

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 22/RP/2023 along with IA No. 58/IA/2023  
and  
Petition No. 23/RP/2023**

**Coram:**

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

**Date of Order: 04.09.2023**

**Petition No. 22/RP/2023 along with IA No. 58/IA/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 8.12.2022 in Petition No. 320/TT/2020.

**And in the matter of:**

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

**...Review Petitioner**

**Vs.**

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Vidyut Marg, Jaipur-302005.
2. Ajmer Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
3. Jaipur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
4. Jodhpur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.



Order in Petition No. 22/RP/2023 and 23/RP/2023

5. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla-171004.
6. Punjab State Power Corporation Limited,  
(formerly known as Punjab State Electricity Board),  
Shed No. D-3, Shakti Vihar,  
Near Phatak No. 23,  
Patiala-147001, Punjab.
7. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula (Haryana)-134109.
8. Power Development Department,  
PDD Complex, Bemina,  
Srinagar/SLDC Building Narwal Gladni Jammu,  
present Janipur Jammu,  
Near J&K High Court, Jammu.
9. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001.
10. Delhi Transco Limited,  
Shakti Sadan, Kotla Road,  
New Delhi-110002.
11. BSES Yamuna Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi.
12. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi.
13. Tata Power Delhi Distribution Limited,  
33 kV Sub-station, Building, Hudson Lane,  
Kingsway Camp, North Delhi-110009.
14. Chandigarh Administration,  
Sector-9, Chandigarh.
15. Uttarakhand Power Corporation Limited,  
Uja Bhawan, Kanwali Road,  
Dehradun.
16. North Central Railway,



Allahabad.

17. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110002.

...Respondent(s)

**Petition No. 23/RP/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 27.3.2023 in Petition No. 78/TT/2021.

**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.
2. Ajmer Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
3. Jaipur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub-station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
4. Jodhpur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub- station Building,  
Caligiri Road, Malviya Nagar, Jaipur-302017.
5. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla-171004.
6. Punjab State Power Corporation Limited,  
(formerly known as Punjab State Electricity Board),  
Shed No. D-3, Shakti Vihar,  
Near Phatak No. 23,  
Patiala-147001, Punjab.



7. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula (Haryana)-134109.
8. Power Development Department,  
PDD Complex, Bemina,  
Srinagar/SLDC Building Narwal Gladni Jammu,  
present Janipur Jammu,  
Near J&K High Court, Jammu.
9. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001.
10. Delhi Transco Limited,  
Shakti Sadan, Kotla Road,  
New Delhi-110002.
11. BSES Yamuna Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019.
12. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019.
13. Tata Power Delhi Distribution Limited,  
33 kV Sub-station, Building, Hudson Lane,  
Kingsway Camp, North Delhi-110009.
14. Chandigarh Administration,  
Sector-9, Chandigarh.
15. Uttarakhand Power Corporation Limited,  
Uja Bhawan, Kanwali Road,  
Dehradun.
16. North Central Railway,  
PCEE Office, Ganga Complex, Headquarter,  
North Central Railway, Prayagraj-211001.
17. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110002.

**...Respondent(s)**



**For Review Petitioner** : Ms. Swapna Seshadri, Advocate, PGCIL  
Shri Utkarsh Singh, Advocate, PGCIL  
Ms. Surbhi Gupta, Advocate, PGCIL  
Shri B.B. Rath, PGCIL  
Ms. Supriya Singh, PGCIL

**For Respondent** : None

### **ORDER**

The Power Grid Corporation of India Limited (hereinafter referred to as “Review Petitioner”) has filed Petition No. 22/RP/2023 and Petition No. 23/RP/2023 seeking review of the order dated 8.12.2022 in Petition No. 320/TT/2020 and order dated 27.3.2023 in Petition No. 78/TT/2021 respectively, 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. 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 I.A. No.58/IA/2023 in Petition No. 22/RP/2023 for condonation of the delay of 106 days in filing the present review petition.

2. The Review Petitioner has sought review of the orders dated 8.12.2022 and 27.3.2023 in Petition No. 320/TT/2020 and Petition No. 78/TT/2021 respectively, wherein the Review Petitioner’s plea for revision of tariff of the 2001-04, 2004-09 and 2009-14 tariff periods, was disallowed in view of the APTEL’s judgment dated 22.1.2007 in Appeal No. 81 of 2005 & 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:



Order in Petition No. 22/RP/2023 and 23/RP/2023

(a) The Review Petitioner in Petition No. 320/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 Nathpa-Jhakri Transmission System in Northern Region.

(b) In Petition No. 78/TT/2021, 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 in respect of the assets under Rihand Transmission System in the Northern Region.

(c) The Commission vide order dated 8.12.2022 in Petition No. 320/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 27.3.2023 in Petition No. 78/TT/2021 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 8.12.2022 in Petition No. 320/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.

*"6. We have considered the submissions of the Petitioner regarding the revision of tariff of 2001-04, 2004-09 and 2009-14 tariff periods. The 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 will 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. The 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, the 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 above directions of the APTEL, the Petitioner has filed the instant petition seeking revision of the outstanding loan allowed for the transmission assets for 2001-04 and 2004-09 tariff period.*

*7. 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.*

*8. 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 the 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.*

*9. On the basis of the above directions in order dated 18.1.2019 in Petition No. 121/2007, PGCIL sought revision of the tariff allowed earlier for the 2001-04 and 2004-09, 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 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.*



10. In a similar case, the Petitioner filed Petition No.288/TT/2019 for revision of transmission tariff for 2001-04, 2004-09, 2009-14 tariff periods, true-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 reopening 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 & IA No.1683 of 2022 and Appeal No.335 of 2022 & 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 above said 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 PGCIL. The relevant portion of the APTEL's judgement dated 17.10.2022 is as follows:

*"22. No doubt, tariff determination is a continuous process. At the same time, however, it has to be borne in mind that tariff is determined by formal orders for specified control periods, Financial Year wise. The tariff determination for a particular control period regulates the affairs of the parties and stakeholders involved for the period to which it is made applicable. A tariff determined on the basis of projections presented by petitions in the nature of Average Revenue Requirement ("ARR") or Annual Performance Review ("APR") is generally followed up by true-up orders based on audited accounts wherein suitable corrections are incorporated. It is with the objective of maintaining regulatory certainty that the law inhibits routine or frequent amendment to the tariff orders, one exception to this general principle being the changes necessary under the terms of fuel surcharge formula [Section 62 (4)]. The law qualifies this inhibition by using this expression "ordinarily". The amendments to tariff orders do become necessary in case errors are found in the tariff order upon appellate scrutiny or, as in the case of UPPCL (supra) some other factors supervene e.g. on account of additional expenditure burden (in that case due to wage revision).*

*23. The NTPC judgments (dated 22.01.2007 and 13.06.2007) of this tribunal were not in a lis wherein the appellants were involved. It was a matter essentially involving another entity (NTPC). The principles concerning interpretation of Tariff Regulations, 2001 and Tariff Regulations, 2004 were decided by this tribunal which statedly showed the views taken by the Central Commission in the original Tariff Orders dated 23.11.2005, 24.10.2006 and 20.10.2010 to be incorrect. There was no directive of this tribunal, or of any statutory authority, for such orders to be revisited pursuant to the interpretation given by this tribunal in the NTPC judgments. The respondent PGCIL took the matter to the Central Commission with a prayer for implementation of the NTPC judgments in its case. This, in effect, was a prayer seeking review and not revision of the tariff orders in the general sense of the term. Such prayer couched in the language of seeking implementation of the law settled by the NTPC judgments being essentially a*





*prayer for review, was impermissible given the specific inhibition there-against by the explanation appended to Rule (1) of Order 47 CPC. This is precisely the view taken by this tribunal in judgment reported as Madhya Pradesh Power Trading Co. Ltd v Central Electricity Regulatory Commission 2009 SCC On Line APTEL 107 : (2009) APTEL 107 [see, para 11(v)].*

*24. We must, however, hasten to add that when we take the above view, we are not to be misunderstood as having ruled that the error committed by the Central Commission in the Orders dated 23.11.2005, 24.10.2006 and 20.10.2010 – assuming such orders were erroneous if seen in the light of the view taken in the NTPC judgments – cannot be corrected or must be allowed to “be perpetuated”, as was ruled against in Madhya Pradesh Power Generation Co v Madhya Pradesh State Electricity Regulatory Commission (Appeal no. 24 of 2010) 2011 ELR (APTEL) 830. The party facing the wrong end of the stick (due to erroneous approach) will have remedies in law which include an appeal or prayer for correction in truing-up or proper principle to be applied in subsequent tariff orders, but not a remedy in the nature of review in the face of express prohibition in Order 47 Rule (1) CPC, not the least at such distance in time after the elapse of control periods by which stage, borrowing the words from UPPCL (supra), “when everybody had arranged its affairs”.*

*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.”*

*11. In view of the above referred APTEL’s judgement dated 17.10.2022 in Appeal No.212 of 2020 & IA No.1683 of 2022 and Appeal No.335 of 2022 & IA No.1580 of 2020, the Petitioner’s prayer for revision of transmission tariff of 2001-04, 2004- 09 and 2009-14 tariff periods of the combined assets is not allowed*

(e) Similar observations were made by the Commission in order dated 27.3.2023 in Petition No. 78/TT/2021.

(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 instant petitions were heard on 30.8.2023.
5. The learned counsel for 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. However, the Commission has applied the findings of the said judgment in Petition No. 320/TT/2020 and Petition No. 78/TT/2021. She 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. She further submitted that the said Civil Appeals are listed before the Hon'ble Supreme Court on 8.9.2023 and these review petitions may be adjourned till the disposal of the Civil Appeals, as done by the Commission vide order dated 20.7.2023 in Petition Nos.18/RP/2023 and 19/RP/2023.



6. We have considered the submissions of the Review Petitioner. 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 8.12.2022 in Petition No. 320/TT/2020 and order dated 27.3.2023 in Petition No. 78/TT/2021, 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 Petition No. 22/RP/2022 and admit the Review Petition No. 22/RP/2023 and Review Petition No. 23/RP/2023. However, we are not inclined to revise the tariff of the transmission assets covered in Petition No.320/TT/2020 and Petition No.78/TT/2021 at this stage, as it would require further revision of the tariff of the earlier tariff periods, if the Review Petitioner does not succeed in the said Civil Appeals. Therefore, we would like to wait for the final outcome of the Civil Appeal Nos.74-75/2023 pending before the Hon'ble Supreme Court.

7. Accordingly, we adjourn Review Petition No. 22/RP/2023 and Review Petition No. 23RP/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.

8. The I.A. No. 58/IA/2023 in Review Petition No.22/RP/2023 is disposed of.

**sd/-**  
**(P. K. Singh)**  
**Member**

**sd/-**  
**(Arun Goyal)**  
**Member**

**sd/-**  
**(I. S. Jha)**  
**Member**

