

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 3/RP/2021
in Petition No. 172/TT/2018
(alongwith I.A. No. 13/2021 and I.A. No. 15/2021)**

CORAM:

**Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member**

Date of Order: 31.05.2022

In the matter of:

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 6.8.2019 in Petition No. 172/TT/2018.

And in the matter of:

Mytrah Energy (India) Pvt. Ltd.,
8001, 8th Floor, Q-city,
Nanakramguda, Gachibowli,
Hyderabad, Telangana-500032.

.....Review Petitioner

Versus

1. Power Grid Corporation of India Ltd.,
"SAUDAMINI", Plot No. 2, Sector-29,
Near IFFCO Chowk,
Gurugram-122001, Haryana.
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302005, Rajasthan.
3. Ajmer Vidyut Vitran Nigam Ltd.,
132 kV, GSS RVPNL sub-station building,
Caligiri Road, Malviya Nagar,
Jaipur-302017, Rajasthan.
4. Jaipur Vidyut Vitran Nigam Ltd.,
132 kV, GSS RVPNL sub-station building,
Caligiri Road, Malviya Nagar,
Jaipur-302017, Rajasthan.



5. Jodhpur Vidyut Vitran Nigam Ltd.,
132 kV, GSS RVPNL sub-station building,
Caligiri Road, Malviya Nagar,
Jaipur-302017, Rajasthan.
6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II
Shimla-171004, Himachal Pradesh.
7. Punjab State Electricity Board,
Thermal Shed Tia,
Near 22 Phatak, Patiala-147001, Punjab.
8. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula-134109, Haryana.
9. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu.
10. Uttar Pradesh Power Corporation Ltd.,
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001, Uttar Pradesh.
11. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110002.
12. BSES Yamuna Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi-110019.
13. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi-110019.
14. North Delhi Power Ltd.,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent to 66/11 kV Pitampura-3
Grid building, Near PP Jewellers,
Pitampura-110034, New Delhi.
15. Chandigarh Administration,
Sector-9, Chandigarh.
16. Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,



Dehradun, Uttarakhand.

17. North Central Railway,
Allahabad, Uttar Pradesh.
18. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002.
19. Suzlon Power Infrastructure Ltd.,
5, Shrimali Society, Near Shree Krishna Centre,
Navrangpura, Ahmedabad, Gujarat.

.....Respondent(s)

For Review Petitioner: Ms. Molshree Bhatnagar, Advocate, MEIPL
Ms. Manpreet Kaur, Advocate, MEIPL

For Respondents : Ms. Swapna Seshadri, Advocate, PGCIL
Shri S. S. Raju, PGCIL
Shri D. K. Biswal, PGCIL
Shri A. K. Verma, PGCIL
Shri V. P. Rastogi, PGCIL

ORDER

Mytrah Energy (India) Pvt. Ltd. (MEIPL) has filed the instant review petition seeking review of the order dated 6.8.2019 in Petition No. 172/TT/2018 under Section 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. MEIPL has also filed I.A. No. 13/2021 for condonation of delay of 339 days in filing of the instant review petition, I.A. No. 15/2021 for staying the operation of the order dated 6.8.2019 (hereinafter referred to as “the impugned order”) pending adjudication of the review petition and I.A. No. 16/2021 for early hearing of the instant review petition.

Background

2. Power Grid Corporation of India Ltd. (PGCIL) filed Petition No. 172/TT/2018 seeking approval of transmission tariff from the date of commercial operation (COD)



to 31.3.2019 in respect of the following assets under Transmission System Associated with Green Energy Corridors: Inter-State Transmission Scheme (ISTS)-Part A:

- Asset-I:** Combined Asset of (1) 400 kV D/C Ajmer (New)-Ajmer (RVPN) TL along with associated bays at both ends; (2) 400 kV, 125 MVAR Bus Reactor along with associated bay at Ajmer (New) Sub-station; (3) 765/400 kV, 3X500 MVA ICT-I along with associated bays at Ajmer (New) Sub-station; (4) 400 kV D/C Chittorgarh (New)-Chittorgarh (RVPN) TL along with associated bays at both ends; (5) 765 kV, 240 MVAR Bus Reactor along with associated bay at Chittorgarh (New) Sub-station; (6) 400 kV, 125 MVAR Bus Reactor along with associated bay at Chittorgarh (New) Sub-station; (7) 765/400 kV, 3X500 MVA ICT-I along with associated bays at Chittorgarh (New) Sub-station; (8) 765/400 kV, 3X500 MVA ICT-II along with associated bays at Chittorgarh (New);
- Asset-II:** Combined Asset of (1) 765 kV, 240 MVAR Bus Reactor along with associated bay at Ajmer (New) Sub-station; (2) 765/400 kV, 3X500 MVA ICT-II along with associated bays at Ajmer (New) Sub-station;
- Asset-III:** 2X400 kV D/C (Quad) Tirunelveli Pooling Station-Tuticorin Pooling station line along with new 400/230KV (GIS) Tirunelveli Pooling Sub-station with 2X125 MVAR 400 kV Bus reactors and associated bays at 400/230 kV Tuticorin Pooling station; and
- Asset-IV:** 2X500 MVA 400/230 kV transformers along with associated bays and equipment at new 400/230 kV (GIS) Tirunelveli Pooling Sub-station.

3. The Commission vide order dated 6.8.2019 held that the Review Petitioner, as the generating station of the Review Petitioner was not ready on the date of commercial operation of Asset-IV, shall bear the transmission charges of Asset-IV proportionate to the quantum of Long Term Access (LTA) granted to it, i.e. 75 MW from 10.6.2018 to the date of commissioning of its generation. The relevant portion of the order dated 6.8.2019 is as follows:

“84. Asset-IV, i.e. 2X500 MVA 400/230 kV transformers alongwith associated 220 kV bays and associated new 400/230 kV GIS Pooling station at Tirunelveli was put into commercial operation on 10.6.2018. It was built alongwith Asset-III for evacuation of power from the seven wind generators in the Tirunelveli area of Tamil Nadu. As per the 38th SCM, seven RE generators had applied for connectivity for about 1764 MW in Tirunelveli area of Tamil Nadu. The petitioner started operationalizing the LTA after the COD of Asset-IV on 10.6.2018. It is observed that the start date of LTA for Mytrah



Energy was February, 2016. However, Mytrah Energy was not ready with generation on the date of commercial operation of Asset-IV, i.e. 10.6.2018. Therefore, we are of the view that Mytrah Energy shall bear the transmission charges proportionate to the quantum of LTA granted to it, i.e. 75 MW from 10.6.2018 to the date of commissioning of its generation.

85. Besides the above said 75 MW of LTA granted to Mytrah Energy, it is observed that further LTA was granted to Mytrah Energy, Orange Sironj, GIREL and Betam Wind for 175 MW, 200 MW, 249.9 MW and 250.2 MW respectively. The start dates for these said LTAs are after the date of commercial operation of Asset-IV, i.e. 10.6.2018. Therefore, we are of the view that these LTA grantees shall pay the transmission charges from the date of operationalisation of the respective LTAs as per the start date of LTA till the commissioning of their respective generation. After the commissioning of the generation by these LTA grantees, the transmission charges of the Asset-IV shall be included in the POC computation.”

4. Aggrieved with the above-said findings of the Commission, the Review Petitioner has filed the instant review petition wherein the following prayers are made:

“(a) Allow the present Review Petition in terms of the grounds and submissions made hereinabove at para A to BB;

(b) Modify the Order dated 06.09.2018 and held that the Review Petitioner is not liable to make payment of any transmission charges;

(c) Pass such other Order/(s) as deem fit in the interest of justice and equity by this Hon’ble Commission.”

5. The impugned order was heard by coram of Shri P. K. Pujari, Chairperson, Dr. M. K. Iyer, Member and Shri I. S. Jha, Member. Dr. M. K. Iyer, Member has demitted office. Hence, the instant review petition is heard by coram of Shri P. K. Pujari, Chairperson and Shri I. S. Jha, Member.

6. The matter was heard through video conference on 20.7.2021 and order was reserved on admissibility. I.A. No. 16/2021 filed for urgent hearing was disposed vide RoP dated 20.7.2021.



I.A. No. 13/IA/2021

7. The Review Petitioner has filed I.A. No. 13/IA/2021 for condonation of delay of 339 days in filing of the present Review Petition on the grounds that right from the date of pronouncement of order on 6.8.2019, the Review Petitioner deliberated the matter with lawyers, arranged documents, took internal approval and filed Appeal (being DFR No. 43 of 2020) before the Appellate Tribunal for Electricity (APTEL). However, the Review Petitioner withdrew the Appeal on 21.8.2020 and thereafter filed the present Review Petition before the Commission.

8. PGCIL opposed the condonation of delay on the ground that Review Petitioner was aware of the original proceedings and due to long delay caused by the Review Petitioner, rights have accrued in favour of PGCIL and condoning the delay, being a discretionary relief, may not be granted in this case.

9. We have considered the submissions of the parties. In the facts and circumstances of the case and in the interest of natural justice, delay of 339 days in filing the Review Petition is condoned. Accordingly, the I.A. No. 13/IA/2021 stands disposed of.

I.A. No. 15/IA/2021

10. I.A. No. 15 of 2021 has been filed by the Review Petitioner seeking stay of operation of the order dated 6.8.2019 so that PGCIL should not encash the Bank Guarantee (BG) submitted by the Review Petitioner while signing the LTA. It is observed that the Review Petitioner had filed O.P. No. 6 of 2020 before the APTEL and the APTEL vide order dated 22.4.2020 granted interim protection to the Review Petitioner while allowing the Review Petitioner to withdraw the said O.P. Later, the



Review Petitioner has filed Petition No. 727/MP/2020 before the Commission wherein the Commission vide Record of Proceedings dated 28.4.2022 has continued the interim protection granted by the APTEL subject to BG being kept alive by the Review Petitioner.

11. Since the Review Petitioner has been granted interim protection with regard to its BG (in respect of Asset-IV) under Petition No. 727/MP/2020, I.A. No. 15 of 2021 seeking stay on operation of the order dated 6.8.2019, basically to restrain PGCIL to encash the BG, becomes infructuous. However, the issue of Review Petitioner's BG shall be as decided by the Commission in Petition No. 727/MP/2020.

Submissions of the Review Petitioner

12. The Review Petitioner has made the following submissions:

a. Applications were made to PGCIL for grant of connectivity to the Grid and open access to the transmission lines for 300 MW. MEIPL had sought LTA for 75 MW (45 MW in Northern Region + 30 MW in Southern Region) vide LTA Application-I dated 26.5.2014.

b. Applications were revised vide letters dated 11.7.2018 and 19.7.2018 for balance LTA of 225 MW to 175 MW.

c. Connectivity was granted for 300 MW to MEIPL on 22.1.2015 and Agreement was entered into between PGCIL and MEIPL on 20.2.2015 wherein PGCIL undertook to provide connectivity to the Grid for entire 300 MW to MEIPL.

d. Article 8.0 of the said Agreement expressly provided that the sharing of transmission charges and computation of POC charges will be as per the Central Electricity Regulatory Authority (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010.



e. Construction Bank Guarantee (CBG) amounting to ₹3.75 crore was submitted by MEIPL to CTU.

f. MEIPL vide communications dated 5.3.2016 and 6.5.2016 intimated that its Generation Project would be possible by March, 2018.

g. SECI vide letter dated 19.11.2018 granted extension of 39 days from SCOD under PPA due to force measure reasons.

h. Being a wind power generator, the Review Petitioner is exempted from payment of transmission charges.

i. CTU on 14.3.2018, before granting LTA for remaining 225 MW, informed that in case of delay in commissioning of transmission system associated with MEIPL's generation project, transmission charges may be payable.

j. CTU granted LTA of 175 MW to MEIPL on 23.7.2018 as per the following arrangement:

i. 25 MW each to Uttar Pradesh Power Corporation Ltd./ UPPCL and Assam Power Distribution Company Ltd./ APDCL- from 30.9.2018; and

ii. 50 MW (Jharkhand Bijli Vitran Nigam Ltd./ JBVNL), 25 MW (Assam Power Distribution Co. Ltd./ APDCL), 50 MW (North Bihar Power Distribution Co. Ltd./ NBPDCCL and South Bihar Power Distribution Co. Ltd./ SBPDCL)- from 1.12.2018.

k. MEIPL did not contest Petition No. 172/TT/2018 under the bona fide assumption that it was a proforma party.

l. The Commission granted COD of Asset-IV as 10.6.2018 under proviso (ii) of Regulation 4(3) of 2014 Tariff Regulations.

m. The Connectivity Agreement was issued by PGCIL on 3.8.2018 after a lapse of approximately eight months and signed by MEIPL on 8.8.2018 and in order to change the beneficiaries, previous LTA Agreement for 75 MW under LTA Application-I was amended by MEIPL on 8.8.2018.



n. CTU vide letter dated 8.10.2018 intimated LTA operationalization details as follows:

- i. 75 MW-10.6.2018 (with target beneficiaries as NR-45 MW and SR-30 MW till 23.7.2018 and firm beneficiary as UPPCL for 75 MW from 24.7.2018 onwards);
- ii. 50 MW-30.9.2018 (UPPCL-25 MW, APDCL-25 MW); and
- iii. 125 MW-1.12.2018 (JBVNL-50 MW, APDCL-25 MW and NBPDC and SBPDCL-50 MW).

o. COD of MEIPL's Generation Project took place in three phases as follows:

- i. 30.1.2019-128.79 MW;
- ii. 16.4.2019-58.32 MW; and
- iii. 11.5.2019-62.89 MW.

p. The Commission vide impugned order held that the transmission charges for Asset-IV should be levied on defaulting generator, MEIPL, from the date of operationalization of LTA till the commissioning of the respective generation plant.

q. Pursuant to the impugned order CTU issued a Bill of Supply for Transmission Charges dated 20.1.2020 amounting to ₹1,08,85,957.00/-.

r. Aggrieved by the impugned order, an Appeal vide DFR No. 43 of 2020 was preferred by MEIPL before the Appellate Tribunal for Electricity (APTEL).

s. CTU issued a Supplementary Bill of Supply for Transmission Charges dated 31.1.2020 amounting to ₹1,15,56,108.00/- as transmission charges whereas MEIPL vide letter dated 31.1.2020 sought return of CBG of ₹3.75 crore submitted for 75 MW LTA. However, PGCIL vide letter dated 6.2.2020 responded that CBG was for servicing the transmission charges from date of LTA and the transmission charges bills for the delayed period are yet to be liquidated, the said CBG was required to be maintained till the bills are settled. PGCIL further requested MEIPL to liquidate the dues prior to expiry of CBG to enable it to return CBG or extend the validity of CBG till the settlement of dues.



t. Informed PGCIL vide e-mail dated 3.4.2020 that the impugned order has been challenged before the APTEL and Bills of Supply dated 20.1.2020 and 31.1.2020 have been disputed. However, PGCIL vide e-mail dated 7.4.2020 had stated that MEIPL is liable to pay the said Bills within the due dates else applicable regulations will be invoked. Further, the Review Petitioner vide e-mail dated 13.4.2020 informed that Bills raised by PGCIL have not attained finality as an Appeal challenging the basis of issuance of such invoices i.e. impugned order dated 6.8.2019 had already been filed not only by the Review Petitioner but also by PGCIL itself being Appeal No. 359 of 2019.

u. CTU issued Power Supply Regulation Notice to MEIPL on 11.8.2020 due to non-payment of purported outstanding dues amounting to ₹2,24,42,065.00/- stating therein as follows:

- i. MEIPL failed to make timely payment against the Bills raised towards the delay in commissioning of generation as per the impugned order in Petition No. 172/TT/2018;
 - ii. PGCIL was constrained to issue Power Supply Regulation Notice as MEIPL was in default of payment of transmission charges;
 - iii. PGCIL requested SRLDC to prepare an implementation for regulation of power supply of MEIPL and implement the same; and
 - iv. PGCIL directed MEIPL to liquidate the outstanding dues latest by 22.8.2020 failing which the Power Supply Regulations will be enforced.
- v. The Review Petitioner responded to the afore-mentioned Notice on 11.8.2020 and also filed an interim application in pending Appeal filed vide DFR No. 43 of 2020 and the application was heard on 21.8.2020.
- w. The APTEL showed its inability to look into merits of the case till the Commission hears the case and provides its view. Subsequent to which, the said appeal was withdrawn and instant review petition has been filed by MEIPL.



Grounds for Review:

13. The Review Petitioner has prayed for review of the impugned order on the following grounds:

- a) Due to non-participation of MEIPL in Petition No. 172/TT/2018, the facts that default of PGCIL led to delay in commissioning of the generating asset of MEIPL and extension granted by SECI in commissioning dates of the generating stations could not be brought on record.
- b) The impugned order suffers from error apparent on the face of record as the said order did not consider the notice dated 13.12.2017 sent to PGCIL with regard to *force majeure* events faced by MEIPL.
- c) The Commission erred in passing the impugned order as the extension of 39 days in achieving SCOD i.e. till 13.11.2018, given by SECI to MEIPL on account of *force majeure* events was not taken into account and hence MEIPL is not liable to pay any transmission charges till 13.11.2018.
- d) An order passed under mistake of facts is a valid ground for review in terms of the judgments of the Hon'ble Supreme Court in *Lily Thomas and Other vs. Union of India and Other* (AIR 2000 SC 1650); and *BCCI and Another vs. Netaji Cricket Club and Ors.* (2005 4 SCC 741).
- e) The Commission erred by ignoring that it is PGCIL which is at default in fulfilling its own statutory obligation and submitted as follows:
 - i. The impugned order deserves to be set aside insofar as the same validated the wrong committed on the part of PGCIL whereby it claims to have decided to postpone the execution of its transmission assets so as to match them with the commissioning date of the Generation Project of MEIPL rather than admitting the delay and default in executing its own transmission assets.
 - ii. Regulation 4(3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (the 2014 Tariff Regulations)



statutorily required PGCIL to match the commissioning of the generating station and the transmission system as far as practicable.

- iii. MEIPL *bonafidely* informed PGCIL on 6.5.2016 that its Generation Project should be commissioned by March, 2018 against which PGCIL claimed to have postponed the execution of its transmission Asset-III and Asset-IV which signifies that PGCIL did not fulfil its statutory obligation to match up the execution of its assets with that of the generating station.
 - iv. MEIPL may not be made to suffer or pay due to the delay and default of PGCIL and no fault of its own.
 - v. MEIPL was in no default as it constantly informed PGCIL in the quarterly JCC meetings about the progress of its generating plant and the ongoing land and other issues. PGCIL on its own postponed the execution of its transmission Asset-III and Asset-IV. PGCIL in 32nd Meeting of SRPC held on 22.8.2017 suddenly informed that some of its transmission elements are in the advanced stage of execution which meant that there was no actual postponement of the execution of Asset-III and Asset-IV but was rather purely a delay on the part of PGCIL.
 - vi. PGCIL may not seek to recover transmission charges/compensation towards un-utilized ISTS network, which was rendered un-utilized due to fault of PGCIL.
- f) The Commission erred in imposing the liability of payment of transmission charges on MEIPL:
- i. The Commission wrongly imposed the liability of payment of transmission charges on MEIPL as it was a renewable energy generating station and was waived from payment of any transmission charges for the use of ISTS network for at least 25 years from the date of its commissioning as per the Sharing Regulations and the amendments thereafter.
 - ii. Transmission Services Agreement between PGCIL and MEIPL provided that the transmission charges will be determined and payable as per the



Sharing Regulations which clearly exempt the renewable energy generating stations from payment of any transmission charges.

- iii. Assets covered under the impugned order are covered under the Green Energy Corridor and are subject to waiver of transmission charges for the qualified entities who fulfil the conditions mandated under the Sharing Regulations. MEIPL's project is associated with the commissioning of Asset-IV and, therefore, was entitled to waiver from the payment of transmission charges for the use of ISTS.
- iv. The Tariff Policy notified by Ministry of Power on 28.1.2016 proposing to encourage renewable sources of energy by waiving off the levy of inter-state transmission charges and losses till such period as may be notified by the Central Government on transmission of electricity through solar and wind sources of energy through the inter-state transmission system for sale.
- v. MoP vide order dated 30.9.2016 *inter-alia* held that no inter-state transmission charges and losses will be levied on transmission of the electricity through the inter-state transmission system for sale by such projects commissioned till 31.3.2019 and the said order was further amended vide order dated 14.6.2017 whereby the waiver was extended for the generation projects based on solar resources.
- vi. Waiver of inter-state transmission charges and losses on transmission of electricity was extended for the projects based on solar and wind resources vide 5th Amendment to the Sharing Regulations vide the Commission's notification dated 14.12.2017. The said waiver was available for wind-based projects commissioned/to be commissioned between 30.9.2016 and 31.3.2019. MEIPL's project was commissioned in three phases, and the first phase of 128.79 MW was commissioned on 30.1.2019 which may be entitled to be waived from payment of any transmission charges.
- vii. MoP vide order dated 13.2.2018 further extended the waiver of ISTS transmission charges and losses for generation projects based on solar and wind sources of energy commissioned till 31.3.2022.



- viii. Ministry of New and Renewable Energy, Govt. of India (MNRE) vide letter dated 31.1.2019 observed that waiver of ISTS charges for the power generating stations from renewable sources, wind and solar, was in effect socialisation of cost among the larger consumer framework and further observed that such waiver does not result in any revenue loss but is in fact the socialised cost *in lieu* of the transmission charges that would have been paid by inter-State renewable power purchaser.
- ix. The Commission based on afore-mentioned orders, notifications, communications and letters of MNRE, MoP and the existing legal framework, notified 6th Amendment to the Sharing Regulations on 27.3.2019 which extended the waiver of transmission charges payable for the generation based on solar and wind power resources, having commercial operation between 13.2.2018 till 31.3.2022. In view of this, MEIPL's project's other two phases commissioned post 31.3.2019 i.e. 58.32 MW on 16.4.2019 and 62.89 MW on 11.5.2019 may also be exempted from payment of transmission charges under Regulation 7 of the 2020 Sharing Regulations.
- x. The impugned order was passed not only in excess of the Commission's powers/ jurisdiction but is unlawful and legally unsustainable for being in utter disregard of the scheme/ provisions of the 2003 Act and the Regulations thereunder and is thus liable to be set aside by the Commission.
- g) No transmission charges are payable by the generating company until the transmission system is used by the generating company. The 2003 Act only recognizes recovery of transmission charges for utilization of the transmission asset but does not recognize recovery of stranded capacity charges in relation to non-utilization of the transmission asset. Conjoint reading of Section 38(2)(d)(i) and Section 2(47) of the 2003 Act establishes that the Commission has been empowered to make Regulations to determine transmission tariff and



for Open Access for use of ISTS by the generators, licensee or consumer and does not permit the Commission to specify any charges for non-usage of transmission system.

- h) The Commission failed to appreciate the statutory mandate for system planning and execution:
- i. PGCIL has been vested with the functions particularly in relation to planning and coordination for creation of the ISTS network and perusal of Section 38(2)(b) of the 2003 Act demonstrated that while discharging such function, PGCIL has to coordinate with multiple stakeholders and statutory authorities.
 - ii. ISTS network is a national asset created by PGCIL, like other national assets such as roadways, airports, railways etc. and under law the creation of the infrastructure happens through a systematic planning and should not be driven by intention of revenue maximization. The recovery of cost of such shared infrastructure has to be accordingly made.
- i) MEIPL cannot be made liable to pay transmission charges as MEIPL is a mere LTTC and has absolutely no control over the execution of the respective transmission assets/ elements of PGCIL. Any mismatch between execution of respective transmission assets of PGCIL cannot be made attributable to MEIPL and, therefore, such claim/demand cannot be sustained in law.
- j) The Commission has erred to appreciate that the transmission charges under the extant regulatory and contractual framework are only recoverable once the actual transmission of power commences and not otherwise.
- k) PGCIL was already using Asset-IV (Line Reactors) as Bus Reactors to maintain the voltage profile of ISTS and hence may not be allowed to recover additional cost from MEIPL. Accordingly, in terms of the 2014 Tariff Regulations and the



Sharing Regulations, transmission charges for these assets may be recovered under PoC mechanism from the respective dates of COD of these assets.

Submissions of PGCIL, Respondent No. 1

14. PGCIL opposed the condonation of delay in filing the review petition and has also raised issue of maintainability and admissibility of the present review petition. The gist of the submissions made by PGCIL is as follows:

- a) PGCIL impleaded MEIPL as necessary and a proper party and never described MEIPL as a *pro-forma* Respondent in any of the proceedings or pleadings before the Commission in Petition No. 172/TT/2018.
- b) MEIPL was served with the said Petition in time and was mapped on e-filing portal of the Commission as well. The representative of MEIPL attended the hearing on 31.7.2018 in Petition No. 172/TT/2018 wherein details of LTA granted on Green Energy Corridors, the solar and wind generating project envisaged in such corridors, the start date of LTA, the status of operationalisation of LTA, the nature of the transmission scheme and several other details which pertained and would have affected MEIPL were sought by the Commission.
- c) Despite being aware of the proceedings, MEIPL did not appear in the next hearing of the said petition held on 24.1.2019. The impugned order was communicated to MEIPL on 7.8.2019 as the same was posted on the website of the Commission and was intimated through e-filing portal of the Commission



as well. MEIPL claimed the receipt of impugned order copy by post on 30.8.2019. PGCIL has submitted the findings of the Commission in the impugned order with regard to the liability of MEIPL to pay the transmission charges for certain assets covered in Petition No. 172/TT/2018.

- d) MEIPL claimed that it had knowledge of PGCIL's Appeal No. 359 of 2019 filed on 25.11.2019 before the APTEL against the impugned order. MEIPL's appearance in the said Appeal was noticed for the first time on 30.1.2020.
- e) MEIPL filed Appeal before the APTEL on 24.1.2020 vide DFR No. 43 of 2020 against the impugned order on the basis of which PGCIL raised bills for transmission charges on MEIPL on 20.1.2020. MEIPL did not take any steps to either to get the said Appeal or applications related thereto heard before the APTEL even after notice was issued on condonation of delay application on 18.2.2020.
- f) PGCIL issued Regulation of Power Supply Notice to MEIPL even after a series of communications between PGCIL and MEIPL during January, 2020 and 14.8.2020, MEIPL failed to pay the transmission charges raised by PGCIL vide Bill dated 20.1.2020.
- g) MEIPL's IA No. 1031 of 2020 seeking early hearing of Appeal filed by MEIPL vide DFR No. 43 of 2020 and IA No. 1030 of 2020 seeking stay of Regulation of Power Supply Notice were dismissed by APTEL vide order dated 21.8.2020 and the Appeal along with IAs were recorded as withdrawn in APTEL's said order.



- h) MEIPL should have obtained liberty to file the present review petition from APTEL but MEIPL withdrew the Appeal along with all pending applications as APTEL was against them which render the filing of the instant review petition barred by law.
- i) PGCIL has cited Hon'ble Supreme Court's judgment in Thungabhadra Industries Ltd. vs. Govt. of Andhra Pradesh; AIR 1964 SC 1372, and submitted that a review petition cannot be filed after the date of filing of appeal.
- l) Relying on the provisions of Order-XXIII, Rule-1 of the Code of Civil Procedure, PGCIL has submitted that even if an Appeal is withdrawn to pursue the remedy of review, there needs to be a specific liberty taken from the appellate Court in order to file a review petition.
- k. The present review petition has to be dismissed as being barred by law and without the liberty of the Appellate Tribunal. In support of this, PGCIL has referred APTEL's order dated 19.2.2018 in Appeal No. 147 of 2017, the relevant extract of which is as follows:

"The Appeal No. 147 of 2017 is disposed of as withdrawn giving liberty to the Appellant to file the Review Petition before the Central Commission within a period of two weeks from the date of receipt of this order."

- j) PGCIL had sought determination of tariff of certain assets which were part of the GEC and built specifically to service the LTA granted in such corridors. MEIPL's LTA of 75 MW was operationalized on 10.6.2018 and its balance LTA of 175 MW out of which 50 MW and 125 MW was operationalized on 30.9.2018 and 1.12.2018 respectively, MEIPL was well aware that any decision on the transmission charges or the manner of the recovery would have affected it.



- k) When the Bill was raised by PGCIL on 20.1.2020, MEIPL immediately filed Appeal before APTEL on 24.1.2020. MEIPL's decision to file an Appeal was not affected by PGCIL's action of filing Appeal on 25.11.2019 as PGCIL's Appeal was on a completely different issue and had nothing to do with liability of MEIPL to pay the transmission charges. This was only being given as a reason to explain the condonation of delay while actually MEIPL was waiting to see how PGCIL would implement the order dated 6.8.2019.
- l) MEIPL was not serious in pursuing the Appeal as it was filed to defer any steps that PGCIL might have taken for recovery of the amounts due to it in line with impugned order.
- m) Due to the long delay caused by MEIPL, rights have accrued in favour of PGCIL and condoning the delay, being a discretionary relief, may not be granted in this case to the detriment of PGCIL.

15. During the hearing on 20.7.2021, learned counsel for MEIPL reiterated the above submissions made in the review petition.

16. We have heard the learned counsels for Review Petitioner and PGCIL and perused the material available on record. Learned counsel for the Review Petitioner contended that MEIPL did not contest Petition No. 172/TT/2018 as it was under the impression that it was a proforma party. He contended that the impugned order is erroneous insofar as it concluded that MEIPL is liable to pay transmission charges in proportion to quantum of LTA granted to it i.e. 75 MW from the date of commercial operation of Asset-IV i.e from 10.6.2018 to the date of commissioning of generation



by MEIPL. Learned counsel contended that the Commission has wrongly imposed the liability of payment of transmission charges on MEIPL as it is a renewable energy generating station and it is exempted from payment of any transmission charges for the use of ISTS network for at least 25 years from the date of its commissioning as per the 2010 Sharing Regulations. Learned counsel contended that Transmission Services Agreement between PGCIL and MEIPL provides that the transmission charges will be determined and payable as per the Sharing Regulations and the Sharing Regulations exempt renewable energy generating stations from payment of transmission charges. The MEIPL's project is associated with transmission assets of PGCIL which are covered under the Green Energy Corridor and as such MEIPL's project is entitled to waiver from the payment of transmission charges for the use of ISTS. MEIPL cannot be made liable to pay transmission charges as it is merely an LTTC and it has no control over the execution of the respective transmission assets/elements of PGCIL. Therefore, for any mismatch between execution of respective transmission assets of PGCIL cannot be made attributable to MEIPL. Learned counsel contended that PGCIL was already using Asset-IV (Line Reactor) as Bus Reactor to maintain the voltage profile of ISTS and, therefore, it may not be allowed to recover additional cost from MEIPL.

17. Per contra learned counsel for PGCIL contended that PGCIL impleaded MEIPL as a necessary and proper party and MEIPL was not a pro-forma Respondent before the Commission in Petition No. 172/TT/2018. Learned counsel further contended that PGCIL sought determination of tariff of certain assets which were part of the Green Energy Corridor and built mainly to service the LTA granted in such corridors. Learned counsel also contended that MEIPL's LTA of 75 MW was



operationalized on 10.6.2018 and its balance LTA of 175 MW, out of which 50 MW and 125 MW were operationalized on 30.9.2018 and 1.12.2018 respectively, suggest that MEIPL was well aware of the fact that any decision on transmission charges or the manner of recovery would have impact on it. MEIPL filed Appeal being DFR No. 43 of 2020 before the APTEL and the same was withdrawn by it on 21.8.2020 alongwith all applications filed therewith with a plea to approach the Commission by way of a Review Petition, and that the said Appeal under DFR No. 43 of 2020 was dismissed as withdrawn. Learned counsel contended that the present Review Petition being barred by law is liable to be dismissed as it is filed after filing of Appeal which was withdrawn without liberty of APTEL to file the Review Petition. Contending such, learned counsel prayed for dismissal of the Review Petition as being not maintainable.

18. The contention of MEIPL that it was under the impression that it was a proforma party and no formal reply was required to be filed by it does not appeal to us. On perusal of record, we notice that MEIPL was arrayed as one of the Respondents in the original Petition No. 172/TT/2018 and notice of the petition was also served upon it. Further, Record of Proceedings dated 31.7.2018 in Petition No. 172/TT/2018, shows that representative of MEIPL attended the hearing on 31.7.2018 wherein the Commission directed the Respondents to file their reply in the matter. The matter was again heard by the Commission on 24.1.2019 wherein the Commission, inter alia, called for list of generators associated with Asset-IV and LTA operationalization details and also directed the Respondents to file their reply.

19. In compliance of Commission's direction, PGCIL vide affidavit dated 14.2.2019 in Petition No. 172/TT/2018, deposed that start date of LTA operationalization for 75 MW quantum of MEIPL was February, 2016. PGCIL further deposed that



transmission charges of Asset-I, Asset-II and Asset-III should be granted in POC pool and transmission charges of Asset-IV should be levied on the concerned generators till the commissioning of the respective generation from the date of operationalization of LTA and after commissioning of the generators, transmission tariff should be part of PoC pool.

20. We are of the view that MEIPL should have responded to PGCIL's contention that the transmission charges of Asset-IV should be borne by the generators from the date of operationalization of LTA till the commissioning of the respective generation, especially when MEIPL was well aware that Asset-IV of PGCIL is connected to its generation for which 75 MW LTA was also given by the PGCIL with start date as February, 2016. However, MEIPL choose not file any reply and has also not controverted the contentions of PGCIL. We are not convinced with the contentions of MEIPL that it chose not to file any reply in the matter as it was a proforma party. Accordingly, the contention of MEIPL that it did not file any reply as it thought that it was a proforma party appears to be an afterthought and therefore it is rejected

21. Learned counsel for PGCIL has contended that MEIPL filed Appeal being DFR No. 43 of 2020 before the APTEL and the same was withdrawn by it on 21.8.2020 with a plea to approach the Commission by way of a Review Petition. However, MEIPL did not take leave of the Appellate Tribunal to file Review Petition before the Commission and as such the present Review Petition is barred by law and is, therefore, liable to be dismissed. As against this, learned counsel for MEIPL contended that DFR No. 43 of 2020 was allowed to be withdrawn by the APTEL.



22. We have perused APTEL's order dated 21.8.2020 in DFR No. 43 of 2020 which was filed by MEIPL against the Commission's order dated 6.8.2019. On perusal of the said order of APTEL, it is observed that on the submissions of MEIPL to file review petition before the Commission, the said Appeal was dismissed as withdrawn. Subsequent to withdrawal of DFR No. 43 of 2020, MEIPL filed the present Review Petition before the Commission. It is further observed from the APTEL's order dated 21.8.2020, that no effective order on any of the Interlocutory Applications in DFR No. 43 of 2020 was passed and that the Appeal was not even registered by APTEL. MEIPL was allowed to withdraw DFR No. 43 of 2020 by the APTEL on submission of MEIPL to file review petition before the Commission. In the present case, the fact of filing the Review Petition before the Central Commission was the reason for withdrawal of DFR No. 43 of 2020 and this was in the knowledge of APTEL. As APTEL did not proceed further with DFR No. 43 of 2020, nor passed any effective order, did not register the Appeal and allowed withdrawal of the same to file Review Petition before the Central Commission is sufficient ground for entertaining the Review Petition. Accordingly, we observe that in the facts and circumstances of the present case, the review petition is maintainable.

23. Before examination of the contentions of MEIPL and PGCIL, it is appropriate to refer to the provisions of Order 47 Rule 1 of Code of Civil Procedure, 1908 which provides that a review is maintainable on the following grounds:

- (a) discovery of new and important matter or evidence which was not within knowledge of the Review Petitioner or could not be produced after the exercise of due diligence,
- (b) Mistake or error apparent on the face of the record;
- (c) Any other sufficient reason.



24. The main contention of learned counsel for MEIPL is that the Commission has erred by imposing the liability of payment of transmission charges on MEIPL as it is a renewable energy generating station and the same is exempted from payment of transmission charges for the use of ISTS network for 25 years from the date of its commissioning as per the 5th and 6th amendments to the Sharing Regulations, 2010 and Ministry of Power's order dated 13.2.2018. It is further contended by MEIPL that Transmission Service Agreement between PGCIL and MEIPL provides that transmission charges will be determined and payable as per the Sharing Regulations which exempt the renewable energy generating stations from payment of transmission charges.

25. On the basis of above contentions, MEIPL claims that the Commission in its order dated 6.8.2019 in Petition No. 172/TT/2018, has committed an oversight by which the spirit of provisions of 5th and 6th amendments to the 2010 Sharing Regulations alongwith Ministry of Power's orders including order dated 13.2.2018 have not been taken in their right perspective.

26. We, therefore, first deal with the provisions of 5th and 6th amendments to the 2010 Sharing Regulations. The relevant excerpts of 5th amendment to the 2010 Sharing Regulations are as follows:

“

.....

(z) No transmission charges and losses for the use of ISTS network shall be payable for the generation based on wind power resources for a period of 25 years from the date of commercial operation of such generation if they fulfil the following conditions:

(i) Such generation capacity has been awarded through competitive bidding; and



(ii) Such generation capacity has been declared under commercial operation between 30.9.2016 till 31.3.2019; and

(iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to the Distribution Companies for compliance of their renewable purchase obligations.”

27. The relevant excerpts of 6th amendment to the 2010 Sharing Regulations are as follows:

“7(1) (aa) No transmission charges and losses for the use of ISTS network shall be payable for the generation based on wind power resources for a period of 25 years from the date of commercial operation of such generation if they fulfil the following conditions:

(i) Such generation capacity has been awarded through competitive bidding; and

(ii) Such generation capacity has been declared under commercial operation between 13.2.2018 till 31.3.2022; and

(iii) Power Purchase Agreement(s) have been executed for sale of such generation capacity to the Distribution Companies for compliance of their renewable purchase obligations.”

28. On reading the above provisions of 5th and 6th amendments to 2010 Sharing Regulations, it is clear that no transmission charges and losses for the use of ISTS network shall be payable for the generation based on wind power resources for a period of 25 years from the date of commercial operation of such generation provided such generation has been declared under commercial operation between 3.9.2016 till 31.3.2019 (as per 5th amendment of 2010 Sharing Regulations) and from 13.2.2018 till 31.3.2022 (as per 6th amendment of 2010 Sharing Regulations) amongst other things as provided in the said regulations. Further, the said regulations do not provide for exemption from payment of transmission charges and losses for the generation based on wind power resources before the date of commercial operation of such generation projects. Thus, 5th and 6th amendments to the 2010 Sharing Regulations in essence speak of applicability of waiver from payment of transmission is applicable only after the generator starts generation of electricity and there appears to be no



confusion in the language applied in Regulation 7(1)(z)(ii) and Regulation 7(1)(aa) of the 2010 Sharing Regulations. Therefore, no benefit of 5th and 6th amendments to the 2010 Sharing Regulations can be given to MEIPL as they mean generation of electricity after declaration of commercial operation is a necessary condition for claiming waiver from the payment of transmission charges for use of ISTS network to fall under this category.

29. Further, on careful reading of Ministry of Power's order dated 13.2.2018, we find that the said order provides for waiver to such generation capacity if it has been declared under commercial operation during the period from 13.2.2018 to 31.3.2022 while the other conditions of the said order remain the same as have been laid down in 5th and 6th amendments to 2010 Sharing Regulations. Thus, by way of Ministry of Power's order dated 13.2.2018, there is no material change in the applicability waiver from payment of transmission charges and losses for the generation based on solar or wind power resources as it also emphasizes on the fact that such generation capacity should have been declared under commercial operation during the period from 13.2.2018 to 31.12.2022 while the other terms remain the same. Therefore, MEIPL cannot also take the benefit of MoP's letter dated 13.2.2018 as it nowhere states that waiver from payment of transmission charges and losses is applicable for the use of ISTS network before the date of commercial operation and generation of electricity by the wind power generator.

30. Now the question arises as to how the Commission is justified in its order dated 6.8.2019 in Petition No. 172/TT/2018 on imposing the payment of transmission charges from the date of commercial operation of Asset-IV i.e. from 10.6.2018 to the



commissioning date of generation of MEIPL in proportionate to 75 MW LTA granted to it.

31. The Commission before levy of transmission charges on MEIPL had considered the provisions of Regulation 8(6) of the 2010 Sharing regulations which provides as follows:

“8. Determination of specific transmission charges applicable for a Designated ISTS Customer.

(6) For Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes as per methodology given in the Annexure-I. Such mechanism shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.”

32. A bare reading of the provisions of Regulation 8(6) of 2010 Sharing Regulations states that till the generating station has achieved commercial operation, the responsibility to pay transmission charges shall be of the generator. Therefore, we do not agree with the contentions of MEIPL that 5th and 6th amendments to the 2010 Sharing Regulations or that MoP's orders including order dated 13.2.2018 absolve MEIPL from the payment of transmission charges and losses for the delay of its project as harmonious construction has to be read with Regulation 8(6) of the 2010 Sharing Regulations.

33. In view of above discussions, we do not find any error apparent or any other sufficient cause for review of our order dated 6.8.2019 in Petition No. 172/TT/2018. Accordingly, we reject the above contentions of MEIPL.



34. Review Petition No. 3/RP/2021 along with I.A. No. 13 of 2021, IA No. 15 of 2021 and I.A. No. 16 of 2021 is disposed of in terms of above discussions and findings.

Sd/

(I. S. Jha)
Member

Sd/

(P. K. Pujari)
Chairperson

CERC website S. No. 292/2022

