

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 29/RP/2024 in Petition No. 113/MP/2020
along with IA No. 89/2024**

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 06.01.2025

In the matter of:

Petition under section 94(1)(f) of the Electricity Act, 2003 read with Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 and section 114 and order 47 rule 1 of the code of civil procedure, 1908 seeking review of order dated 20.01.2024 passed by this Commission in Petition No.113/MP/2020.

And

in the matter of:

Central Transmission Utility of India Limited

First Floor, Saudamini, Plot No.2, Sector 29,
Gurugram, Haryana-122001.

... Petitioner

Versus

1. KSK Mahanadi Power Limited,
8-2-293/82/A/431/A,
Road No.22 Jubilee Hills,
Hyderabad-500033, Andhra Pradesh.
2. Powergrid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk Metro Station,
Gurugram, Haryana-122001.
3. Madhyanchal Vidyut Vitran Nigam Ltd.,
4A, Gokhale Marg,
Lucknow – 226001, Uttar Pradesh.
4. Paschimanchal Vidyut Vitran Nigam Ltd.,
Urja Bhawan, Victoria Park,
Meerut – 250001, Uttar Pradesh.
5. Purvanchal Vidyut Vitran Nigam Limited,
DLW Bhikharipur,



Varanasi – 221 004, Uttar Pradesh.

6. Dakshinanchal Vidyut Vitran Nigam Ltd.,
Urja Bhawan, NH-2,
(Agra-Delhi Bypass Road),
Sikandra, Agra-282002, Uttar Pradesh

.... Respondents

Parties Present:

Ms. Suparna Srivastava, Advocate, CTUIL

ORDER

Central Transmission Utility of India Limited (CTUIL) (hereinafter referred to as 'Review Petitioner') has filed the present Petition under section 94(1)(f) of the Electricity Act, 2003, read with Regulation 52 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2023 and section 114 and order 47 rule 1 of the code of civil procedure, 1908 seeking review of order dated 20.01.2024 passed by this Commission in Petition No.113/MP/2020. The Review Petitioner has made the following prayers in the Petition No. 29/RP/2024:

- (a) *Admit the present Review Petition and review and rectify the Order dated 20.1.2024 passed in Petition No.113/MP/2020 to the extent it omits to issue directions regarding the methodology to be adopted for computation of late payment surcharge by Respondent No.1*
- (b) *Issue appropriate directions to Respondent No.1 to pay late payment surcharge to the Review Petitioner, as directed in the Order dated 20.1.2024, calculated in terms of Para 18 above; and*
- (c) *Pass such further and other Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.*

2. The Review Petitioner has made the following prayers in IA No. 89/2024:

- (a) *Condone the delay of 186 days in filing the present Review Petition seeking review and rectification of the Order dated 20.1.2024 passed in Petition No.113/MP/2020 to the extent it omits to issue directions regarding the methodology to be adopted for computation of late payment surcharge by Respondent No.1; and*
- (b) *Pass such other and/or further order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.*

Review Petitioner's submission in review Petition No. 29/RP/2024:

3. The Review Petitioner has submitted as under:

- (a) The KSK Mahanadi Power Limited (KSKMPL) is an independent power producer (IPP) that has set up a 3x600 MW coal-based generating station in the State of Chhattisgarh and has availed long-term access (LTA) from the Petitioner for 1000 MW with an



identified transmission system as per the LTA grant letter dated 29.07.2016 with distribution licensees in the State of Uttar Pradesh to whom 1000 MW electricity is being supplied by the Respondent KSKMPL through its generating station.

- (b) System strengthening for power evacuation from Western Region to Northern Region, the 'Western Region-Northern Region HVDC inter-connector for IPP projects in Chhattisgarh Scheme' was being implemented by the Respondent PGCIL in its capacity as the transmission licensee. The Commission vide Order dated 22.02.2018 passed in Petition No.13/TT/2017, approved the transmission tariff for Pole-I of the Champa-Kurukshetra HVDC line and directed that the mechanism for sharing of transmission charges for the HVDC line was to be in terms of Regulation 11(4)(3)(iii) of the CERC Sharing Regulations, 2010.
- (c) The Commission, vide Order 06.11.2018 in Petition No. 205/TT/2017, held that the sharing of transmission charges for Pole-II of the Champa-Kurukshetra line was to be in terms of Regulation 11(4)(3)(iii) of the Sharing Regulations. The impact of the directions by this Commission was that transmission charges for Pole-I and Pole-II for the Champa-Kurukshetra HVDC line were to be apportioned only between the beneficiaries who were utilizing the instant transmission assets. The Review Petitioner was bound to adopt the methodology of billing as prescribed in the Order.
- (d) Review Petitioner preferred Review Petitions before this Commission, being Petition No.20/RP/2018 seeking review of Order dated 22.02.2018 in Petition No.13/TT/2017 and Petition No. 3/RP/2019 seeking review of Order dated 06.11.2018 in Petition No.205/TT/2017. In the Review Petitions, the Review Petitioner sought rectification of apparent errors in the Orders, being sharing of transmission charges for the HVDC line under Regulation 11(4)(3)(iii) of the Sharing Regulations instead of Regulation 11(4)(3)(i) and thereby apportioning the transmission charges liability only upon the beneficiaries who were utilizing the transmission assets rather than the entire Northern Region beneficiaries. The Respondent KSKMPL is a beneficiary of transmission assets under the Scheme. The Review Petitioner was billing KSKMPL with PoC, HVDC, and reliability charges for 1000 MW quantum and further charges for the Champa-Kurukshetra Corridor to the extent of 847.458 MW, resulting in an exponential rise in the transmission charges bills since the month of November 2018 for KSKMPL. Review Petitioner clarified that it was bound by the PoC rates prescribed by this Commission and the Tariff Orders under review, which had caused the unreasonable and exponential rise in the transmission charges for several generators including for the Respondent KSKMPL.

- (e) Vide Interim Order dated 13.05.2019 in the Review Petition No.20/RP/2018 filed by the Review Petitioner, this Commission directed the Review Petitioner to continue billing on the DICs, including the Respondent KSKMPL, in the same manner as they were being billed till November 2018 till further order /till the outcome of the Review Petitions and further directed the Review Petitioner not to invoke the provisions of CERC (Regulation of Power Supply Regulation), 2010 for regulating power supply for any non-payment of transmission charges by them.
- (f) Vide Order dated 31.07.2019, this Commission disposed of Petition Nos. 20/RP/2018 and 3/RP/2019. The direction of this Commission to the Review Petitioner was to add together the annual transmission charges of Pole-I and Pole-II to arrive at monthly transmission charges and carry out the billing as per Regulation 11(4)(3)(i) of the Sharing Regulations. However, neither was there any direction by this Commission to the Review Petitioner to raise any fresh bills, nor did this Commission hold the earlier bills to be incorrect or illegal, as was subsequently wrongly contended by the Respondent KSKMPL.
- (g) In view of and in compliance with the directions issued by this Commission and subsequent PoC rates revision approved by the Commission, the Review Petitioner re-computed the charges to be paid by the DICs, and accordingly, the Respondent KSKMPL was given a credit of Rs.331.38 Cr. vide Bill-3 dated 01.01.2020. Dispute was raised by the Respondent KSKMPL against Bill-1 issued to it by the Review Petitioner from time to time. Respondent KSKMPL continued to be liable to pay the billed transmission charges under regular monthly Bill-1 as per the RTAs issued by RPCs, subject to their 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 Respondent KSKMPL, 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 Cr., the outstanding payments of the Respondent KSKMPL remained at Rs.354 Cr. as on 03.01.2020 out of which an amount of Rs.267 Cr. remained outstanding for more than 60 days by 05.01.2020. This continuous default by the Respondent KSKMPL was bound to attract regulatory action by the Review Petitioner w.e.f. 23.01.2020.
- (h) The Respondent KSKMPL had 3 LTAs as follows-1000 MW (with UP Discoms), 500 MW (with Tamil Nadu Discoms), and 400 MW (on a target region basis in the Western Region). The Respondent KSKMPL continued to withhold payment of outstanding bills on the ostensible reason that interim protection had been granted to it by this

Commission vide its Order dated 13.05.2019 in Petition No.20/RP/2018, thereby leading to a deficit in the PoC pool. The Respondent KSKMPL filed Petition No.113/MP/2020 contending that the billing towards transmission charges for its 1000 MW LTA as done by the Review Petitioner was 'incorrect' and 'illegal' as the same was contrary to the specific directions of this Commission given in Order dated 31.07.2019 passed in Petition No. 20/RP/2018 and Petition No. 3/RP/2019 to raise fresh bills upon the Respondent KSKMPL.

- (i) As directed by this Commission vide RoP for hearing dated 15.12.2022 in Petition No. 113/MP/2020, the Review Petitioner again convened a Meeting with the Respondent KSKMPL wherein, despite clarification of issues, while the Respondent KSKMPL agreed that LPS was payable by it, no consensus on the methodology of calculation of LPS could be arrived at. From a perusal of the Minutes of Meetings, the Respondent KSKMPL admitted in principle that LPS (Rs.22,61,99,353/-) was payable by it, the controversy as regards the methodology of computation of surcharge thereof remained, leading to a disputed amount of Rs.41,46,35,976/-. The methodology adopted by the Review Petitioner was in accordance with the applicable Regulations framed by this Commission, and as such, the Respondent KSKMPL was liable to pay an amount of Rs.64,08,35,329/- till March 2020 as LPS to the Review Petitioner.
- (j) This Commission, while passing the Order under review, proceeded to frame the issue for adjudication by this Commission, which had been limited to the 'methodology' to calculate the LPS payable by the Respondent KSKMPL. This Commission thus held the Respondent KSKMPL liable to bear LPS on the transmission charges bills that had remained unpaid by it.
- (k) Despite noting the methodology in the Order under review, this Commission erroneously omitted to consider the methodology of computation of the LPS as had been submitted by the Review Petitioner during the course of proceedings.
- (l) The direction of this Commission for computation of LPS on a monthly basis is "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". The delayed payment or partial payment or non-payment of transmission charges in a month by any DIC results in a pro-rata reduction in the payouts to all the ISTS licensees and attracts LPS as per applicable Regulations/LPS Rules due to a shortfall in monthly transmission charges in the pool in a given month.

- (m) Therefore, if the Review Petitioner is to adopt any method other than the method submitted by it before this Commission during the course of proceedings, the same is to result in a significant under-recovery of **surcharge/interest to** the ISTS licensees. Under the methodology being adopted by the Review Petitioner for computation of LPS, payments received from the Respondent KSKMPL and credit bill dated 01.01.2020 have been adjusted on a FIFO basis on the date of the events for the bills already raised for the billing period from April 2018 to June 2019 as per the Orders of this Commission. Accordingly, a surcharge has been calculated on the Respondent KSKMPL on outstanding amounts till the date of payment made by the Respondent KSKMPL.
- (n) Error has crept in the Order dated 20.01.2024 owing to an inadvertent omission on the part of this Commission to consider the submissions of the Review Petitioner as regards the methodology for computation of LPS payable by the Respondent KSKMPL, which has been held to be a valid ground for seeking a review of an Order.

Petitioner's submission in the IA No. 89/2024:

4. The Review Petitioner in 89/IA/2024 submitted as under:
- (a) The delay in filing the Review Petition is caused by the complexities of the issues involved in the present matter and the ongoing process of re-calculation of the LPS payable by the Respondent KSKMPL and reconciliation of the charges already collected from the Respondent KSKMPL as per the Order dated 20.01.2024.
- (b) A delay of 186 days in filing the Review Petition has occurred on account of the Review Petitioner verifying their records and discussing the matter internally with various departments and with their counsel, and thereafter, the Review Petition has been finalized after due internal approval. The delay caused is unintentional and is sincerely regretted. The same may be condoned by this Commission.

Hearing dated 28.11.2024

5. The matter was heard for admission on 28.11.2024. Learned counsel for the Petitioner submitted that the present Petition had been filed seeking the review of the order dated 20.1.2024 passed by this Commission in Petition No. 113/MP/2020. Learned Counsel further submitted that the Petitioner is seeking the review of the said order to a limited extent, that in the said order, the Commission has inadvertently omitted to consider the methodology for calculation of the LPS as submitted by the Petitioner during the course of the proceedings. Learned counsel added that owing to this inadvertent omission, the Petitioner is facing difficulty in recalculating LPS payable to KSKMPL and has found

that the adoption of any other method is leading to a significant under-recovery of the LPS to the ISTS licensees. Learned counsel further submitted that the Petitioner has also moved IA No.89/2024 seeking condonation of delay of 186 days in filing of the Review Petition. After hearing the learned counsel for the Petitioner and having regard to the issue raised in the Review Petition, the Commission deemed it fit to reserve the Review Petition along with IA for orders.

Analysis and Decision:

6. The Review Petitioner has filed the instant Review petition with a delay of 186 days due to internal processes. Review Petitioner has sought condonation of delay in filing the Review Petition.
7. We shall first examine whether the present review petition can be admitted in light of the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908. Order XLVII Rule 1 of the Code of Civil Procedure, 1908 provides as follows:

“Any person considering himself aggrieved

 - a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred,
 - b) by a decree or order from which no appeal is allowed or
 - c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”
8. Review Petitioner has contended that it is seeking the review of the said order to a limited extent, that in the said order, the Commission has inadvertently omitted to consider the methodology for calculation of the LPS as submitted by the Petitioner during the course of the proceedings and that owing to this inadvertent omission, the Petitioner is facing difficulty in recalculating LPS payable to Respondent No.1 and has found that the adoption of any other method is leading to a significant under-recovery of the LPS to the ISTS licensees.
9. We have perused Order date 20.01.2024 in Petition No. 113/MP/2024 quoted as follows:

“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.”

As per above, it was clearly directed that Petitioner therein (which was KSK Mahanadi) 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 (KSK Mahanadi) was made liable to pay the Late Payment Surcharge on the amount of the bill payable by the Petitioner as per the said Orders.

10. The contention of the Review Petitioner that this Commission erroneously omitted to consider the methodology of computation of the LPS as had been submitted by the Review Petitioner during the course of proceedings of Petition No. 113/MP/2020 is incorrect as the decision on the amount of LPS payable by Petitioner therein (KSK Mahanadi) was arrived at after considering all the pleadings in the said petition including the methodology referred to by the Review Petitioner.

11. We observe that Petition No. 113/MP/2020 was filed by KSK Mahanadi inter alia with 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;.”

12. We observe that the prayer was made by KSK Mahanadi against bills to be payable by him. There was no prayer praying for the recovery of LPS by ISTS licensees by Petitioner or CTUIL or any other respondent therein. Hence, the decisions in the Order

dated 20.1.2020 addressed the bills, and LPS is liable to be paid by KSK. Review Petitioner has brought a new prayer seeking recovery of LPS of ISTS Licensees as per original bills raised by it, which was not the subject matter of Petition No. 113/MP/2020.

13. The Review Petitioner is merely trying to raise a new issue for which there was no prayer in Petition No. 113/MP/2020, which is not permissible and is not within the purview of the Review Petition.
14. For the reasons mentioned above, we do not find any ground for admission of the present Review Petition under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Hence, the present review petition is dismissed. The delay of 186 days in filing the Review petition is also not condoned since there is no plausible reason for the delay in filing the Review Petition by the Petitioner.
15. Review Petitioner is granted liberty to file a separate application in accordance with law, if required.
16. Review Petition No. 29/RP/2024, along with IA No. 89/2024, is disposed of in terms of the above.

**Sd/
(Harish Dudani)
Member**

**Sd/
(Ramesh Babu V)
Member**

**Sd/
(Jishnu Barua)
Chairperson**