

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 133/TT/2020

- Subject** : Petition for revision of transmission tariff of 2001-04, 2004-09 and 2009-14 periods, truing up of transmission tariff of 2014-19 period and determination of transmission tariff of 2019-24 period for one no. of asset in Southern Region.
- Date of Hearing** : 9.7.2021
- Coram** : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member
- Petitioner** : Power Grid Corporation of India Ltd.
- Respondents** : Tamil Nadu Generation and Distribution Corporation & 17 Others
- Parties present** : Shri S. Vallinayagam, Advocate, TANGEDCO
Shri S. S. Raju, PGCIL
Shri D.K. Biswal, PGCIL
Shri Ved Prakash Rastogi, PGCIL
Shri Amit Yadav, PGCIL
Ms. R. Ramalakshmi, TANGEDCO
Ms. Siva Preetha Sankari, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.

2. The representative of the Petitioner made the following submissions:
 - a. The instant petition has been filed for revision of transmission tariff of 2001-04, 2004-09 and 2009-14 periods, truing up of transmission tariff of the 2014-19 period and determination of transmission tariff of 2019-24 period for LILO of one circuit of existing Neyveli-Trichy 400 kV D/C line at Neyveli TPS-I Expansion Switchyard Transmission System associated with Neyveli TS-I in Southern Region.
 - b. The instant asset was put under commercial operation on 1.2.2002.



c. Revised tariff of 2001-04, 2004-09 and 2009-14 periods is claimed pursuant to directions of the Commission vide order dated 18.1.2019 in Petition No. 121/2007 in line with APTEL judgments dated 22.1.2007 and 13.6.2007 in Appeal Nos. 81 of 2005 and 139 of 2006 respectively.

d. Transmission tariff for the 2014-19 tariff period for the instant asset was determined by the Commission vide order dated 6.11.2015 in Petition No. 144/TT/2014.

e. The capital cost approved by the Commission vide order dated 6.11.2015 in Petition No. 144/TT/2014 has been considered for 2014-19 and 2019-24 tariff periods.

f. No reply has been filed by any of the Respondents.

3. Learned counsel for TANGEDCO submitted that reply on behalf of TANGEDCO is ready but it could not be uploaded on the Commission's portal. He requested that reply of TANGEDCO may be permitted to be uploaded during the course of the day. He made the following submissions:

a. The Hon'ble Supreme Court of India vide its judgment dated 3.3.2009 in Civil Appeal No. 1110 of 2007 in the matter of *U.P. Power Corporation Ltd. v. NTPC Ltd.* reported as (2009) 6 SCC 235 observed that the tariff of an earlier period cannot be passed on to the current consumers.

b. APTEL in its judgment dated 13.6.2007 in Appeal No. 139 of 2007 and batch matters did not make any observations regarding retrospective revision of tariff and the said judgment is applicable only for 2004-09 tariff period.

c. APTEL in its judgment dated 22.1.2007 in Appeal No. 81 of 2005 has not allowed retrospective revision of tariff.

d. The Petitioner has misled the Commission by stating that APTEL has allowed revision of tariff of 2001-04, 2004-09 and 2009-14 tariff periods.

e. The Petitioner cannot be allowed to take advantage of the orders of APTEL issued in favor of NTPC especially when the Petitioner does not have a finding in its favor from APTEL.

f. The order dated 18.1.2019 in Petition No. 121/2007 passed by the Commission is *per incuriam* the judgment of the Hon'ble Supreme Court of India in the matter of *U.P. Power Corporation Ltd.* (Supra) inasmuch as Article 141 of the Constitution of India mandates that the law declared by the Supreme Court shall be binding on all courts within the territory of India including the Commission.

g. The Petitioner obtained the order dated 18.1.2019 in Petition No. 121/2007 without placing the judgment of the Hon'ble Supreme Court of India in the matter of *U.P. Power Corporation Ltd.* (Supra) before the Commission and hence the



order dated 18.1.2019 is not binding upon this Commission and the Commission is free to take a different view in the present matter.

h. There is no regulation in any of the Tariff Regulations permitting revision of tariff for the 2001-04, 2004-09 and 2009-14 tariff periods.

i. Decapitalization of the asset is not relevant to the instant asset as the Commission has repeatedly observed that gross block of old, decapitalized conductors has to be deducted from the gross block of the instant asset. However, the Petitioner has included the decapitalization of the asset connected with the assets covered under Petition No. 51/TT/2015 and Petition No. 514/TT/2019 in the present petition which is not permissible and is violative of various orders of the Commission and Tariff Regulations.

j. The Petitioner is trying to recover the unrecovered depreciation with regard to the decapitalized asset, which is not supported by the provisions of the Tariff Regulations.

k. The Commission should direct the Petitioner to amend both Petition No. 514/TT/2019 and Petition No. 133/TT/2020 to suitably adjust the decapitalization.

l. Sharing of transmission charges from 1.11.2020 onwards should be allowed as per the 2020 Sharing Regulations.

4. In response, the representative of the Petitioner made the following submissions:

a. Immediately after the judgments of APTEL dated 22.1.2007 and 13.6.2007 in Appeal Nos. 81 of 2005 and 139 of 2006 respectively, the Petitioner approached the Commission in Petition No. 121/2007 for revision of tariff on the grounds tariff was allowed to NTPC by APTEL. Order was passed in Petition No. 121/2007 in 2019 only because Appeals against the judgments of APTEL dated 22.1.2007 and dated 13.6.2007 in Appeal Nos. 81 of 2005 and 139 of 2006 respectively were pending before the Hon'ble Supreme Court.

b. There is no delay on part of the Petitioner in claiming the revised tariff for the 2001-04 tariff period. Consequentially the tariff for 2004-09 and 2009-14 periods are to be revised.

c. There is no change in the Petitioner's capital cost and only the net loan opening and closing are getting changed.

d. Decapitalization has been done in the present petition as per the existing practice and as per the Tariff Regulations.

e. The decapitalization was done on account of discussions in RPC and, hence, the Petitioner is claiming the unrecovered depreciation.

5. The Commission allowed the request of learned counsel for TANGEDCO to upload the reply by 30.7.2021 and the Petitioner to file rejoinder, if any, by 7.8.2021.



The Commission further directed the parties to adhere to the specified timeline and observed that no extension of time shall be granted.

6. After hearing the parties, the Commission reserved the order in the matter.

By order of the Commission

sd/-
(V. Sreenivas)
Deputy Chief (Law)

