

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 199/MP/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S. Verma, Member**

Date of Hearing: 22.12.2011

Date of Order: 17.9.2012

In the matter of:

Miscellaneous petition under Regulation 24 read with Regulation 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 with a prayer for amendment in Regulation 3 of Central Electricity Regulatory Commission (procedure for making of application for determination of tariff, publication of the application and other related matters) Regulation 2004.

And

In the matter of:

PowerGrid Corporation of India Ltd., Gurgaon

.....Petitioner

Vs

1. Bihar State Electricity Board, Patna
2. West Bengal State Electricity Board, Calcutta
3. Grid Corporation of Orissa Limited, Bhubaneshwar
4. Damodar Valley Corporation, Calcutta
5. Power Department, Gangtok
6. Jharkhand State Electricity Board, Ranchi
7. Assam State Electricity Board, Guwahati
8. Meghalaya State Electricity Board, Shillong
9. Government of Arunachal Pradesh, Itanagar
10. BSES Yamuna Power Limited, New Delhi
11. BSES Rajdhani Power limited, New Delhi
12. North Delhi Power Limited, New Delhi
13. Chandigarh Administration, Chandigarh
14. Uttarakhand Power Corporation Ltd., Dehradun
15. North Central Railway, Allahabad



16. New Delhi Municipal Council, New Delhi
17. Power and Electricity Department, Mizoram
18. Electricity Department, Imphal
19. Power Department, Nagaland
20. Tripura State Electricity Corporation Limited, Agartala
21. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur
22. Ajmer Vidyut Vitran Nigam Limited, Ajmer
23. Jaipur Vidyut Vitran Nigam Limited, Jaipur
24. Jodhpur Vidyut Vitran Nigam Limited, Jodhpur
25. Himachal Pradesh State Electricity Board, Shimla
26. Punjab State Electricity Board, Patiala
27. Haryana Power Purchase Centre, Panchkula
28. Delhi Transco Limited, New Delhi
29. Karnataka Power Transmission Corporation Limited, Bangalore
30. Bangalore Electricity Supply Company Limited, Karnataka
31. Gulbarga Electricity Supply Company Limited, Karnataka
32. Hubli Electricity Supply Company Limited, Karnataka
33. Mangalore Electricity Supply Company Limited, Karnataka
34. Chamundeswari Electricity Supply Company Limited, Karnataka
35. Transmission Corporation of Andhra Pradesh Limited, Hyderabad
36. Eastern Power Distribution Company of Andhra Pradesh Limited, Andhra Pradesh
37. Southern Power Distribution Company of Andhra Pradesh Limited, Andhra Pradesh
38. Central Power Distribution Company of Andhra Pradesh Limited, Andhra Pradesh
39. Northern Power Distribution Company of Andhra Pradesh Limited, Andhra Pradesh
40. Kerala State Electricity Board, Thiruvananthapuram
41. Tamil Nadu Electricity Board, Chennai
42. Electricity Department, Pondicherry
43. Electricity Department, Panaji
44. Madhya Pradesh Tradeco, Jabalpur
45. Madhya Pradesh Audyogik Kendra Vikas Nigam Limited, Indore
46. Jindal Power Limited, Noida
47. Maharashtra State Electricity Distribution Company Limited
48. Gujarat Urja Vikas Nigam Limited, Baroda
49. Electricity Department, Daman and Diu
50. Electricity Department, Silvassa
51. Chhattisgarh State Electricity Board, Raipur
52. Power Department, Jammu
53. Uttar Pradesh Power Corporation Limited, Lucknow**Respondents**



The following were present:

1. Shri. S.S. Raju, PGCIL
2. Shri. Rajeev Gupta, PGCIL
3. Shri Manoj Dubey, MP Tradeco
4. Shri R.B. Sharma, BSES, JSEB & BRPL

ORDER

The petition has been filed by Power Grid Corporation of India Limited (PGCIL) under Regulations 24 and 111 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking amendment in Regulation 3 of the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of the application and other related matters) Regulations, 2004 (hereinafter referred to as “2004 regulations”) so that the complexities in procedure for making of application for determination of tariff, publication of the application arising due to enforcement of Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and Losses) Regulations, 2010 (hereinafter referred to as “2010 sharing regulations”) may be avoided.

2. As per section 64 (2) of the Electricity Act, 2003 every applicant shall publish the application in such form and manner as may be specified by the appropriate Commission. The Commission has specified Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “2009 regulations”). As per clause (1) of Regulation 5 of the 2009 regulations, the petitioner is required to make an application for determination of tariff in accordance with the 2004 regulations. Regulation 3 of the 2004 regulations provides as under:-



"3. PROCEDURE FOR MAKING APPLICATION

- (1) The application shall be made to the Commission in the form appended as Appendix I to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 and shall be accompanied by such fee as may be specified by the Commission from time to time.*
- (2) Before making the application, the applicant shall serve a copy of the application on each of the beneficiary.*
- (3) The applicant shall post complete application on its own website or any other authorised website, before making the application to the Commission.*
- (4) While making the application to the Commission, the applicant shall indicate whether copy of the complete application has been served on each of the beneficiary and whether the application has been posted on its own website or any other authorised website, with address of the website where on the application has been posted.*
- (5) The application made shall be supported by affidavit of the person acquainted with the facts stated in the application. The application shall be kept on the website at least for 30 days from the date of publication of the notice of application in accordance with clause (6) of this regulation.*
- (6) The applicant shall, within 7 days after making the application, publish a notice of his application in at least two daily newspapers, one in English language and one in vernacular language, having circulation in each of the State/Union Territory where the beneficiaries are situate in the same language as of the daily newspaper in which the notice of the application is published, as per the specimen given in the schedule to these regulations.*
- (7) The suggestions and objections, if any, to the proposal for determination of tariff, may be filed before the Secretary, Central Electricity Regulatory Commission, 7th Floor, Core-3, Scope Complex, Lodi Road, New Delhi-110003 (or other address where the office of the Commission is situate) by any person, including the beneficiaries within 30 days of publication of the notice with a copy to the applicant.*
- (8) The applicant shall within 15 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published and shall also file before the Commission relevant copies of the newspapers in which the notice has been published.*
- (9) The applicant may file his comments on affidavit on the suggestions and objections, if any, received in response to the public notice within 45 days of its publication in the newspapers, with an advance copy to the person who has filed the suggestions and objections on the proposals made in the application."*

3. The petitioner has submitted that in accordance with Regulation 3 of the 2004 regulations it has been serving a copy of the application seeking transmission tariff on each of the regional beneficiaries and publishing a notice of the application in at least two daily newspapers having circulation in each of the State/UT where the beneficiaries are situated. As per the 2010 sharing regulations, the transmission charges are now computed under the POC and all designated ISTS customers in the country are its beneficiaries. It is now required

to serve copies of the petition on all DICs and publish notices in newspapers all over the country whenever it approaches the Commission for determination of tariff for any transmission asset. It has submitted that there is 6 to 8 fold increase in number of beneficiaries and nearly 5 to 6 times increase in number of States for publishing the notices. It has substantially increased the cost of publication of notices in the newspapers and serving voluminous tariff petitions on the DICs. The whole process of making of tariff application has become complex, environmentally challenging and costlier.

4. The petitioner has also submitted that there is no identified beneficiary for any transmission system and the notices have to be published in English and all vernacular languages whenever a tariff application is filed. This will involve huge expenditure on publication and will be a burden on the beneficiaries, as the publication expenditure is a pass through in tariff. The petitioner has requested to allow replacement of servicing of tariff applications on the DICs and publication of notices by posting the tariff application(s) after clubbing the same, if applications are made simultaneously or within short duration, through "Window Advertisements" in two national dailies of India intimating the URL of webpage before making the applications. The petitioner has proposed that it would also dispatch letters to each beneficiary before making the application, confirming posting of application on website by giving address of website whereon the application has been posted. The petitioner has requested to review the 2004 regulations in so far as determination of transmission tariff is concerned.

5. UPPCL in its reply, vide affidavit dated 5.11.2011, has objected to the respondent's request for amendment of Regulation 3 of 2004 regulations as the petition has to be authenticated by an affidavit under oath, which may not be possible in case of a soft copy. It has been stated that the soft copy of the petition and other submission are to be signed digitally but the documents bearing digitalized signature are devoid of legal validity. The petitioner in its rejoinder to reply of UPPCL has submitted that under Information Technology Act, electronic documents including electronic signature are legal.

7. JVVNL and JdVVNL have objected to the petitioner's prayer on the ground it would not be cost effective as the beneficiaries have to use extra manpower and have to spend extra time and money for getting the petition downloaded. The petitioner in its rejoinder to reply of JVVNL and JdVVNL states that procedure as proposed in the miscellaneous application is prompt, efficient, transparent and cost effective.

8. MPPTCL, vide their affidavit dated 30.11.2011, has submitted that it whole-heartedly supports the petitioners request for amendment of the regulations as it would relieve the beneficiaries from unnecessary burden of additional cost that would be incurred on serving large and voluminous hard copies to the DIC's. The respondent, however, has requested the Commission to direct the petitioner to inform the DIC's about the posting of the petition on their websites and also post the petition on the Commission's website for their reference and further to create a web based portal, which provides for functionalities like filing the petition, replies, etc., using the LDC Development fund and UI Pool account funds. The petitioner, in its rejoinder to reply of

MPPTCL submitted that posting of petitions/reply/rejoinder to all DICs through e-mail seems to be impractical as there may be chances of non-delivery due to technical problems including bouncing back due to space crunch, etc.

9. BSES Rajdhani Power Limited (BRPL) filed its reply, vide affidavit dated 19.12.2011 and Bihar State Electricity Board (BSEB) filed its reply, vide affidavit dated 21.12.2011. The issues raised by BRPL and BSEB are similar in nature and hence they are dealt together. It has been submitted that though the importance of electronic media for its effectiveness is recognized, it cannot be a substitute in the adjudicatory matters. It has also been submitted that the tariff petitions must be posted on the petitioner's website till the application is decided and final orders are passed, instead of the present limit of 30 days, as it would facilitate the electricity consumers to represent their interest any time during the determination of tariff. As per section 64 of the Electricity Act, 2003 (hereinafter referred to as "the Act") publication of application and consideration of all suggestions and objections are of paramount importance. It has also been submitted that an increase in the number of beneficiaries (DICs) does not warrant amendment in the procedure for making of application. The procedure prescribed in Regulation 3 of the 2004 regulations for filing application is far simpler than the procedure prescribed in the Code of Civil Procedure. The representation made by the general public or the electricity consumers before the Commission is much lesser than the representations made before the State Regulatory Commissions. Lack of representation before the Commission may be due to the procedure or its implementation or both. Hence, there is a need to strengthen the existing procedure than its dilution. Dilution of the existing

procedure would deprive the stakeholders of their right to represent their cause before the Commission.

10. Tamil Nadu Electricity Board, now known as Tamil Nadu Generation And Distribution Corporation Limited (TANGEDCO) in its reply, vide affidavit dated 13.1.2012, has submitted that serving a copy of the tariff application on the respondents is a usual practice even as per the Civil Procedure Code/Criminal Procedure Code. A mere increase in the number of respondents does not entitle the petitioner to seek amendments to Regulation 3 of the 2004 regulations. It has also been submitted that a duty is cast on the petitioner to serve a copy of the tariff application on the respondents and to bear the related expenses. Further, no concession can be granted to the petitioner to recover the expenses incurred towards filing of petitions just because it is a government undertaking. It has also been submitted that hosting the tariff application on the petitioner's website is in addition to serving a hardcopy of the tariff application on the respondents as per Regulation 3 of the 2004 regulations, therefore the concept of environment friendly and paperless processes of service is not practically applicable in a system of adversarial adjudication. It has been further submitted that the reimbursement of petition filing fee and related expenses by the beneficiaries is inequitable, as the cost of litigation has to be borne by the petitioner, who has initiated the litigation seeking certain relief. The respondent requested to examine the issue of doing away with the process of publication since no response is received from the public in response to the notices issued during the tariff period 2004-09/2009-14. It was also submitted that the licensees may be directed to host the details of tariff application on their website and on the website of the concerned state utilities, instead of publishing in newspapers,



which involves a huge cost. The respondents have requested to reject the petitioner's prayer for amendment of Regulation 3 of the 2004 regulations.

11. The learned counsel for MPPTCL, during the hearing on 22.12.2012, submitted that they supported the amendments proposed by the petitioner as it would be cost effective and environmentally friendly. He further submitted that a scanned copy of the petition must be made available on the Commission's website, besides the petitioner's website, and it should be linked to the RoPs of the concerned petitions. The representatives of BSES, JSEB and BRPL submitted that the amendments proposed by the petitioner would not take care of the interest of the consumers and that the electronic mode can be used as support mechanism and not as a substitute to the existing mechanism. It was also submitted that the additional information filed by the petitioner, the replies and rejoinder related to the petition must be made available on the Commission's website till the disposal of the petition, for facility of consumers' reference and to make submissions before the Commission.

12. We have considered the submissions of the petitioner and the response of the respondents. The case of the petitioner is that there is no identified beneficiary for any transmission system under the PoC system and therefore, the notices will have to be published in English and all vernacular languages whenever a tariff application is filed which involves huge expenditure on publication and it is a burden on the beneficiaries, as the publication expenditure is a pass through in tariff. In our view, the identified beneficiaries of a transmission line do not change after its inclusion in PoC. The transmission charges of a transmission line are included in the PoC after it is determined by

the Commission. PoC is a system of apportionment of transmission charges and does not change the process of determination of transmission charges. Therefore, the existing system of publication of notices shall continue in terms of Regulation 3(6) of the 2004 regulations.

13. As regards the serving of petitions on the beneficiaries, similar is the procedure as in the case of publication, as the PoC does not change the process of determination of tariff. Accordingly, the existing process of serving the copies of the petition on the identified beneficiaries shall continue. PoC charges will be shared by all DICs depending on the amount of injection and drawl, there is a requirement to give opportunity of hearing to all DICs. Therefore, without amending the existing procedure, we direct that the petitioner shall send the PDF version of the petition and other documents by e-mail to all DICs before filing an application for determination of tariff.

14. This order disposes of Petition No.199/MP/2011.

Sd/-
(V.S. Verma)
Member

Sd/-
(S. Jayaraman)
Member

Sd/-
(Dr. Pramod Deo)
Chairperson

