

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 18/RP/2023 along with IA (Diary) No. 212/2023
and
Petition No. 19/RP/2023 along with IA (Diary)No. 211/2023

Coram:

Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Date of Order: 20.07.2023

Petition No. 18/RP/2023 along with IA (Diary) No. 212/2023

In the matter of:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulations 17 and 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of the tariff order dated 9.1.2023 in Petition No. 473/TT/2020.

And in the matter of:

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

..... Review Petitioner

Versus

1. Karnataka Power Transmission Corporation Limited,
Kaveri Bhavan, Bangalore-560009.
2. Transmission Corporation of Andhra Pradesh Limited,
Vidyut Soudha, Hyderabad-500082.
3. Kerala State Electricity Board, Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695004.
4. Tamil Nadu Generation and Distribution Corporation Limited,
(Formerly Tamil Nadu Electricity Board -TNEB),
NPKRR Maaligai, 800, Anna Salai, Chennai-600002.
5. Electricity Department,
Government of Pondicherry,
Pondicherry-605001.



Order in Petition No. 18/RP/2023 and 19/RP/2023

6. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),
P&T Colony, Seethmmadhara,
Vishakhapatnam, Andhra Pradesh.
7. Southern Power Distribution Company of Andhra Pradesh Limited,
Srinivasasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta, Tirupati-517501.
Chitoor District, Andhra Pradesh
8. Southern Power Distribution Company of Telangana Limited,
Corporate Office, Mint Compound,
Hyderabad-500063, Telangana.
9. Northern Power Distribution Company of Telangana Limited,
Opposite NIT Petrol Pump, Chaitanyapuri, Kazipet,
Warangal-506004, Telangana.
10. Bangalore Electricity Supply Company Limited,
Corporate Office, K. R. Circle,
Bangalore-560001, Karanataka.
11. Gulbarga Electricity Supply Company Limited,
Station Main Road, Gulbarga,
Karnataka.
12. Hubli Electricity Supply Company Limited,
Navanagar, PB Road. Hubli,
Karnataka.
13. MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle,
Mangalore-575001,
Karnataka.
14. Chamundeswari Electricity Supply Corporation Limited,
927, L J Avenue,
Ground Floor, New Kantharaj Urs Road,
Saraswatipuram, Mysore-570009,
Karnataka.
15. Electricity Department,
Government of Goa,
Vidyuti Bhawan, Panaji,
Goa-403001.
16. Transmission Corporation of Telangana Limited,
Vidhyut Sudha, Khairatabad,



Hyderabad-500082.

17. Tamil Nadu Transmission Corporation Ltd.,
NPKRR Maaligai, 800, Anna Salai,
Chennai-600002.

...Respondent(s)

Petition No. 19/RP/2023 along with IA (Diary) No. 211/2023

In the matter of:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulations 17 and 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of the tariff order dated 14.11.2022 in Petition No. 12/TT/2022.

And in the matter of:

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

..... Review Petitioner

Versus

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. Gujarat Energy Transmission Corporation Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara-390007.
8. Electricity Department Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel,
Goa-403001.
9. Electricity Department Administration of Daman & Diu,
Daman-396210.
10. Electricity Department,
Administration of Dadra Nagar Haveli,
Collector and District Magistrate, Silvassa,
Dadra & Nagar Haveli-396230.
11. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh-492013.
12. Chhattisgarh State Power Transmission Company Limited,
State Load Despacth Building,
Dangania, Raipur-492013.
13. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh-492013.

...Respondent(s)

For Review Petitioner : Ms. Swapna Seshadri, Advocate, PGCIL
Shri Utkarsh Singh, Advocate, PGCIL
Shri Mohammad Mohsin, PGCIL
Shri Zafrul Hasan, PGCIL Shri Arjun Malhotra, PCCIL

For Respondent : None

ORDER

The Power Grid Corporation of India Limited (hereinafter referred to as "Review Petitioner") has filed Petition No. 18/RP/2023 and Petition No. 19/RP/2023 seeking review of the order dated 9.1.2023 in Petition No. 473/TT/2020 and order dated 14.11.2022 in Petition No. 12/TT/2022 respectively, under Section 94(1)(f) of the Electricity Act, 2003 read with Regulations 17 and 103 of the Central Electricity



Order in Petition No. 18/RP/2023 and 19/RP/2023

Regulatory Commission (Conduct of Business) Regulations, 1999. The issues and the ground raised by the Review Petitioner in the said review petitions are same and hence the review petitions are taken up together. The Review Petitioner has also filed IAs for condonation of the delay of 77 days and 129 days in filing the present review petitions.

2. The Review Petitioner has sought review of the impugned orders dated 9.1.2023 and 14.11.2022 disallowing the revision of tariff of the earlier periods and approve the revised transmission tariff for the 2001-04, 2004-09 and 2009-14 tariff periods for the transmission assets covered in Petition No. 473/TT/2020 and Petition No. 12/TT/2022 in terms of the APTEL's finding(s) in the judgment dated 22.1.2007 in Appeal No. 81 of 2005 and Batch and judgment dated 13.6.2007 in Appeal No. 139 of 2006.

Brief facts

3. The brief facts in the instant review petitions are as follows:

a. The Review Petitioner in Petition No. 473/TT/2020 had prayed for revision of transmission tariff of the 2001-04, 2004-09 and 2009-14 tariff periods; truing-up of the transmission tariff for 2014-19 tariff period and determination of the transmission tariff for 2019-24 tariff period for the assets associated with Ramagundam STPP including ICT at Khammam and Reactor at Gazuwaka in Southern Region under "CTP Augmentation in Southern Region".

b. In Petition No. 12/TT/2022, the Review Petitioner had prayed for revision of transmission tariff of the 2004-09 and 2009-14 tariff periods; truing-up of the transmission tariff for 2014-19 tariff period and determination of the transmission tariff for 2019-24 tariff period for the assets associated with "Sipat-I Transmission System".



c. The Commission vide order dated 9.1.2023 in Petition No. 473/TT/2020 disallowed the Review Petitioner's prayer for revision of transmission tariff of the 2001-04, 2004-09 and 2009-14 tariff periods and in order dated 14.11.2022 in Petition No. 12/TT/2022 disallowed the prayer for revision of tariff of 2004-09 and 2009-14 tariff periods taking into consideration the APTEL's judgement dated 17.10.2022 in Appeal No. 212 of 2020 and IA No.1683 of 2022 and Appeal No. 335 of 2022 and IA No.1580 of 2020 filed by BRPL and BYPL. The relevant portion of the APTEL's judgement dated 17.10.2022 is as follows:

"25. For the foregoing reasons, we find that the objections taken by the appellants to the maintainability of the petition (no. 288/TT/2019), in the case involving them, were wrongly rejected by the Central Commission by Order dated 6.11.2019. We hold to the contrary and, thus, set aside and vacate the said order. Resultantly, the subsequent proceedings in same matter taken out before the Central Commission are found to be impermissible rendering the final Order dated 31.07.2020 non est. The same is also consequently set aside.

26. The appeals are allowed in above terms. The pending applications are rendered infructuous and stand disposed of accordingly."

d. The Commission in order dated 9.1.2023 in Petition No. 473/TT/2020 made the following observations, while disallowing the Review Petitioner's prayer for revision of tariff of the 2001-04, 2004-09 and 2009-14 tariff periods.

"8. We have considered the submissions of the Petitioner and TANGEDCO regarding the revision of tariff of 2001-04, 2004-09 and 2009-14 tariff periods. APTEL vide judgment dated 22.1.2007 in Appeal No. 81 of 2005 and batch matters observed that IoL for the period from 1.4.1998 to 31.3.2001 shall be computed only on normative loan repayment as per its judgment dated 14.11.2006 in Appeal No. 94 of 2005 and Appeal No. 96 of 2005. APTEL vide its judgment dated 14.11.2006 had set aside the Commission's methodology of computation of loan on actual repayment basis or normative repayment whichever is higher and held that the Commission is required to adopt normative debt repayment methodology for working out IoL liability order for the period from 1.4.1998 to 31.3.2001. APTEL vide judgment dated 13.6.2007 in Appeal No. 139/2006 and batch matters further held that Additional Capital Expenditure (ACE) after COD should also be considered for computation of maintenance spares. Further, APTEL in its judgement dated 13.6.2007 in Appeal No.139 of 2006 and batch matters observed that depreciation is an expense and it cannot be deployed for deemed repayment of loan and, accordingly, directed the Commission to compute the outstanding loan afresh. In view of the above directions of APTEL, the outstanding loan allowed for the transmission assets for 2004-09 tariff period is revised in the instant order. The



Commission and certain interested parties filed Civil Appeals against the APTEL's judgments before the Hon'ble Supreme Court in 2007. Based on the APTEL's judgments dated 22.1.2007 and 13.6.2007, the Petitioner had sought revision of tariff of its transmission assets for 2001-04 and 2004-09 tariff periods in Petition No.121/2007. The Commission taking into consideration the pendency of Appeals before the Hon'ble Supreme Court adjourned the said petition sine die and directed that the same be revived after the disposal of Civil Appeals by the Hon'ble Supreme Court.

9. The Hon'ble Supreme Court vide order dated 10.4.2018, dismissed the said Civil Appeals filed against the APTEL's said judgments. Thus, the judgements of APTEL have attained finality. Consequent to the Hon'ble Supreme Court's order dated 10.4.2018 in NTPC matters, Petition No. 121/2007 was listed for hearing on 8.1.2019. The Commission vide order dated 18.1.2019 in Petition No. 121/2007, directed the Petitioner to submit its claim separately for the assets at the time of filing of truing up petition for 2014-19 tariff period.

10. On the basis of the above directions in order dated 18.1.2019 in Petition No.121/2007, the Petitioner sought revision of the tariff allowed earlier for the 2001-04, 2004-09 and 2009-14 tariff periods in all applicable cases and the consequent revision of tariff of 2014-19 tariff period. The Commission has revised the tariff of the 2001-04 and 2004-09 tariff periods allowed earlier for the transmission assets of the Petitioner on the basis of the APTEL's judgement at the stage of truing up of the 2014-19 tariff and determination of tariff of the 2019-24 tariff period in some of the petitions filed by the Petitioner.

11. In a similar case, the Petitioner filed Petition No. 288/TT/2019 for revision of transmission tariff for 2001-04, 2004-09 and 2009-14 tariff periods, truing-up of transmission tariff of 2014-19 tariff period and determination of transmission tariff for 2019-24 tariff period for LILO of 400 kV S/C Chamera-1 Kishenpur transmission line at Chamera-II under transmission system associated with Chamera HEP Stage-II Transmission System in Northern Region. BRPL objected to the re-opening of the tariff of the transmission assets where final tariff has already been determined, on the ground that no appeal was filed by Petitioner against them and as such the orders of the Commission passed therein have attained finality. The objections of BRPL were rejected by the Commission vide order dated 6.11.2019 and tariff of 2001-04, 2004-09 and 2009-14 tariff periods earlier allowed for LILO of 400 kV S/C Chamera-1 Kishenpur transmission line at Chamera-II under transmission system associated with Chamera HEP Stage-II Transmission System in Northern Region was revised by the Commission vide order dated 31.7.2020. BRPL and BYPL filed Appeal No. 212 of 2020 and IA No. 1683 of 2022 and Appeal No. 335 of 2022 and IA No.1580 of 2020 respectively against the Commission's orders dated 6.11.2019 and 31.7.2020 in Petition No. 288/TT/2019 before APTEL. APTEL vide judgement dated 17.10.2022 in the abovesaid Appeals has set aside the Commission's interim order dated 6.11.2019 and the final order dated 31.7.2020 in Petition No. 288/TT/2019 filed by the Petitioner. The relevant portion of the APTEL's judgement dated 17.10.2022 is as follows:

"25. For the foregoing reasons, we find that the objections taken by the appellants to the maintainability of the petition (no. 288/TT/2019), in the case involving them, were wrongly rejected by the Central Commission by Order dated 6.11.2019. We hold to the contrary and, thus, set aside and vacate the said order. Resultantly, the subsequent proceedings in same matter taken out



before the Central Commission are found to be impermissible rendering the final Order dated 31.07.2020 non est. The same is also consequently set aside.

26. The appeals are allowed in above terms. The pending applications are rendered infructuous and stand disposed of accordingly.”

12. In view of the above referred APTEL’s judgement dated 17.10.2022 in Appeal No. 212 of 2020 and IA No.1683 of 2022 and Appeal No. 335 of 2022 and IA No.1580 of 2020, the Petitioner’s prayer for revision of transmission tariff of 2004-09 and 2009-14 tariff periods of the transmission assets is not allowed.”

e. Similar observations were made by the Commission in order dated 14.11.2022 in Petition No. 12/TT/2022.

f. The Review Petitioner has filed Civil Appeal Nos.74-75/2023 before the Hon’ble Supreme Court against the APTEL’s judgement dated 17.10.2022 in Appeal No. 212 of 2020 and IA No.1683 of 2022 and Appeal No. 335 of 2022 and IA No.1580 of 2020. The Hon’ble Supreme Court while issuing notices in the Civil Appeals, vide Record of Proceedings dated 23.1.2023, made the following observations:

“We are issuing the notice as it is stated that in number of other cases, applications have been filed before the Appellate Tribunal challenging the orders passed by the Central Electricity Regulatory Commission (“CERC”) revising / amending the orders passed by them in the Light of the ratio of the impugned judgment, though, the review / amendment orders in those cases were passed between the years 2004 to 2009. It is submitted that belated challenge will result in substantial liabilities payable by the appellant.

Learned Senior Advocate appearing for the appellant, on instructions, states that the appellant would not press for recovery of the disputed against the respondents. In view of the issue raised, we stay the ratio of the judgment as a precedent, but clarify that it will be open to the authorities to duly consider all reasons and contentions and pass order / judgment without relying upon the impugned judgment.”

4. The matter was heard on 5.7.2023 and order was reserved on admissibility of the review petitions.

5. The Review Petitioner has submitted that the judgment dated 17.10.2022 passed by APTEL in Appeal No.212 of 2020 and Appeal No.335 of 2022 is case specific to the Appeal(s) filed by BRPL and BYPL and there are no generic findings in the judgment



dated 17.10.2022 or directions to apply the judgment '*in rem*' to all cases. However, the Commission has applied the findings of the judgment in case of the transmission assets in Petition No. 473/TT/2020 and Petition No. 12/TT/2022 without giving an opportunity to the Petitioner to explain the import of the judgment. The Review Petitioner has further submitted that the Review Petitioner had filed a Civil Appeal No. 74-75 of 2023 against the judgement of APTEL dated 17.10.2022 and the Supreme Court, vide RoP dated 23.1.2023, has stayed the ratio of the impugned judgement of the APTEL as precedence and directed that it is open for the authorities like the Commission to pass orders without relying upon the said judgement.

6. We have considered the submissions of the Review Petitioner. The basic contention of the Review Petitioner is that the APTEL's judgement dated 17.10.2022 is applicable only in the matters where Appeals were filed by BYPL and BRPL, however, the Commission applied the same in case of the transmission assets covered in Petition No. 473/TT/2020 and Petition No. 12/TT/2022 which is an error apparent. The Review Petitioner has further contended that Hon'ble Supreme Court has stayed the ratio of the judgement of the APTEL dated 17.10.2022 as precedence and directed the authorities like the Commission to pass orders without considering the APTEL's judgement.

7. As the Hon'ble Supreme Court has stayed the ratio of the judgement of APTEL dated 17.10.2022 as a precedent, on the basis of which the revision of tariff of earlier tariff periods was disallowed by the Commission in order dated 9.1.2023 in Petition No. 473/TT/2020 and order dated 14.11.2022 in Petition No. 12/TT/2022, and has also clarified that it is open to the authorities like the Commission to pass orders/ judgements without relying on the aforesaid judgement dated 17.10.2022 passed by the APTEL, we



condone the delay in filing of the review petitions and admit Petition No. 18/RP/2023 and Petition No. 19/RP/2023. However, we are not inclined to allow revision of the tariff of the transmission assets of the earlier tariff periods in Petition No. 18/RP/2023 and Petition No. 19/RP/2023 at this juncture and we would like to wait for the final outcome of the Civil Appeal Nos.74-75/2023 pending before the Hon'ble Supreme Court, as it would require re-revision of the tariff of the earlier tariff periods, if the Review Petitioner does not succeed in the said Civil Appeals.

8. Accordingly, we adjourn Petition No. 18/RP/2023 and Petition No. 19/RP/2023 sine-die with a direction to the Review Petitioner to revive the review petitions on disposal of the Civil Appeal Nos.74-75/2023 by the Hon'ble Supreme Court.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

