

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 113/MP/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 20.01.2024

In the matter of:

Petition under Section 79(1)(c) & (f) of the Electricity Act, 2003 read with the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 to set aside the bill dated 1.1.2020 of the Central Transmission Utility (PGCIL) towards Transmission Charges (POC and HVDC charges) as well as the Notice for Regulation of Power Supply dated 3.1.2020.

And

In the matter of:

KSK Mahanadi Power Limited,
8-2-293/82/A/431/A, Road No.22 Jubilee Hills,
Hyderabad-500033

.....Petitioner

Versus

1. Powergrid Corporation of India Limited,
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi – 110016
2. Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL),
4A, Gokhale Marg, Lucknow – 226001
3. Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL),
UrjaBhawan, Victoria Park, Meerut – 250001
4. Purvanchal Vidyut Vitran Nigam Limited (PuVVNL),
DLW Bhikharipur, Varanasi – 221 004
5. Dakshinanchal Vidyut Vitran Nigam Ltd. (DVVNL),
Urja Bhawan, NH-2, (Agra-Delhi Bypass Road),
Sikandra, Agra-282002



6. Central Transmission Utility of India Ltd.,
B-9, Qutub Industrial Area,
Katwaria Sarai, New Delhi-110016

.....Respondents

Parties Present:

Shri Anand K. Ganeshan, Advocate, KSKMPL
Ms. Kriti Soni, Advocate, KSKMPL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Shri Haribabu. V, CTUIL

ORDER

KSK Mahanadi Power Limited (hereinafter to be referred to as 'Petitioner') has filed the present Petition under Section 79(1)(c) & (f) of the Electricity Act, 2003, read with the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 to set aside the bill dated 1.1.2020 of the Central Transmission Utility (PGCIL) towards Transmission Charges (POC and HVDC charges) as well as the Notice for Regulation of Power Supply dated 3.1.2020.

2. The Petitioner has made the following prayers:

- (a) *Set aside the bill dated 01/01/2020 raised by Power Grid on the Petitioner as illegal and incorrect;*
- (b) *Direct Power Grid to raise a fresh bill in terms of the Order dated 31/07/2019 passed by this Hon'ble Commission;*
- (c) *Direct Power Grid not to take any precipitative action against the Petitioner for non-payment of the amounts indicated in the Regulation Notice dated 03/01/2020;*
- (d) *Stay the Regulation Notice dated 03/01/2020 issued by Power Grid till disposal of the present petition;*
- (e) *Direct that any penalties which will have to be paid by the Petitioner to the respective Distribution Companies under its PPAs for short supply of power due to regulation of power supply threatened by Power Grid will have to be paid by Power Grid to the Petitioner subject to prudence check by this Hon'ble Commission;*
- (f) *Award costs of the present petition in favour of the Petitioner and against Power Grid;*
- (g) *Pass such other further orders as the Hon'ble Commission may deem just in the facts of the present case;*

3. Petitioner, while filing the petition in 2020, has made PGCIL the sole respondent.

However, vide affidavit dated 20.10.2022, the petitioner has filed an amended

memo of parties & impleaded CTUIL as the respondent, consequent to the separation of CTUIL from PGCIL. Accordingly, submissions made by PGCIL, wherever referred to in the petition, shall be considered as that of CTUIL.

Submission of Petitioner

4. The Petitioner has made the following submissions:
- (a) The Petitioner is aggrieved of the incorrect and illegal bill dated 01.01.2020 issued by Power Grid on the Petitioner. Powergrid has also threatened to regulate the power supply of the Petitioner from 23.01.2020 onwards if the amount purported to be outstanding based on the above bill is not paid.
 - (b) The Petitioner is in the process of establishing a 3600 MW coal-based generating station in the State of Chhattisgarh. Out of the above, three units of 600 MW each have been commissioned and are presently under commercial operation.
 - (c) The Petitioner, along with other generators in the state of Chhattisgarh and Chhattisgarh Power Trading Company Limited (towards host-state obligatory power off take) had initially entered into a Bulk Power Transmission Agreement (BPTA) dated 24/02/2010 with Powergrid in terms of the then applicable Regulations. Thereafter, a Transmission Service Agreement (TSA) was signed between the Petitioner and Powergrid on 05/12/2012.
 - (d) The Petitioner has been granted LTA – 1000 MW to UP vide intimation letter dated 29/07/2016 on 765 kV Jabalpur – Orai and upgradation of + 800 kV 3000 MW HVDC Bipole between Champa PS – Kurukshetra (NR) to 6000 MW.
 - (e) Till April 2018, Power Grid had billed the transmission charges as per the POC slab rates for 1000 MW. For the period April 2018 till October 2018, the bills were being raised with POC, HVDC and Reliability Charges being billed to the extent of 177.99 or 178.51 MW and charges for the HVDC Champa-Kurukshetra corridor to the extent of 822.01 or 821.49 MW which totals to the 1000 MW open access granted. However, the HVDC charges being billed for Champa –Kurukshetra (Pole 1) were exorbitant and erroneous since the rate has to be arrived at considering the Annual Transmission charges of Pole 1 and Pole 2 summated and distributed on the entire capacity of 3000 MW instead of billing the costs on 1500 MW.

- (f) In the bill dated 07/12/2018, there was an exponential rise in the charges being billed to the Petitioner, with the POC, HVDC and Reliability Charges being billed to the extent of 1000 MW and further, the charges for the Champa-Kurukshetra corridor to the extent of 847.458 MW. In effect, for the LTA capacity of 1000 MW, Power Grid was billing the Petitioner for a capacity of more than 1800 MW. The primary error committed by Power Grid is to bill the charges for more than LTA of 1000 MW quantum in absolute terms.
- (g) Power Grid itself had sought a review of the Champa Kurukshetra Tariff Orders – Order dated 22/02/2018, in Petition No. 13/TT/2017 and order dated 06/11/2018 in Petition No. 205/TT/2017 before this Commission.
- (h) In the meanwhile, and on 15/04/2019, the Petitioner had also filed a substantive petition being Petition No. 120/MP/2019, before this Commission challenging the erroneous billing of Power Grid on the very same aspects.
- (i) While the Review Petitions were being taken up, the issue of the incorrect billing was raised before this Commission by several generators, including the Petitioner and an interim order was passed on 13/05/2019. There were two specific directions of the Commission i.e. a direction to bill generators as they were being billed till November 2018, and also not to invoke the regulation of power supply on any of the generators. Despite the above, Power Grid chose to disregard the same and did not raise bills on the Petitioner as per the methodology prior to November 2018. On the other hand, Power Grid continued the same illegal methodology of billing for 1800 MW (on a grant of LTOA of 1000 MW) as is evident from the following bill details:

SI. No	Billing Month	Bill Date	Bill Value	Capacity Charged
1	Nov-18	07-12-2018	66,62,38,788	1800
2	Dec-18	07-01-2019	67,97,72,030	1800
3	Jan-19	08-02-2019	60,31,48,126	1800
4	Feb-19	08-03-2019	65,23,03,631	1800
5	Mar-19	05-04-2019	70,76,27,475	1800
6	Apr-19	07-05-2019	76,97,98,475	1800
7	May-19	06-06-2019	73,83,43,263	1800
8	Jun-19	04-07-2019	69,83,47,035	1800

- (j) By a detailed order dated 31/07/2019, this Commission allowed review petitions and directed that revised billing of transmission charges be done on all generators,

including the Petitioner. Therefore, Power Grid was to raise revised bills for the period from June 2018 onwards, which also was not done.

- (k) The Petitioner brought to the notice of Power Grid that Power Grid continues to bill the petitioner wrongly and not following the Orders of the Commission to follow the billing methodology adopted before November 2018 and that the outstanding dues reckoned for the purpose of issuing the Regulation Notice is completely erroneous and in fact, the Petitioner had paid Rs.118.64 Crs in excess for the billing period till Feb'19 and after adjustment of excess amounts paid towards Mar'19 to May'19, an excess amount of Rs.16.97Crs lies to the credit of the Petitioner for adjusting in Jun'19 bill. Petitioner also requested Power Grid to issue fresh bills as per the directives of this commission to enable the Petitioner to make such payments as and when due. Power Grid also sent another Regulation notice dated 06/08/2019.
- (l) In the circumstances, the Petitioner was constrained to urgently file an additional affidavit in Petition in Petition No. 120/MP/2019 on 08/08/2019 seeking protection against the Regulation of power supply. Upon mentioning, the Commission took up the matter on 08/08/2019 and directed Power Grid to not take any coercive measures till the disposal of Petition No. 120/MP/2019. Further, a specific direction was also issued to NLDC to revise POC rates within 15 days in line with the Commission's order dated 31.7.2019 in Petition No. 20/RP/2019.
- (m) Power Grid's submission in the above hearing was that it was unable to revise the bills due to non-revision of POC rates by NLDC.
- (n) Accordingly, Power Grid was to raise fresh bills of transmission charges from April 2018 onwards based on NLDC's computation. However, instead of following this course, Power Grid raised a bill on 01/01/2020, giving a credit bill taking into account the difference between the rates wrongly charged by it and the rates now determined by this Commission. The perversity in the bill becomes further clear by the fact that Power Grid has given a self-certification to its earlier bills as if they were payable on the due dates, then computed the delay payment surcharge on the said bill and even adjusted the STOA credit, which was due to the Petitioner from it.
- (o) Further, Power Grid has gone on to issue a Regulation Notice dated 03/01/2020 on the Petitioner for non-payment of its bill dated 01/01/2020, again holding its

earlier bills to be valid and payable on the respective due date despite the Interim Order dated 13/05/2019 and the final Order dated 31/07/2019.

- (p) If the principal bill itself is found to be erroneous and not payable and there is a requirement to claim transmission charges as per revised methodology, it is not understood how a credit can be given as if there is only an adjustment to be made and the regulation of power supply be threatened for non-payment of the original bill. The effect of the review order dated 31/07/2019 in Petition No. 20/RP/2018 and the RoP dated 08/08/2019 in Petition No. 120/MP/2019, is that fresh transmission charges bills need to be raised by Power Grid on the Petitioner, as per the rates issued by NLDC. Needless to say, if a bill is raised on a particular date, the LTTC has 45 days from the said date to make payment and only thereafter can further action be taken by Power Grid in case of non-payment. The due date needs to be computed from the date when Power Grid has correctly raised the invoices in terms of the directions of the Commission.
- (q) The Petitioner is currently under a resolution process under the provisions of the Insolvency and Bankruptcy Code (IBC). The Petitioner also is protected under the provisions of the IBC, which are in addition to the rights of the Petitioner claimed in the present petition.

Hearing dated 21.01.2020:

5. During the hearing, the learned counsel for PGCIL submitted that after the issuance of the Regulation of Power Supply notice dated 3.1.2020, Rs. 267 Crore is outstanding for more than 45 days. Out of this, the Petitioner has paid Rs. 45 Crore. In response the counsel for the petitioner submitted that Rs. 222 Crore is outstanding for more than 45 days. After hearing the counsel for the parties, the Commission admitted the Petition and directed the Petitioner to pay Rs. 100 Crore to PGCIL, along with current transmission charges within 7 days from the issuance of ROP. The Commission further directed that after the payment of the above amount, if the outstanding dues exceeding 45 days are more than Rs. 122 Crore at any point in time, PGCIL is free to regulate the Petitioner's power in accordance with law.

Reply of PGCIL

6. PGCIL, in its reply, vide affidavit dated 26.02.2020, has submitted as follows:



- (a) The system strengthening for power evacuation from the Western Region to the Northern Region, the “Western Region-Northern Region HVDC inter-connector for IPP Projects in Chhattisgarh Scheme”, was being implemented by PGCIL consisting of the following elements:
- i. Asset-1: Pole-I of the ± 800 kV, 3000 MW Champa Pooling Station and Kurukshetra HVDC Terminals along with ± 800 kV Champa Pooling Station-Kurukshetra HVDC transmission line;
 - ii. Asset-2: 2 Nos. 400/220 kV, 500 MVA ICTs along with associated bays at 400/220 kV GIS Sub-station at Kurukshetra;
 - iii. Asset-3: 8 nos. 220 kV line bays at 400/220 kV GIS Sub-station at Kurukshetra; and
 - iv. Pole-II of the ± 800 kV, 3000 MW Champa and Kurukshetra HVDC terminals along with associated bays.
- (b) Vide Order dated 22.2.2018 passed in Petition No.13/TT/2017, this Commission approved the transmission tariff for the tariff period 2014-2019 for Asset-I. However, while declining to approve the Commercial Operation Date (COD) of Asset-II and Asset-III and disallowing transmission charges for the said Assets, this Commission adjudicated upon the mechanism for sharing of transmission charges for HVDC line for transmission Asset-I. Thereafter, following the said Order, this Commission vide Order dated 6.11.2018 passed in Petition No.205/TT/2017, adjudicated on the issue of sharing of transmission charges for transmission tariff of Pole-II of the Champa-Kurukshetra HVDC line whereby the transmission charges were apportioned only between the beneficiaries who were utilizing the instant transmission assets. Thus, PGCIL became bound to adopt the methodology of billing as prescribed under the aforesaid Orders of this Commission.
- (c) PGCIL preferred Review Petitions before this Commission, being Petition No.20/RP/2018 seeking review of Order dated 22.2.2018 passed in Petition No.13/TT/2017 and Petition No.3/RP/2019 seeking review of Order dated 6.11.2018 passed in Petition No.205/TT/2017.
- (d) Despite being represented in the Review Petitions and also being supported therein by PGCIL, the Petitioner filed a Petition [Petition No.120/MP/2019] seeking

setting aside of the bills dated 7.12.2018, 7.1.2019, 7.2.2019 and 8.3.2019 issued by PGCIL towards transmission charges for its LTA of 1000 MW and a consequent direction from this Commission to direct PGCIL to pay any penalties which the Petitioner was to pay to its beneficiaries for short supply of power due to any regulation of power supply by PGCIL. The Petitioner, at the same time, also filed a completely misplaced Review Petition [being Petition No.142/RP/2019] seeking review and clarification of the Order dated 6.2.2019 passed by this Commission in Petition No. L/44/2010-CERC, wherein this Commission had determined the PoC rates and transmission losses for the period from January 2019 to March 2019.

- (e) Vide interim Order dated 13.5.2019 passed in the Review Petitions filed by PGCIL, this Commission directed PGCIL to continue billing the DICs, including the Petitioner, in the same manner as they were being billed till November 2018 till the final disposal of the Review Petitions (as also the Petition filed by the Petitioner) and further directed PGCIL not to invoke the provisions of Central Electricity Regulation Commission (Regulation of Power Supply Regulation), 2010 for regulating power supply for any non-payment of transmission charges by them.
- (f) This Commission has notified the Billing Collection and Disbursement (BCD) Procedure under the Sharing Regulations, which also provides [clause 2.1.3] the above-said billing methodology to be adopted by PGCIL. Thus, the billing methodology adopted by PGCIL for all DICs is such that Bill-1 is issued to recover charges for the use of the transmission assets based on the PoC methodology. The BCD Procedure prescribes a methodology for raising bill dispute notices in case the said bill is not acceptable to any DIC. However, since the bill is based on PoC methodology so as to recover the Yearly Transmission Charges (YTC) fully and exactly at all points of time, therefore the raising of a bill dispute notice does not absolve a DIC from its liability to pay such a bill. In case the said bill is later found to be not in consonance with the applicable Regulations, the overcharged/undercharged amount is adjusted in the adjustments made in Bill-3. In this regulated process, the payments and cash flows of the PoC pool remain undisturbed and at the same time, any incorrect billing is also rectified by way of adjustments/credits given under Bill-3.
- (g) As per the above regulatory methodology, PoC bills were raised on the Petitioner (Bill-1) as per the Orders dated 22.2.2018 and 6.11.2018 passed by this

Commission in Petition No.13/TT/2017 and Petition No.205/TT/2017 under Regulation 11(4)(3)(iii) of the Sharing Regulations.

- (h) This Commission disposed of the Review Petition 20/RP/2018 and 3/RP/2019 vide Order dated 31.07.2019, and subsequently, the PoC rates for the period April 2018 to September 2018 were revised by the NLDC and approved by this Commission only on 10.10.2019 and thereafter relevant RTAs were issued by the RPCs by 18.12.2019, PGCIL was constrained to continue the same billing methodology in the interim as per the prevailing PoC rates and RTAs issued by the RPCs. The Petitioner's contention that PGCIL continued to wrongly bill the Petitioner despite the above interim directions issued by this Commission in its RoP dated 13.5.2019 is completely misplaced and inadmissible.
- (i) The direction of this Commission vide Order dated 31.7.2019 in the Review petitions was to the Respondent to add together the annual transmission charges of Pole-I and Pole-II to arrive at monthly transmission charges and the billing to be done as per Regulation 11(4)(3)(i) of the 2010 Sharing Regulations. However, neither was there any direction by this Commission to PGCIL to raise any fresh bills, nor did this Commission hold the earlier bills to be incorrect or illegal as has been wrongly contended by the Petitioner. This was so because this Commission's own Regulations provided for the adjustment of any overpaid amounts by DICs through the issuance of Bill-3 at the end of the quarter, through which credit was to be granted to those DICs who had paid excess amounts. Thus, the contention of the Petitioner that the bills raised by the Petitioner from April 2018 onwards had lost all sanctity after the passing of the Order dated 31.7.2019 is completely misplaced and based on an incorrect understanding of the regulatory mechanism governing the PoC billing; the same is merely a tool to evade payment of the shared PoC charges.
- (j) In compliance with the directions issued by this Commission and subsequent POC rates revision approved by the Commission and thereafter issuance of RTA revisions by the RPCs, PGCIL re-computed the charges to be paid by the DICs and accordingly, the Petitioner was given a credit of Rs.331.38 crores vide Bill-3 issued on 1.1.2020. It is submitted that notwithstanding any dispute raised by the Petitioner against Bill-1 issued to it by PGCIL from time to time, the Petitioner continued to be liable to pay the billed transmission charges as per the RTAs issued by RPCs, subject to its adjustment through Bill-3; any non-payment thereof

beyond 60 days was to attract the regulatory consequences in the form of regulation of power supply. However, the Petitioner, of its own volition, chose not to pay the transmission charges under Bill-1 and continued to default in payments, and hence, despite giving a credit of Rs.331.38 crores, the outstanding payments of the Petitioner remained at Rs. 354 crores out of which an amount of Rs.267 crores remained outstanding for more than 45 days. This continuous default by the Petitioner was bound to attract regulatory action by PGCIL.

- (k) The Petitioner has 3 LTAs being 1000 MW (with UP Discoms), 500MW (with Tamil Nadu Discoms) and 400 MW (on target region basis in Western Region). The Petitioner was also transacting power through Medium Term Open Access (MTOA) for 400 MW to Andhra Pradesh Discoms till 15.6.2019, which was thereafter reduced to 38.5 MW which is continuing till date. Thus, the Petitioner was also getting an offset to the extent of 38.5 MW in its transmission bills. The cumulative value of all these transactions put together formed the basis of calculating the outstanding dues of the Petitioner. On a willful and misplaced assumption, the Petitioner has now wrongly contended that under the protection of interim Orders, it was not liable to clear the outstanding dues and continue to default in its payments. Accordingly, PGCIL was constrained to issue a Notice for Regulation of Power Supply dated 29.7.2019. The Petitioner, despite the said Notice, failed to clear the outstanding dues containing PGCIL to issue another notice of Regulation of Power Supply on 3.1.2020.
- (l) Nowhere did this Commission hold that the bills issued earlier (which were issued as per the directions of this Commission and as per procedures of the applicable Regulations) were 'erroneous' or 'not payable' as has been wrongly contended by the Petitioner.
- (m) As soon as the liability of the Petitioner towards transmission charges exceeded the threshold time of 45 days, the provisions of late payments surcharge were automatically attracted, and the Petitioner became liable for the same.
- (n) This Commission, in its Order dated 29.1.2010 passed in Petition No.323/MP/2019, held that only because the Respondent/CTU has been directed to revise the bills, the same cannot obliterate the right of the Respondent/CTU to claim late payments surcharge on the amounts withheld by an entity. The said position as held by this Commission is in consonance with the law settled by the

Hon'ble Supreme Court in Kanoria Chemicals and Industries Limited v. UPSEB [(1997) 5 SCC 772].

- (o) As per the directions of this Commission, vide its RoP dated 21.02.2020 to the Petitioner to pay a sum of Rs.100 crore to PGCIL along with current outstanding transmission charges within 7 days, the Petitioner made staggered payments of the above-said sum till 17.2.2020 so that the dues are brought down below Rs.122 Cr, and the regulation of power supply was accordingly withdrawn with effect from 17.2.2020 by the PGCIL complying with the above directions of Commission.
- (p) As regards the contention of the Petitioner regarding discrepancies in Bill-3 dated 1.1.2020, on which this Commission provided interim relief to the Petitioner to an extent of dues amounting to Rs.122 crore, PGCIL submits that the issues have been clarified to the representative of the Petitioner on his visit to the office of the PGCIL during 28-30 January 2020, however, the Petitioner refused to acknowledge the clarifications citing the pendency of the present Petition. Subsequently, the PGCIL issued a letter dated 3.2.2020 informing the clarifications to the issues raised by the Petitioner.

Hearing dated 26.05.2020:

7. In response to the specific query of the Commission regarding payment of the outstanding transmission charges to PGCIL, the counsel for the Petitioner submitted that he did not have any instruction regarding payment of transmission charges. The Commission further observed that for any dispute pertaining to a surcharge on the principal amount, the Petitioner could withhold the payment of entire transmission charges including the current/regular transmission charges. In view of the above and with no clear indication from the Petitioner on payment of outstanding transmission charges to PGCIL, the Commission observed that PGCIL is at liberty to take appropriate action, including the regulation of Petitioner's power supply in accordance with law, in case the principal outstanding dues (exceeding 45 days) excluding the surcharge remain unpaid.

Rejoinder of the petitioner to the reply filed by PGCIL

8. The petitioner, in its rejoinder vide affidavit dated 01.07.2020, in response to the reply filed by PGCIL, has submitted as under:

- (a) Powergrid made a conscious decision not to comply with the Interim Order. This is despite the fact that the counsel for Powergrid had, in open court in the hearing held on 13.05.2019 admitted that there is a wrong billing being done to the Petitioner (1800 MW instead of 1000 MW). Therefore, in absolute terms, Powergrid continued to bill for 1800 MW on the Petitioner and in the new methodology after November 2018, when the direction was to bill as per the previous methodology.
- (b) The issue that arises is whether the bills that had already been raised as per the previous methodology are to be treated as legitimate or not, and further whether the revision in billing methodology would be retrospective or not considering that the Commission has reviewed the earlier tariff orders at the behest of Powergrid itself.
- (c) Firstly, in view of the above interim order dated 13.05.2019, the impugned billing methodology adopted from November 2018 onwards was, in any case, to be stopped from the date of the interim order, i.e. 13.05.2019. Thereafter, once the final order dated 31.07.2019 was issued by the Commission, the revised methodology was to be used. Therefore, there was no occasion for Powergrid to continue billing as per the impugned methodology after 13.05.2019.
- (d) While Powergrid seeks to rely on the Sharing Regulations to state that the POC rates need to be revised by the NLDC, Powergrid could have billed at least as per the October 2018 bill from 13.05.2019 onwards. Even this was not done. Any delay that may have occurred in the process of publishing POC rates would certainly not entitle Powergrid to bill in an incorrect manner and cannot be to the prejudice of the Petitioner.
- (e) Powergrid had itself approached the Commission seeking rectification of errors in the tariff orders for Pole-I and Pole-II of the Champa Kurukshetra HVDC Line. Now, while the Commission has recognized those errors and has rectified the same, Powergrid seeks advantage out of the incorrect billing, which had been done on account of those very errors in the original tariff orders.
- (f) The direction of the Commission to add together the annual transmission charges of Pole-I and Pole-II and billing as per Regulation 11(4)(3)(i) has to obviously apply from the commercial operation of the assets, and not only after the Order dated 31.07.2019. In the eyes of law, there can only be one decree at a time. The

original tariff order (decree) was modified by the review order (revised decree) and it is deemed that the revised order would be in force from the date of the original order.

- (g) The contention that any error in the POC bills could be rectified in Bill 3 as per BCD procedure is ill-founded, as the spirit of such provision is applicable only to errors that have crept in by mistake and not to gross errors in billing done with prior specific knowledge that the methodology/rates adopted are arbitrary and highly inflated, more so when specific orders have been passed by this Commission to raise the bills on the rates/methodology followed earlier. Even assuming without admitting that the BCD procedure is to be followed for the amounts to be credited for the wrong billing, it is to note that clause 3.5.7 of BCD procedures clearly states that if the Dispute is settled in favour of the disputing DIC, then the question of Late payment Surcharge payable by the Disputing DIC does not arise for the disputed amount. Moreover, in the present case, the petitioner had followed clause 3.5.8 of the BCD procedure and paid the average amounts of the last 3 months' bills which were in excess of the revised bills.
- (h) The extent of credit given by Powergrid on 1st Jan 20, to the extent of Rs.331 Cr, is a testimony of the extent of erroneous billing. It is imperative that the BCD procedure does not give shelter to Powergrid to make errors to such an extent and benefit out of its own gross mistake by charging LPS for the amounts which are not even due to the extent of Rs.331 Cr. The credits for such amounts ought to have been given between April 18 and June 19, when such higher billing was done, but Power Grid has chosen to give the entire credit of Rs.331 Cr as late as Jan 20, thereby charging LPS on amounts which were never due for the period up to Jan 20 from April 18 to June 19.
- (i) The perversity in the billing and collection of charges, including LPS by Powergrid, is evident by the following:
- i. For the period from April 2018 to October 2018 Powergrid included the entire capital cost of Pole I and Pole II of the Champa – Kurukshetra line but only considered the capacity of the 1500 MW Pole I, which resulted in a substantial increase in the LTA charges for the Pole I. The billing was about Rs. 40-45 crores per month on the Petitioner, which the Petitioner had paid. However, by the subsequent order dated 31/07/2019 of the Commission, the amount on the

Petitioner for the period from April 2018 to October 2018 only works out to about Rs. 32 crores.

- ii. Powergrid is proceeding on the basis that the bills of Rs. 40 crores were to be paid and would attract LPS from the respective due dates, but the adjustment of Rs. 8 crores would be given only for the principal sum as of date. Therefore, the Petitioner is being charged Rs. 40 crores plus LPS for the past period, though the billing should have been only Rs. 32 crores, and the adjustment is being given only to the principal sum on today's date. This is perverse to the extent that the LPS can only be computed with relation to Rs. 32 crores, which was the entitlement of Powergrid for the said period of April 2018 to October 2018. In the alternative, the LPS should be applicable for the excess tariff paid by the Petitioner to Powergrid during the said period, on the same rates as the LPS, which is now to be refunded/adjusted in favour of the Petitioner.
- iii. Powergrid cannot take the benefit of LPS on higher billing, but not provide LPS on the amounts to be refunded/ adjusted in favour of the Petitioner.
- iv. The above perversity becomes more evident for the period from November 2018 onwards. Powergrid started billing LTA charges for 1800 MW on the Petitioner, even though the LTA was itself only 1000 MW. This was even accepted by Powergrid during the hearing before the Commission. However, for billing purposes, Powergrid was billing around Rs. 70 crores per month on the Petitioner, The Petitioner was paying about Rs. 40 crores per month, as per the average of the previous three months.
- v. The Commission had, by the order dated 13th May 2020, given an interim order in favour of the Petitioner for Powergrid to bill only as per the methodology followed till October 2018. This was, however, willfully violated by Powergrid, which continued to bill the amount of about Rs. 70 crores.
- vi. Powergrid is now computing the LPS assuming that Rs. 70 crores was to be paid then, even though the recovery at the lower amount of Rs. 40 crores itself is in excess of the entitlement of Powergrid. Further, Powergrid is only giving adjustments of the principal amounts excess collected, though proceeding to bill and recover LPS on the amounts wrongfully and excessively billed in the past.

- vii. The correct methodology has to be that Powergrid has to compare the amounts that Powergrid was entitled to bill for the respective months now that the dispute has been settled and compare the same to the payments made by the Petitioner. On any such short/late payment, the LPS can be applied.
- (j) In terms of the order of the Commission dated 21.01.2020, the Petitioner had paid the total amount of Rs. 100 Crores by 15.02.2020, thereby bringing the total amounts outstanding beyond 45 days below 122 Crores. In the meanwhile, the Petitioner continued to pay the current bills being raised by Powergrid.
- (k) Further, as on 29.02.2020, the total outstanding was Rs. 1,16,27,93,507/- i.e. below the Rs. 122 Crores limit in terms of the order dated 21.01.2020. Even as on 13.03.2020, the total outstanding amounts due to Powergrid did not exceed Rs. 122 Crores, and the Petitioner had been adhering to the order of the Commission.
- (l) Powergrid, on 28.03.2020 wrote to the Petitioner stating that it had encashed the Letter of Credit of Rs. 108,44,70,568/- and adjusted against past dues. This was in contempt of the Interim Order passed by this Commission on 21.01.2020. Therefore, the submission of Powergrid today that there is no Letter of Credit been made available by the Petitioner is misconceived, since the encashment of the previous LC was on unfounded grounds.
- (m) The Petitioner has duly disclosed in its Petition that the CIRP process has been initiated and a Resolution Professional has been appointed.
- (n) The action of Powergrid to seek and impose Regulation of Power is completely illegal, and on the basis that the previous encashment was proper. Moreover, the appropriation of dues by Powergrid for the period prior to the commencement of the Corporate Insolvency and Resolution Process (Pre-CIRP Period) before the NCLT is patently illegal and contrary to Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016). In this regard, the Petitioner has, therefore, approached the NLCT, Hyderabad Bench by filing an Interim Application for stay.
- (o) In terms of Regulation 11, Powergrid has contended that Bill-1 for transmission charges on POC methodology is issued as per the RTA data. Therefore, Powergrid has essentially sought to shift the onus on the RPC and NLDC for revision of POC rates, without which Powergrid cannot bill. While the above

contention is merely a technicality for raising bills, the same in no manner can overreach a specific direction of the Commission.

- (p) On the contrary, the BCD Procedure does not require the Petitioner to make full payments in case of a dispute in billing. The Petitioner had made payment of amounts equal to the simple average of the last three (3) months' relevant Bills (being an undisputed portion of such three months' Bills. Further, in terms of Clause 3.5.7 as quoted, it may be seen that in case the billing dispute is resolved by the Dispute Resolution Mechanism in favour of the disputing DIC, the CTU shall credit the DIC, such excess amount through adjustment in the relevant bill of the next month. In the present case, while the Commission rectified the errors in its tariff orders, the dispute with regard to the billing also got resolved in the same terms. Therefore, it was incumbent on Powergrid to give such adjustment credit in the next monthly bill to the Petitioner.

Hearing dated 25.08.2020:

9. The commission observed that since the issue involved in the Petition is limited to the billing of the transmission charges, accordingly, the Commission directed the Petitioner to share the chart of computation as referred to with the Respondent, PGCIL. The Commission further directed PGCIL to convene a meeting with the Petitioner to carry out the reconciliation of transmission charges and file the minutes of the meeting. The Commission clarified that PGCIL is at liberty to take appropriate action in accordance with the law in case the principal outstanding dues (exceeding 45 days), excluding the surcharge, remain unpaid or on default of maintenance of LC.

Submissions of PGCIL

10. The PGCIL vide affidavit dated 09.08.2021 in compliance with the RoP for the hearing dated 25.08.2020 has submitted that in order to conclude the matter, PGCIL convened a meeting with the Petitioner on 17.6.2021. PGCIL and the Petitioner made efforts and reconciled the principal dues; however, there was a difference in understanding on applicable surcharge dues.
11. The Petitioner company is currently undergoing a Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2016, before the National Company Law Tribunal (NCLT), Hyderabad, in CP(IB)

No.429/7/2019 wherein, vide Order dated 3.10.2019, NCLT has been pleased to appoint an Interim Resolution Professional (IRP). PGCIL, being an operational creditor of the Petitioner company, has also duly filed its claim before the IRP so appointed by the NCLT. It is also stated that since CIRP under the provisions of the Insolvency and Bankruptcy Code, 2016 is a time-bound process, this Commission may be pleased to kindly dispose of the present Petition filed by the Petitioner as early as possible so that PGCIL may effectively pursue its claim before the IRP in the pending CIRP of the Petitioner company.

Hearing dated 15.12.2022:

12. The learned counsel for the Petitioner submitted that the raising of adjustment credit bills by CTUIL and computation of surcharge is disputed by the Petitioner. CTUIL is seeking LPS on amounts which were never due and payable by the Petitioner. LPS can be charged only in respect of the non-payment or delay in payment in respect of monthly transmission charges as determined by the Commission and indicated in the revised bill dated 1.1.2020 and cannot be on the higher charges which were never due. Therefore, the limited issue before the Commission is with respect to the methodology adopted by CTUIL for LPS computation. The learned counsel for CTUIL submitted that bills were raised during April 2018 and September, 2019 on the Petitioner on the basis of the inputs from Regional Power Committees (RPCs) in accordance with the Commission's Regulations and procedure made thereunder. She submitted that CTUIL has apprised the Petitioner about the rationale and the Regulations/ provisions on the basis of which a surcharge has been levied. She suggested that the Petitioner and CTUIL may again sit together to address the issue arising from the instant petition and resolve the said issue.
13. Considering the submissions of Petitioner and Respondent, the Commission directed CTUIL to convene a meeting with the Petitioner within 30 days to address the issues raised by the Petitioner and submit the minutes of the meeting(s) before the next date of hearing.

Hearing dated 19.01.2023 and 28.03.2023:

14. The matter could not be taken up on the hearing dated 19.01.2023 due to paucity of time. The commission vide RoP for the hearing dated 28.03.2023 directed the

Petitioner to file the authorization from IRP and the parties to file short written submissions flagging the issues to be decided by the Commission.

Petitioner's Note for hearing dated 28.03.2023

15. There is no mandate that the invoices have to be paid in full, even though there was a dispute on the same. In the present case, there is no dispute on the principal amounts that are payable by the Petitioner as transmission charges. The only issue raised by the Powergrid is that the Petitioner is required to pay DPC on the bills originally raised, and the credit for the excess amounts billed would only be given prospectively and only for the principal amounts.
16. The perversity in the contention of Powergrid would be evident by the following illustration:
 - (a) Powergrid raises an invoice of Rs. 500 Crore on a generator, and the generator disputes the invoice and pays the amount of Rs. 50 crores in terms of Clause 3.5.8 of the BCD Procedure;
 - (b) The dispute is resolved by holding that only Rs. 50 crores should be billed, and this process takes 1 year. Powergrid gives back the credit of Rs. 450 crores principal amount after 1 year but seeks DPC from the generator for Rs. 450 crores for the period of 1 year.
17. The petitioner, in compliance with the RoP for the hearing dated 28.03.2023, the Petitioner has submitted the minutes of the meeting held on 12.01.2023 regarding the methodology adopted for the levy of applicable surcharge & raising of credit bills for the period Apr'18 to Sep'19 between CTU & Petitioner. In the meeting, the CTU confirmed that the details of surcharge implications mentioned in the earlier Minutes of the meeting held on 17.06.2021 hold good.

Hearing dated 25.05.2023

18. After hearing the counsels for the petitioner & the respondents, the Commission reserved the matter for order and directed the Petitioner and the CTUIL to file their Written Submissions along with the minutes of the meeting held on 12.1.2023.
19. In compliance with the RoP for the hearing dated 25.05.2023, the Petitioner has filed a written note of submissions in which the Petitioner has summarized the

facts which are already submitted before the commission in their entirety. The petitioner has also impleaded Central Transmission Utility of India Ltd. (CTUIL) as a party to the petition & filed the amended memo of parties on 10.05.2023. No submissions have been made by the CTUIL subsequent to the hearing dated 25.05.2023.

Analysis and Decision

20. We have considered the submissions of the Petitioner and the Respondents.
21. Petitioner has submitted that it has filed the present Petition inter-alia, seeking to set aside the bill dated 1.1.2020 of PGCIL towards transmission charges (POC and HVDC charges) as well as the notice for regulation of Power Supply dated 3.1.2020. The Petitioner has challenged the incorrect billing done by the PGCIL contrary to the Commission's specific directions in orders dated 13.5.2019 and 31.7.2019 in Petition No. 20/RP/2018 and Petition No. 3/RP/2019, respectively. Further, subsequent to the above orders of the Commission, instead of raising a fresh bill for transmission charges from April 2018 onwards, PGCIL raised a bill on 1.1.2020, giving a credit of the difference between the rates wrongly charged by it and the rates as determined by the Commission. However, in doing so, PGCIL has given a self-certification to its earlier bills as if they were payable on due dates and then also levied the delay payment surcharge on the said bills.
22. Respondent PGCIL has submitted that the transmission charges bill was raised on the Petitioner as per the monthly/ Regional Transmission Accounts (RTAs) as issued by the respective Regional Power Committees (RPCs) in compliance with the Commission`s Regulations and procedure made thereunder. Non-payment by any DIC shall lead to a deficit in the recovery of PoC charges in the pool. Further, pursuant to the Commission's order dated 31.7.2019 and issuance of revised RTAs by the RPCs, the PGCIL has re-computed the charges to be paid by the DICs, and accordingly, the Petitioner was given a credit of Rs. 331.38 crore vide Bill-3 on 1.1.2020. Raising of a fresh bill, as sought by the Petitioner in terms of the Commission's order dated 31.7.2019 in Petition No. 20/RP/2018 vis-à-vis the adjustment Bill-3 raised by PGCIL, led to a surcharge amount to the tune of Rs.13.81 crore. The Petitioner, of its own violation, chose not to pay the transmission charges under Bill-1 and continued to default in payments, and

hence, despite giving a credit of Rs.331.38 crores, the outstanding payments of the Petitioner remained at Rs. 354 crores.

23. In response, the Petitioner has stated that the credit given by Powergrid on 1st Jan 20, to the extent of Rs.331 Cr itself is a testimony of the extent of erroneous billing. BCD procedure does not give shelter to Powergrid to make errors to such an extent and benefit out of its own gross mistake by charging LPS for the amounts which are not even due to the extent of Rs.331 Cr. LPS can be charged only in respect of the non-payment or delay in payment in respect of monthly transmission charges as determined by the Commission and indicated in the revised bill dated 1.1.2020 and cannot be on the higher charges, which were never due. Therefore, the limited issue before the Commission is with respect to the methodology adopted by PGCIL for LPS computation. The Petitioner has further stated that it had followed clause 3.5.8 of the BCD procedure and paid the average amounts of the last 3 months' bills, which were in excess of the revised bills.

Considering the submissions of Petitioner and Respondent, the issue which arises for our consideration is: **What should be the methodology to calculate the Late Payment Surcharge in respect of the Petitioner in light of the Orders of the Commission?** Now we proceed to discuss the above issue.

24. We note that the Petitioner was granted LTA for the quantum of 1000 MW, and the transmission system required for LTA as per Annexure-a of the LTA grant is as under:

“Inter-Regional System Strengthening Scheme in WR and NR (Part-B)

- *Jabalpur PS-Orai 765kV D/C line*
- *Orai-Aligarh 765kV D/C line*
- *Orai-Orai 400kV D/C (Quad) line*
- *LILO of one ckt of Satna-Gwalior 765kV 2xS/C line at Orai*
- *LILO of Agra -Meerut 765kV S/C at Aligarh*
- *LILO of Kanpur-Jhatikara 765kV S/C at Aligarh*

Transmission System Strengthening in WR-NR Transmission Corridor for IPPs in Chattisgarh

- *Up-gradation of \pm 800kV, 3000 MW HVDC bipole between Champa PS-Kurukshetra (NR) to 6000MW*
- *Kurukshetra (NR)- Jind 400kV D/c (Quad)”*

As per the above, the Up-gradation of \pm 800kV, 3000 MW HVDC bipole between Champa PS- Kurukshetra (NR) to 6000MW was part of the system considered for LTA grant for the Petitioner.

25. We note that since Petitioner had sought LTA, it was billed transmission charges under the 2010 Sharing Regulations under HVDC, Reliability charges and POC charges.

26. We also note that there have been changes in the treatment of transmission charges for HVDC Champa-Kurukshetra, pursuant to the issuance of final Order in Petition No. 13/TT/2017 and Review Petition filed by the PGCIL (Petition No. 20/RP/2018) in the said Order and related Orders, viz Order dated 22/02/2018, in Petition No. 13/TT/2017 and order dated 06/11/2018 in Petition No. 205/TT/2017. Relevant extracts of various Orders is quoted as follows:

Order dated 22.02.2018 in Petition No. 13/TT/2017 – for Pole-I of HVDC Champa-Kurukshetra

“102. In our view, the above regulation is applicable in this case and accordingly, the transmission charges of the subject HVDC line shall be borne as under:-

a) 10% of the transmission charges allowed shall be considered under Reliability charges which shall be borne by all DICs.

b) Where the generators as LTTC has tied up PPA with the beneficiaries, the transmission charges of the subject transmission system shall be apportioned to such beneficiaries for such tied up capacity.

c) Where the long term transmission customer has not firmed up the beneficiaries, the transmission charges shall be apportioned to such long term transmission customers in proportion to the capacity not tied up by each of the generators.

d) The capacity, if any, left out after considering the capacities under (b) and (c) above, the HVDC charges for such balance capacity shall be borne by the remaining DICs of the target region by scaling up of MTC of the AC system included in the PoC as per Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations. In such an event, direction at (a) above shall not be effected.”

Order dated 6.11.2018 in Petition No. 205/TT/2017 – for Pole-II of HVDC Champa-Kurukshetra

“68. Pole-II of Champa-Kurukshetra has capacity of 1500 MW, out of which long term access has been operated for 1383 MW capacity as mentioned in para 65 above. For the remaining capacity, beneficiaries have not been tied up. In our view, the transmission charges shall be apportioned in accordance with the provisions of Regulation 11(4)(3)(iii) and our order dated 22.2.2018 in Petition No.13/TT/2017 as under :-

a) 10% of the transmission charges for the entire capacity allowed shall be considered as Reliability charges which shall be borne by all DICs.

b) Where the generators (as LTTCs) have tied up for sale of power through PPAs, such beneficiaries shall bear the transmission charges in proportion to their tied up capacity provided that the beneficiaries are liable to bear the transmission charges as per the provisions of PPAs. If the PPAs provide that the generator shall bear the transmission charges, then the generators shall be liable to bear the transmission charges to the extent of the capacity tied up under respective PPAs.

c) For the capacity for which the generators (as LTTCs) have not firmed up the beneficiaries, the transmission charges for such capacity shall be borne by the generators.

d) In respect of the capacity left out after considering the capacities covered under (b) and (c), the HVDC charges for such capacity shall be borne by the remaining DICs of the target region by scaling up of MTC of the AC system included in the PoC as per Regulation 11(4)(3)(iii) of the 2010 sharing Regulations. In such an event, direction at (a) above shall not be effected.”

Interim order dated 13.05.2019 in Petition No. 20/RP/2018 is as under:

“4. Learned counsel appearing for KSK Mahanadi Power Limited submitted that in Pole-I, the Review Petitioner has included the cost of the line plus several more assets. Consequently, its cost has increased significantly. In case of Pole-II, the number of assets is few and as such its capital cost is low. The capacity of Pole-I and Pole-II is 1500 MW each and the total transmission capacity from them is 3000 MW. She submitted that after issuance of the impugned order, the bills raised by the Review Petitioner on the respondent for LTA to UP from July, 2018 onwards and since November, 2018 show exponential rise in transmission charges. She submitted that from November, 2018 onwards the Review Petitioner is billing POC, HVDC and reliability charges for 1000 MW and further the Champa-Kurukshetra HVDC charges for 847.458 MW quantum.

.....

6. Learned counsel for the parties unanimously requested the Commission to direct the Review Petitioner to bill the generators as they were being billed prior to passing of the impugned order/till November, 2018. Learned counsel for TRN submitted that in its case the billing pattern should remain as it was followed till April, 2018. Learned counsel for the parties insisted that the billing pattern as suggested by them should remain in force till outcome of the instant Review Petition. They also requested the Commission that the Review Petitioner be directed not to invoke provisions of curtailment of power supply on the generators for non-payment due to excessive billing.

.....

9. After hearing the parties, we direct the Review Petitioner to implead TRN as respondents. We further direct the Review Petitioner to bill all the generators/IIPs as they were being billed till November, 2018 except for TRN in whose case the billing pattern will be as adopted by the Review Petitioner till April, 2018. This billing and payment will continue till the outcome of the present Review Petition. We also direct the Review Petitioner not to invoke the Central Electricity Regulation Commission (Regulation of Power Supply Regulation), 2010 imposing a curtailment of power supply on the generators/IIPs till further order/till outcome of Review Petition.”

Order dated 31.07.2019 in Petition No. 20/RP/2018:

“45. As regards sharing of transmission charges of Champa-Kurukshetra HVDC Pole I and Pole II lines, the Commission in impugned orders dated 22.2.2018 and 6.11.2018 observed that the said transmission system has been developed based on the request of 13 generating companies for the purpose of evacuation of the power from the IPP generation projects and that the sharing of transmission charges for instant assets are to be done in accordance with the Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.

.....

55. Admittedly, the clauses of the Agreement as well as the observations during the meeting that the generators/beneficiaries are liable to pay the transmission charges were prior to coming into effect of the 2010 Sharing Regulations. After the coming into effect of the 2010 Sharing Regulations, the provisions of the Regulations are necessarily to be applied in the present case and having come to the conclusion that the instant transmission assets are created to supply the power to Northern Region, the methodology specified for sharing of transmission charges in the orders dated 22.2.2018 and 6.11.2018 would also require modification as the applicable methodology for sharing of transmission charges would now be as per Regulation 11(4)(3)(i) of

the 2010 Sharing Regulations and it would come into effect from the date of commercial operation of the instant assets.

56. The Review Petitioner as well as some of the Respondents have requested that the annual transmission charges of Pole I and II need to be added together and the monthly transmission charges should be arrived at by considering them as one corridor and that they should not be billed separately. They have submitted that Champa-Kurukshetra HVDC is one corridor that is capable of transmitting of 3000 MW of power and it is incorrect to state that Pole-I and Pole-II can each separately transmit 1500 MW. Therefore, they have submitted that the correct manner of billing would be to make a sum total of the Annual Transmission Charges (ATC) as determined in both the tariff orders and then proportionating the same to 3000 MW. We agree with this contention of the Review Petitioner and the Respondents. The transmission scheme itself had been envisaged as + 800 kV, 3000 MW HVDC Bi-pole Champa Pooling Station (WR)-Kurukshetra (NR) Transmission Line and the Review Petitioner had filed separate petitions merely to take care of the different dates of commercial operation of Pole-I and II. Therefore, we direct the Review Petitioner to add together the annual transmission charges of Pole-I and Pole-II to arrive at monthly transmission charges and also to file one combined petition claiming tariff for all the assets covered in the transmission project at the truing up stage.

57. As regards the other issue of exponential rise in transmission charges and wrong billing raised by some of the respondents, we are of the view that this issue arose as the billing was being done as per provisions under Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations as decided in our impugned Orders. This issue would be taken care of as we have allowed the prayer in the present Review Petitions allowing the sharing of transmission charge under Regulation 11(4)(3)(i) instead of sharing under Regulation 11(4)(3)(iii) of the 2010 Sharing Regulations.”

As per the above Orders, it is observed that billing for HVDC Champa-Kurukshetra Pole I and Pole II has undergone a change from its treatment under Regulation 11(4)(3)(iii) to Regulation 11(4)(3)(i) of the 2010 Sharing Regulations, which has led to a revision of billing for the said HVDC.

27. PGCIL has submitted that it raised the bills to Petitioner in terms of RTA issued by the RPC. We have perused Regulation 11 of the 2010 Sharing Regulations, which provides as follows:

“11. Billing.

- (1) The CTU shall be responsible for raising the transmission bills, collection and disbursement of transmission charges to ISTS transmission licensees. Any expenses incurred by CTU on account of this function shall be reimbursed as part of YEARLY TRANSMISSION CHARGE;
- (2) The bill for the use of the ISTS shall be raised by the CTU on the concerned Designated ISTS Customers. The SEB/STU may recover the transmission charges for the use of the ISTS from the distribution companies, generators and bulk customers connected to the transmission system owned by the SEB/STU/intrastate transmission licensee in a manner approved by the Appropriate Commission.
- (3) The billing for ISTS charges for all Designated ISTS Customers shall be on the basis of Rs./MW/Month, and shall be raised by the CTU in three parts.

- (4) *The first part of the bill shall recover charges for use of the transmission assets of the ISTS Licensees based on the Point of Connection methodology. This part of the bill shall be computed as:*

This first part of the bill shall be raised based on the Point of Connection rates, Reliability support rate, HVDC charge, Approved withdrawal and Approved injection for each DIC, provided by the implementing agency on the next working day of uploading of the Regional Transmission Accounts by the respective Regional Power Committees on their websites in each month for the previous month and determined prior to the commencement of the application period.

- (5) *The second part of the bill shall recover charges for Additional Approved Medium Term Open Access and shall be computed as follows:*

The second part of the bill shall be raised on the Designated ISTS Customers along with the first part of the bill.

- (6) *The third part of the bill shall be used to adjust any variations in, FERV, Incentive, rescheduling of commissioning of transmission assets, arrears due to any revision order etc. as allowed by the Commission for any ISTS Transmission Licensee. Total amount to be recovered / reimbursed because of such under recovery / over recovery shall be billed by CTU to each Designated ISTS Customer in proportion of its average Approved Injection / Approved Withdrawal over the relevant POC period. This part of the bill shall be raised on first working day of September, December, March and June for the previous application period.*

*****”

28. Bill 1 is accordingly to be raised by PGCIL/ CTUIL based on the PoC rates issued by the Commission and RTA issued by RPC. PGCIL/ CUTIL has submitted that pursuant to the Commission order dated 31.07.2019, the revised PoC rates for the period from April 2018 to September 2019 were issued by the Commission only on 10.10.2019. This was followed by the RPC's issuing the RTAs on 18.12.2019. In the meantime, it was constrained to continue the same billing methodology as per the prevailing PoC rates. PGCIL/ CUTIL has accordingly adjusted the amount after re-calculating and raised the credit of ₹331.377 Crore on the Petitioner on 1.1.2020 with LPS on the principal amount during the disputed period.

29. It is observed that the Petitioner has not disputed the principal amount as such. This was confirmed by it in the meeting held on 17.06.2021 and 12.1.2023 wherein the Petitioner has accepted that there is no dispute to the principal amount to be paid by the Petitioner. The Petitioner's contention, therefore, is only toward the LPS, which should have been raised on the revised charges, not on the principal amount after the transmission charges towards the disputed period were revised. PGCIL/ CTUIL, however, maintain the view that the Petitioner was bound by the regulations and required to pay the amount thus raised as per the Sharing Regulations, notwithstanding its protest on the disputed bills since any revision on

the transmission charges does not mitigate the liability to pay the transmission charges from the date that such liability has accrued.

30. We observe that the LPS was levied after the Petitioner abstained from paying the bills towards the transmission charges under Bill 1, claiming the same to be the disputed amount and not as per the directions of the Commission, which, according to PGCIL/ CUTIL led to the outstanding amount remaining to be ₹354 crore despite a credit of ₹331.38 crore out of which ₹267 crore remained outstanding for more than 45 days.
31. After considering the provisions as enunciated hereinabove, in our considered view LPS is a contractual right that arises upon delayed payment. The basic purpose of introducing the LPS seems to encourage the timely payment of bills within the stipulated time period in the relevant regulations.
32. Vide RoP dated 15.12.2022, the Commission directed CTU to convene a meeting with Petitioner to discuss again the methodology adopted for levy of applicable surcharge and raising of credit bills for the period Apr'18 to Sep'19 between CTU and KSK Mahanadi. A meeting was held on 12.01.2023. The relevant extract of the minutes is as under:

“2. It was confirmed by KSK Mahanadi that there is no issue towards the principal transmission charges and the same has already been reconciled. However, raising of adjustment credit bills by CTU and computation of surcharge thereon was disputed by the petitioner, M/s KSK Mahanadi and filed the above referred petition 113/MP/2020 in CERC. During deliberations, KSK Mahanadi and CTU stuck to their earlier stands and it was desired by both to reiterate the same as recorded in the earlier signed MoM dated 17.06.2021.

2.1 The comments of CTU regarding raising of credit bills and calculation of Surcharge is mentioned below:

During the process of reconciliation, CTU explained and reiterated that, the transmission bills were raised during April'18 to Sept' 19 on the Petitioner (KSK Mahanadi) as per the monthly/ Regional Transmission Accounts (RTAs) as issued by the respective Regional Power Committees (RPCs) in compliance with the Commission's Regulations and procedure made thereunder. Any non-payment by a DIC, like KSK Mahanadi, citing dispute in the instant case, shall lead to deficit in the recovery of PoC charges in the pool thereby affecting the revenues of licensees and such shortfall attracts levy of surcharge as per Regulations. Accordingly, upon issuance of order dated 31.7.2019 in Review Petition No. 20/RP/2018 along with I.A. Nos. 46/IA/2019, 48/IA/2019 and 49/IA/2019 and Review Petition No. 3/RP/2019 by Hon'ble commission and subsequent revision of RTAs by respective RPCs in Nov'19/Dec'19, CTU could raise only credit bill for the differential charges as raising of fresh bills is not envisaged in the Regulations. Thereafter, CTU computed the applicable surcharge since April, 2018 and raised the surcharge bills as per the provisions of regulations.

2.2 The comments of KSK Mahanadi regarding raising of credit bills is mentioned below:

However, KSK Mahanadi is not in agreement with CTU in giving the entire differential credit of Rs.331.377 Cr as on 1st Jan 2020 (which is only the principal amount). KSK Mahanadi informed that by this methodology, CTU is seeking to claim Late payment surcharge on amounts which were never due and payable by KSK Mahanadi. KSK Mahanadi opined that LPS can be charged only in respect of the non-payment or delay in payment in respect of the monthly transmission charges as determined based on the Order of CERC and indicated in the revised bill dated 01.01.2020 of CTU and cannot be on the original higher charges which was never due. By this methodology, CTU is seeking LPS on amounts held to be not due, but giving refund of the amounts only in future that too without LPS.”

.....

3.1 Surcharge mechanism adopted by CTU:

Payments received from KSK Mahanadi and Credit Bill raised on 01.01.2020 has been adjusted on FIFO basis on the date of the events, for the bills already raised for the Billing period from Apr'18 to June'19 as per CERC order. Accordingly, surcharge has been calculated on KSK Mahanadi on outstanding amounts.

3.2 Surcharge mechanism adopted by KSK Mahanadi in their calculation:

All the credit amounts of each Billing period from Apr'18 to June'19 in the credit bill dated 01.01.2020 has been adjusted against each corresponding month. Also, excess amount paid after adjustment of credit amount against each bill has been adjusted in the subsequent bills. Accordingly, surcharge has been calculated.”

As per above, we observe that the PGCIL/CTUIL has charged the LPS to the Petitioner for the bills already raised for the billing period from April 2018 to June 2019.

33. We have already noted that the issue of revised billing has arisen on account of various Orders, vide which methodology for HVDC Champa-Kurukshetra has undergone change. We also note that the bills for ISTS are raised in accordance with the 2010 Sharing Regulations, where a POC rates Order was issued by the Commission based on which RPC issued RTAs. Till the revised rates are issued, PGCIL cannot raise bills at another rate since the entire Yearly transmission charges are to be recovered. We observe that after taking into account revised rates, issued as per Order dated 10.10.2019 (revision of POC rates) and Order dated 31.07.2019 in Review Petitions 20/RP/2018 and 3/RP/2019, there is no dispute on the principal amount payable by the Petitioner. We are of the considered view that the Petitioner is liable to pay the late payment surcharge on the monthly transmission charges due on him as per the revised rates as per Order dated 10.10.2019 (revision of POC rates) and Order dated 31.07.2019 in Review Petition 20/RP/2018 and 3/RP/2019. Accordingly, against the disputed bills for the period April 2018 to June 2019, the Petitioner is liable to pay the Late

Payment Surcharge on the amount of the bill payable by the Petitioner as per the said Orders.

34. In view of the above discussions, CTUIL is directed to re-calculate the late payment surcharge payable by the Petitioner and reconcile the charges already collected from the Petitioner within a period of one month from the issuance of this order.
35. Petitioner has also raised issues related to Regulation Notice dated 3.1.2020 issued by PGCIL/ CTUIL, which has been dealt with in the Record of Proceedings from time to time. We observe that pursuant to the direction of this Commission to the Petitioner to pay a sum of Rs.100 crore to PGCIL along with current outstanding transmission charges, the Petitioner made payment of the above-said sum till 17.2.2020 and the regulation of power supply notice dated 03.01.2020 was accordingly withdrawn with effect from 17.2.2020 by the PGCIL. Therefore, this issue need not be pursued further. We further observe that since PGCIL raised the bills in accordance with the Orders of the Commission, it was entitled to raise regulation notice as per the Regulations and hence the prayer of the Petitioner claiming penalty raised by Discoms, if any due to short supply of power due to regulation of power supply, is rejected.
36. The Petition No. 113/MP/2020 is disposed of in terms of the above.

**Sd/
(P. K. Singh)**
Member

**Sd/
(Arun Goyal)**
Member

**Sd/
(I. S. Jha)**
Member

**Sd/
(Jishnu Barua)**
Chairperson