

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal no. 46 of 2013

Dated: 2nd September, 2013

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

**Power Grid Corporation of India Ltd. ...Appellant(s)
Saudamini, Plot No. 2
Sector 29, Gurgaon – 122 001
Haryana**

Versus

- 1. Central Electricity Regulatory Commission ...Respondent(s)
3rd and 4th Floor, Chanderlok
Building, 36, Janpath
New Delhi – 110 001**
- 2. Karnataka Power Transmission Corporation Ltd.
Kaveri Bhavan, Bangalore – 560 009**
- 3. Transmission Corporation of Andhra Pradesh
Limited
Vidyut Soudha, Hyderabad – 500 082**

- 4. Kerala State Electricity Board
Vaidyuthi Bhavanam
Pattom, Thiruvananthapuram – 695 004**
- 5. Tamil Nadu Electricity Board
NPKRR Maaligai, 800, Anna Salai
Chennai – 600 002**
- 6. Electricity Department, Government of Goa
Vidyuti Bhawan, Panaji
Goa 403 001**
- 7. Electricity Department, Government of Pondicherry
Pondicherry – 605 001**
- 8. Eastern Power Distribution Company of Andhra
Pradesh Ltd.
APEPDCL, P&T Colony, Seethmmadhara
Vishakhapatnam – 530 013**
- 9. Southern Power Distribution Company of Andhra
Pradesh Limited
Srinivasa Kalyana Mandapam Backside
Tiruchanoor Road, Kesavayana Gunta
Tirupati – 517 501**
- 10. Central Power Distribution Company of Andhra
Pradesh Limited
Corporate Office, Mint Compound
Hyderabad – 500 063**
- 11. Northern Power Distribution Company of Andhra
Pradesh Limited
Opp. NIT Petrol Pump, Chaitanyapuri, Kazipet
Warangal – 506 004**

- 12. Bangalore Electricity Supply Company Limited
Corporate Office, K.R. Circle
Bangalore – 560 001**

- 13. Gulbarga Electricity Supply Company Limited
Station Main Road, Gulbarga – 585 102**

- 14. Hubli Electricity Supply Company Limited
Navanagar, PB Road
Hubli – 580 025**

- 15. MESCOM Corporate Office
Paradigm Plaza, AB Shetty Circle
Mangalore – 575 001**

- 16. Chamundeswari Electricity Supply Corporation
Limited
927, L J Avenue, Ground Floor
New Kantharaj Urs Road, Saraswatipuram
Mysore – 570 009**

**Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Ms. Swagatika Sahoo**

Counsel for the Respondent(s): -

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

This Appeal has been filed by Power Grid Corporation of India Ltd. against the order dated 11.12.2012 passed by the Central Electricity Regulatory Commission in Review Petition no. 23 of 2011 in petition no. 58 of 2011 wherein the Central Commission has partly allowed the Review Petition filed by the Appellant and reviewed the Tariff Order dated 27.9.2011 on one issue but rejected the claim of the Appellant for additional Return on Equity for timely completion of the transmission assets.

2. The Appellant is a transmission licensee. The Central Commission is the Respondent no. 1. The Respondent no. 2 to 16 are the beneficiaries of the transmission project executed by the Appellant.

3. The brief facts of the case are as under:-
- a) On 1.4.2009, the Tariff Regulations, 2009 of the Central Commission came into force providing the terms and conditions for determination of tariff of transmission licensee. The Regulation provided for additional Return on Equity at the rate of 0.5% provided the transmission project is completed within timeline stipulated in the Regulations.

 - b) On 14.1.2010 the Board of Directors of the Appellant accorded investment approval for implementation of transmission system associated with Simhadri-II generation project in Southern Region consisting of loop in and loop out of both the circuits of Gajuwaka-Vemagiri 400 kV Double Circuit line at Simhadri-II TPS. As per the investment approval, the transmission

- project was scheduled to be commissioned within 18 months from the date of investment approval i.e. by 14.07.2011. However, the transmission project of the Appellant was commissioned on 01.08.2011.
- c) On 8.3.2011, the Appellant filed a petition being no. 58 of 2011 before the Central Commission for approval of the transmission tariff for the above transmission project as the transmission project of the Appellant had been commissioned within the time schedule specified in the Tariff Regulations. The Appellant in the petition claimed for additional Return on Equity at the rate of 0.5% in accordance with the Tariff Regulations, 2009.
- d) On 27.9.2011, the Central Commission passed the Tariff Order determining the transmission tariff for the Appellant's transmission project. However, the Central Commission did not allow the additional Return on

- Equity as there was a delay in commissioning of the project with respect to the expected date of commissioning as per the investment approval of the transmission Project by the Board of the Appellant.
- e) On 11.11.2011, the Appellant filed a Review Petition being no. 23 of 2011 before the Central Commission seeking review of the order dated 27.9.2010.
 - f) On 11.12.2012, the Central Commission passed the impugned order by partly allowing the Review Petition. However, the additional Return on Equity as sought by the Appellant for completion of transmission project within the time schedule specified in the Regulation was not allowed.
4. Aggrieved by the above order, the Appellant has filed this Appeal.

5. Nobody appeared on behalf of the Respondents on the various dates when this matter came up before this Tribunal despite service of notice. Ultimately, we heard Shri M.G. Ramachandran, Learned Counsel for the Appellant.

6. Shri M.G. Ramachandran, Learned Counsel for the Appellant submitted as under:-
 - a) Regulation 15 of the Tariff Regulations, 2009 read with Statement of Objects and Reasons dated 3.2.2009 of the Central Commission provides that if a transmission project is completed within the time frame stipulated in the Tariff Regulations, the transmission project will be entitled to additional Return on Equity at the rate of 0.5%.

- b) In terms of the Tariff Regulations, the timeline for commissioning of the project was till 13.5.2012 and the project was commissioned within the scheduled time, i.e. on 1.8.2011.
- c) However, the Central Commission wrongly disallowed the claim of the Appellant for additional Return on Equity on the ground that the transmission project was expected to be commissioned by 1.5.2011 but was commissioned only on 1.8.2011 resulting in a delay of 3 months from the expected date of commissioning. The Central Commission without considering the time schedule given in the Tariff Regulation erroneously took into consideration the expected date of commercial operation which was only internal decision of the Appellant for speeding up the commissioning of the transmission project.

d) The Central Commission in a similar matter by order dated 18.8.2011 in another petition being no. 232 of 2010 has allowed additional Return on Equity in respect of another transmission project which was commissioned within the time schedule specified in the Regulations.

7. The only question that arises for our consideration is whether the Central Commission should have decided the claim of the Appellant for additional Return on Equity for timely commissioning of its transmission project involving Loop-in-Loop-out of the transmission line on the basis of internal schedule of the transmission licensee or as per the schedule specified in the Regulation for a transmission line?

8. Let us examine the Tariff Regulations. The relevant Regulation is reproduced as under:-

“15. Return on Equity

(1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in Appendix-II:

Provided further that the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever.”

Thus, the Regulations provided for additional Return on Equity of 0.5% if the project is completed within the timeline specified in Appendix – II of the Regulations.

9. Appendix – II of the Tariff Regulations specify the qualifying time schedule of 28 months from the date of

investment approval by the Board of the Licensee for a 400 kV double circuit D/C twin transmission line in plain area which is relevant to the case. The relevant extracts of the Appendix –II are as under:-

“C. Transmission Schemes

Qualifying time schedules in months

<i>S.No.</i>	<i>Transmission Work</i>	<i>Plain Area (months)</i>	<i>Hilly Terrain (months)</i>	<i>Snowbound area/@very difficult Terrain (months)</i>
<i>a.</i>	<i>.....</i>			
<i>b.</i>	<i>.....</i>			
<i>c.</i>	<i>.....</i>			
<i>d.</i>	<i>.....</i>			
<i>e.</i>	<i>400 KV D/C Twin Transmission line</i>	<i>28</i>	<i>34</i>	<i>38</i>

“

Thus the Appendix-II indicates that if a 400 kV D/C twin transmission line in plain area, irrespective of its length, is commissioned within 28 months from the date of investment approval by the Board of the Transmission

Licensee, then the transmission project will be entitled to an additional Return on Equity of 0.5%.

10. The Statement of Objects and Reasons of the Tariff Regulation 2009 also indicate the intent of the Central Commission to allow additional Return on Equity at the rate of 0.5% to those projects that are completed within time schedule as stipulated in Appendix-II. However, if the project is not completed within the specified timeline for any reasons whatsoever, the additional return of 0.5% would not be admissible.

11. Let us now examine the main order dated 27.9.2011 passed by the Central Commission regarding the tariff for the period 2009-14 for Loop-in-Loop-out of Gajuwaka-Vemagiri 400 kV D/C line at Simhadri-II TPS. The relevant extracts of the order are as under:

“ADDITIONAL ROE

23. Investment approval for the transmission project was granted on 14.1.2010 and the Board of Directors of the petitioners granted timeline of 18 months. The project was scheduled to be commissioned by 14.7.2011. The project was anticipated to be commissioned on 1.5.2011. The petitioner has claimed additional return of equity of 0.5% under Regulation 15 of the 2009 regulations as the project was anticipated to be completed before 18 months.

24. The actual date of commercial operation of the project was 1.8.2011. There has been a delay of 3 months in commissioning the project. Hence, the petitioner’s claim for additional return of equity of 0.5% is rejected.”

Thus, the Central Commission rejected the claim of the Appellant for additional Return on Equity of 0.5% because there was a delay of 3 months with respect to the anticipated date of commissioning of the project i.e. 1.5.2011.

12. Let us now examine the impugned order dated 11.12.2012 passed in the Review Petition filed by the

Appellant on various issues including disallowance of additional Return on Equity in accordance with the Tariff Regulations. The findings given by the Central Commission in the review order regarding disallowance of additional Return on Equity are as under:-

“6. We have considered the submission of the Review Petitioner and the respondent. As per the “Scope of the project”, the subject asset is a Line In Line Out (LILO) of both circuits of 400 kV D/C Gazuwaka – Vemagiri transmission line at Simhadri-II TPS of length 6.15 km only. No timeline has been specified for a LILO in Appendix-II in the 2009 Tariff Regulations. Since, the Board of Directors of PGCIL in the Investment approval had fixed a time line of 18 months for execution of 400 kV D/C, twin conductor transmission line, the same time line has been considered for the purpose of allowing additional return on equity. As per the investment approval, LILO was to be commissioned within 18 months i.e. by 14.7.2011, but was actually commissioned on 1.8.2011. Accordingly, additional return on equity has been disallowed in the impugned order. The Review Petitioner cannot assume the time limit specified in Appendix-II of the Tariff Regulations for a transmission line for the purpose of claiming the additional RoE for a LILO, which is comparatively a smaller line and requires a much shorter time frame for execution. Since, the LILO was executed after the period of 18 months prescribed in the investment approval, the Commission has denied additional RoE

for said asset. In our view, there is no error in the order and the review on this ground is rejected.”

13. The crux of the findings of the Central Commission in the review order is as under:-

(a) No timeline has been specified for Loop-in-Loop-out of a transmission line in Appendix-II of 2009 Tariff Regulations. Time limit specified for a transmission line will not be applicable for a Loop-in-Loop-out which is comparatively a smaller line and requires a shorter time frame for execution.

(b) Since the Board of Directors of the Appellant had fixed timeline of 18 months for execution of the Project, the same has been considered for the purpose of allowing additional Return of Equity.

(c) As per the investment approval by the Board of Directors of the Appellant, the project was to be commissioned within 18 months, i.e. by 14.7.2011 but

was actually commissioned on 1.8.2011. Accordingly additional Return on Equity has been disallowed.

14. We find that in the main order dated 27.9.2011 the Central Commission had not given any reason for not considering the claim of the Appellant for timely commissioning of the transmission project with respect to the schedule given in Appendix-II of the Tariff Regulations and had reckoned the delay in commissioning with respect to expected date of commissioning i.e. 1.5.2011 and not with respect to the commissioning schedule approved by the Board i.e. 14.7.2011. However, in the Review order it has reckoned the delay in commissioning with respect to commissioning schedule approved by the Board i.e. 14.7.2011 and also explained the reason for inapplicability of the Appendix-II of the Tariff Regulations because no time schedule was specified

- for Loop-in-Loop out of a transmission line. Further, according to the Commission, the time schedule as given in the Appendix-II for transmission line could not be applied for Loop-in-Loop-out of a transmission line which is comparatively a smaller transmission line.
15. We find from the Tariff Regulations, 2009 that the time schedule specified for a transmission line in Appendix-II is not linked to the length of the transmission line. The transmission project under consideration is Loop-in-Loop-out of Gajuwaka-Vemagiri 400 kV Double Circuit line at Simhadri-II involving execution of a twin transmission line of length of about 6 km. When the time schedule specified in the Regulations for 400 kV Double Circuit Twin Transmission line is 28 months irrespective of length of the lines, the same has to be considered for the project in question which involves a short transmission line.

16. Let us consider a transmission line of 6 km. constructed by the transmission licensee between two generating stations located in close proximity. Naturally, for this transmission line even though of short length, the time schedule as specified in Appendix-II of the Regulations would apply as the schedule is not linked to the length of line. Therefore, it is logical that the timeline for Loop-in-Loop-out of a transmission line involving a short length of line should also be considered as per the Appendix-II.

17. Loop-in-Loop-out of a transmission line at a sub-station/switchyard of a generating station is also a transmission line project and should be entitled to additional Return on Equity as applicable to a transmission line as per the Regulations as no separate time schedule has been specified for a

short transmission line or a project involving Loop-in-Loop-out of a transmission line.

18. The Central Commission is bound to follow its Regulations and when the Regulations provide for something to be done in a particular manner, it has to be done in the same manner and in no other manner. When the Regulations have been framed for additional Return on Equity for a transmission line executed within the time schedule specified for a transmission line irrespective of its length, the same have to be applied in the manner specified in the Regulation and in no other manner.
19. The time of completion of a transmission project could not be compared with the internal schedule set up by the transmission licensee for the purpose of considering additional Return on Equity. The completion time of the transmission line has to be compared with the schedule

specified in the Regulations. Admittedly, the transmission project of the Appellant has been commissioned within the time schedule specified in the Regulations. Accordingly, the Appellant is entitled to additional Return on Equity @ 0.5% for the project.

20. **Summary of our findings:**

The Tariff Regulations specify time schedule for commissioning of transmission line in plain area, hilly terrain and snowbound area/very difficult terrain, irrespective of length of line. Thus, the same time schedule is applicable for a short line and long line of similar configuration in similar terrain. Loop-in-Loop-out of a transmission line at a sub-station/generating station switchyard is also a transmission line project and its time schedule has to be considered as per the time schedule specified in the Regulations for a transmission line. Accordingly, the claim of the Appellant for

additional Return on Equity for timely completion of the transmission project involving Loop-in-Loop out of a transmission line has to be decided with respect to the time schedule given in the Appendix-II of the Regulations and not with respect to the internal schedule of the transmission licensee.

21. In view of above, the Appeal is allowed and the impugned order dated 11.12.2012 is set aside. The Central Commission is directed to pass consequential order as per our findings. No order as to costs.

22. **Pronounced in the open court on this 2nd day of September, 2013.**

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

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**REPORTABLE/NON-REPORTABLE
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