

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 51/RP/2022
in Petition No. 30/TT/2021**

Coram:

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

Date of Order: 15.01.2024

In the matter of:

Petition seeking review of order dated 13.3.2022 passed in Petition No. 30/TT/2021.

And in the matter of:

Power Grid Corporation of India Limited,
"Saudamini", Plot No. 2, Sector 29,
Gurgaon-122001, Haryana

.....Review Petitioner

Vs.

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008.
2. Madhya Pradesh Power Transmission Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008.
3. Madhya Pradesh Audyogik Kendra,
Vikas Nigam (Indore) Limited,
3/ 54, Press Complex, Agra-Bombay Road,
Indore-452008.
4. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building,
3rd Floor, M.G. Road, Fort,
Mumbai-400001.
5. Maharashtra State Electricity Transmission Company Limited,
Prakashganga, 6th Floor, Plot No. C-19, E-Block,



Bandra Kurla Complex, Bandra (East), Mumbai-400051.

6. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara – 390007.
 7. Electricity Department, Government of Goa,
Vidyut Bhawan,
Near Mandvi Hotel,
Panaji, Goa-403001.
 8. Electricity Department,
Administration of Daman & Diu,
Daman-396210.
 9. DNH Power Distribution Corporation Limited,
Vidyut Bhawan, 66 kV Road, Near Secretariat Amli,
Silvassa-396230.
 10. Chhattisgarh State Power Transmission Company Limited,
Office of The Executive Director (C&P),
State Load Despatch Building, Dangania
Raipur-492013.
 11. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh-492013.
 12. Raipur-Rajnandgaun-Warora Transmission Limited,
Adani Corporate House, Shantigram, S G Highway, Ahmedabad,
Gujarat-382421.
 13. Adani Transmission Limited,
Adani Corporate House, Shantigram, S G Highway, Ahmedabad,
Gujarat-382421.
 14. Adani Power Limited,
Sambhav press Building, 6th Floor, B-wing,
Judges Bungalow, Ahmedabad,
Gujarat-380015.
-Respondent(s)**



For Petitioner : Ms. Swapna Seshadri, Advocate, PGCIL
Shri Utkarsh Singh, Advocate, PGCIL
Shri Surbhi Gupta, Advocate, PGCIL
Shri Sneha Singh, Advocate, PGCIL
Shri Mohd. Mohsin, PGCIL
Shri Zafrul Hasan, PGCIL
Shri Pankaj Sharma, PGCIL

For Respondents : Shri Hemant Singh, Advocate, RRWTL
Shri Lakshyajit Singh, RRWTL
Ms. Lavanya Panwar, RRWTL
Shri Ayush Raj, RRWTL

ORDER

Power Grid Corporation of India Limited has filed the instant review petition seeking review of the order dated 13.3.2022 in Petition No. 30/TT/2021, wherein the Commission held that the issue pertaining to the payment of transmission charges for the period from 30.11.2018 to 31.3.2019 with respect to the 2 numbers of 765 kV line bays at 765/400 kV Raipur Pooling Station (Powergrid) for Raipur PS (Powergrid)-Rajnandgaon (TBCB) 765 kV D/C line under "Powergrid works associated with additional System Strengthening Scheme for Chhattisgarh IPPs (Part-B)" in Western Region, would be decided in Petition No. 31/MP/2021. However, the Commission, vide order dated 6.6.2022, dismissed Petition No. 31/MP/2021 and the issue pertaining to the transmission charges remain unsettled. As the issue of transmission charges for the period from 30.11.2018 to 31.3.2019 for the two line bays at Raipur Pooling Station has not been decided, the Review Petitioner has filed the instant review petition.

2. The Review Petitioner has made the following prayers in the review petition:

- a. *"Admit the present Review Petition;*
- b. *Review the Order dated 13.03.2021 passed by this Hon'ble Commission;*
- c. *Direct the Respondent - Raipur Rajnandgaon Warora Transmission Limited or Adani Power Limited to make the payment of bill dated 16.06.2020; and*



d. *Pass such other further order(s) as this Hon'ble Commission may deem just in the facts of the present case.*"

Background

3. Petition No. 16/TT/2019 (original tariff petition) was filed by the Review Petitioner for determination of tariff of 2 numbers 765 kV line bays at 765/400 kV Raipur Pooling Station (Power Grid) for Raipur Pooling Station (Power Grid)-Rajnandgaon (TBCB) 765 kV D/C line under "Power Grid works associated with additional System Strengthening Scheme for Chhattisgarh IPPs (Part-B)" for 2014-19 tariff period. The Commission, vide order dated 10.5.2020, approved the COD of the two line bays at Raipur Pooling Station under Regulation 4(3) of the 2014 Tariff Regulations and held that Adani Power Limited (APL) is liable for the transmission charges from 30.11.2018 to 30.3.2019, as the associated transmission line under the scope of APL were not ready. The relevant portion of the said order is as follows:

"Sharing of Transmission Charges

65. The COD of instant asset has been approved as 30.11.2018 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations due to non-commissioning of the associated transmission system under the scope of Adani Power Limited (APL). Accordingly, the transmission charges in respect of instant Asset from 30.11.2018 till 30.3.2019 shall be borne by APL and w.e.f. 31.3.2019, the transmission charges allowed in this order, as provided in Regulation 43 of the 2014 Tariff Regulations, shall be shared by the beneficiaries and long term transmission customers in terms of the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 as amended from time to time."

4. The Review Petitioner raised the bill on Raipur-Rajnandgaun-Warora Transmission Limited (RRWTL) on 16.6.2020, which was not paid by RRWTL on the basis that APL was wrongly impleaded as a party instead of RRWTL. Then the Review Petitioner vide letter dated 18.8.2020 forwarded a copy of the bill dated 16.6.2020 to APL, and APL. by its letter dated 20.6.2020, refused to pay the bill on the basis that the transmission project was being implemented by RRWTL, which is a separate legal entity.



5. In the meantime, while the issue pertaining to bills was ongoing, the Review Petitioner filed Petition No. 30/TT/2021 (true up petition) for truing up of transmission tariff for the period from the date of commercial operation (COD) to 31.3.2019. The Review Petitioner also filed Petition No. 31/MP/2021 for adjudication of this issue between the Review Petitioner, RRWTL and APL due to non-payment of the bill dated 16.6.2020. The Commission, vide order dated 13.3.2022 in Petition No. 30/TT/2021, held that the issue pertaining to payment of transmission charges of the Petitioner's assets for the period from 30.11.2018 to 31.3.2019 would be decided in Petition No. 31/MP/2021. The relevant portion of the said order is as follows:

"87. Transmission charges approved in this order shall be shared as per order dated 10.5.2020 in Petition No. 16/TT/2019. As regards the issues raised by RRWTL with respect to raising bill on APL for transmission charges of the transmission asset for the period of mismatch from 30.11.2018 to 30.3.2019 in terms of Commission's order dated 10.5.2020 in Petition No. 16/TT/2019, observations of APTEL in Appeal No. 17 of 2019 vide judgment dated 14.9.2020 and non-impleadment of RRWTL in Petition No. 16/TT/2019, the same will be considered in Petition No. 31/MP/2021."

6. The Commission, vide order dated 6.6.2022, dismissed Petition No. 31/MP/2021 on the grounds of non-maintainability without considering the issue of non-payment of the bill dated 16.6.2020. The relevant portion of the said order is as follows:

"20. We observe that the Petitioner is seeking a review of the order dated 10.5.2020 in Petition No 16/TT/2019 regarding sharing of transmission charges in the garb of this Miscellaneous Petition. Therefore, we are of the opinion that it is not a fit case for invoking the inherent jurisdiction under Regulation 111 of the CBR."

21. In light of the above, we find that the present Petition is not maintainable under Section 79(1)(f) of the Act read with Regulation 111 of the CBR."

7. The Review Petitioner has filed the instant petition on the ground that the Commission did not consider the issue of non-payment of the bill dated 16.6.2020 raised by the Review Petitioner on RRWTL in Petition No. 30/TT/2021 while holding that the same will be considered in Petition No. 31/MP/2021. However, Petition No.



31/MP/2021 was dismissed vide order dated 6.6.2022 on the ground of non-maintainability and left the issue pertaining to non-payment of the bill dated 16.6.2020 by RRWTL undecided.

8. The review petition was admitted on 27.4.2023, and notice was issued to the Respondents. Madhya Pradesh Power Management Company Limited (MPPMCL), Respondent No.1 and RRWTL, Respondent No. 12, have filed replies in the matter vide affidavits dated 25.4.2023 and 13.9.2023 respectively. The Petitioner has filed its rejoinder to the reply of RRWTL vide affidavit dated 25.9.2023.

9. The review petition was heard on 30.8.2023, and the order was reserved in the matter. We have considered the submissions made by the learned counsels for the Review Petitioner and RRWTL, replies of MPPMCL and RRWTL, rejoinder of the Petitioner to the reply of RRWTL, written submissions made by RRWTL dated 4.12.2023 and the Review Petitioner dated 8.12.2023 and the documents on record. We proceed to dispose of the review petition.

Submission of the Review Petitioner

10. The gist of the submissions made by the Review Petitioner is as follows:
- (a) APL, being a group company of RRWTL was impleaded in the original tariff petition. RRWTL was impleaded in the true-up petition and had the full opportunity to make its submissions on the ground of merits along with APL and Adani Transmission Limited (ATL). The conduct of RRWTL/ APL is only seeking profit on the ground of a non-joinder which has been subsequently rectified by the Review Petitioner.
 - (b) Petition No. 31/MP/2021 was dismissed without considering the order dated 10.5.2020 in Petition No. 16/TT/2019 and the order dated 13.3.2022 in Petition No. 30/TT/2020.



- (c) The deemed COD granted to the Review Petitioner was 30.11.2018, therefore, recovery of tariff is a natural consequence and cannot be denied based on technicalities. The Commission has failed to appreciate that RRWTL and APL are taking advantage of the situation besides the fact that RRWTL's transmission line has been delayed as compared to the bays of the Review Petitioner. Therefore, non-consideration of the issue of non-payment of transmission charges in Petition No. 31/MP/2021 is an error apparent on the face of the record.

Submission of MPPMCL

11. MPPMCL has reiterated the facts as stated by the Review Petitioner in the instant petition. They are not repeated for the sake of brevity.

Submission of RRWTL

12. The gist of the submissions made is as follows:

- (a) The relief sought by the Review Petitioner in Petition No. 30/TT/2021 is a subject matter of Petition No. 31/MP/2021, and the Review Petitioner has wrongly invoked the review jurisdiction of the Commission against the said order in Petition No. 30/TT/2021 where there is no error apparent whatsoever. The Review Petitioner itself has submitted that its grievance is against the order dated 6.6.2021 in Petition No. 31/MP/2021 and not against the order dated 13.3.2021 in Petition No. 30/TT/2021 as the issue of recovery of transmission charges for the period of alleged mismatch i.e., 30.11.2018 to 30.3.2019 was specifically raised by the Review Petitioner in the proceedings of Petition No. 31/MP/2021. The review petition is on the wrong premise, and, therefore, liable to be rejected.
- (b) The Review Petitioner's contention that RRWTL's transmission line was delayed as compared to the bays of the Review Petitioner and, therefore, recovery of tariff is a natural consequence and cannot be denied based on technicalities does not fall under the scope of Order 47 Rule 1 of CPC, 1908. Therefore, the same may be rejected.



- (c) RRWTL executed a Transmission Service Agreement (TSA) dated 24.6.2015 for the implementation of the Raipur Pooling Station (PowerGrid) - Rajnandgaon 765 kV D/C line along with associated Sub-stations. As per the TSA, the scheduled COD of the transmission system under the scope of RRWTL was 30.11.2018. The COD of the transmission system was on 30.3.2019. The delay in achieving SCOD by RRWTL was on account of certain *force majeure* events. Therefore, RRWTL filed Petition No. 326/MP/2018 for condonation/ extension of COD from 30.11.2018 to 30.3.2019. The Commission, vide order dated 9.10.2019, granted the extension of SCOD up to 31.3.2019 to RRWTL on account of *force majeure* events.
- (d) Since the Commission has already condoned the delay, no basis remains for the Review Petitioner to make such unreasonable and unsubstantiated allegations of delay and seek payment from RRWTL. To support its contentions, RRWTL has referred to APTEL's judgment dated 14.9.2020 in Appeal No 17 of 2019, titled "*NRSS XXXI (B) Transmission Ltd. v. CERC & Ors.*" wherein it has been held that once the delay in commissioning of a transmission system is held to be on account of *force majeure*, then no transmission charges can be levied by the Review Petitioner upon the associated transmission licensee.
- (e) The period from 30.11.2018 to 30.3.2019 falls under the 'control period' of the 2014 Tariff Regulations, which does not contemplate a situation of payment of transmission charges by an associate transmission licensee on account of a mismatch of the COD.
- (f) RRWTL is a separate company and an independent legal entity, and the transmission system was under the scope of RRWTL, a subsidiary of ATL, but RRWTL was never intimated about the proceedings in Petition No. 16/TT/2019. In this regard, RRWTL has referred to the judgment of the Hon'ble Supreme Court in the case of "*State Trading Corpn. of India, Ltd. v. CTO*, reported in *AIR 1963 SC 1811 and Heavy Engg. Mazdoor Union v. State of Bihar*, reported in (1969) 1 SCC 765. Not impleading RRWTL is non-joinder of a necessary party and referred to the judgment of Hon'ble Supreme Court in the case of *Ramrao v. All India Backward Class Bank*



Employees Welfare Assn., reported in (2004) 2 SCC 76 and Girjesh Shrivastava and Others V. State of Madhya Pradesh and Others, reported in (2010) 10 SCC 707, and requested to dismiss the Review Petitioner's contentions.

13. RRWTL, in its written submission, has submitted that the Commission will not proceed to deal with the merits of the case without holding as to how the review meets Order 47 Rule 1 of CPC, 1908. The instant review petition is not at all maintainable, as it does not demonstrate any mistake or error apparent on the face of the record or any sufficient reason for the review. RRWTL has submitted that the Review Petitioner has raised the issue of transmission charges in Petition No. 31/MP/2021 in compliance with the Commission's direction in the impugned order. However, Petition No. 31/MP/2021 was dismissed by the Commission, vide order dated 6.6.2022. The Petitioner is aggrieved by a different order, i.e. order dated 6.6.2022 in Petition No. 31/MP/2021, for which no review or appeal has been filed. The submissions made by the Petitioner are based on wrongful and misguided allegations against RRWTL. RRWTL has submitted that once the extension of SCOD is granted to RRWTL by the Commission, the same means that the TSA of RRWTL stood modified by the Commission and, as such, there is no event of 'mismatch' or 'delay' on the part of RRWTL, for which any form of charges can be levied. RRWTL has submitted that after the issuance of 2020 Sharing Regulations, the Ministry of Power issued directions under Section 107 of the Electricity Act, 2003 (the Act) on 15.1.2021, stating that the transmission charges cannot be levied upon the transmission licensee, which has delayed in putting its transmission project into commercial operation awarded under Section 63 of the Act since such charges are not contemplated under the TSA. RRWTL submitted that the observations made by the Commission in an order dated 26.4.2022 in Petition No. 60/TT/2017 (remanded by the APTEL) are not applicable to



the present case. RRWTL has further submitted that the Petitioner's submission is baseless in that in Petition No. 16/TT/2019, its group company APL stood impleaded in the proceedings and could make submissions.

14. In response to the RRWTL submission, the Petitioner, vide affidavit dated 25.9.2012, has reiterated its submissions and also submitted that the issue regarding the payment of the invoice dated 16.6.2020 raised by the Petitioner remains undecided. The Petitioner cannot be left remedy less by not allowing the Review Petitioner to recover the transmission charges for the mismatch period. The instant review petition is filed on the limited ground that the direction passed in the order under the review with regard to the adjudication of the dispute regarding non-payment of the transmission charges for the mismatch period and subsequent dismissal of Petition No. 31/MP/2021 is an error apparent on the face of the record and ought to be reviewed by the Commission. The said issue ought to have been decided in the proceedings in Petition No. 31/MP/2021. However, the same has remained open and is not been adjudicated or heard by the Commission. The issue of payment of transmission charges qua RRWTL for the mismatch period was raised by the Petitioner in Petition No. 30/TT/2021. RRWTL's reliance on the judgments of *Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715*, *Kamlesh Verma vs. Mayawati (2013) 8 SCC 320*, *Thungbhadra Industries Limited vs. Government of Andhra Pradesh AIR (1964) SC 1372* are misplaced and erroneous. The Petitioner has submitted that the COD claimed under Regulation 4(3) of 2014 Tariff Regulations is approved by the Commission, and such approval of COD has not been disturbed. The limited issue of who will pay the transmission charges is to be adjudicated in the present review petition i.e. whether APL/ ATL or RRWTL.



15. As regards the RRWTL's contentions on liability upon RRWTL and recovery of tariff based on the technicalities, the Review Petitioner has submitted that the Petitioner, as a transmission licensee, requires to be paid for the assets that it has set up. A tariff recovery is not akin to a claim for damages but goes towards servicing of the capital cost invested by the Review Petitioner in the construction of the transmission assets. In support, the Review Petitioner has referred to the APTEL's judgment dated 2.5.2023 in *Fatehgarh Bhadla Transmission Company Limited vs. Central Electricity Regulatory Commission & Ors (2023 SCC Online APTEL 16)*. The Petitioner has submitted that the liability of payment of the transmission charges ought to have been fastened upon RRWTL as it has delayed its associated transmission line, because of which the transmission bays of the Petitioner remained unutilized. Reliance placed by RRWTL on the APTEL's judgments dated 14.9.2020 in Appeal No. 17 of 2019 and in judgment dated 15.9.2022 in Appeal No. 109 of 2021 is erroneous and misplaced. RRWTL was well aware of its obligations, both in terms of the Transmission License and the Transmission Service Agreement (TSA) dated 19.5.2015 executed between RRWTL and the Long-Term Transmission Customers, to adhere to the timelines stipulated for commissioning its transmission asset and to ensure that it is put into commercial operation matching the timelines of the upstream or downstream transmission asset. The Review Petitioner has referred to the order dated 16.11.2022 in Petition No. 116/TT/2017, titled *PGCIL vs. AVNL and Ors.* and APTEL's judgment dated 18.1.2019 in Appeal No. 332 of 2016, titled *NPCIL vs. CERC and Ors.* wherein it has categorically held that existence of a contractual relationship is not a prerequisite for the imposition of liability to pay the transmission charges in case of a mismatch.

16. As regards the RRWTL's reliance upon the MoP's directions to the Commission



under Section 107 of the Act, the Review Petitioner has submitted that there is no mandate on the Regulatory Commissions to follow any directions that may be issued by the Ministry of Power under Sections 107/108 of the Act.

17. With respect to RRWTL's contention that the development of a transmission system was never under the scope of APL while RRWTL a subsidiary of ATL, was never intimated regarding the proceeding of Petition No.16/TT/2019, Review Petitioner has submitted that though there are different entities on the papers, the management and control are the same. Therefore by applying the principles of Lifting of the Corporate Veil, RRWTL cannot simply make a claim that they are completely different entities and evade their liability. The defence of distinct legal entities has been taken to evade the claim of the Review Petitioner of its legitimate transmission charges. Reliance placed by RRWTL on the judgments namely *Heavy Engg. Mazdoor Union v. State of Bihar, (1969) 1 SCC 765, Ramrao v. All India Backward Class Bank Employees welfare Assn. (2004) 2 SCC 76 and Girjesh Shrivastava and Others v. State of Madhya Pradesh (2010) 10 SCC 707* is erroneous, wrong and misplaced.

18. The Review Petitioner, in its written submission, has reiterated its submissions while making the following additional submissions:

- (a) As regards RRWTL's contention that there is no error apparent on the face of the record, reliance is placed on the judgment dated 31.8.2010 of the Hon'ble Allahabad High Court in the matter of *Brajesh Dutt Sharma vs. Provincial Cooperative Dairy Federation Ltd., & Anr, being Review Petition Defective No. 111 of 2010*, wherein it has been held that review is permissible if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does not effectively deal with or determine any important issue in the case though argued by the parties.



(b) RRWTL's contention that the Review Petitioner is seeking to change the rules at the truing up stage as compared to the tariff determination stage is incorrect and ought to be rejected. Placed reliance upon the Hon'ble Supreme Court's judgment in "*Saiyad Mohammad Bakar El-Edroos v. Abdulhabib Hasan Arab (1998) 4 SCC 343*" that tariff determination is a continuous process and occurs in several stages. In the original tariff petition, since APL was the bidder of the project, the Review Petitioner has arrayed it as a party. APL is the ultimate holding company of RRWTL and had bid for the project. However, when it took a technical plea, that the project was being implemented through a SPV, the Review Petitioner arrayed APL, RRWTL as well as ATL as parties in the truing up proceedings. However, the Review Petitioner is not asking for any variation of change in the principle of tariff determination or seeking any new principle at the truing up stage. Even if the tariff order is to be ignored completely, the issue of mismatch and who should pay the transmission charges for mismatch could have been independently decided by the Commission in the truing up proceedings after hearing all the concerned parties. Therefore, the reliance of RRWTL on the Hon'ble Supreme Court's judgment in "*BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission (2023) 4 SCC 788*" has no application. The Review Petitioner has placed its reliance on the Hon'ble Supreme Court's judgment in the matter of "*Uttar Pradesh Power Corporation Limited v. National Thermal Power Corporation Ltd & Ors. (2009) 6 SCC 235*".

(c) As regards RRWTL's contention that the non-rejoinder of RRWTL in the tariff petition is fatal, APL, which was the successful bidder for the transmission project, was arrayed as a party to the original tariff petition. Bill was raised on RRWTL after the tariff order dated 10.5.2020 was passed, which was not paid on the basis that APL was wrongly impleaded as a party instead of RRWTL. Further, APL also refused to pay the bill on the basis that the transmission project was being implemented by RRWTL, which is a separate legal entity. The Review Petitioner, while filing the truing up petition, i.e., specifically impleaded APL, RRWTL as well as ATL as a party.



The Review Petitioner has also filed Petition No. 31/MP/2021 to adjudicate the disputes which have arisen between the Review Petitioner and RRWTL, APL and ATL. If the original tariff order is held to be non-binding on RRWTL, the true up proceedings, which is a continuation of the tariff proceedings, can surely be taken independently, and the liability can be decided afresh after hearing RRWTL as well as APL/ ATL. Reliance has been placed upon the Hon'ble Supreme Court's judgment in the case of "*Kasturi vs Iyyamperumal & Ors (2005) 6 SCC 733*" wherein the test to determine the necessary party while deciding the case has been laid down.

(d) With respect to RRWTL's separate legal entity and a group company operating under the umbrella of the Adani group of companies / Adani Energy Solution Limited (AESL), it is observed from the records of the Ministry of Corporate Affairs website that there is overlapping of directors as well as the registered addresses between ATL and APL. On paper, they may be different entities, but the management and control seem to have been the same; therefore, by applying the principles of Lifting the Corporate Veil, RRWTL cannot simply make a claim that they are completely different entities and evade their liability. RRWTL's reliance upon the judgment of the Hon'ble Supreme Court in the matter of "*Ramrao and Others vs All India Backward Class Bank Employees Welfare Association and Others (2004) 2 SCC 76*" cannot be applied to the present case since the decision of the Hon'ble Supreme Court was on the absence of the appellant as parties to a Writ Petition in which only one of the promotee have pursued the matter. The order was issued against a person without a hearing was held bad in law. However, in the present case, even in the original tariff petition, the bidder, i.e., APL was impleaded as a party. If the tariff is altogether ignored, this issue can independently be decided in the true up proceeding where both APL and RRWTL are parties.

(e) The Review Petitioner, as a transmission licensee, is required to be paid for the assets that it is setting up. The Commission has condoned the delay in putting the RRWTL's downstream assets into commercial operation. This condonation of delay will enable RRWTL to avoid any liabilities, such as



liquidated damages in its TSA with its beneficiaries, but this will not take away the liability of RRWTL to pay transmission charges due to the Petitioner.

- (f) RRWTL has conceded that the APTEL's judgments dated 14.9.2020 in Appeal No. 17 of 2019 (*NRSS XXXI (B) Transmission Ltd. vs Central Electricity Regulatory Commission and Ors.*), judgment dated 15.9.2022 in Appeal No. 109 of 2021 (*Punjab State Transmission Corporation Ltd. v. Central Electricity Regulatory Commission & Ors.*) and judgment dated 2.5.2023 in Appeal No. 352 of 2022 and IA Nos. 1189 of 2022 & 1454 of 2022 (*Fatehgarh Bhadla Transmission Company Limited v. Central Electricity Regulatory Commission & Ors.*) is applicable from 1.4.2019 onwards and would not apply to any case prior thereto. On the contrary the APTEL has also upheld such bilateral recoveries for the previous periods in its judgments in Appeal No. 51 of 2018 & Batch (*Jindal India Thermal Power Limited v. CERC & Ors.*), Appeal No. 390 of 2017 (*Punjab State Power Corporation Ltd. v. Patran Transmission Company Limited & Ors.*) and Appeal No. 332 of 2016 (*Nuclear Power Corporation of India v. CERC & Ors.*). For the 2014-19 period, a consistent approach has been followed by the Commission. Therefore, the liability of payment of the transmission charges ought to have been fastened upon RRWTL as it has delayed its associated transmission line, because of which the transmission bays of the Petitioner remained unutilized.

Analysis and Decision

19. We have considered the submission of the Petitioner, MPPMCL and RRWTL. We recapitulate the facts of the matter. The Review Petitioner filed Petition No.16/TT/2019 for determination of tariff of two of its 765 kV line bays at 765/400 kV Raipur Pooling Station for the Raipur Pooling Station to Rajnandgaon 765 kV D/C line executed under the TBCB route. The Commission, vide order dated 10.5.2020, approved the COD of the two line bays as 30.11.2018 under provision (ii) of Regulation



4(3) of the 2014 Tariff Regulations as the associated transmission line under the TBCB route was not ready. The transmission line achieved COD on 30.3.2019. Therefore, the Commission held that the transmission charges for the period of mismatch from 30.11.2018 to 30.3.2019 should be borne by ATL. Accordingly, the Review Petitioner claimed the transmission charges for the period of a mismatch from ATL by raising the bill dated 16.6.2020. ATL did not make the payment as the transmission line was executed by its SPV, RRWTL, and ATL is not legally bound to make the payment. Later, the Review Petitioner raised the bill against RRWTL, and RRWTL ostensibly did not pay the transmission charges for the period of mismatch as it was not made a party by the Review Petitioner in Petition No.16/TT/20219. The Review Petitioner filed Petition No.30/TT/2021 for truing up the tariff from the COD to 31.3.2019 of the two line bays, where the Review Petitioner impleaded RRWTL, ATL and APL as Respondents. The Commission, vide order dated 13.3.2022 in Petition No.30/TT/2021, observed that the transmission charges for the period of mismatch will be considered in Petition No.31/MP/2021, filed by the Review Petitioner for recovery of the transmission charges for the two-line bays for the period of mismatch. The Commission disposed of Petition No.31/MP/20121 without deciding the issue of transmission charges for the period of mismatch. Therefore, the Review Petitioner has filed the instant petition seeking review of order dated 13.3.2022 in Petition No.30/TT/2021 and praying for directions to RRWTL to pay the bill dated 16.6.2020 pertaining to transmission charges for the two-line bays for the period of mismatch.

20. The Review Petitioner has submitted that postponing the consideration of the payment of transmission charges for the two-line bays in Raipur Pooling Station for the period of mismatch in the order dated 13.3.2022 in Petition No. 30/TT/2021 to the decision in Petition No. 31/MP/2021 and thereafter not resolving the issue in Petition



No. 31/MP/2021 amounts to an error apparent on the face of the record. The Review Petitioner has contended that it has executed the line bays and it is entitled to transmission charges and RRWTL is liable to pay the transmission charges for the period of mismatch, but it is avoiding the same by citing technicalities. RRWTL has contended that the Review Petitioner has raised the issue of mismatch period, i.e., 30.11.2018 to 30.3.2019, specifically in the proceedings of Petition No. 31/MP/2021. Therefore, the instant review petition is not maintainable against the findings in the order dated 6.6.2022 in Petition No. 31/MP/2021.

21. In the instant case, the transmission line associated with the two-line bays of the Review Petitioner at Raipur Pooling Station is implemented by RRWTL, SPV of ATL. Accordingly, the Review Petitioner should have impleaded RRWTL as a Respondent in the matter, especially when the Review Petitioner has claimed approval of its line bays under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations on the ground that the associated transmission lines were not ready. However, the Review Petitioner had impleaded only ATL, which was a serious lapse on the part of the Review Petitioner. This lapse on the part of the Review Petitioner has led to the filing of a multiple number of petitions, viz, Petition No.31/MP/2021 and the instant review petition. The Review Petitioner was also the CTU at the time of filing of Petition No.16/TT/2019 and should have been aware that the associated transmission line is not implemented by ATL but by its SPV, i.e. RRWTL. We are of the view that the Review Petitioner was casual while filing Petition No.16/TT/2019 and should have been more careful while filing the petition. Had the Review Petitioner been careful, the filing of multiple petitions and the waste of time of the Commission and the parties could have been avoided. The Review Petitioner is directed to be careful in filing of the petitions in future.



22. RRWTL has submitted that though it is a subsidiary of ATL, RRWTL is a separate and independent legal entity and was never intimated about the proceedings in Petition No.16/TT/2019 and therefore, no liability can be imposed on it as it was not a party to the proceedings in Petition No.16/TT/2019. We tend to agree that this liability cannot be imposed on RRWTL at this stage as it was not given an opportunity to present its case before the Commission. However, the transmission charges for the two-lines bays for the period of mismatch cannot also be imposed on the beneficiaries/ consumers as held by the Appellate Tribunal for Electricity in its judgement dated 2.5.2023 in Appeal No. 352 of 2022 and IA Nos. 1189 of 2022 and 1454 of 2022. The relevant portion of the judgement date 2.5.2023 is as follows:

“177. Yearly Transmission Charges, as approved by the CERC, are required to be shared and paid by all designated customers of ISTS (DICs), including the generating stations. The methodology prescribed, for a pooled system of sharing of transmission charges to be paid by ISTS users, is known as the Point of Connection (PoC) mechanism. The CTU is required to collect these charges from the DICs in proportion to their monthly charges, and to place them in a pool known as the PoC pool. From the said PoC Pool, the CTU is required to disburse the monthly transmission charges, to various transmission licensees owning the transmission assets, in terms of their approved transmission tariff. Non-payment of transmission charges results in a deficit in the shared pool which, in turn, results in under-servicing of the transmission assets comprised in the ISTS. No liability, for payment of transmission charges, can be fastened upon the beneficiaries/consumers of the transmission system till they start receiving power through the commissioned inter-connected transmission assets. Where more than one inter-State transmission licensee is involved, and the transmission system of one is delayed, the DICs do not receive power through the inter-connected transmission assets. Fastening liability of payment of transmission charges on them, when they have not received any benefit therefrom, would be wholly unjustified.”

23. We are of the view that the real question of liability for transmission charges cannot be kept unanswered. In the peculiar facts and circumstances of the case, a solution to the present situation lies in hearing all the concerned parties on the issue of transmission charges for the two-line bays at Raipur Pooling Station of the Review Petitioner for the period from 30.11.2018 to 31.3.2019. Accordingly, we are inclined to reopen and recall the order dated 13.3.2022 passed in Petition No.30/TT/2021, wherein the Commission observed that the present issue would be considered in



Petition No.31/MP/2021 which was, however, not considered.. In this regard, we would like to refer to the Commission's order in a similar situation dated 28.1.2020 in Review Petition No. 35/RP/2018 in Petition No. 261/TT/2015 and Petition No. 232/MP/2018.

The relevant portion of the order dated 28.1.2020 is as follows:

“18. We are of the view that all LTTCs including MBPL are necessary parties to the proceedings in Petition No. 261/TT/2015 as civil liability in the form of payment of transmission charges for the period of mismatch was created against them. However, the LTTCs including MBPMPL were not impleaded as parties in Petition No.261/TT/2015 by PGCIL. Making MBPMPL liable for payment of the transmission charges for the period of mismatch in COD of transmission assets of PGCIL and JTCL without an opportunity to MBPMPL to place its views/objections on record is an apparent error. Further, PGCIL did not implead the other LTTCs of the transmission assets in Petition No.261/TT/2015.It is further observed that MBPMPL has not impleaded JTCL, which as per MBPMPL is liable to bear the transmission charges, as a party to the present proceedings in Petition Nos.232/MP/2018 and 35/RP/2018. Without going into the merits of the issues raised by MBPMPL in the instant petitions, we are of the view that the issue of sharing of the transmission charges needs to be decided after hearing all the necessary parties. Accordingly, we allow the review to the limited extent of reconsideration of the sharing of transmission charges of the instant transmission assets and set down the main petition for hearing on the aspect of sharing of transmission charges. PGCIL is directed to file an amended “Memo of Parties” in Petition No.261/TT/2016 making all the LTTCs including MBPMPL as respondents and any other beneficiary(ies) for whom the instant transmission assets were envisaged and serve a copy of the petition on them within 15 days of issue of this order. Further, PGCIL is directed to clarify whether the transmission charges for the instant assets for the period of mismatch was recovered through PoC mechanism and also the reasons for delay of two years in raising the bills on MBPMPL after the issue of order dated 27.5.2016. The respondents are directed to submit their replies on the limited issue of sharing of transmission charges within three weeks of receipt of the amended Petition No.261/TT/2015 and PGCIL to file the rejoinder, if any, within two weeks thereafter.”

24. All the other issues raised by the Review Petitioner and RRWTL herein will be considered by us in Petition No.30/TT/2021. The Registry is directed to relist Petition No.30/TT/2021 at the earliest with a notice to all the parties.

25. This order disposes of Petition No. 51/RP/2022 in terms of the above findings and discussions.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

