

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

**Review Petition No. 3/RP/2022
in
Petition No. 156/TT/2015**

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order : 7.9.2022

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 9.2.2021 in Petition No. 156/TT/2015.

And in the matter of:

Parbati Koldam Transmission Company Limited,
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110016.

.... Review Petitioner

Vs.

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302005.
2. Ajmer Vidyut Vitran Nigam Limited,
132 kV, GSS RVPNL Sub-station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan).
3. Jaipur Vidyut Vitran Nigam Limited,
132 kV, GSS RVPNL Sub-station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan).
4. Jodhpur Vidyut Vitran Nigam Limited,
132 kV, GSS RVPNL Sub-station Building,
Caligiri Road, Malviya Nagar,



Jaipur-302017 (Rajasthan).

5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171004.
6. Punjab State Electricity Board,
Thermal Shed TIA, Near 22 Phatak,
Patiala-147001.
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134109.
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001.
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002.
11. BSES Yamuna Power Limited,
B Block, Shakti Kiran Bldg.
(Near Karkardooma Court)
Karkardooma, 2nd Floor,
Delhi-110092.
12. BSES Rajdhani Power Limited,
BSES Bhawan, Behind Nehru Place,
New Delhi-110019.
13. Tata Power Delhi Distribution Limited,
Cennet Building, Adjacent to 66/11 kV Pritampura-Grid building,
Near PP Jewellers, Pitampura,
North Delhi-110034.
14. Chandigarh Administration,
Sector -9, Chandigarh.
15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road, Dehradun.



16. North Central Railway,
Allahabad.
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi – 110002.
18. Northern Regional Electricity Board, 1
8-A, Shaheed Jeet Singh Marg, Katwaria Sarai,
New Delhi-110016.
19. PowerGrid Corporation of India Limited,
"Saudamini", Plot No.2, Sector-29, Gurgaon -122001.
20. National Hydro Power Corporation Limited,
NHPC Office Complex, Sector-33,
Faridabad, Haryana-121003.
21. NTPC Limited,
NTPC Bhawan, Scope Complex, Institutional Area,
Lodhi Road, Pragati Vihar, New Delhi-110 016.
22. Himachal Pradesh Power Corporation Limited, Sainj (HEP),
Sarabhai, Bhunter, Distt. Kullu, Himachal Pradesh-175 125.
23. Himachal Pradesh Power Corporation Limited,
HIMFED Bhawan, Below Old MLA Quarters,
Bypass Road, Tutikandi, Shimla-171 005,
Himachal Pradesh.

.....**Respondents**

Parties Present :

Shri Amit Kapur, Advocate, PKTCL
Ms. Gayatri Aryan, Advocate, PKTCL
Shri Rajiv Shankar Dvivedi, Advocate, NHPCL
Shri Lokendra Singh Ranawat, PKTCL
Shri Venkatraman Inumula, PKTCL
Shri Ketan Patil, PKTCL
Shri Ajay Shrivastava, NHPCL
Shri S. K. Meena, NHPCL

Order

Instant Review Petition has been filed by Parbati Koldam Transmission Company Limited (PKTCL) seeking review and modification of order dated 9.2.2021 in Petition No. 156/TT/2015 (hereinafter referred to as 'the impugned order') 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.

Background

2. Brief facts leading to filing of the present Review Petition are as follows:

a) PKTCL filed Petition No.156/TT/2015 for determination of transmission tariff from the date of commercial operation (COD) to 31.3.2019 in respect of the following assets:

- (i) Asset-I: 400 kV (Quad) 2 x S/C Parbati-Koldam transmission line, portion starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station to Koldam HEP (Ckt.-I), and
- (ii) Asset-II: Portion starting from Parbati-II HEP LILO point of Parbati-III HEP (Ckt.-II) in Northern Region under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”).

b) The Commission vide order dated 29.12.2016 in Petition No. 156/TT/2015 observed that PKTCL was not able to put into use its transmission line due to delay on the part of NHPC and held that NHPC would bear IDC and IEDC charges for the period of mismatch. The relevant extract of the order dated 29.12.2016 is as follows:

“24. It is observed that Ckt.-I and Ckt.-II of Parbati-III-Koldam line were originally envisaged to be commissioned with the 400 kV bays in Parbati-II switchyard of NHPC. On account of delay in commissioning of 400 kV bays in Parbati-II switchyard of NHPC, the Ckt.-I and Ckt.-II of Parbati-III-Koldam line were put into use only on 3.11.2015 through an alternate arrangement. Since the delay is attributable to the non-commissioning of 400 kV bays by NHPC, we are of the view that the IDC and IEDC from 30.6.2015 for instant assets till



2.11.2015 shall be borne by NHPC. With effect from 3.11.2015, the transmission charges for the instant assets shall be serviced in accordance with Sharing Regulations. The IDC and IDEC borne by NHPC shall not be capitalized by NHPC in its books of accounts for the purposes of claiming tariff for its generation from Parbati HEPs as well as for transmission services by the petitioner.”

- c) Against the Commission's order dated 29.12.2016 in Petition No. 156/TT/2015, PKTCL filed Review Petition No. 4/RP/2017 and NHPC filed Review Petition No. 15/RP/2017.
- d) In Review Petition No. 4/RP/2017, PKTCL sought review and modification of the order dated 29.12.2016 mainly on the grounds of (i) restriction of IEDC to 5% of the hard cost instead of 11.71% of the hard cost claimed by PKTCL; (ii) approval of COD of the transmission assets as 3.11.2015 against the PKTCL's claim of 30.6.2015 and to allow full payment of transmission charges from 30.6.2015 to 2.11.2015 to PKTCL.
- e) NHPC in Review Petition No. 15/RP/2017 sought review of the impugned order on the issue of allowing recovery of IDC and IDEC charges from it for the period from 30.6.2015 to 2.11.2015 due to non-execution of 400 kV bay of Prabati-II within the scope of work of NHPC.
- f) During pendency of Review Petition No. 4/RP/2017 and Review Petition No.15/RP/2017 before the Commission, NHPC preferred Appeal No. 281 of 2016 challenging the Commission's order dated 21.7.2016 in Petition No. 91/TT/2012 and Appeal No. 81 of 2017 against the Commission's order dated 7.9.2016 in Review Petition No. 19/RP/2015 arising out of



Petition No. 91/TT/2012 before Appellate Tribunal for Electricity (APTEL). APTEL vide its judgment dated 16.7.2018 in Appeal No. 281 of 2016 and Appeal No. 81 of 2017 directed the Central Commission to take a comprehensive view on adjudication of the pending Review Petitions in Petition No. 156/TT/2015. The relevant extract of APTEL's judgment dated 16.7.2018 in Appeal No. 281 of 2016 and Appeal No. 81 of 2017 is as follows:

"14.4.....It is, however, relevant to opine that the findings and decisions of the Central Commission have to be consistent and uniform based on principle of natural justice and equity in all the cases as far as liability for delay in commissioning of the respective assets of the parties is concerned. It is further noted that a review petition in respect of the said petition No.156/TT/2015 is pending before the CERC and the entire issue, as such, needs comprehensive adjudication."

g) Both the Review Petition No. 4/RP/2017 and Review Petition No. 15/RP/2017 were allowed vide order dated 12.12.2018 with direction to re-list Petition No.156/TT/2015 for re-consideration in terms of the APTEL's judgement dated 16.7.2018 on the issue of COD and sharing of transmission charges. The observations made by the Commission in the said order dated 12.12.2018 are as follows:

"26. Taking into consideration the directions of APTEL in judgment dated 16.7.2018 and the submissions made by NHPC, as elucidated in paragraphs 22, 23 and 24 above, we set down the main petition, Petition No.156/TT/2015, for hearing on the issue of date of commercial operation of Asset-I: section of 400 kV (Quad) 2xS/C Parbati Koldam transmission line starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station to Koldam HEP (Ckt.-I) and Asset-II: from Parbati-II HEP LILO point of Parbati-III HEP (Ckt-II) and sharing of the transmission assets of the said assets alongwith Petition No.91/TT/2012."

27. The issues raised by PKTCL in its Review Petition like grant of IDC and IEDC instead of transmission charges, grant of 5% of Hard Cost as IEDC instead of 11.77% of the Hard Cost and some typographical errors while



dealing with interest on working capital and IEDC will also be considered while deciding the Petition Nos. 156/TT/2015 alongwith Petition No. 91/TT/2012.”

- h) Accordingly, Petition No. 156/TT/2015 was re-opened in terms of the Commission’s common order dated 12.12.2018 in Review Petition No. 4/RP/2017 and Review Petition No. 15/RP/2017 keeping in mind the observations of APTEL vide judgment dated 16.7.2018 in Appeal No. 281 of 2016 and Appeal No. 81 of 2017. Accordingly, Petition No. 156/TT/2015 was re-listed before the Commission on 11.7.2019 and order was reserved on 13.2.2020.
- i) The Commission vide order dated 9.2.2021 in Petition No. 156/TT/2015 rejected the prayer of PKTCL for approval of COD of its transmission assets as 30.6.2015 under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations and observed that delay in execution of the transmission assets was not due to NHPC. The relevant extracts of the order dated 9.2.2021 are as follows:

“53. In sum, (i) availability of Parbati-II switchyard was not a necessary condition for commissioning of the instant assets of PKTCL; (ii) despite NHPC being ready with its bays in 2013 and readiness of assets of the Petitioner (except for communication system) on 30.06.2015, power flow could not begin since the Petitioner did not inform NHPC about its readiness; (iii) the loop (bypassing the two circuits i.e. one coming from Parbati Pooling Station and other from Parbati-III generation at Parbati-II) had not been completed by the Petitioner prior to 15.10.2015, when PGCIL intimated NHPC about the readiness of 400 kV Parbati-III to Banala PS transmission line (via Parbati-II) Ckt-I; (iv) complete communication system of 400 kV Parbati-III to Banala PS transmission line (via Parbati-II) was commissioned by 1.11.2015 and trial operation of the said line was completed successfully only on 3.11.2015; and (v) lack of coordination amongst the entities led to a situation in which associated bays of Parbati-III could not be re-tested as per the 2010 CEA Safety Regulations as on the date matching with claimed completion date of assets of the Petitioner i.e. 30.6.2015. In view thereof, we cannot approve COD



of the instant assets as 30.6.2015 in terms of proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations.

.....
.....

54. In view of the facts and circumstances of the present case as discussed in detail above, the COD of the Assets-I and II as 30.6.2015 has not been accepted. Thus, having held that COD of the assets is 3.11.2015, no IDC/IEDC or any transmission charge can be allowed during the period from 30.6.2015 to 2.11.2015. Any IDC/IEDC, if already paid by NHPC for the period 30.6.2015 to 2.11.2015 in terms of order of the Commission dated 29.12.2016, shall be refunded to NHPC by PKTCL within one month from the date of passing of this order.

- j) Aggrieved by the Commission's order dated 9.2.2021 in Petition No. 156/TT/2015, PKTCL has filed the instant Review Petition. PKTCL has made the following prayers in the Review Petition:

"48. In view of the foregoing submissions, it is respectfully prayed that this Hon'ble Commission may be pleased to:

- (a) Condone the delay in filing the present Petition;
- (b) Allow the present Petition and review the Impugned Order dated 9.2.2021 passed in Petition No.156/TT/2015 as prayed in the present Petition;
- (c) Approve the Commercial Operation Date of PKTCL's Transmission Line viz. Asset-I: Section of 400 kV (Quad) 2 x S/C Parbati - Koldam transmission line starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station (Ckt. I) and Asset II: Section starting from Parbati-II HEP to LILO point of Parbati-III HEP (Ckt. -II) as 30.06.2015;
- (d) Hold that the delay in power flow in PKTCL's Transmission line from 30.06.2015 to 2.11.2015 is not attributable to PKTCL;
- (e) Allow PKTCL to recover complete transmission charges for Asset-I and Asset-II with effect from 30.6.2015 in the manner and from the agency as decided by this Hon'ble Commission.
- (f) Pass any such and further orders that this Hon'ble Commission deems fit in the facts of the present Petition.

3. Against the Commission's order dated 9.2.2021 in Petition No.156/TT/2015, PKTCL is before the Commission by way of the present Review Petition submitting that the Commission has erred in the impugned order by disallowing COD of the



transmission assets as 30.6.2015 under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations. PKTCL has further submitted that the Commission's observation in the impugned order is erroneous that delay in COD between 30.6.2015 and 3.11.2015 (i.e. date of power flow) was not on account of NHPC and as such no IDC and IEDC or any transmission charges can be allowed during the period from 30.6.2015 to 2.11.2015.

4. Main submissions of the Review Petitioner are as follows:

a) Mistake of fact confusing bays at Parbati-III switchyard for Parbati-II switchyard

(i) The Commission erred in linking the charging of PKTCL's assets to the execution of the Parbati-II switchyard and observed this as one of the reasons for concluding the date of COD and NHPC's accountability for this delay. It was never the case of PKTCL that charging of its transmission assets were linked to the execution of NHPC's Parbati-II switchyard. Charging of PKTCL's transmission assets were partly dependent on execution of bays at Parbati-III switchyard as was brought out by PKTCL in its Petition No. 156/TT/2015.

(ii) Though transmission assets of PKTCL were not directly entering Parbati-III HEP switchyard of NHPC and are connected to the point of LILO of Parbati-III HEP switchyard which belongs to CTU, they were prevented from getting charged as the switchyard at Parbati-III HEP of NHPC was not ready for charging.

(iii) The factual position that delay was due to non-readiness of switchyard at Parbati-III HEP was clarified by PKTCL before the Commission in its



rejoinder affidavit dated 11.2.2016 in Petition No.156/TT/2015 and rejoinder affidavit dated 5.7.2017 to the reply of NHPC in Petition No. 4/RP/2017 and PKTCL's written submissions filed on 9.3.2020 in Petition No. 156/TT/2015 i.e. after the matter was re-opened.

- (iv) It is the consistent stand of PKTCL in the correspondences exchanged with CTU that delay in power flow in the PKTCL's transmission line section is due to non-availability of Parbati-III bay under the scope of NHPC.
- (v) PKTCL in its letter dated 17.7.2015 requested CTU to intervene in the charging of Parbati-III bay under the scope of work of NHPC so that power flow could start in the PKTCL's transmission line section and line could be utilized.
- (vi) PKTCL wrote to CTU on 9.12.2015 to amend revised COD to 3.11.2015 since power flow in the transmission line section could not be achieved due to non-readiness of switchyard at Parbati-III HEP of NHPC.
- (vii) The question whether execution of Parbati-II switchyard was essential for execution of transmission assets of PKTCL was not even involved in Petition No. 156/TT/2015 and it was extraneous and irrelevant for deciding date of commercial operation as 3.11.2015 and holding NHPC accountable for delay in COD.

b) Mistake of fact and law holding PKTCL as being obliged to inform NHPC and other beneficiaries of the Northern Region regarding expected date of readiness of PKTCL system



(viii) The Commission has erred in the impugned order by observing that there has been lack of co-ordination efforts undertaken by PKTCL to inform NHPC and CTU regarding probable charging of its transmission assets. The Commission has also erred by concluding that delay in power flow is not attributable to NHPC on account of non-readiness its bays at Parbati-III since PKTCL did not inform NHPC regarding readiness of its transmission assets. The Commission failed to consider Article 6.1.1 of the Implementation Agreement (IA) dated 23.11.2007 executed between CTU and PKTCL and the contents of letters written by PKTCL which evince the co-ordination was done by PKTCL. PKTCL was only required to inform CTU by giving 60 days written notice in advance with regard to its intention to execute a phase of the transmission system. PKTCL in terms of the IA duly intimated CTU vide letter dated 11.3.2015 that Parbati-Koldam line starting from Parbati-II HEP to LILO point of Banala Pooling Station (Circuit-1) and from Parbati-II HEP to LILO point of Parbati-III HEP (Circuit-2) was in the advanced stage of construction and is expected to be executed by 31.5.2015. The impugned order noted letter dated 11.3.2015 issued by PKTCL but it failed to consider the contents of the said letter alongwith the provisions of IA. The issue of advance notice to NHPC appears to have been decided solely relying on e-mail dated 2.7.2015 from PKTCL to NHPC and the same is clearly an error apparent on face of record as steps taken by PKTCL to co-ordinate for inter-connecting its transmission line in its letter dated 11.3.2015 appears to have been overlooked by the Commission. The execution schedule of PKTCL's transmission lines was known to both NHPC and



CTU. The responsibility to inform the other parties regarding PKTCL's transmission assets solely rests with CTU and not with PKTCL. PKTCL cannot be held responsible for lack of co-ordination, if any, as the same was beyond the scope of PKTCL.

- (ix) PKTCL as per the scope of work was required to terminate its transmission line at LILO point of Parbati-III HEP which was in the scope of CTU. PKTCL was not to enter the switchyard at Parbati-III HEP of NHPC and as such it had duly co-ordinated with CTU with regard to its probable inter-connection at LILO point. As the scope of PKTCL ended at LILO point, PKTCL was not required to co-ordinate with NHPC with regard to the probable charging of this transmission line section. NHPC failed to execute the bays in its switchyard in the said timeframe for execution of PKTCL's transmission lines. Even if bays of NHPC were ready in 2013, the same were not available when PKTCL was ready to execute its line i.e. on 30.6.2015 or even by December, 2014 which was decided in the 32nd Standing Committee and was attended by NHPC. No efforts were made by NHPC to make Parbati-III bays available by even December, 2014.
- (x) With regard to the issue of completion of loop (by-passing the two circuits i.e. one coming from Parbati Pooling Station and other from Parbati-III generation at Parbati-II)/shunting of two circuits was neither raised by NHPC nor put to PKTCL by the Commission during the proceedings in Petition No. 156/TT/2015. During the course of hearing, no opportunity was given to PKTCL to present its submissions with regard to the reasons



for delay in completion of shunting arrangement and consequent delay in power flow in the transmission line. The issue of delay in shunting of two circuits was not raised before the Commission by either of the parties nor did the Commission enquire reasons on this issue from PKTCL for not carrying out shunting on 30.6.2015 or that as to why it was carried out later. Thus, the impugned order observed that delay in completion of the shunting arrangement i.e. on 25.9.2015 was attributable to PKTCL and as such deprived PKTCL of the transmission charges.

c) Mistake of fact and law holding PKTCL as being obliged to inform NHPC and other beneficiaries of the Northern Region regarding expected date of readiness of PKTCL system

(xi) Impugned order held that establishing communication system was the obligation of PKTCL and delay in communication system was attributable to PKTCL to deprive PKTCL of the transmission charges. In terms of the Implementation Agreement dated 23.11.2007 executed between CTU and PKTCL, completion/ construction of the communication system was not within the scope PKTCL. Schedule 4 of the IA which deals with 'Scope of Project' clearly provides that scope of work of PKTCL shall terminate at the line take-off gantry for each of the elements and does not extend to the construction of the communication system. None of the correspondences exchanged between PKTCL and CTU or NHPC indicate that communication system was under the scope of work of PKTCL. Placing reliance on Commission's order dated 24.7.2019 in Petition No. 9/RP/2017, PKTCL has asserted that the Commission in the said order dealt with the issue of execution of communication system of PKTCL's other transmission lines which form part of the entire Transmission Project



(i.e. Koldam-Ludhiana lines) and observed that execution of communication system of PKTCL's lines was not under the scope of work PKTCL but it was in the scope of work of PGCIL.

(xii) Since the construction of communication system was not under the scope of work of PKTCL, delay in the construction of communication system is not attributable to PKTCL.

(xiii) The Commission in the impugned order at paragraph 73 disallowed IDC and IEDC or transmission charges from 30.6.2015 (from the date when CEA energisation certificate in respect of the transmission assets was received) till 3.11.2015 (the date of evacuation of power flow from the transmission assets on erroneous consideration that delay in execution of the transmission assets was attributable to PKTCL).

5. In addition to above, PKTCL has submitted that the Commission in the impugned order has rendered the following findings which transgress the pleadings in Petition No. 156/TT/2015:

(a) Completion of loop (by-passing the two circuits i.e. one coming from Parbati Pooling Station and other from Parbati-III generation at Parbati-II) beyond 30.6.2015.

(b) Non-execution of communication system of the transmission assets as on 30.6.2015

6. Referring to the judgment of Hon'ble Supreme Court in the matter of *Bachhaj Nahar vs Nilima Mandal & Ors.* dated 23.9.2009 reported in AIR 2009 SC 1103, PKTCL has submitted that the settled principle of law is that the Courts ought not



record any finding on the issues which are not part of pleadings and Court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. PKTCL has also placed reliance on the judgment of Hon'ble Supreme Court in the matter of Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar reported in (2018) 11 SCC 652 wherein it was observed that any finding of Court recorded on an issue de hors the pleadings is without jurisdiction.

7. The matter was heard on 26.4.2022 through virtual mode and order on admissibility was reserved. However, order could not be issued prior to the former Chairperson Shri P.K. Pujari demitting office. Accordingly, the matter was again heard through virtual mode on 28.6.2022 and order on admissibility was reserved. Learned counsel for NHPC submitted that he will file reply in the matter after order on admissibility, if need be.

Analysis and Decision

8. We have considered the contentions of the Review Petitioner and have perused the impugned order dated 9.2.2021 and have also gone through the record carefully. PKTCL has sought review of the impugned order mainly on three grounds, (i) disapproval of COD of the transmission assets of PKTCL as 30.6.2015, (ii) making PKTCL liable for delay in power flow in its transmission line from 30.6.2015 to 2.11.2015, and (iii) disallowing PKTCL to recover complete transmission charges of Asset-I and Asset-II with effect from 30.6.2015. PKTCL is also aggrieved with the findings of the Commission on the issues of (i) completion of shunting arrangements de-hors pleadings, and (ii) observation that PKTCL was obliged to execute communication system.



9. PKTCL has prayed for condonation of delay in filing of the instant Review Petition. It is observed that as per Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business Regulations), 1999 , a petition for review has to be filed within 45 days of making the order by the Commission. It is observed that the impugned order was passed on 9.2.2021 and was posted on website on 10.2.2021. Therefore, the period of 45 days shall be reckoned from 10.2.2021 and the same lapses on 15.3.2021. The Review Petition was filed on 1.3.2021. Thus, there is no delay in filing of the instant Review Petition. Accordingly, the Review Petition shall now be considered on admissibility on the basis of grounds as raised by the Review Petitioner.

10. Order XLVII Rule 1 of Code of Civil Procedure, 1908, provides that a party considering itself aggrieved by an order may seek review of the order under the following circumstances:

“(a) On discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or

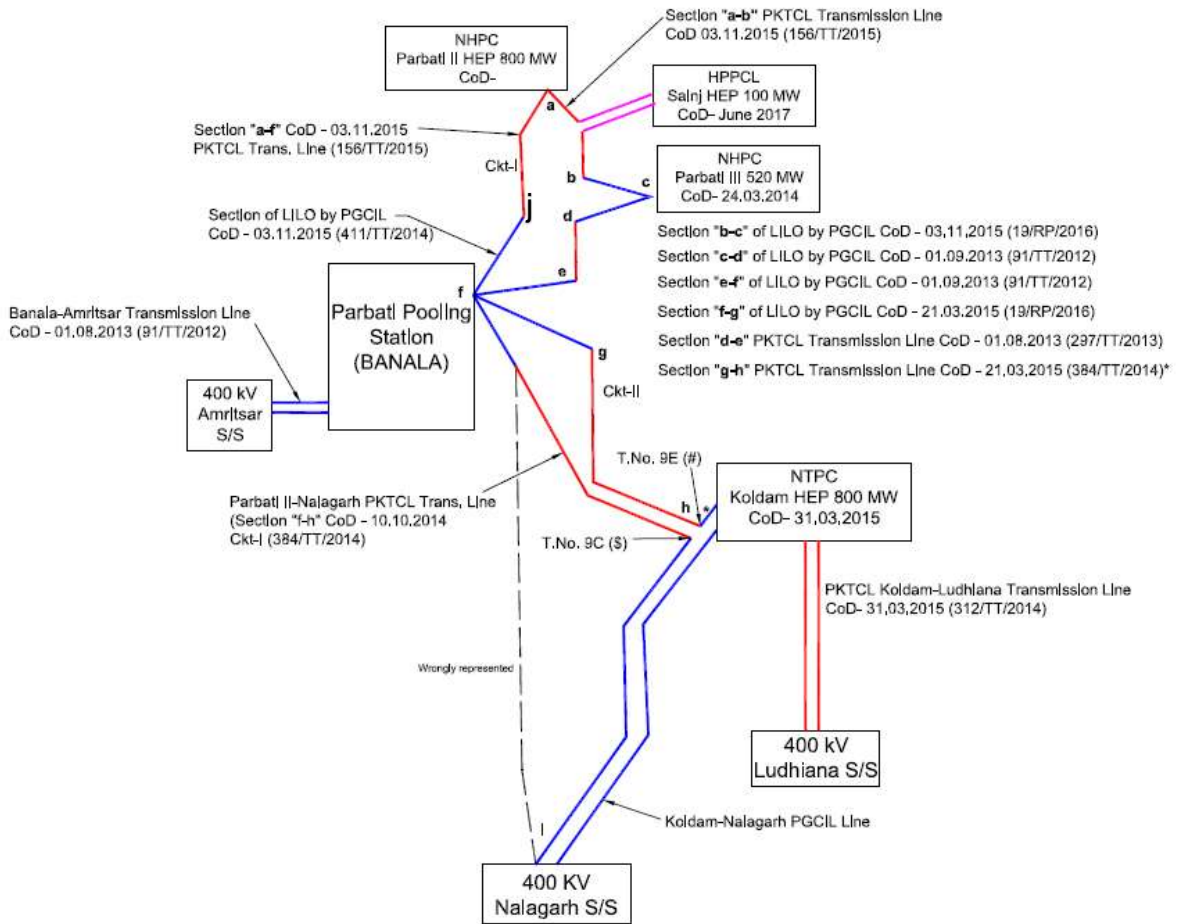
(b) On account of a mistake or error apparent on the face of the record, or

(c) For any other sufficient reasons.”

11. Before we deal with the contentions of PKTCL in the matter, it is necessary for us to peruse ‘Single Line Diagram’ of the transmission assets of PKTCL as filed by it, which is as follows:



The Schematic diagram describing transmission system constructed by PKTCL

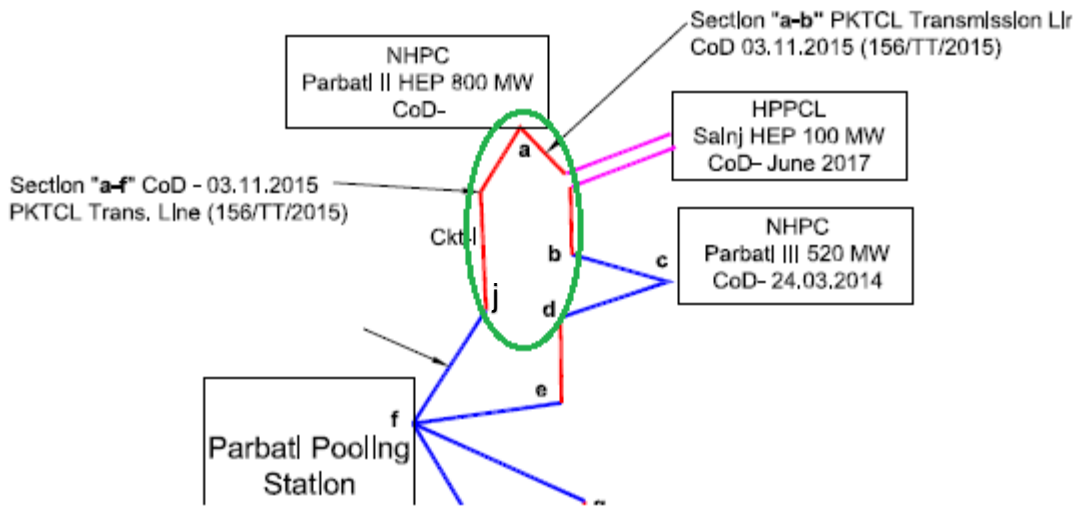


Power Evacuation System for Koldam-Parbat II and Parbat III HEP

- LEGEND:**
- PGCIL Lines
 - PKTCL Lines
 - HPPCL Lines
 - - - Wrongly represented

The matter in issue in the present Review Petition pertains to the transmission assets marked as 'a-f' and 'a-b' portions (encircled in 'green') in the following diagram:





12. PKTCL has contended that COD in respect of its transmission assets should be considered as 30.6.2015 instead of 3.11.2015 as observed by the Commission in the impugned order. Relevant excerpts of the impugned order i.e. order dated 9.2.2021 in Petition No. 156/TT/2015 are as follows:

38. We have considered the submissions of PKTCL, NHPC and Sainj HEP and have also perused the record. In view of above submissions, we find it appropriate to reproduce the relevant excerpt of the 32nd Standing Committee Meeting of NR dated 31.8.2013:

“5.5 As informed by HPPCL Sainj project is expected by Dec.’14. PKTCL is constructing 400 kV 2 X S/c lines from Parbati-II HEP to Koldam HEP. Portion of these lines between Parbati-III HEP and Parbati Pooling Station has been completed for evacuation of Parbati-III HEP. It was further informed that Parbati-II and Sainj HEPs are located in very close proximity. For evacuation of power from Sainj, it was agreed that both the circuits from Parbati-III to Parbati-II may be constructed upto Parbati-II. As Parbati-II switchyard would not be available by December 2014, both circuits (i.e. one coming from Parbati Pooling Station and other from Parbati-III generation) may be joined together. For evacuation of power from Sainj LILO of 400 kV direct circuit from Parbati-II HEP to Parbati Pooling station (Banala) may be implemented by HPPCL/HPPTCL. This arrangement would provide reliable evacuation of power under N-I condition. It was proposed that PKTCL may be requested to extend these 400 kV lines up to Parbati-II and join both the circuits at dead-end tower of Parbati-II switchyard by December, 2014 matching with the scheduled commissioning of Sainj HEP for evacuation of power from Sainj HEP. Members concurred to the proposal.”

39. On perusal of above minutes, it is observed that it was agreed in the said meeting to request PKTCL to provide an alternate arrangement to join both circuits at Parbati-II



switchyard i.e. one coming from Banala Pooling Station and other from Parbati-III HEP, as Parbati-II switchyard was not going to be available by December 2014. From the above minutes, it is evident that PKTCL was well aware of the fact that it was required to by-pass the two circuits i.e. one coming from Parbati Pooling Station (Asset-I) and other from Parbati-III generation (Asset-II) at Parbati-II and on the basis of this meeting only, PKTCL requested PGCIL to sign revised Implementation Agreement by 18.12.2013...

41. We observe that Petitioner has obtained CEA Energisation Certificate dated 30.6.2015 for Asset-I (a-j). The Petitioner has also submitted No Load certificate dated 20.7.2015 issued by NRLDC for successful No Load charging of Asset-I during 10.7.2015 to 11.7.2015.

42. We observe that the No load certificate is only for Asset-I (a-j). The reason for no power flow as indicated in the No Load certificate is non-availability of Parbati-II (NHPC) at remote end. However, we have already concluded in earlier part of this order that as per 32nd Standing Committee Meeting of NR dated 31.8.2013 read with letter dated 18.12.2013 written by PKTCL to PGCIL, availability of Parbati-II switchyard was not a necessary condition for commissioning of the instant assets of PKTCL. Also, PKTCL was supposed to connect Asset-I and Asset-II at Parbati-II (bypass loop) by December 2014. However, it is not clear from the no load certificate of NRLDC dated 20.7.2015 if loop {bypassing the two circuits i.e. one coming from Parbati Pooling Station (Asset-I) and other from Parbati-III generation (Asset-II) at Parbati-II} was completed by PKTCL as on 10.7.2015 when no load certificate was issued by NRLDC. The Petitioner has not filed any document on record to prove or suggest when it completed the loop between Asset-I and Asset-II. We also observe that neither the CEA Energisation Certificate nor the NRLDC No load certificate certifies anything about the completion of associated communication system.

....

51. We have observed in preceding paragraphs that availability of Parbati-II switchyard was not a necessary condition for execution of the instant assets of PKTCL. Also, PKTCL was well aware that Parbati-II was not going to declare its COD till September 2018 and that PKTCL was required to join its Assets-I and II by December 2014 after by-passing the Parbati-II to provide alternate path. However, we note that the Petitioner has not submitted any documents to prove that it did so as on claimed date of COD i.e. 30.6.2015. In fact, as on 15.10.2015, the loop had not been completed by the Petitioner, when PGCIL intimated NHPC about the readiness of 400 kV Parbati-III to Banala PS transmission line (via Parbati-II) Ckt-I. Since the associated bay at Parbati-III was ready in October 2013 itself, NHPC cannot be held liable for delay in commissioning of PKTCL's assets. Rather PKTCL did not inform NHPC about readiness of its assets on 30.6.2015 and, therefore, NHPC could not get its bays re-inspected in terms of Regulations 43 of the 2010 CEA Safety Regulations. Further, the associated communication system was established only on 1.11.2015 which is a necessary condition to declare COD under the 2014 Tariff Regulations."

13. On perusal of above excerpts of order dated 9.2.2021 in Petition No. 156/TT/2015, it was deduced that Petitioner was required to connect 'a-b' and 'a-f' at point 'a' (reference in drawing at paragraph 11 of this order) since Parbati-II was delayed which was agreed to by PKTCL and incorporated in its letters as noted in the



said order dated 9.2.2021. Keeping in view the fact that connection of 'a-b' and 'a-f' was part of scope of PKTCL, without completing the same, PKTCL could not have sought COD of its transmission assets. In the light of above discussion, we shall examine the contentions of PKTCL which are as follows:

a) Mistake of fact confusing bays at Parbati-III switchyard for Parbati-II switchyard is erroneous finding with regard to completion of shunting arrangements de-hors pleadings.

14. PKTCL has contended that the Commission appears to be in confusion between bays of Parbati-II and Parabti-III switchyard. PKTCL has claimed that the Commission did not seek details from it regarding looping at Parbati-II switchyard was concerned.

15. We observe that PKTCL's asset under original arrangement required bays at Parbati-II switchyard which was later agreed by Petitioner and PGCIL, to be bypassed outside the switchyard of Parbati-II (connecting 'a-b' and 'a-f' at 'a'), keeping in view that Parbati-II Switchyard was getting delayed. Hence, without completing the bypass arrangement outside Parbati-II Switchyard, the works required to be completed by the Petitioner cannot be said to have been completed. The asset would not have come into operation (i.e. would not have carried power flow from point 'b' to 'a' to 'f'), unless looping at 'a' was carried out by PKTCL. Petitioner has contended that it was for the Commission to seek necessary details viz. when the bypass arrangement was completed by the Petitioner. We are of the considered opinion that once a transmission licensee seeks COD in respect of its transmission assets, it should ensure that the same is complete in all respects as per prevalent tariff regulations and the tariff petition is supported by necessary documents. We further observe that Petitioner has claimed COD from 30.6.2015 while it actually completed bypass



arrangement much later in September 2015, the date of which has been indicated by the Petitioner in the instant Review Petition.

16. Further, NHPC had submitted that its associated bays at Parbati-III switchyard were ready since October 2013, but because of delay of transmission system including that of PKTCL, its bays could not be charged at 400 kV in 2013. NHPC had submitted that it had to get the bays re-inspected by CEA at rated voltage once the transmission system got ready. Since NHPC bays were ready since 2013 waiting for transmission system, once petitioner was about to complete its work, it should have informed NHPC so that it could get its bays re-inspected. It was because of delay of Petitioner's transmission line that NHPC bays were not charged at 400 kV. Hence, it cannot be said that Parbati-III switchyard was delayed.

17. For the foregoing reasons, we do not find any reason to invoke our Review Jurisdiction on the ground of confusion with regard to bays at Parbati-III switchyard for Parbati-II switchyard.

b) Mistake of fact and law holding PKTCL obliged to inform NHPC and other beneficiaries of the Northern Region regarding the expected date of readiness of PKTCL system

18. PKTCL has contended that it was not obliged to inform NHPC and other beneficiaries of its readiness. To ascertain this as a ground of Review we have perused the original Implementation Agreement dated 23.11.2007 executed between PKTCL and PGCIL which provides as follows:

"POWERGRID (as CTU)'s obligations in implementation of the Transmission System/Project.

Subject to the terms and conditions of this Agreement, POWERGRID (as CTU), at its own cost and expense (other than in case of paragraphs (i) and (vi) below,



for which POWERGRID (as CTU) shall be reimbursed in accordance with Clause 3.1.3 (iii) of this Agreement) undertakes to be responsible;

- i) for obtaining the necessary project approval of the Transmission System/Project from Competent Authority so as to facilitate commencement of implementation of the Transmission System/Project.*
- ii) for arranging, on or prior to the Required Commercial Operation Date, the connection of each Phase of the Transmission System/Project with the Interconnection Facilities. However, the COMPANY shall be required to coordinate and liaise with the concerned agency in this regard;*
- iii) for complying with its obligations under this Agreement;*
- iv) for providing all assistance to the Adjudicator and Arbitrator as they may require for the performance of their duties and services;*
- v) for assisting and supporting the COMPANY in obtaining the necessary Consents and way leaves required for the Transmission System/Project by providing letters of recommendation, to the concerned Indian Governmental Instrumentality as may be requested by the COMPANY from time to time;*
- vi) for providing reasonable support and assistance to the COMPANY in connection with the finalisation of the Financing Agreements by giving due consideration to the requirements of the prospective lenders.”*

19. We observe that as per the Investment Approval, COD of the transmission assets was 25.12.2008. However, the same was shifted from time to time to 2011, 2012 and then to 2013 through the Implementation Agreement with CTU for various reasons. We also observe from the Single Line Diagram that PKTCL's transmission assets, LILO by Powergrid and NHPC Switchyard forms an integral part of the electrical circuit and in the absence of any one of them, power will not flow. The Implementation Agreement clearly provides in Clause (ii) as quoted above that the connection of each phase of the Transmission System/Project with inter-connection facilities on or prior to Required Commercial Operation Date is the responsibility of Powergrid. However, the Company shall be required to co-ordinate and liaise with the



concerned agency in this regard. This clearly indicates that PKTCL was supposed to liaise with required entities and cannot claim that it was only CTU which was supposed to co-ordinate on behalf of PKTCL.

20. We also note that the Commission vide order dated 9.2.2021 in Petition No. 156/TT/2015 observed as follows:

“52. When multiple entities are involved in completion of a circuit or line, proper coordination amongst parties is necessary in order to ensure that asset is not stranded. In the present case, the Petitioner, that is claiming COD on basis of proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, should have ensured that NHPC is properly informed about readiness of its assets so that NHPC could have got its bays re-inspected (more so when the Petitioner itself was delayed from the agreed date of commissioning in December 2014). However, we notice that lack of coordination amongst the entities led to a situation in which associated bays of Parbati-III could not be re-tested as per the 2010 CEA Safety Regulations as on the date matching with claimed completion date of assets of the Petitioner i.e. 30.6.2015. Flow of power through instant assets of the Petitioner could not take place on account of fault of the Petitioner and NHPC cannot be held responsible for this. In view of the facts and circumstances of the present case, we are not inclined to accept the plea of the Petitioner that non-flow of power on PKTCL’s assets was beyond its control and we are rather of the view that proper coordination by the Petitioner could have averted the situation.”

21. For the reasons mentioned above, we are unable to find any mistake of fact and law as averred above by PKTCL as a ground to admit the present Review Petition.

c) Mistake of fact and law holding PKTCL is obliged to execute communication system for the transmission system

22. PKTCL has contended that construction of communication system was not in its scope, hence delay in construction of communication system is not attributable to it. The Commission vide order dated 9.2.2021 in Petition No. 156/TT/2015 observed as follows:

“50. PKTCL has claimed COD of the assets under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. However, in terms of this regulation, the Commission can allow COD of an asset if such asset is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors. Also, in terms of the above-mentioned provisions of the 2014 Tariff Regulations, the communication system of the transmission line has also



to be successfully charged before the transmission line can be declared under COD. However, there is nothing on record to prove that the same was completed as on 30.6.2015.

23. It is the responsibility of the transmission licensee to complete the transmission system under its scope prior to seeking COD for the same. The tariff regulation requires an element of the transmission system to be in regular service for transmitting electricity and communication signal from sending end to receiving end from the COD. Even if the communication system was not in scope of the PKTCL, necessary coordination could have been done by the PKTCL to get it completed along with its transmission system. The Petitioner did not file appropriate document to prove its completeness when it sought deemed COD as on 30.6.2015. PKTCL must have completed the transmission system for which COD has been claimed, file appropriate proofs thereof, in the absence of which COD can be considered only from actual power flow which has been done in instant case.

24. For the reasons mentioned, no ground is made out for admission of the Review Petition or that there is any patent mistake of fact and law apparent on the face of record, as averred by PKTCL.

25. In view of the discussions made above in this order, we further observe that it is also not the case of PKTCL that there is discovery of any new and important matter or evidence which after the exercise of due diligence was not within its knowledge or could not be produced by it at the time of the order. The reasons given by PKTCL for review of the order dated 9.2.2021 in Petition No. 156/TT/2015, whose detailed account we have given above in the order, do not show any 'sufficient cause' requiring us to review the order dated 9.2.2021.



26. We have also taken into consideration the judgments of *Bachhaj Nahar vs Nilima Mandal & Ors.* reported in AIR 2009 SC 1103 and *Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar* reported in (2018) 11 SCC 652 (supra) and are of the opinion that based on the pleadings of the parties, the Commission has considered all issues and as such the said judgments on which reliance is placed by the Review Petitioner do not come to its rescue. On perusal of the order dated 9.2.2021, we find that the grounds as raised in the present Review Petition by the Review Petitioner have already been taken into consideration by us and they do not show any error apparent on record. Thus, we do not find any reason to admit the present Review Petition.

27. Accordingly, Review Petition No 3/RP/2022 is dismissed at the stage of admission.

Sd/
(P. K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I.S. Jha)
Member

