

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 5/RP/2022

Coram:

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

Date of Order: 14.08.2022

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 the PoC order dated 6.3.2020 in Petition No. L-1/44/2010-CERC.

And in the matter of:

Torrent Power Limited,
"Samanvay", 600, Tapovan,
Ambavadi, Ahmedabad-380015, Gujarat.

....Review Petitioner

Versus

1. National Load Despatch Centre,
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi – 110016.
2. Central Transmission Utility,
1st Floor, A-Wing,
Saudamini, Plot No. – 2,
Sector – 29, Near IFFCO Chowk Metro Station,
Gurgaon – 122 001, Haryana.

...Respondents

For Review Petitioner : Shri Sanjay Sen, Sr. Advocate, TPL
Shri Abhishek Munot, Advocate, TPL
Ms. Mandakini Ghosh, Advocate, TPL
Shri Tushar Nagar, Advocate, TPL
Shri Jaydip Chudasama, TPL
Shri Parth Desai, TPL

For Respondents : None



ORDER

Torrent Power Limited, (hereinafter referred to as the “Review Petitioner”) has filed the instant Review Petition seeking review of the order dated 6.3.2020 in Petition No. L-1/44/2010-CERC whereby the Commission revised the calculation of transmission rates applicable for Short Term Open Access (STOA) for Q4 of the financial year 2019-20 which were earlier fixed by the Commission vide order dated 4.2.2020 in Petition No. L-1/44/2010-CERC in terms of Regulation 17(2) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and amendments thereto.

2. Being aggrieved with the Commission’s order dated 6.3.2020, the Review Petitioner has filed the present petition seeking review of the impugned order to the extent that it incorrectly holds that short term PoC rates computed by NLDC and determined by the Commission in the PoC order dated 6.3.2020 would be applicable for bilateral and collective transactions from the date of passing of PoC order i.e. 6.3.2020. The said Review Petition was earlier inadvertently registered as Miscellaneous Petition No. 345/MP/2020 instead of Review Petition.

3. The Commission vide order dated 21.1.2022 in Petition No. 345/MP/2020 observed that the Review Petitioner filed petition under the head of Miscellaneous Petition through e-portal of the Commission which was accordingly registered as Miscellaneous Petition. However, learned counsel for the Review Petitioner prayed to convert the same into a Review Petition. The Commission granted liberty to the Review Petitioner to withdraw Miscellaneous Petition and to file a fresh Review



Petitioner. Pursuant to the Commission's order dated 21.1.2022, the Review Petitioner has filed the present Review Petition and has made the following prayers:

- “(a) Admit and allow the present Review Petition;*
- (b) Adjudicate the present Petition expeditiously;*
- (c) Review the Impugned Order dated 06.03.2020 and direct that the PoC Rates/ Charges determined in the Impugned Order shall be applicable to bilateral/ collective transactions undertaken with effect from the date of the PoC Order dated 04.02.2020 and not from the date of the Impugned Order.*
- (d) Direct Central Transmission Utility to refund the excess PoC/ Transmission Charges paid by the Petitioner during the period 17.02.2020 to 05.03.2020, amounting to INR 4,00,81,225.98 (Indian Rupees Four Crores Eighty One Thousand Two Hundred and Twenty Five and paise ninety eight only) along with applicable interest at the rate of 1.25% per month, computed till the date of realisation of the amount;*
- (e) Pass any such other and further reliefs as this Hon'ble Commission deems just and proper in the nature and circumstances of the present case.”*

Submissions of the Review Petitioner

4. The main submissions of the Review Petitioner are as follows:

- (i) The Review Petitioner owns and operates a 1200 MW gas based DGEN Mega Power Project located in Dahej, Gujarat. The Project is connected directly to the inter-State Transmission System at Navsari Sub-station, through 400 kV D/C DGEN-Navsari dedicated transmission line (DGEN-Navasari DTL). DGEN Navasari DTL is constructed, owned, operated and maintained by the Review Petitioner.
- (ii) The Commission vide order dated 4.2.2020 in Petition No. L-1/44/2010-CERC determined PoC rates/charges for Q4 of 2019-20 which, inter alia, determined PoC rates for STOA transactions. The Commission based on computations provided by NLDC



arrived at applicable PoC rate for the Review Petitioner's DGEN generation node as 37.07 paise/kWh (PoC slab – 32.62 paise/kWh + reliability support charge – 4.45 paise/kWh) and as such for undertaking any short-term transactions from DGEN power plant, the applicable transmission charges to be paid by the Review Petitioner/generator in terms of the order dated 4.2.2020 was 37.07 paise/kWh.

- (iii) The Commission vide order dated 6.3.2020 in Petition No.L-1/44/2020 revised the PoC rates applicable for STOA transactions for Q4 of 2019-20 which were earlier determined in the PoC vide order dated 4.2.2020 on the ground that there were certain inadvertent errors in implementing the methodology for computing the PoC rates in the PoC order. Thus, vide order dated 6.3.2020, the Commission, inter alia, revised the PoC slab rate applicable at the DGEN generation node (for STOA transactions) to 4.99 paise/kWh (PoC slab – 0.54 paise/kWh + Reliability Support Charge – 4.45 paise/kWh) and ordered that applicability of the revised rates shall be effective from the date of the order i.e. 6.3.2020.
- (iv) On 17.2.2020, the Review Petitioner started generating and selling electricity from its DGEN Power Plant on short term basis on IEX power market.



- (v) On or around 19.2.2020, the Review Petitioner realized that it was being billed incorrect PoC rates/charges for supply on STOA i.e. 37.07 paise in terms of PoC order dated 4.2.2020.
- (vi) After discussions with NLDC, the Review Petitioner realised that while computing PoC rates for Q4 of 2019-20, NLDC had inadvertently considered the DGEN-Navasari DTL as part of the ISTS and accordingly computed PoC rates applicable to DGEN Power Plant for transmission of electricity through the said transmission line (i.e. PoC rates computed at DGEN Power Plant bus bar instead of computing the same considering the Navsari Sub-station as the generation node).
- (vii) The Review Petitioner through communication dated 21.2.2020 requested the Commission for revision in the PoC rates. Accordingly, the Commission vide order dated 6.3.2020 revised the PoC rates applicable for STOA transactions for Q4 of 2019-20 which were earlier determined vide PoC order dated 4.2.2020 on account of inadvertent errors in implementation of methodology for computing the PoC rates in the PoC order as a result of which the revised PoC slab rate applicable for DGEN generating node for STOA transactions came to be 4.99 paise/kWh.
- (viii) The Commission's impugned order dated 6.3.2020 is incorrect insofar as it holds that the applicability of revised/ corrected PoC rates for STOA transactions would be effective from the date of



the order i.e. prospectively and not from the date of PoC order dated 4.2.2020. The settled law is that if an error is corrected, it shall be presumed that it has been carried out and is applicable from the date on which the error was made.

- (ix) During the period 17.2.2020 to 5.3.2020, the Review Petitioner generated and sold electricity from its DGEN Power Plant on short term basis in the power market (IEX) and paid Rs.4,63,15,805.71/- towards PoC/ transmission charges for the transactions. The charges for the duration from 17.2.2020 to 5.3.2020 of the Review Petitioner are premised on incorrect PoC rates determined in the PoC order dated 4.2.2020. However, as per the revised/corrected PoC rates dated 6.3.2020, the Review Petitioner was liable to pay PoC/ transmission charges amounting to Rs.62,34,579.73/- as such the Review Petitioner paid an excess amount of Rs.4,00,81,225.98 towards PoC/ transmission charges on account of the erroneous computation of NLDC and the consequent approval of the Commission. The Review Petitioner is entitled to recover said amount alongwith applicable interest @1.25%, per month computed till the date of realisation of the amount.
- (x) DGEN-Navasari transmission line is identified as a connectivity line while processing long term open access application. The said line is constructed, owned and operated by the Review Petitioner as a dedicated transmission line and continues to remain one.



- (xi) All costs associated with DGEN-Navasari DTL have already been borne by DGEN Power Plant as cost of power generation as reflected in the tariff order dated 31.3.2017 in Petition No. 281/GT/2015 read with the Review Petitioner's affidavit dated 15.7.2020 in the original petition.
- (xii) In terms of Regulation 7 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations), DGEN-Navasari DTL shall not be a part of the basic network as it is constructed, owned and operated by the Review Petitioner and considering it as such is contrary to the philosophy of computation of PoC as admitted by the Commission.
- (xiii) The short term PoC rates determined by NLDC were inadvertently wrong/ incorrect. The cost of DGEN-Navasari DTL was incorrectly and inadvertently considered as part of the basic network by NLDC as admitted by it in its reply dated 15.7.2020 in the original petition. In other words, short term PoC rates determined by NLDC were admittedly contrary to the principles laid down under Regulation 7 of the 2010 Sharing Regulations i.e. dedicated transmission line will not be considered as part of basic network for computing PoC. Hence, the PoC order of the Commission dated 4.2.2020 to the extent of the short term PoC rates notified therein, which is premised on the assumption that PoC rates have been computed in accordance with the Sharing



Regulations is illegal and bad in law. Such PoC Rates cannot be made applicable for any short-term transaction undertaken by the Petitioner during Q4 of 2019-20. By holding that the revised/ corrected PoC rates are only applicable from PoC order dated 6.3.2020 means the incorrect PoC rates of the PoC order dated 4.2.2020 have been legitimised for the period 4.2.2020 till 6.3.2020 contrary to the principles of Sharing Regulations.

- (xiv) Regulation 11(6) of the 2010 Sharing Regulations, clearly provides for reimbursement of excess transmission charges billed by CTU. The Commission in the past has passed orders directing CTU to revise the bills for transmission charges on account of revisions/ corrections in the PoC rates including order dated 28.10.2019 in Petition No. 313/MP/2018 and order dated 16.3.2017 in Petition No. 306/MP/2015.

5. The matter was heard through video conference on 29.3.2022. After hearing learned senior counsel for the Review Petitioner, order on admission was reserved.

The relevant extracts of Record of Proceedings dated 29.3.2022 are as follows:

“2. Learned senior counsel for the Review Petitioner, Torrent Power Limited (TPL) submitted that the present Review Petition has been filed seeking review of the Commission’s order dated 6.3.2020 in Petition No. L-1/44/2010-CERC (‘Impugned order’) and in terms of the order dated 21.1.2022 in Petition No. 345/MP/2019 filed by the Review Petitioner on the same subject matter, which was inadvertently numbered as Miscellaneous Petition instead of Review Petition. Learned senior counsel further submitted as under:

(a) The Commission vide order dated 4.2.2020 (‘PoC order’), inter-alia, determined the PoC rate for Short-Term Open Access (‘STOA’) transactions for quarter 4 of financial year 2019-20 wherein the applicable PoC slab rate for TPL’s generation (DGEN) node was determined as 37.07 Paise/kWh.

(b) After realising that NLDC had inadvertently considered the DGEN Navsari dedicated transmission line as part of ISTS while computing the PoC rate



applicable to TPL's DGEN Plant, TPL vide its letter dated 21.2.2020 requested the Commission to revise the PoC rate determined vide PoC order. The said letter of TPL was then forwarded to NLDC.

(c) Thereafter, the Commission vide Impugned order revised the PoC charges for STOA transactions determined in the PoC order. However, such revised/corrected charges were made applicable only for the applications of STOA received after the date of issue of the Impugned order (i.e. prospectively) and not from the date of applicability of the PoC order.

(d) Inadvertent error on the part of NLDC has been clearly admitted in its letter dated 2.3.2020 as well as in the reply filed by NLDC in the Petition No. 345/MP/2020.

(e) Once the Commission rectified the inadvertent computational error in PoC rates vide the Impugned order, the revised /corrected PoC rates ought to have been made applicable from the date of applicability of original PoC order. Also, TPL was not provided an opportunity of being heard while passing the Impugned order.

(f) NLDC in its reply filed in Petition No. 345/MP/2019 has attempted to justify the prospective application of the Impugned order by submitting that if the retrospective revision of PoC charges is allowed then the settled commercial transaction will required to be reopened and the resettlement of old transactions would additionally change the tax liabilities of the parities, reconciliation of TDS part of the payment, reconciliation of accounts, refunds to the applicants and recovery from the applicants, etc. for the period from 1.1.2020 to 6.3.2020.

(g) However, the above difficulties cannot come in a way of retrospective implementation of correct PoC rates. In many of the cases, directions have been issued for revision of RTA and refund of charges collected by CTU for adjustment against underpaid/overpaid transmission charges.

(h) NLDC vide its letter dated 29.11.2020 to the Power Exchanges had itself asked for retrospective revision with regard to STOA transmission charges for the approved transactions for which applications were made on or after 1st November, 2020 and refund of the transmission charges.

(i) Accordingly, the Respondents ought to be directed to refund the excess PoC charges paid by the Petitioner during the period from 17.2.2020 to 5.3.2020 amounting to approximately Rs. 4 crore along with applicable interest. Alternatively, the Respondents may be directed to adjust such amount against the future transmission charges liability.

3. *After hearing the learned counsel for the Review Petitioner, the Commission reserved the order 'on admission'.*

6. However, order could not be issued in the matter before the former Chairperson demitted office. Therefore, the matter was again heard on 28.6.2022 by the present Commission on admissibility. During the course of hearing, learned



counsel for the Review Petitioner submitted that the matter has already been argued at length and prayed the Commission to admit the Review Petition. The Commission after hearing learned counsel for the Review Petitioner reserved order on admissibility.

Analysis and Decision

7. We have considered the submissions of the Review Petitioner. Accordingly, we proceed to consider whether any case for review has been made out by the Review Petitioner in terms of Order 47 Rule 1 of the Code of Civil Procedure, 1908 ('CPC') read with Regulation 103 of the Conduct of Business Regulations. Under 47 Rule 1 of the CPC, a person aggrieved by order of a Court can file for review on the following grounds, if no appeal against the said order has been filed:

- (a) Discovery of new and important matter of 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 decree was passed or order made.
- (b) On account of some mistake or error apparent on the face of record; and
- (c) For any other sufficient reason.

In light of the above provisions, we proceed to consider the grounds raised in the Review Petition for review of the impugned order dated 6.3.2020. The Review Petitioner has sought review of the Commission's order dated 6.3.2020 determining the Point of Connection (PoC) rates/charges and transmission losses for the 4th quarter of 2019-20. The Review Petitioner has further submitted that an inadvertent computational error had crept in while determining PoC rates for short term transactions in the PoC order dated 4.2.2020 (PoC order for Q4 of 2019-20). Accordingly, the Commission vide order dated 6.3.2020 revised the PoC charges/ rates for short term transactions to be undertaken during Q4 of 2019-20 (revised



DGEN rates: PoC slab–0.54 paise/kWh + Reliability Support Charge – 4.45/ kWh). The Review Petitioner is aggrieved as the said correction in PoC rates for short term transactions has been made applicable from the date of the impugned order i.e. 6.3.2020.

8. The Commission vide order dated 4.2.2020 determined Point of Connection (PoC) rates and transmission losses for the period of January to March 2020 in accordance with Regulation 17(2) of the 2010 Sharing Regulations. Subsequently, the Review Petitioner vide its letter dated 21.2.2020 requested the Commission to review the order dated 4.2.2020 for applicability of short transmission charges and losses for DGEN.

9. Thereafter, the Commission passed the impugned order dated 6.3.2020 and the same is as follows:

“2. NLDC, the Implementing Agency vide its letter dated 02.03.2020, has submitted that an inadvertent error has crept in while calculating Transmission rates applicable for STOA transaction for Q4,2019-20 and accordingly Implementing Agency has submitted the revised PoC Slab Rates for the STOA

3. NLDC, the Implementing Agency vide its letter dated 02.03.2020, has submitted that an inadvertent error has crept in while calculating Transmission rates applicable for STOA transaction for Q4,2019-20 and accordingly Implementing Agency has submitted the revised PoC Slab Rates for the STOA.

4. xxxxxxxx

5. In respect of the applications made for scheduling of bilateral and collective transactions received on or before the date of issue of this order, short-term open access charges would be payable at the rates applicable as per Order dated 04.02.2020. For applications received after date of issue of this order, the short-term open access charges shall be payable as per the rates approved vide this order. The rates as approved vide this order shall remain applicable till notification of the next order.

6. Implementing agency is advised to carry out calculation prudently to avoid any such inadvertent errors in future.

10. The Commission while passing the above impugned order dated 6.3.2020 observed that transactions received on or before the date of issue of this order, short-term open access charges would be payable at the rates applicable as per order dated 4.2.2020. For applications received after the date of issue of this order, short-term open access charges shall be payable as per the rates approved vide this order. The rates as approved vide this order shall remain applicable till notification of the next order.

11. The LTA and MTOA POC rates as well as STOA POC rates were notified by the Commission on quarterly basis in accordance with 2010 Sharing Regulations prior to coming into effect of the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2020 (2020 Sharing Regulations). As per the 2010 Sharing Regulations, the yearly transmission charges for ISTS licensees apportioned for a month (Rs.3300-3500 crore/month) were allocated to each point of connection based on pre-defined methodology in regulations. The monthly charges for ISTS licensees form the basis of determination for STOA rates also. The Commission while issuing POC rates for each quarter provided that STOA rates as per the new rates shall become applicable for STOA applications received after the date of issue of instant order. One such order being Order No.L-1/44/2010-CERC dated 27.11.2019 for Q3-2019-20 which provides as follows:

“9. In order to ensure smooth changeover of short term transactions from the existing rates to the new rates of sharing of transmission charges, we direct that in respect of the applications made for scheduling of bilateral and collective transactions received on or before the date of issue of this order, short-term open access charges would be payable at the rates applicable for the application period from July-September, 2019 (Q2 of 2019 -20) and for applications received after date of issue of this order, the short-term open access charges shall be payable as per the rates approved vide this order. Taking into consideration the application of



weekly losses, we direct that the application of the new PoC loss slabs would be made applicable from the Monday immediately following the date of issue of the instant order. The rates/losses as approved vide this order shall remain applicable till notification of the next order.”

12. Perusal of above order makes it clear that the above principle of STOA charges is prevalent since the inception of the regulations and STOA rates once notified are never revised retrospectively for the simple reason that the nature is STOA. In a short term market, the transmission charges cannot be left to be revised at a later stage since it shall unsettle all the already settled STOA transactions. An STOA applicant applies for STOA with a clear picture of STOA rates applicable for it. In case STOA rates are allowed to be revised retrospectively, the entire bidding considerations including at Power Exchange shall get unsettled. Further, all the charges collected under STOA are disbursed back to DICs under first bill. Hence, in case of STOA rate revision for an entity whose STOA rate reduces due to calculation, there would be another entity whose rate will increase. The calculation of rates is such that total yearly transmission charges are divided among DICs fully and exactly. In fact, the Commission vide order dated 6.3.2020 through which STOA rates were revised, there were many entities whose STOA rate increased pursuant to reduction of the Review Petitioner's rate. Such rates, if increased retrospectively will unsettle the affairs of STOA applicants including open access consumers, captive generating stations etc., who have taken STOA for very short duration such as a few hours only.

13. Moreover, once transmission tariff for ISTS licensees such as PGCIL is revised or is issued final tariff against provisional tariff granted earlier, Bill-3 was generated under the 2010 Sharing regulations which was levied only on LTA/MTOA customers under Bill-1. There has been no retrospective revision of STOA rates to



incorporate such increased overall yearly transmission charges including that for change in law claims of TBCB licensees retrospectively for the very reasons as stated above in this order.

14. The Commission while passing the impugned order was conscious while applying revised PoC rates for short term transactions from the date of the impugned order i.e. 6.3.2020. If the transmissions charges are allowed to be settled with retrospective effect, it would lead to re-opening of series of inter-connected transactions and settled payments which will lead to anomalous situation. Accordingly, the Commission in the impugned order revised PoC slab rates for the STOA, from the date of impugned order dated 6.3.2020 and not retrospectively. The impugned order was passed by the commission in view of the peculiar facts and circumstances of the case in a thoughtful exercise of its regulatory powers. We find that there is no error apparent on face of the record, nor there is any discovery of new and important matter of evidence and hence there is no reason for review of the Order dated 6.3.2020.

15. Accordingly, Review Petition No. 5/RP/2022 is dismissed at the stage of admission.

16. Review Petition No. 5/RP/2022 is disposed of in terms of above.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

