

CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi

Review Petition No. 32/RP/2020

in

Petition No. 107/TT/2017

Coram:

Sh. P. K. Pujari, Chairperson
Sh. I. S. Jha, Member

Date of Order: 31.03.2022

In the matter of:

Review Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of the order dated 17.8.2020 in Petition No. 107/TT/2017.

And in the matter of:

Power Grid Corporation of India Limited,
'SAUDAMINI', Plot No-2, Sector-29,
Gurgaon-122001 (Haryana).

.....Review Petitioner

Versus

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302005 (Rajasthan).
2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur (Rajasthan).
3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur (Rajasthan).
4. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur (Rajasthan).
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building-II,
Shimla-171004 (Himachal Pradesh).



6. Punjab State Power Corporation Limited,
(Formerly Punjab State Electricity Board),
Thermal Shed Tia, Near 22 Phatak,
Patiala-147001 (Punjab).
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula-134109 (Haryana).
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat,
Jammu-180001.
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001(Uttar Pradesh).
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002.
11. BSES Yamuna Power Limited,
B-Block, Shakti Kiran, Building,
Karkadooma 2nd Floor,
New Delhi-110092.
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi-110019.
13. Tata Power Delhi Distribution Limited,
NDPL House, Hudson Lines Kingsway Camp,
Delhi-110009.
14. Chandigarh Administration,
Sector-9,
Chandigarh-160009.
15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun-248 001 (Uttarakhand).
16. North Central Railway,
Allahabad (Uttar Pradesh).
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002.



18. NHPC Limited,
NHPC Office Complex,
Sector-33, Faridabad,
Haryana-121003.
19. Parbati Koldam Transmission Company Limited,
5th Floor, JMD Galleria, Sohna Road, Sector 48,
Gurgaon-122018.

.....Respondent(s)

For Review Petitioner : Ms. Swapna Seshadri, Advocate, PGCIL
Shri Aditya H. Dubey, Advocate, PGCIL
Shri S. S. Raju, PGCIL
Shri D. K. Biswal, PGCIL
Shri A. K. Verma, PGCIL
Shri V. P. Rastogi, PGCIL

For Respondents : None

ORDER

Powergrid Corporation of India Limited (hereinafter referred to as "PGCIL/Review Petitioner) has filed the present Petition No.32/RP/2020 seeking review and modification of the order dated 17.8.2020 in Petition No. 107/TT/2017 under Section 94(1)(f) of the Electricity Act, 2003, read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

2. PGCIL filed Petition No. 107/TT/2017 for truing up of transmission tariff of the period from the date of commercial operation (COD) to 31.3.2014 in respect of **Asset-1**: 400 kV D/C Parbati Pooling Point-Amritsar line along with associated bays and **Asset-2**: 80 MVAR bus reactor at Parbati Pooling Point along with associated bays. The petition was also filed for determination of tariff for 2014-19 tariff period and truing up of transmission tariff for 2009-14 tariff period in respect of **Asset-3**: LILO of 2nd circuit of Parbati-II-Koldam Transmission Line at Pooling Station and LILO at Parbati-III [portion (c-d)] and **Asset- 4**: LILO of 2nd circuit of Parbati-II-Koldam Transmission Line at Pooling Station along with associated bays and LILO of Parbati-III [portion (e-f)]. The transmission assets were combined during 2014-19 tariff period and combined tariff for Combined Asset was allowed for 2014-19 tariff period. **Asset-1, Asset-2, Asset-3 and Asset-4 (hereinafter referred to as**



“the transmission assets”) are under “Transmission System associated with Parbati-III-HEP” (hereinafter referred to as “transmission system”). Single line diagram (SLD) of the transmission system is given in the Annexure to this order and the instant transmission assets are marked in the SLD.

3. The Commission vide order dated 17.8.2020 in Petition No. 107/TT/2017 disallowed time over-run in the case of Asset-3: LILO of 2nd circuit of Parbati-II Koldam Transmission Line at Pooling Station and LILO at Parbati-III [portion (c-d)] and Asset-4: LILO of 2nd circuit of Parbati-II Koldam Transmission Line at Pooling Station along with associated bays and LILO of Parbati-III [portion (e-f)]. Accordingly, Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) was disallowed by the Commission observing that time over-run with reference to Asset-II covered in Petition No.91/TT/2012 was not condoned and the Review Petitioner did not give any justification concerning time over-run in the case of Asset-3 and Asset-4 in Petition No. 107/TT/2017.

4. Aggrieved with the Commission’s order dated 17.8.2020 in Petition No. 107/TT/2017, PGCIL has filed the present review petition contending that the Commission has erred by observing that time over-run in respect of Asset-3 and Asset-4 (parts of Asset-II in Petition No. 91/TT/20212) was not condoned in Petition No. 91/TT/2012.

Background

5. PGCIL initially filed Petition No. 91/TT/2012 for approval of transmission charges in respect of the following four number of transmission assets covered under the transmission system in Northern Region for 2009-14 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (“2009 Tariff Regulations):

- (i) Asset-I: 400 kV D/C Parbati-Amritsar Transmission Line along with associated bays at both ends with COD as 1.8.2013;



- (ii) Asset-II: LILO of 2nd circuit of Parbati-II-Koldam Transmission Line at Pooling Station along with associated bays and LILO at Parbati-III with COD as 1.8.2013;
- (iii) Asset-III: 400 kV 80 MVAR Bus Reactor at Parbati Pooling Station along with associated bays with COD as 1.8.2013, and
- (iv) Asset-IV: LILO of Parbati-II Koldam circuit-I at Parbati Pooling Point along with associated bays with COD as 1.4.2014.

6. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 approved transmission tariff in respect of aforesaid Asset-I and Asset-III. The Commission in the said order dated 26.5.2015 did not allow tariff for Asset-II as it was not being utilized since Koldam Switchyard was not commissioned and part of LILO could not be put to trial operation. Thus, time over-run with respect to Asset-II was not considered vide order dated 26.5.2015 in Petition No. 91/TT/2012. As regards Asset-IV, the Commission in the said order observed that it was put into commercial operation during 2014-19 tariff period and that the Petitioner had already filed Petition No. 411/TT/2014 wherein tariff of this asset was claimed.

7. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 observed that Unit No. 1 and Unit No.2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. The Commission further observed that Asset-I and Asset-III were put into commercial operation with effect from 1.8.2013 at the request and behest of NHPC, therefore, transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC.

8. Aggrieved with the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 on the issues of COD of Asset-I and non-impleadment of NHPC in Petition No. 91/TT/2012, NHPC filed Review Petition No. 25/RP/2015. The Commission vide order dated 29.12.2015 in Petition No. 25/RP/2015 observed that NHPC has been made liable to pay the transmission charges of Asset-I and Asset-III till commissioning of its generation without hearing NHPC and therefore recalled para 23 of the order dated 26.5.2015 relating to sharing of the transmission charges to be borne by NHPC from



1.8.2013 to 23.3.2014 and directed that the original petition shall be set down for hearing on the limited aspect of sharing of the transmission charges of the transmission line. Accordingly, Review Petition No. 25/RP/2015 was disposed of.

9. Petition No. 91/TT/2012 was again heard on 28.1.2016. The Commission vide order dated 21.7.2016 in Petition No. 91/TT/2012 affirmed para 23 of its order dated 26.5.2015 in Petition No. 91/TT/2012 with regard to sharing of transmission charges. The Commission in the said order dated 21.7.2016 further directed CTU to examine whether these transmission assets were used by other generators during the period in question, and if so, the transmission charges paid by them shall be utilized to reduce the liability of NHPC.

10. Aggrieved with the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 on the issue of disallowance of tariff with respect to Asset-II, the Review Petitioner preferred Review Petition No. 19/RP/2015. The Commission vide order dated 7.9.2016 disposed of the said Review Petition No. 19/RP/2015 with the observation that COD for parts of Asset-II portion (c-d-e-f) was approved as 1.9.2013 as per the 2009 Tariff Regulations with direction to NHPC to pay charges from 1.9.2013 to 23.4.2014. The Commission in the said order dated 7.9.2016 further observed that with effect from 23.4.2014, the transmission charges for (c-d-e-f) portion of Asset-II shall be included in PoC charges as provided under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. As regards, portion (b-c) and portion (f-g), these elements will be declared under commercial operation with effect from the date of commercial operation of line portion (a-b) and portion (g-h) respectively. The Petitioner was directed to submit the details of cost of the (c-d-e-f) portion of transmission line of Asset-II as on 1.9.2013 for determination of tariff.

11. Aggrieved with the orders dated 26.5.2015 and 21.7.2016 (consequent to the order



dated 26.5.2025 in Review Petition No. 25/RP/2015) in Petition No. 91/TT/2012 and order dated 7.9.2016 in Review Petition No. 19/RP/2015, NHPC filed Appeal No. 281 of 2016 and Appeal No. 81 of 2017 before the Appellate Tribunal for Electricity (APTEL). The APTEL vide judgment dated 16.7.2018 remitted Petition No. 91/TT/2012 for fresh consideration. The Commission vide order dated 5.2.2020 again decided certain aspects of Petition No. 91/TT/2012 in terms of the APTEL's judgment dated 16.7.2018 and upheld the COD of Asset-II as 1.9.2013.

12. Since COD of portion (b-c) and portion (f-g) of Asset-II of Petition No. 91/TT/2012 fall in 2014-19 tariff period, a separate petition was filed by PGCIL in respect of these assets being Petition No. 136/TT/2017.

13. The Commission's order dated 7.9.2016 in Petition No. 19/RP/2015 nowhere dealt with the issue of time over-run with respect to Asset-II or any of its portions.

14. The matter was heard through video conference on 26.11.2021 and order on admissibility was reserved.

Submissions of the Review Petitioner

15. The Review Petitioner has submitted followings in support of the instant the instant review petition:

(a) The Commission in order dated 26.5.2015 in Petition No. 91/TT/2012 considered the Review Petitioner's affidavit dated 20.9.2013 with reference to time over-run and clearly recorded the submissions that delay in execution of the transmission assets was on account of acquisition of land for sub-station, forest clearance of Parbati-Amritsar Transmission Line in Himachal Pradesh and at Punjab portions. After appreciation of submissions of the Review Petitioner, the Commission vide order dated 26.5.2015 condoned delay of 42 months.



(b) Pursuant to APTEL's judgment dated 16.7.2018 remanding Petition No. 91/TT/2012, the Commission vide order dated 5.2.2020 reconsidered Petition No. 91/TT/2012 and recorded that there was time over-run of 42 months in the case of Asset-I, Asset-II and Asset-III and it was mainly due to forest clearance, land acquisition and time taken for obtaining tree cutting permission. The Commission in the order dated 5.2.2020 observed that the said time over-run of 42 months was found to be beyond the control of the Review Petitioner and, therefore, it was condoned.

(c) The Review Petitioner in its rejoinder affidavit dated 14.9.2018 to the reply of BRPL on the issue of time over-run submitted that delay justifications for the assets covered under Parbati-III HEP have already been submitted in Petition No. 91/TT/2012 and Petition No. 411/TT/2014 concerning the transmission assets of Petition No. 107/TT/2017. It is submitted that on consideration of the submissions of Review Petitioner, the Commission condoned delay after finalizing various transmission elements and their COD covered in the aforesaid two petitions. Due to this reason, the Review Petitioner has not filed any further justification for time over-run.

(d) The Commission did not seek any further clarifications or sought additional details in Record of Proceedings and/or technical validation from the Review Petitioner with reference to the present case. In the absence of any query from the side of the Commission seeking clarification on any issue/technical validation or any additional details on the subject matter, the Commission ought not to have rejected the claim for time over-run on the grounds that Review Petitioner has not given any documents in support of the same. However, the Review Petitioner has proceeded on the basis that documents had already been submitted in earlier proceedings and therefore there is no need for fresh submission. Reliance is placed on the judgments of APTEL in the matter of (i) NTPC Ltd. v. Central Electricity Regulatory Commission and Ors. dated 9.5.2019



in Appeal No. 125 of 2017 and (ii) D.B. Power Ltd. v. Central Electricity Regulatory Commission and Ors. dated 15.5.2020 in IA No. 129 of 2019 in Appeal No. 253 of 2018 and IA No. 1515 of 2019.

(e) Consideration of time over-run is essential and has it has impact on the capital cost of the Review Petitioner which in turn has a cascading impact on various elements of tariff. Denial of time over-run and associated IDC and IEDC results in denial of legitimate costs of the Review Petitioner. The principle of allowing cost over-run due to time over-run beyond the control of the licensee has been settled and accepted by the APTEL and the Commission. Reliance is placed on the judgment of APTEL in the matter of Maharashtra State Power Generation Co. Ltd. v. Maharashtra Electricity Regulatory Commission decision dated 27.4.2011 in Appeal No. 72 of 2010.

(f) The Review Petitioner has set out reasons for delay in land acquisition for Pooling Station at Banala and also gave details of communication exchanged on various dates between officials and Authorities right from 15.1.2003 to 4.11.2010 with reference to land allotment.

(g) The Review Petitioner in the present petition has reiterated its submissions with regard to time over-run as submitted by it in Petition No. 91/TT/2012. Since the Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 has given detailed account of reasons of time over-run in paragraph 21 and paragraph 22, to avoid repetition the same are not being recorded here.

16. In the background of aforementioned submissions, the Review Petitioner has sought review of the order dated 17.8.2020 in Petition No. 107/TT/2017 and has requested to allow full IDC and IEDC for Asset-3 and Asset-4 as prayed with consequential changes and allow calculation of capital cost and tariff.



17. During hearing of the matter on 26.11.2021, learned counsel for the Review Petitioner reiterated the submissions as made in the instant Review Petition and requested to consider the same, allow time over-run as sought as well as allow full IDC and IEDC for Asset-3 and Asset-4 in the facts and circumstances of the present case.

Analysis and Decision

18. We have considered the submissions of the Review Petitioner and have gone through the material available on record. The main contention of the Review Petitioner is that Petition No. 91/TT/2012 was filed in respect of four number of transmission assets. The Commission vide order dated 26.5.2015 allowed tariff for Asset-I and Asset-III after considering and allowing time over-run of 42 months while no tariff was fixed for Asset-II and Asset-IV. The Review Petitioner has further submitted that tariff for Asset-IV was not allowed in the said order as it was commissioned during 2014-19 tariff period and a separate petition claiming tariff for this asset being Petition No. 411/TT/2014 was filed by the Review Petitioner. The Review Petitioner has contended that reasons for time over-run are common to all the transmission assets covered in Petition No. 91/TT/2012 and the same have been allowed by the Commission in case of Asset-I and Asset-III. The Review Petitioner has drawn attention to the fact that the Commission vide order dated 7.9.2016 in Review Petition No. 19/RP/2015 approved the COD in respect of portion of the asset (c-d-e-f) as 1.9.2013 as per the 2009 Tariff Regulations with direction to NHPC to pay charges from 1.9.2013 to 23.4.2014. The Review Petitioner has contended that the said order dated 7.9.2016 further observes that with effect from 23.4.2014, the transmission charges for (c-d-e-f) portion of Asset-II shall be included in PoC charges as provided under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. As regards, portion (b-c) and portion (f-g), these elements will be declared under commercial operation with effect from the date of commercial operation of line portion (a-b) and portion (g-h),



respectively. Referring to the observation of the Commission in order dated 7.9.2016 in Review Petition No. 19/RP/2015, the Review Petitioner has contended that the Review Petitioner was directed to submit details of the cost of portion of the transmission line represented by (c-d-e-f) of Asset II as on 1.9.2013 for determination of tariff, which was indicative of the fact that time over-run in respect of Asset-II in Petition No. 91/TT/2012 had already been condoned by the Commission. The Review Petitioner has contended that as no further clarification, information or technical validation was sought by the Commission from the Review Petitioner with reference to time over-run of the transmission assets, it led the Review Petitioner to presume that time over-run with reference to Asset-II had already been condoned in Petition No. 91/TT/2012. Review Petitioner has further contended that denial of time over-run and associated IDC and IEDC to it would have adverse impact on various elements of tariff.

19. Order 47 Rule 1 of Civil Procedure Code, 1908 provides that a party considering itself aggrieved by an order may seek review of the order under the following circumstances:

“(a) On 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 order was made, or

(b) On account of a mistake or error apparent on the face of the record, or

(c) For any other sufficient reasons.”

20. We note that the main ground for review of the Review Petitioner is that reasons and justification for time over-run in respect of four number of transmission assets had already been submitted in Petition No. 91/TT/2012. However, we observe that the Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 allowed tariff after condoning time over-run in respect of Asset-I and Asset-III only. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 did not deal with the issue of time over-run in respect of Asset-II and Asset-IV. Pursuant to Commission's order dated 29.12.2015 in Review Petition No.



25/RP/2015, the Commission took up Petition No. 91/TT/2012 again for hearing limited to the issue of sharing of transmission charges payable by NHPC. The Commission vide order dated 21.7.2016 in Petition No. 91/TT/2012 affirmed the arrangement of payment of sharing of transmission charges by NHPC with direction to CTU to examine whether the transmission assets were used by other generators during the period in question and if so, the transmission charges paid by them shall be utilized to reduce the liability of NHPC. However, the said order dated 21.7.2016 did not deal with time over-run of Asset-II and Asset-IV. The Review Petitioner filed Review Petition No. 19/RP/2015 in Petition No. 91/TT/2012 and the Commission vide order dated 7.9.2016 approved the COD for part of the asset (c-d-e-f) as 1.9.2013 as per the 2009 Tariff Regulations and directed NHPC to pay charges from 1.9.2013 to 23.4.2014. The Commission in the said order dated 7.9.2016 further observed that with effect from 23.4.2014, the transmission charges for (c-d-e-f) portion of Asset-II shall be included in PoC charges as provided under 2010 Sharing Regulations. As regards, portion (b-c) and portion (f-g), these elements will be declared under commercial operation with effect from the date of commercial operation of line portion (a-b) and portion (g-h), respectively. The Petitioner was directed to submit the details of the cost of portion of the transmission line represented by portion (c-d-e-f) of Asset II as on 1.9.2013 for determination of tariff. The Commission's order dated 7.9.2016 in Review Petition No. 19/RP/2015 only dealt with the issue of COD for parts of Asset-II in Petition No. 91/TT/2012 and it did not deal with time over-run of Asset-II.

21. The Commission in its order dated 5.2.2020 in Petition No. 91/TT/2012 has observed that there was time over-run in the case of Asset-I, Asset-II and Asset-III and it was beyond the control of the Review Petitioner.

22. Thus, we find that it is not the case of Review Petitioner that it was unable to produce the aforesaid facts at the time when order in Petition No. 107/TT/2017 was passed. In other



words, no new facts have been brought on record which were not in power and possession of the Review Petitioner or that these facts were not in the knowledge of the Review Petitioner at the time when the order in Petition No.107/TT/2017 was passed. On examination of the Review Petitioner's submissions, we find that none of the submissions satisfy that there is "any other sufficient cause" to review the order dated 17.8.2020.

23. The Review Petitioner rests its case on the fact that Petition No. 91/TT/2012 was filed for determination of four numbers of transmission assets and time over-run being common to all was condoned by the Commission in case of Asset-I and Asset-III. The Commission vide order dated 26.5.2015 in Petition No. 91/TT/2012 condoned time over-run of 42 months and allowed tariff for Asset-I and Asset-III leaving Asset-II and Asset-IV.

24. On perusal of the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012, we find that the said petition was filed in respect of four numbers of transmission assets. However, the Commission vide the said order dated 26.5.2015 considered and condoned time over-run of 42 months on the basis of material available on record and allowed tariff in respect of Asset-I and Asset-III only. The Commission in its order dated 26.5.2015 observed that it was not contemplating tariff in respect of Asset-IV as a separate petition being number 411/TT/2014 had been filed by the Review Petitioner when Petition No.91/TT/2012 itself was pending adjudication. The Commission in the said order dated 26.5.2015 did not allow tariff for Asset-II as it was not being utilized, since Koldam Switchyard was not commissioned and part of LILO could not be put to trial operation. Thus, it is apparent that the issue of time over-run with respect to Asset-II and Asset-IV was not even considered and addressed, leave alone condoned by the Commission in the order dated 26.5.2015 in Petition No. 91/TT/2012.

25. The Review Petitioner has contended that vide common affidavit dated 14.9.2018 in Petition No. 91/TT/2012, Petition No. 107/TT/2017 and Petition No. 136/TT/2017, it had



submitted justifications for the delay and time over-run for the assets of Parbati-II HEP in Petition No. 91/TT/2012 and Petition No. 411/TT/2014 covering the assets of Petition No. 107/TT/2017 and the Commission after considering the submissions of the Review Petitioner has already condoned the delay in COD of various transmission elements covered in the said two petitions. The Review Petitioner has further contended that as justifications for the delay and time over-run were given in the said two petitions, no further justification was given by it in Petition No. 107/TT/2017.

26. We have already observed that no delay was condoned in Petition No. 91/TT/2012 with regard to Asset-II and Asset-IV. Further, we have also perused the order dated 30.7.2016 in Petition No. 411/TT/2014 and find nothing in the order dated 30.7.2016 in Petition No. 411/TT/2014 suggesting that the issue of time over-run was considered and addressed, leave alone condoned. Thus, contention of the Review Petitioner that time over-run was considered and condoned for Asset-II and Asset-IV in Petition No. 91/TT/2012 and Petition No. 411/TT/2014, respectively does not reflect the correct fact.

27. On perusal of order dated 7.9.2016 in Review Petition No. 19/RP/2015, we find that the Commission in the said order only approved the COD for parts of Asset-II in Petition No. 91/TT/2012 and there was no discussion on the issue of time over-run of Asset-II or any of its parts. The matter in issue in the present Review Petition is with regard to time over-run of portions (c-d) and (e-f) of Asset-II which were carved out pursuant to the Commission's order dated 7.9.2016 in Review Petition No.19/RP/2015. Parts of Asset-II in Petition No. 91/TT/2012 i.e. portion (c-d) and portion (e-f) are now Asset-3 and Asset-4, respectively in Petition No. 107/TT/2017. Thus, it cannot be said that the Commission in order dated 7.9.2016 in Review Petition No.19/RP/2015 had considered and condoned the time over-run with respect to these parts of Asset-II.



28. The Review Petitioner has also contended that the Commission vide order dated 5.2.2020 in Petition No. 91/TT/2012 on re-consideration of the matter in terms of APTEL's judgment dated 16.7.2018 in Appeal No. 281 of 2016 and Appeal No. 81 of 2017, in paragraph 4 observed that there was time over-run of 42 months in the case of Asset-I, Asset-II and Asset- III which was mainly due to forest clearance, land acquisition and time taken for obtaining tree cutting permission. The Review Petitioner goes on to contend that the Commission found the said time over-run of 42 months was beyond the control of the Petitioner and condoned the same and therefore, goes on to claim that the time over-run in respect of Asset-II in Petition No. 91/TT/2012 was also condoned.

29. It is observed that Petition No.91/TT/2012 was heard by the Commission thrice. In the first instance, tariff was approved for Asset-I and Asset-III and tariff for Asset-II and IV was not allowed vide order dated 26.5.2015. The Commission in paragraph 6 of the order has clearly stated that tariff is not granted for Asset-II. The relevant portion of the order dated 26.5.2015 in Petition No.91/TT/2012 is extracted hereunder:

“6. A portion of the LILO circuits of Asset-II is not utilized as the Koldam switchyard has not been commissioned and the part of LILO cannot be put to trial operation without the line getting connected at the other end as per the APTEL order dated 2.7.2012 in Appeal No. 123 of 2011. Further, the petitioner has neither prayed for declaration of date of commercial operation under Regulation 3(12)(C) of the 2009 Tariff Regulations nor disclosed the information that the portion of LILO are not in use. Punjab State Power Corporation Limited (PSPCL), Respondent No. 6, has also raised this issue in their submission. Since the Koldam Switchyard has not been commissioned, we are not inclined to grant tariff for Asset-II in this petition. The petitioner is at liberty to file the tariff of this asset when complete LILO is put into regular service after test charge and trial operation.”

30. Further, the time over-run in case of Asset-I and Asset-III, for which tariff was allowed in order dated 26.5.2015, was dealt in paragraph 20 to paragraph 23 of the order and there was no mention about Asset-II in the said portion of the order. Thus, it is clear that issue of time over-run and tariff in case of Asset-II was not considered by the Commission in order dated 26.5.2015.



31. At the second instance, Petition No. 91/TT/2012 was reopened pursuant to the Commission's order dated 29.12.2015 in Petition No. 25/RP/2015 filed by NHPC. Petition No. 91/TT/2012 was reopened for reconsideration of the Commission's direction making NHPC liable for the transmission charges of Asset-I and Asset-III till commissioning of its generation. After hearing the parties, the Commission vide order dated 21.7.2016 in Petition No. 91/TT/2012 while reaffirming paragraph 23 of the order dated 26.5.2015 in Petition No. 91/TT/2012 holding NHPC liable for the transmission charges of Asset-I and Asset-III directed CTU to examine whether these transmission assets were used by other generators during the period in question, and if so, use the transmission charges paid by them for reducing the liability of NHPC. Therefore, the time over-run in case of the assets covered in Petition No.91/TT/2012 was not an issue for consideration by the Commission at that stage and accordingly, it was not at all considered in order dated 21.7.2016.

32. The Commission for the third time heard Petition No.91/TT/2012 on remand pursuant to the APTEL's judgement dated 16.7.2018 in Appeal No.281 of 2016 and Appeal No.81 of 2013. The Commission framed the following issues on the basis of the submissions made by PGCIL, NHPC and PKTCL:

"26. From the submissions of the parties, the following issues arise for our consideration:

(i) Whether Indemnification Agreement dated 22.7.2005 executed between NHPC and PGCIL is applicable?

(ii) Whether tariff can be granted for a part of any transmission system?

(iii) Whether COD of the assets/ elements in the present case was declared without putting in place the associated Communication System?

(iv) Whether the approach of the Commission is inconsistent in similar cases for allowing recovery of transmission charges?

(v) Whether the transmission charges in the present case should be shared by the other generators using the transmission system?"

33. From the perusal of the issues framed by the Commission, it is clear that the time over-run in case of the transmission assets was not for consideration of the Commission on remand.



34. We have perused order dated 5.2.2020 in Petition No. 91/TT/2012. It is observed that while giving a background of the matter, the Commission in paragraph 4 of the order observed “*There was a time over-run of 42 months in case of Assets-I, II and III and it was mainly due to forest clearance, land acquisition.....*” The issue of time over-run in case of Asset-II was never considered earlier by the Commission as brought in the aforesaid paragraphs from 29 to 33. Moreover, it was a remark made in the introduction of the order and it was not a finding of the Commission. Thus, mention of Asset-II in that sentence was an inadvertent error. The paragraph 4 of the order dated 5.2.2020 is extracted hereunder:

“4. There was a time over-run of 42 months in case of Assets-I, II and III and it was mainly due to forest clearance, land acquisition and time taken for obtaining tree cutting permission. The said time over-run of 42 months was found to be beyond the control of the Petitioner and, therefore, it was condoned. As regards Assets-I and III, the Petitioner submitted that in view of the requirement of NHPC, as conveyed to them by NHPC vide letter dated 12.6.2013, the Petitioner put them into commercial operation on 1.8.2013. Taking into consideration the submissions of the petitioner, the Commission approved the COD of Assets I and III as 1.8.2013 and granted tariff for Assets-I and III in this Petition in order dated 26.5.2015. However, the tariff for Asset-II was not allowed as a portion of LILO of circuits of Asset-II was not being utilized since the Koldam switchyard was not ready and part of LILO could not be put to trial operation.”

35. Moreover, in the 9th line of the paragraph it is mentioned that tariff for Asset-II was not allowed as a portion of LILO of circuits of Asset-II was not being utilized since the Koldam switchyard was not ready and part of LILO could not be put to trial operation. The Review Petitioner is reading paragraph 4 which is the introductory part of the order and the same cannot be said to be the finding of the Commission. Thus, there is no discussion at all on the issue of time over-run of Asset-II and there is nothing suggesting that time over-run in case of Asset-II has been condoned in the order dated 5.2.2020 in Petition No. 91/TT/2012. In fact, the relevant portion (paragraph 6 and paragraph 7) of the order dated 26.5.2025 extracted in the same paragraph 4 of the order dated 5.2.2020 in Petition No. 91/TT/2012 puts the facts in correct perspective, which is as under:



“6. A portion of the LILO circuits of Asset-II is not utilized as the Koldam switchyard has not been commissioned and the part of LILO cannot be put to trial operation without the line getting connected at the other end as per the APTEL order dated 2.7.2012 in Appeal No. 123 of 2011. Further, the Petitioner has neither prayed for declaration of date of commercial operation under Regulation 3(12)(C) of the 2009 Tariff Regulations nor disclosed the information that the portion of LILO are not in use. Punjab State Power Corporation Limited (PSPCL), Respondent No. 6, has also raised this issue in their submission. Since the Koldam Switchyard has not been commissioned, we are not inclined to grant tariff for Asset-II in this petition. The Petitioner is at liberty to file the tariff of this asset when complete LILO is put into regular service after test charge and trial operation.

7. Asset-IV has been commissioned in the 2014-19 tariff period and the Petitioner has already claimed tariff as per the 2014 tariff as per the 2014 Tariff Regulations for this asset in Petition No. 411/TT/2014. Accordingly, the transmission charges are allowed for only Asset-I and Asset-III in the instant petition. The Petitioner was directed to file separate capital cost of Assets-I and III as the Petitioner had submitted combined capital cost of all three assets. However, the Petitioner again vide affidavit dated 5.1.2015, submitted the combined capital costs of all the three assets.”

36. In the light of above discussions, we are of the view that the Review Petitioner has failed to show any error apparent on the face of record or discovery of any new facts which were not in its knowledge or any other sufficient cause to bring its case within the ambit of review.

37. For the reasons mentioned above, we are unable to accept the contentions of the Review Petitioner for admission of the Review Petition. Accordingly, the Review Petition is dismissed at the stage of admission. The Review Petition No. 32/RP/2020 is disposed of accordingly.

sd/-

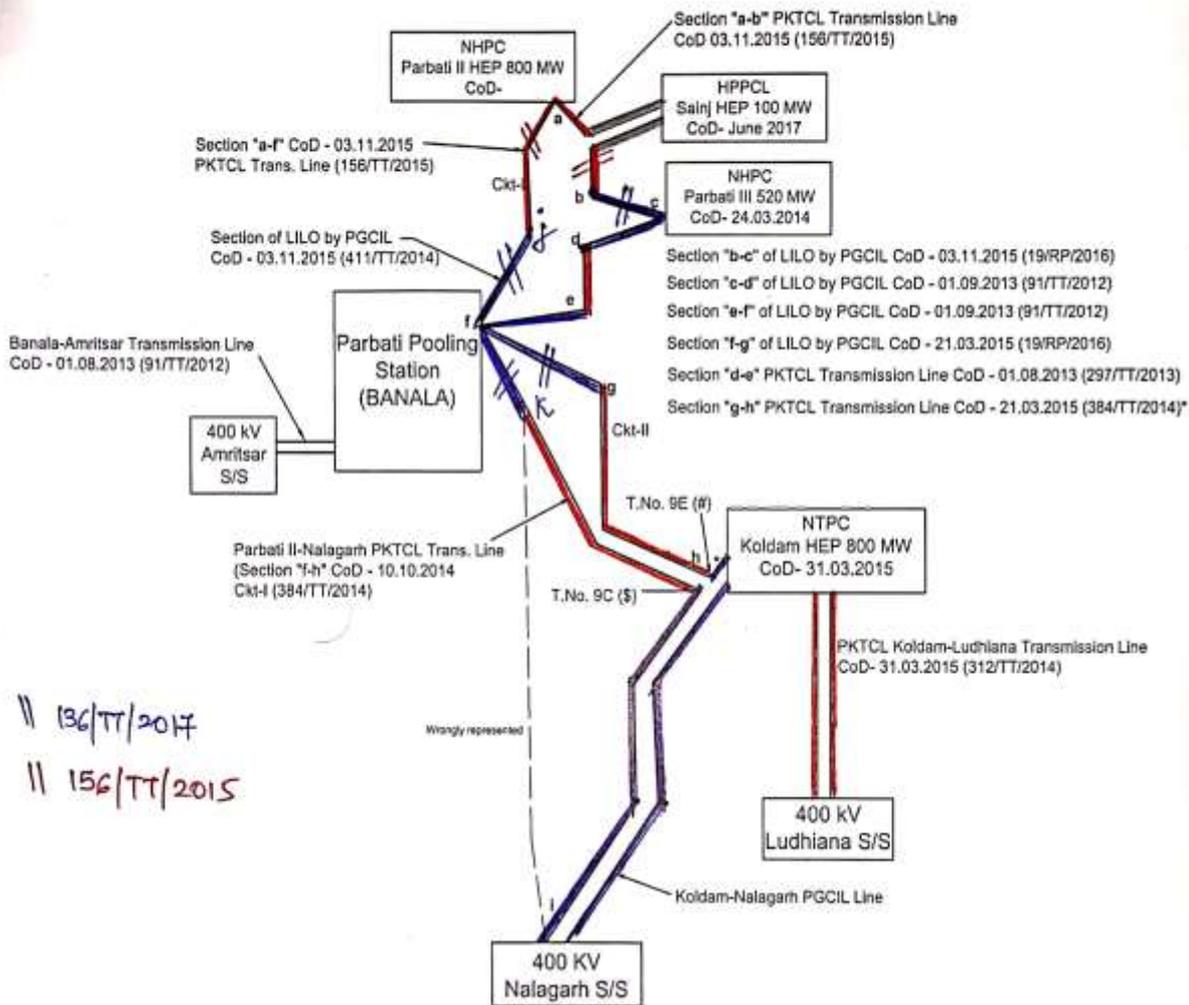
(I. S. Jha)
Member

sd/-

(P. K. Pujari)
Chairperson



The Schematic diagram describing transmission system constructed by PKTCL



Power Evacuation System for Koldam-Parbati II and Parbati III HEP

- LEGEND:**
- PGCIL Lines
 - PKTCL Lines
 - HPPCL Lines
 - - - - - Wrongly represented

* Section of Koldam-Nalagarh Line of PGCIL CoD 01.04.2011 (2/TT/2011)
 § Ckt-I "f-h" connected at Tower 9C of Koldam-Nalagarh Line of PGCIL forming Banala-Nalagarh section.
 # Ckt-II "g-h" connected at Tower 9E of Koldam-Nalagarh Line of PGCIL forming Banala-Koldam section.

