

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
New Delhi**

**Review Petition No. 25/RP/2023**

**in**

**Petition No. 296/TT/2022**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member**

**Date of order: 19.04.2024**

**In the matter of:**

Petition for review and modification of the order dated 28.4.2023 passed by the Commission in Petition No. 296/TT/2022.

**And in the matter of:**

Goa Tamnar Transmission Project Limited,  
F-1, Mira Corporate Suits,  
1 & 2, Mathura Road,  
Ishwar Nagar, New Delhi – 110065

**...Review Petitioner**

**Versus**

1. Power Grid Corporation of India Limited,  
“Saudamini”, Plot No-2,  
Sector-29, Gurgaon  
Haryana – 122001.
2. Madhya Pradesh Power Management Company Limited,  
Block No. 11, Ground Floor, Shakti Bhawan,  
Vidyut Nagar, Rampur, Jabalpur  
Madhya Pradesh – 482008
3. Maharashtra State Electricity Distribution Company Limited,  
Hong Kong Bank Building, 3rd Floor,  
MG Road, Fort,  
Mumbai - 400001
4. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidyut Bhawan,  
Race Course Road, Vadodara  
Gujarat – 390007.



5. Electricity Department, Government of Goa,  
Near Mandvi Hotel, Goa – 403001.
6. Electricity Department,  
Administration of Daman & Diu,  
Plot No. 35, OI DC Complex,  
Near Fire Station, Somnath,  
Daman – 396210.
7. DNH Power Distribution Corporation Limited,  
Vidyut Bhawan, 66kV Road, Near Secretariat Amla,  
Silvassa – 396230
8. Chhattisgarh State Electricity Board,  
P.O. Sunder Nagar, Dangania, Raipur  
Chhattisgarh – 492013.
9. Gujarat Power Corporation Limited,  
Block No. 8, Sixth Floor,  
Udhyog Bhavan, Sector 11,  
Gandhinagar – 382011
10. Central Transmission Utility of India Limited,  
Plot No.2, Sector-29, Gurgaon,  
Haryana-122001
11. Power Finance Corporation Limited,  
Urjanidhi 1, Barakhamba Lane,  
Fire Brigade Lane, Connaught Place,  
New Delhi, Delhi 110001

.....Respondents

**For Petitioner:** Shri Deep Rao, Advocate, GTTPL

**For Respondents:** Ms. Swapna Seshadri, Advocate, PGCIL  
Shri Utkarsh Singh, Advocate, PGCIL  
Ms. Sneha Singh, Advocate, PGCIL  
Shri G Vijay, Advocate, Advocate, PGCIL  
Ms. Tanushree Rao, Advocate, PGCIL  
Shri Deepak Kumar, PFCL



## ORDER

Goa Tamnar Transmission Project Limited (Review Petitioner/ GTTPL) has filed the present Review Petition No. 25/RP/2023 seeking review and modification of the Commission's order dated 28.4.2023 in Petition No. 296/TT/2022 under section 94(1)(f) of the Electricity Act, 2003 (hereinafter to be referred as "the Act"), wherein the transmission tariff of the 2 Nos. 765 kV line bays each at Raigarh and Dharamjaygarh Pooling Station of PGCIL (hereinafter to be referred to as 'transmission asset'), for termination of Dharamjaygarh Pooling Station Section B-Raigarh (Tamnar) Pooling Station 765 kV D/C Line ("DT Line") of GTTPL from their COD to 31.3.2024 was approved.

2. The Commission, in its order dated 28.4.2023 Petition No. 296/TT/2022, approved the COD of the transmission asset as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations as the associated transmission line under the scope of GTTPL was not ready and also held that the tariff of the transmission asset from their approved COD on 20.5.2021 to the COD of the DT transmission line of GTTPL on 27.6.2022 would be borne by GTTPL. The relevant portions of the Commission's order dated 28.4.2023 is as follows:

*"12. We have considered the submissions of the Petitioner. As per Regulation 5(2) of the 2019 Tariff Regulations, the COD of a transmission system or an element thereof may be approved if the said system has been prevented from being put to regular service for reasons not attributable to the transmission licensee. As per Regulation 5(2) of Tariff Regulations, the Petitioner shall have to give prior notice of at least one month, to the transmission licensee regarding the date of commercial operation.*

*13. In support of actual COD of the transmission asset, the Petitioner has submitted 'Approval of Energization' certificates issued by CEA dated 1.4.2021 and 26.4.2021, 'Certificate of Idle Charging Operation of Transmission element' issued by WRLDC dated 24.5.2021 and 10.6.2021 certifying that idle charging operation was completed on 9.5.2021 and 16.5.2021; and CMD certificate in accordance with Regulation 5(2) of the 2019 Tariff Regulations. The Petitioner, vide letter dated 12.2.2021 and 5.5.2021, has issued prior notice as required under Regulation 5(2) of the 2019 Tariff Regulations, to GTTPL and informed that the transmission asset will be ready for charging.*



14. Taking into consideration 'Approval of Energization' certificates dated 1.4.2021 and 26.4.2021 issued by CEA, 'Certificate of Idle Charging Operation of Transmission element' dated 24.5.2021 and 10.6.2021 issued by WRLDC, certifying that idle charging operation completed on 9.5.2021 and 16.5.2021; and CMD certificate as required under the Grid Code, COD of the subject transmission assets is hereby approved as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations."

"65. As per Regulation 13(12) of the 2020 Sharing Regulations, when the COD of a transmission asset/ system is approved under Regulation 5(2) of the said Regulations, the Yearly Transmission Charges of the transmission asset/ system shall be paid by the ISTS licensee whose transmission system is delayed till its transmission system achieves COD. The said provision does not distinguish between a transmission project under the RTM route and the TBCB route. Therefore, the contention of GTTPL that it is not liable to bear the transmission charges under the 2019 Tariff Regulations and the 2020 Sharing Regulations is misconceived and rejected.

66. In view of the above, we are of the view that the yearly transmission charges of the instant transmission asset should be borne by GTTPL from COD of the transmission asset, i.e. from 20.5.2021 till the COD of the associated TBCB line of GTTPL. Thereafter, the billing, collection, and disbursement of transmission charges approved in this order for the transmission asset shall be in accordance with the 2020 Sharing Regulations as provided in Regulation 57 of the 2019 Tariff Regulations."

3. GTTPL has contended that the SCOD of its DT line was 14.7.2021, and holding GTTPL liable for the transmission charges before its SCOD is against Regulation 6(2) of the 2019 Tariff Regulations. Therefore, holding GTTPL liable to pay the transmission charges from 20.5.2021 is an error apparent on the face of the record in order 28.4.2023 in Petition No. 296/TT/2022. GTTPL has made the following prayers:

- a) Admit the Review Petition and list the same for an urgent hearing;
- b) Review and modify the Impugned Order dated 28.04.2023 passed by this Hon'ble Commission in Petition No. 296/TT/2022, in terms of the submissions set out in the present Petition;
- c) Hold and declare that the Review Petitioner is not liable to pay any transmission charges to Power Grid Corporation of India Limited for the period prior to the scheduled commercial operation date of the Dharamjaygarh PS Section B - Raigarh (Tamnar) PS 765kV D/c line i.e., before its scheduled commercial operation date i.e., 14.07.2021;
- d) Issue ad-interim ex-parte directions to the Central Transmission Utility and Power Grid Corporation of India to take no coercive action/s against the Review Petitioner pending disposal of the present Petition including raising any bilateral bills seeking transmission charges from the Review Petitioner in terms of the Impugned Order, and



*e) Pass such other order(s) and/or direction(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case."*

4. The submissions made by GTTPL in support of its contentions are as follows:
- a) The DT line was awarded through tariff-based competitive bidding ("TBCB") to GTTPL. As per the TSA executed by GTTPL with its Long-Term Transmission Customers ("LTTCs"), the SCOD of the DT line was 14.7.2021. The actual commercial operation date of the DT Line is 27.6.2022.
  - b) PGCIL has claimed the COD of its bays to be 20.5.2021.
  - c) The Commission, in its order dated 24.8.2023 in Petition No. 296/TT/2022, held that GTTPL is liable to pay transmission charges from the date of commercial operation of the PGCIL assets (i.e., 20.5.2021 – which was prior to the DT line's SCOD) till the COD of the DT line (i.e., 27.6.2022). The imposition of transmission charges on GTTPL prior to the SCOD of the DT Line (i.e., 14.7.2021) is in violation of Regulation 6(2) of the 2019 Tariff Regulations that clearly stipulates that no liability can be imposed on the defaulting transmission licensee before the SCOD of its transmission system. The Statement of Reasons (SoR) on the 2019 Tariff Regulations also states the same.
  - d) The Commission appears to have overlooked the SCOD of the DT line as 14.7.2021 while imposing liability on GTTPL to pay transmission charges to PGCIL including for a period prior to the SCOD of the DT line.
  - e) The Commission has erred in approving the COD of PGCIL assets as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations when Regulation 6(2) of the 2019 Tariff Regulations stipulates that the COD of the transmission system/ asset of the non-defaulting transmission licensee cannot



be approved before the SCOD of the delaying licensee. The Commission ought to have considered that a transmission licensee is entitled to invoke Regulation 5(2) to seek a determination of its date of commercial operation when its transmission system/element is ready, but the interconnected transmission system is not ready as per its agreed project implementation schedule

- f) Regulation 6(2) of the 2019 Tariff Regulations applies to the present case and, therefore, should have been applied while approving the COD of bays of PGCIL and fastening any bilateral liability on the Review Petitioner. The same has inadvertently not been considered by the Commission. Regulation 6(2) deals with the mismatch in commissioning between transmission assets of two different inter-connected transmission licensees and makes it expressly clear that no bilateral liability can be imposed on the delaying licensee for a period prior to its SCOD.
- g) Irrespective of the inherent planning mismatch in the COD of the PGCIL's bays and the DT line (which are interconnected ISTS systems) attributable to the concerned planning agencies, the deemed COD of the PGCIL's bays could not have been declared to be a date prior to the SCOD of the DT line.
- h) It is clear from Regulation 6(2) of the 2019 Tariff Regulations and the SoR that the objective of the Commission is not to penalize a transmission licensee for the delay in commissioning its asset prior to its SCOD. Accordingly, no liability can be imposed on the Review Petitioner for payment of transmission charges before 14.7.2021. Any such imposition will be contrary to the express stipulation under Regulation 6(2) of the 2019 Tariff Regulations.

5. The matter was admitted on 8.11.2023, and notice was issued to the Respondents.



The Respondents, MSEDCL and PGCIL have filed their replies in the matter.

6. MSEDCL has filed its reply, vide affidavit dated 5.12.2023, and the gist of the submissions made by it is as follows:

- a) The Commission has rightly directed the Review Petitioner to bear the transmission charges for the DT line from 20.5.2021 until the COD of the associated TBCB line of the Review Petitioner. Regulation 6(2) of the 2019 Tariff Regulations also implies that the defaulting entity should bear the transmission charges in case of a mismatch of COD of the transmission systems developed by different transmission licensees.
- b) The law is well settled in light of the judgement dated 2.7.2012 in Appeal No. 123 of 2011 of the APTEL and Hon'ble Supreme Court in its judgement dated 3.3.2016 in Civil Appeal No. 9302 of 2012 in the case of PGCIL Vs. PSPCL and Ors, that until transmission asset is put into service the beneficiaries are not liable to pay the transmission charges of the said assets. The settled law is equally applicable to the transmission projects constructed under the TBCB route, which are ready for being put into use, and the upstream/ downstream system is not ready. The Commission has decided this issue in its order dated 21.9.2016 in Petition No. 43/MP/2016 (RAPP Transmission Company Ltd. Vs. PGCIL & Ors.), wherein it was held that the transmission charges of transmission asset, which could not be put to use due to non-readiness of upstream/ downstream transmission licensee has to be borne by the defaulting transmission.
- c) APTEL, in Appeal No. 332 of 2016 dated 18.1.2019, has also held that the defaulting party should bear the transmission charges until the transmission



element has been put into regular use.

7. PGCIL has filed its reply vide its affidavit dated 8.12.2023. The gist of the submissions made by it is as follows:

- a) The Commission has rightly imposed the liability towards the payment of transmission charges on the Review Petitioner for the mismatch period in accordance with the provisions of the 2020 Sharing Regulations, 2020 and 2019 Tariff Regulations. In case of a mismatch between two transmission licensees, the party that has delayed in achieving the COD has to pay the transmission charges for the said mismatch period from the date of the deemed COD approved by the Commission to the actual COD of the associated transmission line. The said provisions are aimed at safeguarding the financial interest of the transmission licensee, which has achieved COD on time, and the transmission asset is stranded for no fault of the said transmission licensee.
- b) During the period of mismatch (i.e., 20.5.2021 and 14.7.2021), PGCIL's bays could not be utilized despite achieving COD on time due to the delay in the completion/ commercial operation of the DT line under the scope of the Review Petitioner. Considering all these aspects, the Commission imposed the liability on the Review Petitioner as per regulatory provisions since the COD of the PGCIL bays could not have been changed.
- c) As regards the contention of the GTTPL regarding seeking COD under Regulation 5(2) of the 2019 Tariff Regulations by PGCIL, a transmission licensee that comes on or after the scheduled date is entitled to seek approval of deemed COD under Regulation 5 of the 2019 Tariff Regulations and 2020 Sharing Regulations. The COD has been achieved in terms of the timeline





given under the investment approval. Therefore, it is not the case that PGCIL has established its assets either before the SCOD or after the COD of the interconnecting transmission line of the Review Petitioner.

- d) The Review Petitioner is raising fresh grounds that are not permissible under a Review Petition as per the principles of Review provided under Order 47 Rule 1 of the Code of Civil Procedure, 1908. The contention of matching the time frame of the interconnection facility of both entities and liability on the Review Petitioner before its SCOD was never raised in the proceedings before the Impugned Petition. Therefore, it cannot be denied that such fresh contention is certainly an afterthought and liable to be rightly rejected when raised under the ambit of a Review Petition. It is a settled principle that a review can only be sought on the grounds of discovery of new and important matter or evidence or information which was not within the knowledge or could not be produced by them in original proceedings.
- e) GTTPL has already filed an Appeal against the order before the APTEL, where PGCIL is impleaded as Respondent No.2 contesting that the Review Petitioner is not liable for the payment of mismatch period due to various reasons such as *force majeure* which are purported to be beyond the Review Petitioner's control . On the contrary, the statement in paragraph 41 of the review petition stating that no review/appeal was filed against the order is factually incorrect.

8. GTTPL has filed its rejoinders to the reply filed by MSEDCL and PGCIL vide its affidavits dated 22.12.2023. The clarifications given by GTTPL in its rejoinders are as follows:



- a) Regulation 13(12) of the 2020 Sharing Regulations relied upon by PGCIL is only applicable in cases where there has been a delay by a transmission licensee, which results in a situation of mismatch. However, in the present case, there cannot be any delay attributable to GTTPL prior to the SCOD of the DT Line, and accordingly, there cannot be any corresponding liability.
- b) PGCIL has wrongly contended that GTTPL has raised fresh grounds in the Review Petition and did not refer to Regulation 6(2) of the 2019 Tariff Regulations in its submissions during the proceedings in the main Petition. GTTPL had referred to Regulation 6(2) of the 2019 Tariff Regulations in its reply to the main Petition in paragraph 27.1 and had categorically stated in paragraph 28 that PGCIL could not have expected GTTPL to complete its stringing work at the beginning of 2021 when the SCOD of DT Line was 14.7.2021. The same was reiterated by GTTPL in the Written Submissions filed in the main petition.
- c) MSEDCL's reliance on the "RAPP order" is misplaced. In the RAPP order, liability was imposed on the delaying generating company based on its representation on the commissioning timeline of its assets in a Standing Committee Meeting. However, in the present case, there was no such prior agreement or understanding between GTTPL and PGCIL. In fact, as per the RAPP order, no liability can be imposed on GTTPL in the absence of any contractual arrangement between the interconnecting entities.
- d) MSEDCL's reliance on Appeal No. 123 of 2011 of the APTEL and the Hon'ble Supreme Court judgement dated 3.3.2016 in Civil Appeal No. 9302 of 2012 in the case of PGCIL Vs. PSPCL is wrong since MSEDCL has failed to understand that the review petition does not seek the imposition of liability for



transmission charges on the beneficiaries for the period prior to the SCOD of the DT line. In fact, it is the case of wrongly imposing liability on GTTPL before its SCOD.

e) In Appeal 332 of 2016, dated 18.1.2019, the RAPP order was under challenge, and it was upheld. The facts of this matter were substantially different from the present case and cannot be relied upon. In any case, the scope of the captioned review petition is restricted to correcting the error apparent, i.e., imposition of bilateral mismatch liability on GTTPL prior to the SCOD of its DT line, and MSEDCL has failed to address this issue in its reply.

9. The matter was heard on 4.4.2024, and after hearing the parties, the Commission reserved the order in the matter.

### **Analysis and Decision**

10. We have considered the submissions of the Review Petitioner, MSEDCL and PGCIL. In Petition No. 296/TT/2022, PGCIL claimed the COD of its bays at Raigarh and Dharamjaygarh Pooling Stations as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations as they could not be put under commercial operation because the associated DT line of GTTPL was not ready. Taking into consideration the PGCIL's submissions and the fact that PGCIL was prevented from putting its bays into commercial operation as the associated DT line under the scope of GTTPL was not ready, the Commission in an order dated 28.4.2023 in Petition No. 296/TT/2022 approved the COD of the bays of PGCIL at Raigarh and Dharamjaygarh as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations. The Commission further held that the transmission charges from 20.5.2021 to the COD of GTTPL's transmission line would be borne by GTTPL. GTTPL has filed the



instant review petition on the ground that no liability can be imposed on it before the SCOD of the DT line on 14.7.2021 as per Regulation 6(2) of the 2019 Tariff Regulations.

11. GTTPL has submitted that the COD of the transmission system cannot be approved under Regulation 5(2) of the 2019 Tariff Regulations before the SCOD of the interconnected transmission system, as per Regulation 6(2) of the 2019 Tariff Regulations. GTTPL has contended that the Commission's approval of the PGCIL's bays as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations ahead of the SCOD of the GTTPL's DT line on 14.7.2021 is an apparent error on the face of record.

12. Regulation 6 of the 2019 Tariff Regulations provides as follows:

*"6. Treatment of mismatch in date of commercial operation: ...*

*...*

*(2) In case of mismatch of the date of commercial operation of the transmission system and the transmission system of other transmission licensee, the liability for the transmission charges shall be determined as under:*

*(a) Where an interconnected transmission system of other transmission licensee has not achieved the commercial operation as on the date of commercial operation of the transmission system (**which is not before the SCOD of the interconnected transmission system**) and the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of these regulations, the other transmission licensee shall be liable to pay the transmission charges of the transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the interconnected transmission system achieves commercial operation...."*

13. A perusal of Regulation 6(2) of the 2019 Tariff Regulations makes it clear that in the case of mismatch in the COD of an interconnected system the defaulting transmission licensee is liable to pay the transmission charges of the transmission system till its transmission system achieves commercial operation. However, it is subject to the condition that the transmission charges are liable to be paid from the SCOD of the interconnected transmission system of such transmission licensee. This aspect has been



further clarified by the Commission in the SoR of the 2019 Tariff Regulations, which reads as follows:

*“4.2.5 Besides, in sub-clause (b) of clause (1) and sub-clause (b) of clause (2) of Regulation 6, the Commission has added a phrase ‘which is not before the SCOD of the transmission system in order to clarify that the liability for the transmission charges on account of the mismatch after date of commercial operation of the transmission system, shall not commence before the SCOD of the transmission system.’”*

14. Normally, the SCOD of the interconnected associated transmission systems should be on the same date for smooth integration of the new transmission assets into the Grid, and this aspect should have been taken into consideration by the CTUIL, the entity responsible for planning and coordination of the inter-State transmission systems, and the concerned licensees. In the instant case, the SCOD of the two bays of PGCIL is 20.5.2021, and the SCOD of the associated DT line under the scope of GTTPL is 14.7.2021. Thus, there is a mismatch in the SCOD of the associated transmission systems of PGCIL and GTTPL from the beginning, which could have been avoided by proper planning and coordination by the CTUIL with PGCIL and GTTPL. To avoid such peculiar situations in the future, the CTUIL is directed to review the mismatch in SCODs of such interconnected transmission systems of different transmission licensees and find a suitable solution in case of any such mismatch in the COD of the transmission systems and submit a report to the Commission of such instances along with the possible solution within 60 days from the date of issue of this order.

15. Coming back to the instant case, as GTTPL contended, no liability can be imposed on GTTPL before its SCOD on 14.7.2021 as per Regulation 6(2) of the 2019 Tariff Regulations. This aspect got overlooked by us while issuing the order dated 28.4.2023 in Petition No. 296/T/2022, and it is an error apparent on the face of the record that needs to be corrected.



16. In view of the peculiar facts in the matter, where there is a mismatch in the SCOD of the associated transmission systems of PGCIL and GTTPL, and taking into consideration that the COD of the bays of PGCIL has already been approved by the Commission as 20.5.2021 under Regulation 5(2) of the 2019 Tariff Regulations, we revise and approve the COD of the bays of PGCIL as 14.7.2021 under Regulation 5(2) of the 2019 Tariff Regulations to match with the SCOD of the DT line of GTTPL. Accordingly, GTTPL is liable to bear the transmission charges of the bays of PGCIL from the SCOD of its DT line on 14.7.2021 to its COD on 27.6.2022 as per Regulation 6(2) of the 2019 Tariff Regulations. Thereafter, the transmission charges of the bays of PGCIL shall be included in the common pool in accordance with the 2020 Sharing Regulations.

17. PGCIL is directed to claim tariff for its bays as per the revised COD of 14.7.2021 in its petition for truing up of the tariff for the 2019-24 tariff period.

18. The Review Petition No. 25/RP/2023 is disposed of as per the above discussions and findings.

sd/-  
**(P. K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(Jishnu Barua)**  
Chairperson

