

CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi

Review Petition No. 6/RP/2021

in

Petition No. 136/TT/2017

Coram:

Sh. P. K. Pujari, Chairperson
Sh. I. S. Jha, Member

Date of Order: 08.04.2022

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 order dated 20.8.2020 in Petition No. 136/TT/2017.

And in the matter of:

Power Grid Corporation of India Limited,
'SAUDAMINI', Plot No-2, Sector-29,
Gurgaon-122001 (Haryana).

.....Review Petitioner

Versus

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302005 (Rajasthan).
2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur (Rajasthan).
3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur (Rajasthan).
4. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur (Rajasthan).
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building-II,
Shimla-171004 (Himachal Pradesh).



6. Punjab State Power Corporation Limited,
(Formerly Punjab State Electricity Board),
Thermal Shed Tia, Near 22 Phatak,
Patiala-147001 (Punjab).
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula-134109 (Haryana).
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat,
Jammu-180001.
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001(Uttar Pradesh).
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002.
11. BSES Yamuna Power Limited,
B-Block, Shakti Kiran, Building, 2nd Floor,
Karkadooma,
New Delhi-110092.
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019.
13. Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lines Kingsway Camp,
Delhi-110009.
14. Chandigarh Administration,
Sector-9,
Chandigarh-160009.
15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun-248 001 (Uttarakhand).
16. North Central Railway,
Allahabad (Uttar Pradesh).
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002.



18. NHPC Limited,
NHPC Office Complex,
Sector-33, Faridabad,
Haryana-121003.
19. Parbati Koldam Transmission Company Limited,
5th Floor, JMD Galleria, Sohna Road, Sector 48,
Gurgaon-122018.

.....Respondent(s)

For Review Petitioner : Ms. Swapna Seshadri, Advocate, PGCIL
Shri Aditya H. Dubey, Advocate, PGCIL
Shri S. S. Raju, PGCIL
Shri D. K. Biswal, PGCIL
Shri A. K. Verma, PGCIL
Shri V. P. Rastogi, PGCIL

For Respondents : None

ORDER

Power Grid Corporation of India Limited (hereinafter referred to as “PGCIL/ Review Petitioner) has filed the present Review Petition No.6/RP/2021 seeking review and modification of the order dated 20.8.2020 in Petition No. 136/TT/2017 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.

2. PGCIL filed Petition No. 136/TT/2017 for approval of transmission tariff of **Asset-1:** Loop-Out of 1st Circuit of 400 kV D/C Parbati-II-Koldam Transmission Line at Banala (j-k portion), **Asset-2:** Loop-In of 1st Circuit of 400 kV D/C Parbati-II-Koldam Transmission Line at Banala (i-f portion), **Asset-3:** LILO of 2nd Circuit of Parbati-II-Koldam Transmission Line at Pooling Station and LILO at Parbati-III (b-c Portion), **Asset-4:** LILO of 2nd Circuit of Parbati-II-Koldam Transmission Line at Pooling Station along with associated bays and LILO at Parbati-III (f-g portion) at Parbati-III Transmission Line at Parbati Pooling Station (Banala) (hereinafter referred to as “the transmission assets”) associated with Parbati-III HEP in Northern Region. The schematic diagram is attached as Annexure-I to this order.



3. The Commission vide order dated 20.8.2020 in Petition No. 136/TT/2017 did not allow time over-run in respect of the transmission assets i.e. Asset-1, Asset-2, Asset-3 and Asset-4 as no justification was given by the Review Petitioner. Accordingly, the Commission disallowed Interest During Construction (IDC) and Incidental Expenditure During Construction (IDEC) for the period of time over-run in respect of the transmission assets.

4. Aggrieved with the Commission's order dated 20.8.2020 in Petition No. 136/TT/2017, PGCIL has filed the present review petition. The Review Petitioner has made the following prayers in the Review Petition:

- “(a) Allow the Review Petition and modify the order dated 20.8.2020 passed in Petition No. 136/TT/2017 to the extent stated in the present Review Petition;*
- (b) Allow the full IDC/IEDC for Assets 1, 2, 3 and 4 as prayed for by the Review Petitioner in Petition No. 135/TT/2017 and consequent changes to calculation of capital cost and tariff; and*
- (c) Pass any such further order or orders as this Hon'ble Commission deem just and proper in the circumstances of the case.”*

5. PGCIL has filed the present review petition contending that the Commission's observations are erroneous insofar as it concludes that time over-run in respect of the transmission assets i.e. Asset-1, Asset-2, Asset-3 and Asset-4 was not condoned vide order dated 26.5.2015 in Petition No. 91/TT/2012 and vide order dated 30.7.2016 in Petition No. 411/TT/2014 as a result of which the Commission vide order dated 20.8.2020 in Petition No. 136/TT/2017 disallowed IDC and IDEC in respect of the transmission assets.

6. The Commission in the order dated 30.7.2016 in Petition No. 411/TT/2014 split the Asset-IV of Petition No. 91/TT/2012 into two assets, namely, (j-k portion) and (i-f portion) which are Asset-1 and Asset-2, respectively in the present review petition. Similarly, Asset-II of Petition No. 91/TT/2012 was split into four assets in the order dated 7.9.2016 in



Petition No. 19/RP/2015. Asset-3 and Asset-4 [portions (b-c) and (f-g) respectively] in the present review petition are part of Asset-II covered in Petition No. 91/TT/2012.

Background

7. PGCIL initially filed Petition No. 91/TT/2012 for approval of transmission charges in respect of the following four number of transmission assets covered under the transmission system in Northern Region for 2009-14 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (“2009 Tariff Regulations):

- (i) Asset-I: 400 kV D/C Parbati-Amritsar Transmission Line along with associated bays at both ends with COD as 1.8.2013;
- (ii) Asset-II: LILO of 2nd circuit of Parbati-II-Koldam Transmission Line at Pooling Station along with associated bays and LILO at Parbati-III with COD as 1.8.2013;
- (iii) Asset-III: 400 kV 80 MVAR Bus Reactor at Parbati Pooling Station along with associated bays with COD as 1.8.2013, and
- (iv) Asset-IV: LILO of Parbati-II Koldam circuit-I at Parbati Pooling Point along with associated bays with COD as 1.4.2014.

8. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 approved transmission tariff in respect of aforesaid Asset-I and Asset-III. The tariff for Asset-II was not approved as it was not being utilized since Koldam Switchyard was not put into commercial operation and part of LILO could not be put to trial operation. Thus, time over-run with respect to Asset-II was not considered vide order dated 26.5.2015 in Petition No. 91/TT/2012. As regards Asset-IV, the Commission in the said order observed that it was put into commercial operation during 2014-19 tariff period and therefore, the Commission directed the Review Petitioner to file a separate petition. Accordingly, the Review Petitioner had filed Petition No. 411/TT/2014 claiming tariff under the 2014 Tariff Regulations.

9. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 observed that Unit No.1 and Unit No.2 of Parbati HEP-III of NHPC were commissioned on



24.3.2014. The Commission further observed that Asset-I and Asset-III were put into commercial operation with effect from 1.8.2013 at the request and behest of NHPC. Therefore, transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC.

10. Aggrieved with the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 on the issues of COD of Asset-II and non-impleadment of NHPC in Petition No. 91/TT/2012, NHPC filed Review Petition No. 25/RP/2015. The Commission vide order dated 29.12.2015 in Petition No. 25/RP/2015 observed that NHPC has been made liable to pay the transmission charges of Asset-I and Asset-III till commissioning of its generating station without hearing NHPC and therefore recalled paragraph 23 of the order dated 26.5.2015 relating to sharing of the transmission charges to be borne by NHPC from 1.8.2013 to 23.3.2014 and directed that the original petition shall be set down for hearing on the limited aspect of sharing of the transmission charges of the transmission line. Accordingly, Review Petition No. 25/RP/2015 was disposed of.

11. Petition No. 91/TT/2012 was again heard on 28.1.2016. The Commission vide order dated 21.7.2016 in Petition No. 91/TT/2012 affirmed paragraph 23 of its order dated 26.5.2015 in Petition No. 91/TT/2012 with regard to sharing of transmission charges. The Commission in the said order dated 21.7.2016 further directed CTU to examine whether these transmission assets were used by any other generators during the period in question, and if so, the transmission charges paid by them shall be utilized to reduce the liability of NHPC.

12. Aggrieved with the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 on the issue of disallowance of tariff with respect to Asset-II, the Review Petitioner preferred Review Petition No. 19/RP/2015. The Commission vide order dated 7.9.2016 disposed of the said Review Petition No. 19/RP/2015 with the observation that COD for parts of Asset-II portion (c-d-e-f) was approved as 1.9.2013 as per the 2009



Tariff Regulations with direction to NHPC to pay charges from 1.9.2013 to 23.4.2014. The Commission in the said order dated 7.9.2016 further observed that with effect from 23.4.2014, the transmission charges for (c-d-e-f) portion of Asset-II shall be included in PoC charges as provided under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. As regards, portion (b-c) and portion (f-g), these elements will be declared under commercial operation with effect from the date of commercial operation of line portion (a-b) and portion (g-h) respectively. The Petitioner was directed to submit the details of cost of the portion of transmission line represented by (c-d-e-f) of Asset II as on 1.9.2013 for determination of tariff.

13. Aggrieved with the orders dated 26.5.2015 and 21.7.2016 (consequent to the order dated 26.5.2015 in Review Petition No. 25/RP/2015) in Petition No. 91/TT/2012 and order dated 7.9.2016 in Review Petition No. 19/RP/2015, NHPC filed Appeal No. 281 of 2016 and Appeal No. 81 of 2017 before the Appellate Tribunal for Electricity (APTEL). The APTEL vide judgment dated 16.7.2018 remitted Petition No. 91/TT/2012 for fresh consideration. The Commission vide order dated 5.2.2020 again decided certain aspects of Petition No. 91/TT/2012 in terms of the APTEL's judgment dated 16.7.2018 and upheld the COD of Asset-II as 1.9.2013.

14. Since COD of portions (b-c) and (f-g) of Asset-II of Petition No. 91/TT/2012, which are Asset-3 and Asset-4 respectively in the present review petition, fall in 2014-19 tariff period, a separate petition was filed by PGCIL in respect of these assets being Petition No. 136/TT/2017.

15. The matter was heard through video conference on 26.11.2021 and order on admissibility was reserved.



Submissions of the Review Petitioner

16. The Review Petitioner has submitted following in support of the instant review petition:

- (a) The Commission in order dated 26.5.2015 in Petition No. 91/TT/2012 considered the Review Petitioner's affidavit dated 20.9.2013 with reference to time over-run and clearly recorded the submissions that delay in execution of the transmission assets was on account of acquisition of land for sub-station, forest clearance of Parbati-Amritsar Transmission Line in Himachal Pradesh and at Punjab portions. After taking into consideration the submissions of the Review Petitioner, the Commission vide order dated 26.5.2015 condoned delay of 42 months in respect of all four transmission assets.
- (b) Pursuant to APTEL's judgment dated 16.7.2018 remanding Petition No. 91/TT/2012, the Commission vide order dated 5.2.2020 again considered Petition No. 91/TT/2012 and upheld the COD of Asset-II as 1.9.2013.
- (c) With regard the Asset-IV of Petition No. 91/TT/2012, Petition No. 411/TT/2014 was filed as it was commissioned during 2014-19 tariff period. The Commission vide order dated 30.7.2016 in Petition No. 411/TT/2014 observed that the Review Petitioner was ready on 1.4.2014 and delay in execution of Asset-IV was due to delay in execution of transmission lines by Parbati Koldam Transmission Company Limited (PKTCL) and therefore bifurcated and approved the COD of Loop-in and Loop-out portion of the asset as 3.11.2015 and 10.10.2014, respectively. The Commission in order dated 30.7.2016 observed that IDC and IEDC from 30.6.2014 till the date of usage of the Loop-in and Loop-out portion i.e. 3.11.2015 and 9.10.2014 respectively would be borne by PKTCL with direction to the Petitioner to submit the capital cost of



Loop-in and Loop out portions of the asset as on 10.10.2014 and 3.11.2015 respectively along with relevant documents.

- (d) From the date when the Review Petitioner was ready as on 1.4.2014 till 30.6.2014, there is no need of any further justification and IDC and IEDC is to be allowed. Delay till 1.4.2014 was beyond the control of the Review Petitioner.
- (e) The Review Petitioner in the proceedings of Petition No. 136/TT/2017 proceeded on the basis that documents and justifications had already been submitted in Petition No. 91/TT/2012 and Petition No. 411/TT/2014.
- (f) The Review Petitioner in its rejoinder affidavit dated 14.9.2018 to the reply of BRPL on the issue of time over-run submitted that delay justifications for the assets covered under Parbati-III HEP have already been submitted in Petition No. 91/TT/2012 and Petition No. 411/TT/2014 concerning the transmission assets of Petition No. 107/TT/2017. It is submitted that on consideration of the submissions of Review Petitioner, the Commission condoned delay after finalizing various transmission elements and their COD covered in the aforesaid two petitions.
- (g) The Commission did not seek any further clarifications or sought additional details in Record of Proceedings and/or technical validation from the Review Petitioner with reference to the present case. In the absence of any query from the side of the Commission seeking clarification on any issue/technical validation or any additional details on the subject matter, the Commission ought not to have rejected the claim for time over-run on the grounds that Review Petitioner did not give any documents in support of the same. However, the Review Petitioner has



proceeded on the basis that documents had already been submitted in earlier proceedings in Petition No. 91/TT/2012 and Petition No. 411/TT/2014, and, therefore, there is no need for fresh submission. Reliance is placed on the judgments of APTEL in the matter of (i) NTPC Ltd. v. Central Electricity Regulatory Commission and Ors. dated 9.5.2019 in Appeal No. 125 of 2017 and (ii) D.B. Power Ltd. v. Central Electricity Regulatory Commission and Ors. dated 15.5.2020 in IA No. 129 of 2019 in Appeal No. 253 of 2018 and IA No. 1515 of 2019.

- (h) Consideration of time over-run is essential and has it has impact on the capital cost of the Review Petitioner which in turn has a cascading impact on various elements of tariff. Denial of time over-run and associated IDC and IEDC results in denial of legitimate costs of the Review Petitioner. The principle of allowing cost over-run due to time over-run beyond the control of the licensee has been settled and accepted by the APTEL and the Commission. Reliance is placed on the judgment of APTEL in the matter of Maharashtra State Power Generation Co. Ltd. v. Maharashtra Electricity Regulatory Commission decision dated 27.4.2011 in Appeal No. 72 of 2010.
- (i) The Review Petitioner has enumerated reasons for delay in land acquisition for Pooling Station at Banala and also gave details of correspondence exchanged on various dates between officials and Authorities right from 15.1.2003 to 4.11.2010 with reference to land allotment.
- (j) The Review Petitioner in the present review petition has reiterated its submissions with regard to time over-run as submitted by it in Petition No. 91/TT/2012. Since the Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 has given details of reasons of time over-run in paragraph 21 and paragraph 22, to avoid



repetition the same are not being recorded here.

17. In view of above submissions, the Review Petitioner has sought review of the order dated 20.8.2020 in Petition No. 136/TT/2017 and has prayed for allowing full IDC and IEDC in respect of the transmission assets i.e. Asset-1, Asset-2, Asset-3 and Asset-4 with consequential changes in calculation of capital cost and tariff.

18. During hearing of the matter on 26.11.2021, learned counsel for the Review Petitioner reiterated the submissions as made in the instant review petition and requested to consider the same, allow time over-run as sought and allow full IDC and IEDC in respect of the transmission assets in the facts and circumstances of the present case.

Analysis and Decision

19. We have considered the submissions of the Review Petitioner and have gone through the record. The contention of the Review Petitioner is that in Petition No. 91/TT/2012, the Review Petitioner submitted common reasons and justifications for time over-run in respect of Asset-I, Asset-II, Asset-III and Asset-IV. The Review Petitioner has further contended that though the Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 allowed tariff for Asset-I and Asset-III after considering and allowing time over-run of 42 months and no tariff was approved for Asset-II and Asset-IV, the Commission condoned time over-run in respect of Asset-I, Asset-II, Asset-III and Asset-IV in Petition No. 91/TT/2012.

20. It is apt to mention here that Asset-IV of Petition No. 91/TT/2012 was declared under commercial operation during 2014-19 tariff period and a separate petition being Petition No. 411/TT/2014 was filed in respect of this asset by the Review Petitioner. The Commission vide order dated 30.7.2016 in Petition No. 411/TT/2014 split Asset-IV of Petition No. 91/TT/2012 into two assets, namely, Asset-1 (j-k portion) and Asset-2 (i-f portion) in Petition No. 136/TT/2017, while Asset-3 (b-c portion) and Asset-4 (f-g portion) of Petition No.



136/TT/2017 came into being in Commission's order dated 7.9.2016 in Review Petition No. 19/RP/2015 which was filed for review and modification of the order dated 26.5.2015 in Petition No. 91/TT/2012. Thus, as the commercial operation of the asset was in the tariff period 2014-19 and the same was dealt in subsequent Petition No. 411/TT/2014 and Petition No. 136/TT/2017 filed by the Petitioner, it is clear that the issue of commercial operation and time over-run was not dealt in the Petition No. 91/TT/2012 as contended by the Review Petitioner.

21. Order 47 Rule 1 of Civil Procedure Code, 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.”

22. The Review Petitioner has contended that as the Commission did not seek any clarification, information or technical validation with respect to time over-run in respect of the transmission assets (Asset-II and Asset-IV), the Review Petitioner, believing that the time over-run in respect of the transmission assets had already been condoned in the Petition No. 91/TT/2012 based on documents already submitted, did not again submit documents relating to time over-run.

23. Thus, the Review Petitioner, by contending that time over-run was condoned by the Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 with reference to Asset-II and Asset-IV based on documents submitted by it in the said petition, per se admits that it is not its case that there is discovery of 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 when order in Petition No. 136/TT/2017 was made.



24. Thus, the case of the Review Petitioner is left to be tested on (i) whether there is any mistake or error apparent on the face of the record, or (ii) there is any other sufficient reasons for review of the order dated 20.8.2020 in Petition No. 136/TT/2017.

25. The issue of time over-run with reference to Asset-II and Asset-IV of Petition No. 91/TT/2012 has recently been examined by the Commission in order dated 31.3.2022 in Review Petition No. 32/RP/2020 in Petition No. 107/TT/2017 filed by the Review Petitioner. The issues raised and the justification given by the Review Petitioner in the Review Petition No. 32/RP/2020 and in the present Review Petition No. 6/RP/2021 are similar.

26. The Commission vide order dated 31.3.2022 in Review Petition No. 32/RP/2020 in Petition No. 107/TT/2017 after detailed examination has rejected the contentions of the Review Petitioner that time over-run was allowed in respect of Asset-II and Asset-IV of Petition No. 91/TT/2012. The relevant excerpts of the order dated 31.3.2022 are as follows:

“22. Thus, we find that it is not the case of Review Petitioner that it was unable to produce the aforesaid facts at the time when order in Petition No. 107/TT/2017 was passed. In other words, no new facts have been brought on record which were not in power and possession of the Review Petitioner or that these facts were not in the knowledge of the Review Petitioner at the time when the order in Petition No.107/TT/2017 was passed. On examination of the Review Petitioner’s submissions, we find that none of the submissions satisfy that there is “any other sufficient cause” to review the order dated 17.8.2020.

23. The Review Petitioner rests its case on the fact that Petition No. 91/TT/2012 was filed for determination of four numbers of transmission assets and time over-run being common to all was condoned by the Commission in case of Asset-I and Asset-III. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 condoned time over-run of 42 months and allowed tariff for Asset-I and Asset-III leaving Asset-II and Asset-IV.

24. On perusal of the Commission’s order dated 26.5.2015 in Petition No. 91/TT/2012, we find that the said petition was filed in respect of four numbers of transmission assets. However, the Commission vide the said order dated 26.5.2015 considered and condoned time over-run of 42 months on the basis of material available on record and allowed tariff in respect of Asset-I and Asset-III only. The Commission in its order dated 26.5.2015 observed that it was not contemplating tariff in respect of Asset-IV as a separate petition being number 411/TT/2014 had been filed by the Review Petitioner when Petition No.91/TT/2012 itself was pending adjudication. The Commission in the said order dated 26.5.2015 did not allow tariff for Asset-II as it was not being utilized, since Koldam Switchyard was not commissioned and part of LIL0 could not be put to trial operation. Thus, it is apparent that the issue of time over-run with respect to Asset-II and Asset-IV was not even considered and addressed, leave alone condoned by the Commission in the order dated 26.5.2015 in Petition No. 91/TT/2012.



25. The Review Petitioner has contended that vide common affidavit dated 14.9.2018 in Petition No. 91/TT/2012, Petition No. 107/TT/2017 and Petition No. 136/TT/2017, it had submitted justifications for the delay and time over-run for the assets of Parbati-II HEP in Petition No. 91/TT/2012 and Petition No. 411/TT/2014 covering the assets of Petition No. 107/TT/2017 and the Commission after considering the submissions of the Review Petitioner has already condoned the delay in COD of various transmission elements covered in the said two petitions. The Review Petitioner has further contended that as justifications for the delay and time over-run were given in the said two petitions, no further justification was given by it in Petition No. 107/TT/2017.

26. We have already observed that no delay was condoned in Petition No. 91/TT/2012 with regard to Asset-II and Asset-IV. Further, we have also perused the order dated 30.7.2016 in Petition No. 411/TT/2014 and find nothing in the order dated 30.7.2016 in Petition No. 411/TT/2014 suggesting that the issue of time over-run was considered and addressed, leave alone condoned. Thus, contention of the Review Petitioner that time over-run was considered and condoned for Asset-II and Asset-IV in Petition No. 91/TT/2012 and Petition No. 411/TT/2014, respectively does not reflect the correct fact.

27. On perusal of order dated 7.9.2016 in Review Petition No. 19/RP/2015, we find that the Commission in the said order only approved the COD for parts of Asset-II in Petition No. 91/TT/2012 and there was no discussion on the issue of time over-run of Asset-II or any of its parts. The matter in issue in the present Review Petition is with regard to time over-run of portions (c-d) and (e-f) of Asset-II which were carved out pursuant to the Commission's order dated 7.9.2016 in Review Petition No. 19/RP/2015. Parts of Asset-II in Petition No. 91/TT/2012 i.e. portion (c-d) and portion (e-f) are now Asset-3 and Asset-4, respectively in Petition No. 107/TT/2017. Thus, it cannot be said that the Commission in order dated 7.9.2016 in Review Petition No. 19/RP/2015 had considered and condoned the time over-run with respect to these parts of Asset- II.

28. The Review Petitioner has also contended that the Commission vide order dated 5.2.2020 in Petition No. 91/TT/2012 on re-consideration of the matter in terms of APTEL's judgment dated 16.7.2018 in Appeal No. 281 of 2016 and Appeal No. 81 of 2017, in paragraph 4 observed that there was time over-run of 42 months in the case of Asset-I, Asset-II and Asset-III which was mainly due to forest clearance, land acquisition and time taken for obtaining tree cutting permission. The Review Petitioner goes on to contend that the Commission found the said time over-run of 42 months was beyond the control of the Petitioner and condoned the same and therefore, goes on to claim that the time over-run in respect of Asset-II in Petition No. 91/TT/2012 was also condoned.

29. It is observed that Petition No.91/TT/2012 was heard by the Commission thrice. In the first instance, tariff was approved for Asset-I and Asset-III and tariff for Asset-II and IV was not allowed vide order dated 26.5.2015. The Commission in paragraph 6 of the order has clearly stated that tariff is not granted for Asset-II. The relevant portion of the order dated 26.5.2015 in Petition No.91/TT/2012 is extracted hereunder:

“6. A portion of the LILO circuits of Asset-II is not utilized as the Koldam switchyard has not been commissioned and the part of LILO cannot be put to trial operation without the line getting connected at the other end as per the APTEL order dated 2.7.2012 in Appeal No. 123 of 2011. Further, the petitioner has neither prayed for declaration of date of commercial operation under Regulation 3(12)(C) of the 2009 Tariff Regulations nor disclosed the information that the portion of LILO are not in use. Punjab State Power Corporation Limited (PSPCL), Respondent No. 6, has also raised this issue in their submission. Since the Koldam Switchyard has not been commissioned, we are not inclined to grant tariff for Asset-II in this petition. The petitioner is at liberty to file the tariff of this asset when complete LILO is put into regular service after test charge and trial operation.”



30. Further, the time over-run in case of Asset-I and Asset-III, for which tariff was allowed in order dated 26.5.2015, was dealt in paragraph 20 to paragraph 23 of the order and there was no mention about Asset-II in the said portion of the order. Thus, it is clear that issue of time over-run and tariff in case of Asset-II was not considered by the Commission in order dated 26.5.2015.

31. At the second instance, Petition No. 91/TT/2012 was reopened pursuant to the Commission's order dated 29.12.2015 in Petition No. 25/RP/2015 filed by NHPC. Petition No. 91/TT/2012 was reopened for reconsideration of the Commission's direction making NHPC liable for the transmission charges of Asset-I and Asset-III till commissioning of its generation. After hearing the parties, the Commission vide order dated 21.7.2016 in Petition No. 91/TT/2012 while reaffirming paragraph 23 of the order dated 26.5.2015 in Petition No. 91/TT/2012 holding NHPC liable for the transmission charges of Asset-I and Asset-III directed CTU to examine whether these transmission assets were used by other generators during the period in question, and if so, use the transmission charges paid by them for reducing the liability of NHPC. Therefore, the time over-run in case of the assets covered in Petition No.91/TT/2012 was not an issue for consideration by the Commission at that stage and accordingly, it was not at all considered in order dated 21.7.2016.

32. The Commission for the third time heard Petition No.91/TT/2012 on remand pursuant to the APTEL's judgement dated 16.7.2018 in Appeal No.281 of 2016 and Appeal No.81 of 2013. The Commission framed the following issues on the basis of the submissions made by PGCIL, NHPC and PKTCL:

"26. From the submissions of the parties, the following issues arise for our consideration:
(i) Whether Indemnification Agreement dated 22.7.2005 executed between NHPC and PGCIL is applicable?
(ii) Whether tariff can be granted for a part of any transmission system?
(iii) Whether COD of the assets/ elements in the present case was declared without putting in place the associated Communication System?
(iv) Whether the approach of the Commission is inconsistent in similar cases for allowing recovery of transmission charges?
(v) Whether the transmission charges in the present case should be shared by the other generators using the transmission system?"

33. From the perusal of the issues framed by the Commission, it is clear that the time over-run in case of the transmission assets was not for consideration of the Commission on remand.

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36. In the light of above discussions, we are of the view that the Review Petitioner has failed to show any error apparent on the face of record or discovery of any new facts which were not in its knowledge or any other sufficient cause to bring its case within the ambit of review."

27. As the contentions and justification given by the Review Petitioner in the present Review Petition No. 6/RP/2021 are similar to those given in the Review Petition No. 32/RP/2020, in the light of our findings in Review Petition No. 32/RP/2020 we are of the view that (a) the issue of time over-run in case of part of Asset-II of Petition No. 91/TT/2012, which are Asset-3 and Asset-4 of the present Review Petition, was neither considered nor



condoned in orders dated 26.5.2015, 21.7.2016 and 5.2.2020 in Petition No.91/TT/2012 as stated by the Commission in order dated 31.3.2022 in Petition No. 32/RP/2020; and (b) the issue of time over-run in case of Asset-IV of Petition No. 91/TT/2012, which are Asset-1 and Asset-2 of the present Review Petition, was neither considered nor condoned in order dated 30.07.2016 in Petition No.411/TT/2014 as stated by the Commission in order dated 31.3.2022 in Petition No. 32/RP/2020.

28. Therefore, we observe that there is no error apparent on the face of record or any other sufficient cause to review the order dated 20.8.2020 in Petition No. 136/TT/2017.

29. For the reasons mentioned above, we are unable to admit the present Review Petition. Accordingly, the Review Petition is dismissed at the stage of admission. The Review Petition No. 6/RP/2021 is disposed of accordingly.

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson



