

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**IA No. 66/IA/2020**  
**in**  
**Petition No. 685/TT/2020**

**Coram:**

**Shri Jishnu Barua, Chairperson**  
**Shri Arun Goyal, Member**  
**Shri P.K. Singh, Member**

**Date of Order : 29.09.2023**

**In the matter of:**

Application under Section 94(2) of the Electricity Act, 2003 read with Regulation 68 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 on behalf of the Petitioner-Powergrid Corporation of India Limited for placing on record the additional documents and seeking directions.

**And in the matter of:**

Approval under Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and determination of transmission tariff from the date of commercial operation (COD) to 31.3.2024 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 in respect of  $\pm$  800 kV 6000 MW Raigarh (HVDC Station)-Pugalur (HVDC Station) HVDC Link along with  $\pm$  800 kV 1500 MW (Pole-I) HVDC terminals each at Raigarh (HVDC Station) & Pugalur (HVDC Station) under " HVDC Bipole link between Western Region (Raigarh, Chattisgarh) and Southern Region (Pugalur, Tamil Nadu)-North Trichur (Kerala)- Scheme 1: Raigarh-Pugalur 6000 MW HVDC System" in the Southern Regional grid.

**And in the matter of:**

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

**.....Applicant/ Petitioner**

**Versus**

1. Tamil Nadu Generation and Distribution Corporation Limited,  
NPKRR Maaligai, 800, Anna Salai,  
Chennai-600002.



2. Transmission Corporation of Andhra Pradesh Limited,  
Vidyut Soudha, Near Axis Bank, Eluru Road,  
Gunadala, Vijaywada-520004.
3. Kerala State Electricity Board,  
Vaidyuthi Bhavanam  
Pattom, Thiruvananthapuram-695004.
4. Tamil Nadu Electricity Board,  
NPKRR Maaligai, 800, Anna Salai,  
Chennai-600002.
5. Electricity Department,  
Government of Goa,  
Vidyuti Bhawan, Panaji,  
Goa-403001.
6. Electricity Department,  
Government of Pondicherry,  
Pondicherry-605001.
7. Eastern Power Distribution Company of Andhra Pradesh Limited,  
P&T Colony, Seethmmadhara, Vishakhapatanam,  
Andhra Pradesh.
8. Southern Power Distribution Company of Andhra Pradesh Limited,  
D. No.: 19-13-65/A, Srinivasapuram, Corporate Office,  
Tiruchanoor Road, Tirupati-517503  
Chittoor District, Andhra Pradesh.
9. Southern Power Distribution Company of Telangana Limited,  
6-1-50, Corporate Office, Mint Compound,  
Hyderabad-500063 (Telangana).
10. Northern Power Distribution Company of Telangana Limited,  
H. No. 2-5-3 1 / 2, Vidyut Bhawan, Corporate Office,  
Nakkal Gutta, Hanamkonda,  
Warangal-506001, Telangana.
11. Bangalore Electricity Supply Company Limited,  
Corporate Office, K.R. Circle,  
Bangalore-560001 (Karnataka).
12. Gulbarga Electricity Supply Company Limited,  
Station Main Road, Gulbarga,  
Karnataka.
13. Hubli Electricity Supply Company Limited,  
Navanagar, PB Road,



Hubli, Karnataka.

14. MESCOM Corporate Office,  
MESCOM Bhavan,  
Kavoor Cross Road, Bejai,  
Mangalore-575004 (Karnataka).
15. Chamundeswari Electricity Supply Corporation Limited,  
CESC Mysore, Corporate Office,  
29, Vijayanagara 2nd Stage,  
Hinkal, Mysuru-570017
16. Transmission Corporation of Telangana Limited,  
Vidhyut Sudha, Khairatabad,  
Hyderabad-500082.
17. Karnataka Power Transmission Corporation Limited,  
Kaveri Bhawan, Bangalore-560009.
18. Tamil Nadu Transmission Corporation,  
NPKRR Maaligai, 800, Anna Salai,  
Chennai-600002.
19. Madhya Pradesh Power Management Company Limited,  
Shakti Bhawan, Rampur,  
Jabalpur - 482008.
20. Maharashtra State Electricity Distribution Company Limited,  
Hongkong Bank Building, 3rd Floor,  
M.G. Road, Fort, Mumbai-400001.
21. Gujarat Urja Vikas Nigam Limited,  
Sardar Patel Vidyut Bhawan,  
Race Course Road, Vadodara-390007.
22. Electricity Department,  
Administration Of Daman & Diu, Daman-396210.
23. DnH Power Distribution Corporation Limited,  
Vidyut Bhawan, 66 kV Road,  
Near Secretariat Amli, Silvassa-396 230.
24. Chhattisgarh State Power Distribution Company Limited,  
P.O. Sunder Nagar, Dangania, Raipur,  
Chhatisgaarh-492013.
25. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,  
3/54, Press Complex, Agra-Bombay Road,  
Indore-452008.



26. Ajmer Vidyut Vitran Nigam Limited,  
Corporate Office, Vidyut Bhawan,  
Panchsheel Nagar,  
Makarwali Road Ajmer-305004 (Rajasthan)
27. Jaipur Vidyut Vitran Nigam Limited,  
132 kV, GSS RVPNL Sub-Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur-302017 (Rajasthan)
28. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur - 342 003(Rajasthan)
29. Himachal Pradesh State Electricity Board Limited,  
Vidyut Bhawan, Kumar House Complex Building-II,  
Shimla-171004.
30. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001.
31. Haryana Power Purchase Centre,  
Shakti Bhawan,  
Sector-6 Panchkula (Haryana) 134109.
32. Jammu Kashmir Power Corporation Limited,  
220/66/33 kV Gladni  
Sub-station SLDC Building Narwal, Jammu.
33. Punjab State Power Corporation Limited,  
The Mall, PSEB Head Office, Patiala-147001.
34. BSES Yamuna Power Limited,  
B-Block, Shakti Kiran, Bldg. (Near Karkadooma Court),  
Karkadooma 2nd Floor, New Delhi-110092.
35. BSES Rajdhani Power Limited,  
BSES Bhawan,  
Nehru Place, New Delhi.
36. Tata Power Delhi Distribution Limited,  
33 kV Sub-station, Building Hudson Lane,  
Kingsway Camp, North Delhi-110009.
37. Uttarakhand Power Corporation Limited,  
Urja Bhawan, Kanwali Road, Dehradun.
38. North Central Railway,  
Allahabad.



39. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110002.
40. Chandigarh Electricity Department,  
UT-Chandigarh, Div-II,  
Opposite, Transport Nagar,  
Industrial Area Phase-I, Chandigarh.
41. Bihar State Power (Holding) Company Limited,  
Vidyut Bhawan, Bailey Road,  
Patna-800001.
42. West Bengal State Electricity Distribution Company Limited,  
Bidyut Bhawan, Bidhan Nagar Block Dj,  
Sector-II, Salt Lake City Calcutta-700091.
43. Grid Corporation Of Orissa Limited,  
Shahid Nagar, Bhubaneswar-751007.
44. Damodar Valley Corporation,  
DVC Tower, Maniktala Civic Centre,  
VIP Road, Calcutta - 700 054
45. Power Department,  
Government of Sikkim, Gangtok-737101.
46. Jharkhand Bijli Vitran Nigam Limited,  
Engineering Building, H.E.C.,  
Dhurwa Ranchi-834004.
47. Assam Electricity Grid Corporation Limited,  
Bijulee Bhawan, Paltan Bazar,  
Guwahat 781001, Assam.
48. Meghalaya Energy Corporation Limited  
Short Round Road, "Lumjingshai"  
Shillong-793001, Meghalaya.
49. Government of Arunachal Pradesh,  
Itanagar, Arunachal Pradesh.
50. Power and Electricity Department,  
Government of Mizoram Aizawl, Mizoram.
51. Manipur State Power Distribution Corporation Limited,  
Keishampat, Imphal.
52. Department of Power,  
Government of Nagaland



Kohima, Nagaland

53. Tripura State Electricity Corporation Limited,  
Vidyut Bhawan, North Banamalipur,  
Agartala, Tripura (W)-799001, Tripura.
54. Sembcorp Energy India Limited,  
5th Floor, Tower C, Building No.8,  
DLF Cybercity Gurugram Haryana-122002.
55. GMR Kamalanga Energy Limited,  
25/1, Skip House, Museum Road, Bangalore-560025.
56. MB POWER Limited,  
Laharpur Jaithari Anuppur  
Anuppur-484330 MP.
57. DB Power Limited,  
Office Block IA,5th Floor,  
Corporate Block, DB City- Park, DB City,  
Arera Hills Opp MP Nagar, Zone -I Bhopal-462016 MP.
58. Sembcorp Energy India Limited,  
(Erstwhile Thermal Powertech Corporation India limited)  
6-3-1090, A-5, TSR Towers Rajbhavan Road,  
Somajiguda Hyderabad-500082 TG.
59. Sembcorp Gayatri Power Limited (SGPL),  
6-3-1090, 5th Floor, A Block,  
TSR Towers, Rajbhavan Road,  
Somajiguda Hyderabad-500082.
60. ACB India Limited,  
7th Floor, Corporate Tower,  
Ambience Mall, N.H.- 8, Gurugram-122002.
61. GMR Warora Energy Limited,  
Naman Centre, 7th Floor, Opp. Dena Bank,  
Plot No. C-31, G Block, Bandra Kurla Complex,  
Bandra (East), Mumbai-400051.
62. Jindal Power Limited,  
Tamnar,  
District Raigarh, Chhattisgarh-496107.
63. Spectrum Coal and Power Limited,  
18, Vas ant Enclave Rao Tula Ram Marg,  
New Delhi-110057.



64. Torrent Power Limited,  
Samanvay, 600,  
Tapovan, Ambavadi, Ahmedabad-380015 (Gujarat).
65. TRN Energy Private Limited,  
18, Vasant Enclave, Rao Tula Ram Marg,  
New Delhi, Delhi, India-110057.
66. Dans Energy Private Limited,  
B-I/E-24, Mohan Cooperative Industrial Area,  
Mathura Road, New Delhi-110044.
67. Shiga Energy Private Limited,  
B-I/E-24, Mohan Cooperative Industrial Area,  
Mathura Road New Delhi-110044.
68. KSK Mahanadi Power Company Limited,  
8-2-293/82/ A/431/ A, Road No. 22,  
Jubilee Hills Hyderabad-500033.
69. Arcelor Mittal Nippon Steel India,  
27 km, Surat-Hazira Road,  
Hazira, Surat-394270, Gujarat.
70. Gati Infrastructure Limited,  
Chuzachen HEP, Plot No. 20,  
Survey No. 12 Kothaguda, Kondapur,  
Hyderabad,500084, Telangana.
71. GMR Bajoli Holi Hydropower Private Limited,  
GMR office, Village DEOL,  
PO HOLI Sub-Tehsil- Holi,  
Tehsil Bharmour Chamba HP-176326.
72. APL Mundra,  
Adani Corporate House, Shantigram,  
Near Vaishnodevi Circle, S G Highway,  
Ahmedabad-382421.
73. Power System Operation Corporation (POSOCO),  
B-9 (1st Floor), Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110016.
74. Central Electricity Authority (CEA),  
Sewa Bhawan, R.K. Puram, Sector-I,  
New Delhi-110066.
75. Central Transmission Utility of India Limited (CTUIL),  
Saudamini, Plot No. 02,  
Sector 29 Gurugram-122001.



76. Assam Power Distribution Company Limited,  
4th Floor, Bijulee Bhawan,  
Paltan Bazar, Guwahati, Assam-781001.

...Respondent(s)

**For Petitioner :** Ms. Swapna Seshadri, Advocate, PGCIL  
Ms. Surbhi Gupta, Advocate, PGCIL  
Shri Utkarsh Singh, Advocate, PGCIL  
Shri A. Naresh Kumar, PGCIL  
Shri Mukesh Khanna, PGCIL  
Shri Mohd. Mohsin, PGCIL  
Shri Arjun Malhotra, PGCIL  
Shri Zafrul Hasan, PGCIL

**For Respondents :** Shri P. Wilson, Senior Advocate, TANGECO  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Apoorv Malhotra, Advocate, TANGEDCO  
Shri Aishwarya Mishra, Advocate, TANGEDCO  
Ms. Suparna Srivastava, Advocate, CTUIL  
Shri Tushar Mathur, Advocate, CTUIL  
Ms. Divya Sharma, Advocate, CTUIL  
Ms. Tejasvita Dhawan, Advocate, CTUIL  
Shri Prabhas Bajaj, Advocate, KSEBL  
Shri Priyanshu Tyagi, Advocate, KSEBL  
Shri Vishrov Mukherjee, Advocate, Sembcorp Energy  
Shri Yashaswi Kant, Advocate, Sembcorp Energy  
Ms. Priyanka Vyas, Advocate, Sembcorp Energy  
Shri Anup Jain, Advocate, MSEDCL  
Shri Shubhranshu Padhi, Advocate, R. No. 12 to 15  
Shri Joy Nirupam, Advocate, R. No. 12 to 15  
Shri D. Abhinav Rao, Advocate, R. Nos. 9, 10 and 16  
Shri Rahul Jajoo, Advocate, R. Nos. 9, 10 and 16  
Shri Sidhant Kumar, Advocate, R. Nos. 7 & 8  
Ms. Manyaa Chandok, Advocate, R. Nos. 7 & 8  
Ms. Muskaan Gopal, Advocate, R. Nos. 7 & 8  
Shri Anil Kumar Meena, CTUIL  
Shri Siddharth Sharma, CTUIL  
Ms. Priyansi Jadiya, CTUIL  
Dr. R. Kathiravan, TANGEDCO  
Shri Gajendra Singh, NLDC  
Shri Rahul Shukla, NLDC  
Shri Debajyoti, NLDC

### **ORDER**

Power Grid Corporation of India Limited has filed the instant IA No.66/IA/2023  
in Petition No.685/TT/2020, on 13.9.2023, under Section 94(2) of the Electricity Act,





2003 (hereinafter referred to as the “Act”) read with the Regulation 68 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2009 for placing on record the additional documents and seeking directions.

### **Background**

2. The Commission vide order dated 29.9.2022 in Petition No. 685/TT/2020 approved the transmission tariff from COD to 31.3.2024 for  $\pm$  800 kV 6000 MW Raigarh (HVDC Station)-Pugalur (HVDC Station) HVDC Link along with  $\pm$  800 kV 1500 MW (Pole-I) HVDC terminals each at Raigarh (HVDC Station) & Pugalur (HVDC Station) (hereinafter referred to as “the transmission asset”) under “HVDC Bipole link between Western Region (Raigarh, Chattisgarh) and Southern Region (Pugalur, Tamil Nadu)–North Trichur (Kerala) – Scheme #1: Raigarh-Pugalur 6000 MW HVDC System” in Southern Regional Grid, wherein the TANGEDCO’s plea for declaring the transmission assets as a national and strategic importance was declined by the Commission.

3. TANGEDCO filed Appeal No. 433 of 2022 against the Commission’s order dated 29.9.2022 in Petition No. 685/TT/2020 before the Appellate Tribunal for Electricity (APTEL) mainly on the ground that the transmission asset should be declared as one of national and strategic importance and the tariff of the same has to be shared by the beneficiaries of all the regions. The APTEL vide order dated 18.7.2023 in Appeal No. 433 of 2022 set aside the impugned order dated 29.9.2022 and directed the Commission to pass a fresh order in light of the observations made in its order dated 18.7.2023.

4. The Applicant/ Petitioner filed Civil Appeal No. 4959 of 2023 before the Hon'ble Supreme Court against the APTEL’s judgement dated 18.7.2023 in Appeal No. 433 of



2022. The Hon'ble Supreme Court, vide order dated 18.8.2023, dismissed the Civil Appeal and directed the Commission to dispose of the proceedings on remand on or before 31.10.2023.

5. Accordingly, Petition No. 685/TT/2020 (on remand) has been listed on a regular basis to dispose of the same before 31.10.2023 as per the directions of the Hon'ble Supreme Court.

**IA No. 66/IA/2020**

6. The Applicant/ Petitioner has made the following submissions in the IA:
- a. Liberty may be given to place on record the copy of the Appeal Paper Book of Civil Appeal No.4959 of 2023 and the Interim Applications filed by the Applicant/ Petitioner before the Hon'ble Supreme Court challenging the judgment of the APTEL dated 18.7.2023 in Appeal No.433 of 2022 filed by TANGEDCO.
  - b. The Applicant/ Petitioner in Civil Appeal No.4959 of 2023 has sought an appropriate interim arrangement for 100% tariff recovery of the transmission asset till the present petition is decided by the Commission on the ground that the Commission's order dated 29.9.2022 in Petition No.685/TT/2020 in terms of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 holds good.
  - c. Subsequent to the order dated 18.7.2023 in Appeal No. 433 of 2022, the Applicant/ Petitioner has stopped billing for the transmission asset with effect from August 2023. However, TANGEDCO, Respondent No. 1 and Telangana Discoms, Respondents No. 9 and 10 have unilaterally adjusted the amounts already paid towards the said transmission asset against the pending PoC bills. There is no authority for the Respondents, including the



Southern Region beneficiaries, to make such unilateral adjustments. TANGEDCO has already decided to adjust Rs. 950 crore, out of which Rs. 204 crore has already been adjusted against the current bills. Telangana Discoms have also started adjusting Rs. 611 crore already paid by them, out of which Rs. 102 crore has already been adjusted against the current bills. The Applicant/ Petitioner has submitted that it is apprehensive that the other beneficiaries may follow suit. Therefore, the Respondents may be directed not to make any unilateral adjustment of the amount already paid towards the transmission charges of the transmission asset till the remand matter is decided by the Commission and pay the current bills regularly. After issue of the order by the Commission in the instant petition, the Central Transmission Utility of India (CTUIL) will make the necessary adjustments in the billing accordingly.

- d. During the hearing on 30.8.2023, TANGEDCO, Andhra Pradesh Discoms, KSEBL submitted that the entire tariff order dated 29.9.2022 in Petition No. 685/TT/2020 has been set aside. However, the APTEL in its judgment, in paragraph 4, dated 18.7.2023 observed that the main issue before it was whether the Commission has the powers and jurisdiction to declare any transmission asset of national importance and whether 100% yearly transmission charges may be considered under the National Component.
- e. The APTEL in judgment dated 18.7.2023 has not granted any directions/orders to make any unilateral adjustment of the transmission charges already paid. Therefore, the adjustments carried out by the Respondents are unlawful, arbitrary and without any basis. Therefore, the Commission may exercise its statutory powers under Section 94(2) of the



Act, and Regulation 68 of the 1999 Conduct of Business Regulations to remedy the present situation till a decision is taken in the present remand proceedings.

7. The Applicant/ Petitioner has made the following prayers in the instant IA:

*“(a) Direct TANGEDCO (Respondent No. 1) and Telangana DISCOMs (Respondent Nos. 9 and 10) to release payment for amount that has already been adjusted;*

*(b) Direct all the Respondents not to make any unilateral deductions/ adjustment and to release payments for already adjusted amount pending final adjudication of the remand petition;*

*(c) Pass any further orders that this Hon’ble Commission deems fit in light of facts and circumstances.”*

8. The IA was heard on 13.9.2023 and it was admitted and registered and the Respondents were directed to file their replies by 20.9.2023. Accordingly, TANGEDCO, Respondent No.1, KSEBL, Respondent No.2, Telangana Discoms, Respondent Nos.9 & 10 and the Karnataka Discoms, Respondent Nos.12 to 15 have filed their reply to the IA. The submissions made by the Respondents in their reply to the IA are as follows.

#### **Reply of TANGEDCO, Respondent No. 1**

9. TANGEDCO in its reply to the IA, vide affidavit dated 19.9.2023, has made the following submissions:

a. The IA filed by the Applicant/ Petitioner is not maintainable as the order dated 29.9.2022 in Petition No.685/TT/2020, on the basis of which the tariff is claimed for the transmission asset has been set aside by the APTEL and the same has been upheld by the Hon’ble Supreme Court.



- b. The recovery of amounts paid as per the order dated 29.9.2022, after the same is set aside by the APTEL, does not in any way amount to a unilateral deduction. It is the consequence of setting aside the order dated 29.9.2022, which absolves the beneficiaries from the liability to pay any transmission charges for the transmission asset. Any payment made under the order dated 29.9.2022, which has been set aside, becomes a payment made without authority of law. The Applicant/ Petitioner has no right to retain any amount paid to it under the order which has been set aside.
- c. The transmission charges for the transmission asset were paid by the Applicant/ Petitioner on the basis of the invoices raised by CTUIL based on order dated 29.9.2022. As the order has been set aside, the liability to pay transmission charges under the order dated 29.9.2022 ceased to exist. Therefore, the tariff relating to the transmission asset is liable to be refunded by the Applicant/ Petitioner immediately. However, the Applicant/ Petitioner has not refunded the amount and has been holding the same illegally for more than two months.
- d. As per the LPSC Rules of Ministry of Power (MoP), the Applicant/ Petitioner has the right to charge Late Payment Surcharge and also to regulate the power in the event of non-payment of transmission invoice. However, the Applicant/ Petitioner is holding on to the transmission charges paid by TANGEDCO, without any authority of law.
- e. It was incumbent upon the Applicant/ Petitioner to refund the amounts collected under the tariff order, which has been set aside. The principles of equity and natural justice require that the amounts realised under the tariff



order which has been set aside, are refunded with interest in line with the LPSC Rules of MoP.

- f. The Applicant/ Petitioner is wrong in alleging mala fide motives against the beneficiaries. The act of retaining the amount collected, after the order is set aside amounts to contempt of orders passed by APTEL and Hon'ble Supreme Court.
- g. The Applicant/ Petitioner made an oral submission before the Hon'ble Supreme Court that it had made an investment of Rs. 20,000 crore and without tariff, it will be in financial difficulty. Based on this submission, the Hon'ble Supreme Court by order dated 18.8.2023, directed this Commission to dispose of the proceedings on remand, on or before 31.10.2023. Having invited such an order, the Applicant/ Petitioner cannot file applications one after another seeking tariff in respect of the transmission asset. The circumstances under which the direction to dispose of the tariff petition on or before 31.10.2023 has been suppressed by the Applicant/ Petitioner.
- h. There is no prima-facie case to seek any prayer against the Respondents seeking to pay the tariff under the tariff order which has been set aside. This is a clear contempt of the orders the APTEL and the Hon'ble Supreme Court. The application of the Applicant/ Petitioner is totally misleading and contumacious. The Applicant/ Petitioner is trying to mislead this Commission to pass an order directing payment of tariff under the order dated 29.9.2022 from 6.9.2020, which has been set aside by the APTEL.
- i. The Applicant/ Petitioner has invoked Section 94(2) of the Act which is not applicable to the facts of the present case. The said section has



empowered this Commission in the ordinary course of adjudication of any matter.

- j. There is no unilateral/ unlawful recovery of any amount by the Respondent. The amounts recovered are given to the Applicant/ Petitioner by way of written communications.

### **Reply of KSEBL, Respondent No.2**

10. The KSEBL, Respondent No.2, in its reply to the IA No.66/IA/2023, vide affidavit dated 20.9.2023, has made the following submissions:

- a. The APTEL vide judgment dated 18.7.2023 in Appeal No. 433 of 2022 has set aside the order dated 29.9.2022 in Petition No. 685/TT/2020. KSEBL had filed Appeal No. 566 of 2023 against the order dated 29.9.2022 and the same was disposed of by the APTEL vide order dated 31.7.2023, on the same terms as the judgment dated 18.7.2023 in Appeal No. 433 of 2022.
- b. The Applicant/ Petitioner filed Civil Appeal No. 4959 of 2023 against the judgment dated. 18.7.2023 of the APTEL before the Hon'ble Supreme Court and it was dismissed vide order dated 18.8.2023. Pursuant to the dismissal of the Civil Appeal, the judgment dated 18.7.2023 of the APTEL has merged with the judgment of the Hon'ble Supreme Court and all observations and findings rendered by the APTEL have attained finality.
- c. The Commission has filed Civil Appeal No. 5883 of 2023 against the judgment dated 18.7.2023 of the APTEL, before the Hon'ble Supreme Court where it has been submitted that "*There is no provision, which empowers Central Commission to declare an HVDC transmission system to be of strategic and national importance under the under the Sharing Regulations, 2020.....*". The contentions raised on behalf of this



Commission in its Appeal before the Hon'ble Supreme Court are contrary to the contentions of KSEBL and other beneficiaries of the Southern Region, which have been accepted by the APTEL in its judgment dated 18.7.2023. This Commission has adopted a position contrary to the submissions made by KSEBL, and the said position adopted by this Commission shall be decided by the Hon'ble Supreme Court in the Appeal filed by this Commission.

- d. Therefore, it would not be appropriate (till the appeal of this Commission is decided by the Hon'ble Supreme Court) for this Commission to hear the present IA. Proceeding further with the hearing of the present IA, when the Commission has already taken a stand before the Hon'ble Supreme Court contrary to the contentions of KSEBL, would not be in conformity with the principles of natural justice including the principle of Nemo Judex In Causa Sua which requires any adjudicating authority to act without prejudice and no person can be a judge in their own cause. In this context, KSEBL has placed reliance on the Hon'ble Supreme Court observations in judgment in the case of Ranjit Thakur Vs. Union of India & Ors., (1987) 4 SCC 611, wherein the Hon'ble Supreme Court observed that the principles of natural justice mandate that even a "reasonable apprehension of bias" in the mind of the parties, shall disentitle the said person from hearing the matter. KSEBL has also placed its reliance in Mohd. Yunus Khan Vs. State of Uttar Pradesh & Ors., (2010) 10 SCC 539 of Hon'ble Supreme Court where it was observed that *".....and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law*





*requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.....”*

- e. The aforesaid principles apply in the facts and circumstances of the present case, and till the Civil Appeal No. 5883 of 2023 filed by this Commission before the Hon'ble Supreme Court is pending, this Commission ought not to proceed with the hearing in the present IA. Any such proceedings would violate the principles of natural justice.
- f. APTEL has set aside the Commission's entire order dated 29.9.2022 vide its judgment dated 18.7.2023. The Applicant/ Petitioner knowing fully well that it has no legal entitlement to retain any payments demanded and paid under the said order dated 29.9.2022, had made a specific prayer for continuation of its "tariff" as well as "sharing", as an interim arrangement in the Civil Appeal No. 4959 of 2023 before Hon'ble Supreme Court.
- g. The aforesaid prayer of the Applicant/ Petitioner has also stood rejected vide order dated 18.8.2023 by the Hon'ble Supreme Court, whereby it has further been directed that this Commission finally decides the Petition No. 685/TT/2020 before 31.10.2023. Therefore, the prayer of Applicant/ Petitioner seeking to create a legal justification through an "interim arrangement", for retaining the amounts recovered by it pursuant to the order dated 29.9.2022, which has been set aside – has already stood rejected by the Hon'ble Supreme Court. The Applicant/ Petitioner's attempt to once again raise the said prayer before this Commission through the



present IA, is an attempt to overreach the orders of the Hon'ble Supreme Court, which is impermissible and deserves to be rejected.

- h. The prayers sought in the present IA are in the nature of seeking a “status quo ante”, thereby inviting this Commission to pass orders contrary to the judgment dated 18.7.2023 passed by APTEL and upheld by the Hon'ble Supreme Court. It is contumacious in nature and deserves to be rejected.
- i. Once the order has been set aside, there is no legal entitlement for the Applicant/ Petitioner to continue to retain the said amounts recovered by it under the said order. Setting aside the order entitles the Respondents to adjust the payments made by them under the orders, and the Respondents are not required to file a separate petition for recovering the said amounts. It is the settled position of law that “..... a person is entitled to pay to himself that amount which is due to him from another if he has in his hand monies belonging to that other.....” and that “..... he is not obliged to sue for the recovery of the money which he is already in possession of.....”. These settled principles have been reiterated time and again, including in the judgment of Hon'ble Madhya Pradesh High Court in the case of State of Madhya Pradesh v. Raja Balbhadra Singh, 1962 SCC Online MP 95 and the Hon'ble Delhi High Court in its judgment in the case of Cofex Exports Ltd. Vs. Canara Bank – AIR 1997 Del 355.
- j. The Respondent and other beneficiaries of Southern Region are entitled to recover the transmission charges paid from the Applicant/ Petitioner including through adjustment. The interim prayer sought by the Applicant/ Petitioner deserve to be rejected by this Commission as being entirely misconceived, unsustainable and impermissible in law.



- k. The present IA filed by the Applicant/ Petitioner is devoid of any merits and deserves to be rejected. As directed by the Hon'ble Supreme Court vide its order dated 18.8.2023, the petition has to be finally decided by this Commission.

**Reply of TSSPDCL & TSNPDCL, Respondent No. 9 and 10**

11. TSSPDCL & TSNPDCL, Respondent No. 9 and 10 have filed a combined reply vide affidavit dated 20.9.2023 to the IA No.66/IA/2023 filed by the Applicant/ Petitioner. The submissions made are similar to the submissions made by TANGEDCO in its reply dated 19.9.2023 and they are not repeated to avoid duplication. The other submissions made by the Respondents are as follows:

- a. After dismissal of the appeal Civil Appeal No. 4959 of the 2023 filed by the Applicant/ Petitioner, by the Hon'ble Supreme Court, the issue has reached finality. It is stated that this Commission has filed Civil Appeal No. 5883 of 2023 against the order of the APTEL, which sets aside the Commission's order in Petition No.685/TT/2020.
- b. The Hon'ble Supreme Court has remanded the matter and directed compliance with the remand order of APTEL, which implies that this Commission has jurisdiction to adjudicate the matter upon remand.
- c. Therefore, this Commission may proceed with the adjudication only after disposal of the Civil Appeal No. 5883 of 2023 filed by this Commission since this Commission has stated that there is conflict of jurisdiction to adjudicate.



## **Reply of Karnataka Discoms, Respondent Nos. 12 to 15**

12. The Karnataka Discoms, Respondent Nos.12 to 15, have made the following submissions in their reply vide affidavit dated 20.9.2023 to the I.A. No. 66 of 2023 filed by the Applicant/ Petitioner:

- a. The principal issue which arises for consideration is whether the transmission asset be treated as a national asset. The APTEL has set aside the order dated 29.9.2022 in its entirety and went on to observe in the judgement dated 18.7.2023 in Appeal No. 433 of 2022 that the transmission asset is to be utilised for the import and export of power under various operating conditions and may be considered as a National Component under the 2020 Sharing Regulations. Therefore, considering the transmission asset is an asset of strategic and national importance, the charges are to be shared on all India basis.
- b. The APTEL's judgement dated 18.7.2023 in Appeal No. 433 of 2022 has attained finality as the same has been upheld by the Hon'ble Supreme Court vide order dated 18.8.2023 in CA No. 4959 of 2023. Therefore, the Commission may pass consequential orders in light of the order of the APTEL and declare the transmission asset as a national asset.
- c. In view of the above, the I.A. No. 66/IA/2023 filed by the Applicant/ Petitioner is premature and, hence, is liable to be rejected.
- d. When there is a specific direction from the APTEL and the Hon'ble Supreme Court to decide the main petition, allowing the I.A. filed by the Applicant/ Petitioner would go against the judicial propriety especially when the same prayers which are made in the present I.A. were made before the Hon'ble Supreme Court and were consciously rejected.



- e. The relief claimed cannot be granted as there is no tariff order and as the tariff order has been set aside. Without any adjudication of the tariff and the issue of the National Component, there can be no interim relief against any adjustment by any of the ESCOMS. Further, the prayer sought by the Applicant/ Petitioner by way of interim reliefs against all ESCOMS is completely vague and too wide to be granted.
- f. The balance of convenience is in favour of the Respondents and against the Applicant/ Petitioner. The Respondent-Escoms represent the interest of the consumers in the State of Karnataka. Such an interim relief, if granted will cause irreparable harm and prejudice to all the ESCOMS and, therefore, all the consumers in the state of Karnataka. Taken on either parameter, the present application merits summary dismissal.

13. The Commission heard the parties on 20.9.2023 and reserved the order in the matter. The learned counsel for the Applicant/ Petitioner submitted that TANGEDCO has unilaterally adjusted ₹539 crore out of the ₹1063.59 crore of transmission charges paid by it towards the transmission asset. Similarly, Telangana Discoms have also adjusted ₹462 crore of ₹507.56 crore of transmission charges paid by it towards instant HVDC Link. Therefore, the Applicant/ Petitioner has filed an IA (in diary stage, Diary No. 388/2023) praying for directions to TANGEDCO and Telangana Discoms to release the payment that has been adjusted by them and to direct all the other Respondents not to make any unilateral deductions/ adjustments and to pay the amount already adjusted pending final adjudication of the instant matter, on remand. Learned counsel further submitted that Telangana has unilaterally adjusted the transmission charges paid for three other elements under the transmission asset in



violation of the Commission's tariff orders in Petition No. 172/TT/2021, Petition No. 173/TT/2021, and Petition No. 242/TT/2021.

14. In response, the Applicant/ Petitioner has filed a combined rejoinder to the replies filed by TANGEDCO, Telangana Discoms, KSEBL and the Karnataka Discoms vide affidavit dated 22.9.2023. The gist of the clarifications given by the Applicant/ Petitioner are as follows:

- a. The Respondents have contended that the Tribunal by its judgment dated 18.7.2023 has set aside the entire order dated 29.9.2022 in Petition No.685/TT/2020 and thus there is no order to recover the transmission charges. Further, the Respondents contentions that with the dismissal of the Civil Appeal 4959 of 2023 filed by the Applicant/ Petitioner against the judgement dated 18.7.2023 passed by the APTEL, there is an automatic direction by the APTEL and the Hon'ble Supreme Court to refund the amounts collected by the Applicant/ Petitioner under the order along with interest are misplaced, incorrect and denied. The only issue that was decided in the judgment dated 18.7.2023 by the APTEL is on the point of sharing of transmission charges i.e. whether the transmission asset should be declared as assets of National and strategic importance, which is clear from the paragraph 4 of the judgement dated 18.7.2023.
- b. The APTEL has set aside the findings of the Commission in order dated 29.9.2022 limited to the issue of sharing and not the complete tariff determined by the Commission. The APTEL has not given any directions for either a refund or a unilateral adjustment to be made pending the present remand proceedings. However, TANGEDCO, Telangana Discoms and



- HESCOM, Respondent No. 13, have made unilateral adjustments of the tariff earlier paid by them towards the transmission asset.
- c. There is no stay against Appeals filed by TANGEDCO before APTEL against the orders in Petition No. 172/TT/2021, Petition No. 173/TT/2021 and Petition No. 242/TT/2021. There is only direction to the Applicant/ Petitioner that it could not regulate the open access of TANGEDCO under the Late Payment Surcharge Rules, 2022 till 30.9.2023. TANGEDCO is not making any adjustment of the transmission charges of the assets contained in the three appeals filed by it however, it is not been not paying tariff of the assets. On the other hand, Telangana DISCOM has started the process of adjustment of transmission charges of other assets even without filing any appeals.
- d. The Southern Discoms cannot contend that an automatic consequence of setting aside of the order on one issue would absolve them from the liability to pay transmission charges for the other assets. The Southern Discoms only pursued a declaratory relief before the APTEL, i.e. the transmission asset should be declared as an asset of national and strategic importance. Therefore, to make adjustments by not paying the future bills of the Applicant/ Petitioner is unfair specifically when no provision either in the contract or any other law has been pointed out by any of the Discoms to justify such adjustments.
- e. The Respondents have contended that the Applicant/ Petitioner has prayed for the same relief that has been sought in the Civil Appeal No.4959 of 2023 in the present IA. The Prayer(s) both in the Appeal and IA before the Hon'ble Supreme Court was for continuing the tariff as per the order dated



- 29.9.2022 so that the billing of charges could continue till the remand is finalized by this Commission. There was no prayer with regard to the adjustments made by the Southern Discoms for the amounts already paid by them.
- f. The rejection of the above Appeal by the Hon'ble Supreme Court means that the Applicant/ Petitioner cannot continue the billing as per the order dated 29.9.2022 till the decision in the present remand proceedings. This does not mean that it is prevented from seeking directions on the Southern Discoms not to make any unilateral decisions/ adjustments from the monthly bills of the Applicant/ Petitioner or to seek directions for release of payments of amounts unilaterally adjusted by the Southern Discoms.
  - g. The issue of adjustments does not arise in the case of KSEBL as it has not made any adjustment till date. The judgement does not give any relief to TANGEDCO or any Southern Discoms to adjust or recover the transmission charges already paid by them under the order dated 29.9.2022 by unilaterally not paying the future bills of the Applicant/ Petitioner.
  - h. While remanding the matter to this Commission, the APTEL was aware that even after the remand is decided, the Southern Discoms have to share the proportional transmission charges from the 30%, which is a "National Component" and also approx. 22% of the balance 70% (i.e. 15% of total transmission charges) has to be shared by Southern DISCOMs if it is considered as part of the "National Component". Thus, 45% of the total transmission charges of the transmission asset are undisputed.
  - i. KSEBL has contended that it is entitled to adjust the payments made when the order under which the payments were made was set aside and in





support of its contention it has relied on the judgement of the Madhya Pradesh High Court passed in *Madhya Pradesh v. Raja Balbhadra Singh 1962 SCC Online MP 95* and Judgment of Delhi High Court in *Cofex Expo Ltd. Canara Bank of AIR 1997 Delhi 355*. Both the judgments referred to the principle of “set-off” i.e., when two parties have claims against each other. However, this principle of “set-off” is not applicable in tariff proceedings since only the Applicant/ Petitioner is only providing transmission services to DISCOMs, who should be paying the transmission charges to it. The Discoms are not giving any services to the Applicant/ Petitioner for which money is being demanded or due from the Applicant/ Petitioner. An issue of “set-off” arises only if the mutual demands are there between the same parties in the same capacity.

- j. The Telangana Discoms have adjusted an amount of Rs. 611 crore which is more than what has been billed by CTUIL for transmission charges towards the transmission asset in Petition No. 685/ TT/2020 i.e., Rs. 507.56 crore. The CTUIL sought the details of such adjustments made by the Telangana Discoms. In response, the Telangana Discoms have submitted that adjustments are made towards the transmission charges determined under Petition Nos. 172/TT/2021, 173/TT/2021 and 242/TT/2021 besides the transmission charges paid by them as per the order in Petition No. 685/TT/2020. No Appeal has been filed by Telangana DISCOMs on subject issue before the APTEL.
- k. The transmission asset is operated at its maximum capacity i.e., 6000 MW and it has been utilized in the forward direction i.e., from WR to SR region, to the extent of 98.5%.



I. The APTEL in judgment dated 18.7.2023 has not granted any directions/ orders to make any unilateral adjustments/deductions/set-off. Therefore, the adjustments/deductions carried out are unlawful, arbitrary and without any basis. Therefore, the Commission may exercise its statutory powers under Section 94(2) of the Act read with 1999 Conduct of Business Regulations allow the prayers as sought in IA No. 66 of 2023 till the final decision in the present remand proceedings. Further, the Applicant/ Petitioner may be allowed to recover 45% of the transmission charges, sharing of which cannot be disputed by any of the DISCOMs in the country. The transmission asset is being gainfully utilized to transmit power and the Applicant/ Petitioner is incurring operational expenditure to operate and maintain the transmission asset and also servicing the huge debt obligations.

### **Analysis & Decision**

15. We have considered the submissions made by the parties. The Applicant/ Petitioner has prayed to issue directions to TANGEDCO and Telangana DISCOMs to release the transmissions charges, which were earlier paid by them as per the Commission's order dated 29.9.2023 in Petition No.685/TT/2020 being deducted by them in the name of adjustments after the APTEL's judgement dated 18.7.2023 in Appeal No. 433 of 2022. The Applicant/ Petitioner has further requested to direct all the Respondents not to make any unilateral deductions/ adjustments and to release payments for the already adjusted amount pending final adjudication of the remand petition. The Applicant/ Petitioner in its combined rejoinder to the replies filed by the Respondents has also prayed that the Applicant/ Petitioner may be allowed to recover 45% of the transmission charges, which cannot be disputed by any of the DISCOMs,



as the transmission asset is being utilised to transmit power and the Applicant/ Petitioner is incurring operational expenditure to operate and maintain the transmission asset and to service the debt obligations.

16. The basic contention of the Respondents is that the Commission's order dated 29.9.2022 in Petition No.685/TT/2020, approving tariff for the transmission asset from its COD to 31.3.2024 under the 2019 Tariff Regulations, has been set aside in its entirety by APTEL vide judgement dated 18.7.2023 in Appeal No.433 of 2023 filed by TANGEDCO. Therefore, the Applicant/ Petitioner is not entitled to retain the transmission charges that were earlier paid by the Respondents so they have adjusted the transmission charges paid by them.

17. On the other hand, the Applicant/ Petitioner has submitted that TANGEDCO had only raised the issue of disallowance of its plea of declaring the transmission asset as of national importance in its Appeal before the APTEL. Accordingly, APTEL only considered the issue of whether the Commission has the power and jurisdiction to declare any transmission asset as of national importance.

18. We have considered the rival submissions, whether the order dated 29.9.2022 has been set aside in its entirety is to be discussed in the final hearing only in which we have have been directed to pass an order by 31.10.2023.

19. We have considered the submissions of the Petitioner in the rejoinder dated 22.9.2023 that after the judgement of APTEL, it is not raising any further bill. We find that the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2021 in Chapters 4 and 5 provide a detailed procedure for accounting, billing and collection of transmission charges by the CTUIL, as per the invoices raised by the CTUIL in accordance with the Billing,



Collection & Disbursement Procedure framed as per Clause 3 of Regulation 23 of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020. The adjustments, if any, are to be made by CTUIL. Needless to say, any contravention of the regulations makes a person liable for a punishment under Section 142 of the Act. We are not going into the merits of the rival submissions, in view of our specific regulations, both parties are directed to maintain a *status quo* as on the date of this order till the final order is passed.

20. The IA No. 66/IA/2023 in Petition No. 685/TT/2020 is disposed of in terms of the above findings and discussions.

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

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

**sd/-**  
**(Jishnu Barua)**  
**Chairperson**

