

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 209 OF 2014**

**Dated: 29<sup>th</sup> May, 2015**

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member  
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

**IN THE MATTER OF**

Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,  
Vidut Bhawan, Jyoti Nagar, Jaipur,  
Rajasthan-302005

Through its Superintending Engineer (P&P).... Appellant/Petitioner

***VERSUS***

1. M/s Shree Cement Limited  
Bangur Nagar, Beawar,  
District Ajmer, Rajasthan-305901

2. Rajasthan Electricity Regulatory Commission  
Vidhyut Viniyamak Bhawan,  
Sahakar Marg,  
Near State Motor Garage, Jaipur  
Rajasthan-302001

Through its Secretary ..... Respondents

Counsel for the Appellant ... Mr. S.S. Shamsbery  
Mr. Varun Punia

Counsel for the Respondent(s)... Mr. Kumar Mihir for R-1

Mr. C.K. Rai for R-2

**J U D G M E N T**

**PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER**

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (in

short, the '**Appellant/Petitioner**'), against the Order, dated 29.5.2014, passed by the Rajasthan Electricity Regulatory Commission, Jaipur (in short, the '**State Commission**)/Respondent No.2 herein, in Petition No. RERC-253 of 2011 in the matter of M/s Rajasthan Rajya Vidyut Prasaran Nigam Ltd vs. M/s Shree Cement Ltd., whereby the petition filed by the petitioner/State Transmission Utility, under section 86(1)(f) read with section 61 of the Electricity Act, 2003, praying for determination of losses in the temporary arrangement made as per Agreement, dated 29.7.2010, was dismissed.

2. The Appellant/petitioner is the State Transmission Utility. The Respondent No.1 is the captive generating plant. The Respondent No.2 is the State Electricity Regulatory Commission which is empowered to discharge the functions as provided under the provision of the Electricity Act, 2003.

3. The relevant facts giving rise to the instant Appeal are as under:

- (a) that the Respondent No.1 has its Captive Generating Plant of 2x50 MW Power plant at Ras at Beawar and Ras in the State of Rajasthan and accordingly, it applied for connectivity to the State Transmission Utility, i.e. the Appellant herein, on 220 KV Beawar – Merta Line for evacuation of power from the said Captive Power Plants.
- (b) that the Appellant insisted on the installation of another Switching Station on the LILO near about the Switchyard of Respondent No.1 for the purpose of giving connectivity to Respondent No.1.
- (c) that the Respondent No.1 was in urgent need for getting the connectivity through LILO as its power was getting stranded in the absence of the requisite evacuation facilities to the Grid, therefore, the Respondent No.1 had no option but had to execute the agreement, dated 29.7.2010, with the Appellant for providing connectivity to the transmission network.

- (d) that the Respondent No.1 again and again raised the issue that no additional Switching Station was necessary and it also placed before the Appellant the expert opinion of CEA on the issue. Despite the same, the Appellant continued to insist on the Respondent No.1 agreeing to the construction of the additional Switching Station and imposition of notional loss of 0.4% as a condition for grant of connectivity.
- (e) that aggrieved by the imposition of notional loss of 0.4%, the Respondent No.1 filed a petition No. 241 of 2010 before the State Commission under section 86(1)(f) and section 61 of the Electricity Act, 2003 stating therein that the Appellant permitted temporary connectivity subject to the condition that metering will be done at the generating station of the Respondent No.1 and the Respondent No.1 shall have to bear notional loss of 0.4%.
- (f) that the State Commission vide its order, dated 8.4.2011, passed in petition no. 241 of 2010 inter-alia, held that the imposition of Notional loss was not valid as the imposition of losses was within the jurisdiction of the State Commission and the STU on its own cannot impose any notional loss. The State Commission, had further, directed the Appellant/STU to file a petition within 30 days for determination of losses in the temporary arrangement mentioned therein, further making observation that losses as per agreement be continued on a provisional basis subject to adjustment as per decision of the State Commission in the said petition on levy of losses and its quantum.
- (g) that the Respondent No.1 also approached the Rajasthan State Commission vide a separate Petition No. 251 of 2011 challenging the condition of construction of Switching Station on 19.4.2011 to declare such condition as unwarranted, unreasonable and contrary to law.

- (h) that the State Commission appointed Shri K.L. Vyas (former Technical member of the State Commission) as amicus curie who submitted his report on 9.3.2012 stating that no switching station was required and that as the meter was to be placed at outgoing feeder of Respondent No.1 under CEA metering Regulations, no notional loss should be imposed and losses should be determined on a pooled basis for the whole system.
- (i) that the State Commission, thereafter, vide its order, dated 28.12.2012, passed in Petition no. 251 of 2011 held that the condition of constructing of a 'switching station' at Respondent No.1's cost for providing LILLO for inter-connection to their captive power plant was unreasonable and contrary to the provisions of law and directed the Appellant not to insist on this for providing connectivity concluding that the condition of construction of a switchyard at the cost of the Respondent No.1 is contrary to provision of law and on account of the dominant position of the Appellant, the agreement arrived at is unsustainable as far as the said condition is concerned.
- (j) that the Appellant filed a review petition being RERC-384 of 2013 before the State Commission against the said order, dated 28.12.2012. The Rajasthan State Commission after considering the above, dismissed the said review petition vide its order, dated 14.8.2013, and reiterated that the switching station as insisted upon by the Appellant was not necessary and uncalled for.
- (k) that the Appellant, thereafter, approached this Appellate Tribunal, by filing an Appeal numbered DFR No. 2309 of 2013 after a delay of 293 days. The said Appeal was dismissed by this Appellate Tribunal on 10.1.2014 after duly considering the application of condonation of delay filed by the Appellant.

- (l) that the Appellant herein challenged the said order, dated 10.1.2014, passed by this Appellate Tribunal in I.A. No. 416 of 2013 in DFR No. 2309 of 2013 before the Hon'ble Supreme Court vide Civil Appeal No. 3787 of 2014 and the Hon'ble Supreme Court vide its order, dated 14.8.2014, dismissed the said civil appeal filed by the Appellant holding that the Appellate Tribunal had correctly refused to condone the delay.
- (m) that, during the pendency of the civil appeal before the Hon'ble Supreme Court, the Appellant filed the impugned petition being Petition no. 253 of 2011 before the State Commission for determination of notional losses. The State Commission, vide impugned order, dated 29.5.2014, rejected/dismissed the impugned petition being Petition No. 253 of 2011 in the light of State Commission's order, dated 28.12.2012, review order, dated 14.8.2013, this Appellate Tribunal's order, dated 10.1.2014 whereby the condition of construction of switching station had been held to be illegal and uncalled for.
- (n) Determination of notional losses in the temporary arrangement made as per the order, dated 8.4.2011, on the ground that the questions of determination of losses does not arise as the Commission had already held the condition of construction of 220 KV switching station as unwarranted and contrary to the law.
- (o) that according to the State Transmission Utility, the Respondent No.1/M/s Shree Cement Limited, after posing themselves as Open Access Consumer specifically agreed to accept the condition of switching station by the letter, dated 13.5.2009. On 29.7.2010, a mutually agreed agreement between the Appellant and Respondent No.1 for providing connectivity was entered with two conditions mentioned at Sl. No.1 from 1.1 to 1.11. The condition No.1.1 was regarding the construction to 220 KV switching station at RAS. Vide condition

No.1.5, the Respondent was allowed to temporarily connect the line at their switch yard till the switching station is developed by the Appellant. The condition No.1.9 of the agreement permits the Appellant to levy notional losses @ 0.4% on energy injected by the Respondent in the system of Appellant till switching station is constructed and metering system is shifted to switching station.

4. We have heard Mr. S.S. Shamsbery, the learned counsel for the Appellant and Mr. Kumar Mihir, the learned counsel for the Respondent No.1 and Mr. C.K. Rai, the learned counsel for the Respondent No.2 and gone through the written submissions filed by the rival parties. We have deeply gone through the evidence and other material available on record including the impugned order passed by the State Commission and written submissions.

5. The only question arising for our consideration is ***whether the State Commission ought to have determined the notional losses in the temporary connectivity as per the condition No.1.9 of the Agreement, dated 29.7.2010, without being influenced by the earlier proceedings, wherein it had been held that the condition of construction of 220 KV Station is unwarranted and contrary to law as both the conditions are mutually independent?***

6. The following contentions have been made on behalf of the Appellant on this issue:

- (a) that despite the condition of construction of 220 KV switching station having been declared unwarranted and against law, the other conditions including condition No.1.9 of the Agreement, dated 29.7.2010, regarding construction of 220 KV switching station still remain relevant to which the parties are bound to follow because

the conditions no. 1.9 in the said agreement was mutually agreed between the parties.

- (b) that as per the mutually agreed agreement, the Appellant provided temporary connection to the Respondent No.1 to connect the line at their switchyard till the switching station was developed by the Appellant with proper metering and protection. This will not confer any duty on the Appellant for allowing direct connectivity to their generating station.
- (c) that as per condition No.1.9 of the agreement, till this temporary connectivity continues, notional losses at the rate of 0.4% shall be levied on energy injected by the Respondent No.1 till switching station is constructed and metering system is shifted to switching station.
- (d) that the said temporary interconnection could take permanent nature only if there was a construction of switching station, however, on the said condition having being declared unwarranted and illegal, the only conclusion follows is that the connection will remain temporary and the Respondent No.1 has to bear notional loss at the rate of 0.4% or as determined by the State Commission or the meters be shifted either to the LILLO point of the line or GSS of Appellant.
- (e) that according to Section 9 (1) of the Electricity Act, 2003, a captive generating plant (like that of the Respondent) has to construct a dedicated transmission line in order to get connected with the transmission system of the Appellant whereas, in the present case, the Appellant has connected

the Respondent's captive generating plant at their end by giving LILO connection.

- (f) that the parties mutually agreed that they will abide by the different Metering Regulations (para 2.4 of the agreement) i.e. - "Metering Scheme shall be as per provisions of the RERC (Metering) Regulations and Metering Code for Rajasthan Grid (Part III of Grid Code). The Respondent No.1 also agreed to adhere to the provisions of Central Electricity Authority (Technical Standards for Connectivity to the Grid) and also agreed that the connectivity to the plant shall be as per the standard notified under clause (b) of Section 73 of the Act and Regulations, 2007 as amended and as per REGC /SLDC Code of the State Commission as amended time to time.
- (g) that it has been indicated at S. No.4 of Table -1 that of the CEA (Installation and Operation of Meters) (Amendment) Regulations 2010 for location of meters that "Consumers directly connected to Inter -State Transmission System or intra - State Transmission System, who have to be covered under Availability Based Tariff and have been permitted open access by the Appropriate Commission would be decided by Appropriate Commission".
- (h) that since the Respondent No.1 is transacting its generation through Short Term Open Access through intra-state Open Access, inter-State Open Access using bilateral agreements and trading through power exchanges, hence the location of meter for open access consumer directly connected to intra-state transmission system is to be



decided by State Commission, therefore, RERC (Metering) Regulations, 2007 is applicable to the present case.

- (i) that as per Rajasthan Electricity Regulatory Commission (Metering) Regulations 2007, meter locations for open access consumers, main and check meters shall be installed at delivery point or relevant to termination point of service line at outgoing isolator of licensee's sub-station. The standby meter shall be installed at other end of line. This is applicable to open access interface meter having interconnection with transmission system/distribution system. Accordingly, the meter location should be at the delivery point at Appellant's sub-stations. Since, the meters are not installed as per RERC (Meter) Regulations, 2007, the levy of additional notional losses are legal and justified.
- (j) that during study of injection of energy by the Respondent No.1, the Appellant found that there are number of instances where injection is more than the capacity agreed in the agreement, dated 29.7.2010. The Appellant has no control on the power flows on the 220 kV Ras-Merta line and 220 kV Ras-Beawar line, as the transmission line is routed through the premises of the Respondent No.1 and it is evident from the calculation of transmission losses with different injections that for higher injection from Respondent's Captive Power Plant, the estimated losses are higher than 0.4%.
- (k) that it is pertinent to mention here that the State Commission, vide Order, dated 8.4.2011, did not restrain the Appellant from charging the notional losses rather

observed that losses as per agreement may be continued on a provisional basis subject to adjustment as per decision of Commission, in the stay petition on levy of loss and its quantum. As a matter of fact, the State Commission, while passing the order, dated 8.4.2011, took the view that the notional loss can be determined by the State Commission for which the Appellant was directed to file petition within 30 days. On the petition for determination of losses, being filed by the Appellant, the State commission, vide impugned order, dated 29.5.2014, did not determine the loss in view of the order, dated 28.12.2012, of the State Commission. As a matter of fact, the State Commission had disposed of the petition being Petition No. 251/2011 vide order, dated 28.12.2012, holding that no question of determination of losses arise, whereas vide order, dated 8.4.2011, the State Commission had granted the liberty to the Appellant to file the aforesaid petition.

- (1) that the Respondent No.1 itself had considered that determination/levy of notional losses in the temporary arrangement and construction of 220 kV Switching Station are two separate issues and, accordingly, had filed two separate petitions before the State Commission being Petition No. RERC/241/2010 for unauthorized levy of notional losses and Petition No. RERC/251/2011 for disallowing the condition for construction of 220 KV Switching Station. In these circumstances, the State Commission ought to have exercised its jurisdiction for determination of losses.

7. **Per contra**, the following submissions have been made on behalf of the Respondent No.1 /M/s Shree Cement Ltd. on this issue:

- (a) that the State Commission, in its order, dated 8.4.2011, in Petition No. 241 of 2010, held as under:

*“15. However, it may be mentioned that losses in transmission system are determined by Regulatory Commission under Regulation No. 101(2) of The Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2009, This being so, STU as a licensee on its own cannot determine the extent of losses to be applied in case of any customer/consumer and if facts and circumstance so warrant, this may be levied only after getting the same determined by the Commission. Keeping in view the provision in Sec. 23 of Indian Contract Act as quoted by learned counsel of the petitioner and in view of the decision cited from judgment of Supreme Court in the case of United India Insurance Company Limited Versus Manubhai Dharmasinhbhai Gajera and others, as discussed in para 7 of this order, we hold that provision of levy of notional loss of 0.4% in the agreement infringes on the Commission’s authority to decide such matters.*

*16. Accordingly, we direct the STU to file a petition within 30 days for determination of losses in the temporary arrangement discussed above. Commission further observes that losses as per agreement be continued on a provisional basis subject to adjustment as per decision of the Commission in the said petition on levy of losses and its quantum.”*

- (b) that in pursuant to the aforesaid order, dated 8.4.2011, the Appellant filed a Petition being Petition No. 251 of 2011 without giving any details such as calculations and data justifying levy of notional loss at 0.4 % on the Respondent No.1. The Appellant, in the said petition, sought the relief that the State Commission may determine the losses in the temporary arrangement as per the agreement entered into between the petitioner and the Respondent No.1 and, thereupon, decide what should be levied against the Respondent No.1 of the aforesaid losses and, thereupon, quantify its quantum to be paid by the Respondent No.1 to the Appellant. The State Commission, once again, vide the impugned order, dated

29.5.2014, rejected the said prayer of the Appellant holding that no notional losses are to be levied upon the Respondent No.1. In this view of the matter, the Appellant has no jurisdiction to levy such notional losses and the State Commission has correctly refused to determine the losses that could be levied upon the Respondent No.1.

- (c) that the grounds taken in the present Appeal are similar to the contentions raised in the Appeal being DFR No.2309 of 2013. The Appellant is indirectly seeking a review of the orders, dated 28.12.2012 and review order, dated 14.08.2013, passed by the State Commission under the garb of the present Appeal which orders had already attained finality on account of the order, dated 14.8.2014, passed by the Hon'ble Supreme Court, which is not legally permissible in any manner.
- (d) that the notional loss of 0.4% sought to be levied under Clause 1.9 of the Agreement, dated 29.7.2010, wherein it is incidental to construction of switching station. However, once the said condition of construction of switching station had been held to be illegal and set-aside after the order, dated 14.8.2014, passed by the Hon'ble Supreme Court, the incidental levy of notional loss cannot be acted upon.
- (e) that as per Regulation 7 of the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 as amended on 4.6.2010 (the metering regulations), the ABT meters have been installed at locations as prescribed i.e. on the outgoing feeders of a generating station. Accordingly, no notional losses are applicable in the present case. The issue of notional losses would arise only when the meters are placed at the location towards generator away from the one prescribed under metering regulations. This being not so in the present case, the levy of notional losses as sought is arbitrary, illegal and prejudicial to the interests of a generating station.

- (f) that as per Regulation 7 of the CEA (Metering) Regulations, the meter was to be placed at the outgoing feeder of the captive power plant of the Respondent No.1 which is a generating station in terms of section 9(1) of the Electricity Act, 2003. Further, the Respondent No.1 has been granted open access under Section 9(2), section 38(2)(d)(i), section 39(2)(d)(i) and section 40(c)(i) read with section 42(2) of the Electricity Act, 2003 and not by the State Commission as being the case in case of other open access consumers mentioned at serial no. 4 of Regulation 7 of the CEA (Metering) Regulations. Further, Regulation 3(2) of the State (Metering) Regulation provides that in case of any inconsistency the CEA (Metering) Regulations will be preferred. Therefore, there is no substance in the contention of the Appellant that the meters were to be placed at its sub-station.
- (g) that even the RERC (Open Access) Regulations, in the definition clause as recognized “generation station” as open access customer and not consumers and, therefore, the meter has to be installed at the outgoing feeder of the Respondent no.1 in terms of CEA (Metering) Regulations and not at the substation of the Appellant.
- (h) that the metering at other state generators/ RVUNL’s generating station, Raj west etc is also at the same location as that of generating station of the Respondent No.1 and yet no additional losses are levied on any of the generating station of RVUN. This only shows a prejudice towards the Respondent No.1 on the part of the Appellant which, being the State Transmission Utility, is expected to act in a just, fair and reasonable manner.
- (i) that RERC Tariff Regulations, 2014 (vide regulations 6.7 and 60) only provide for filing petitions for determination of transmission tariff in respect of existing loss or sub-stations or

transmission system as a whole by the transmission licensee. The said tariff regulations call for trajectory of reduction of transmission losses and provide that the transmission losses allowed by the State Commission will have to be borne by the users of the transmission system. The said regulations, however, nowhere provide for methodology for determination of transmission losses for a single line or part of transmission system and the transmission losses are determined/allowed by the Commission after considering the entire transmission system of the licensee. Even, otherwise, logically if the losses recoverable as percentage of energy transmitted to the Appellant's system including the dedicated lines does not increase with injection of power by the generating company, then no losses (other than that for system as a whole) are liable/recoverable from the generating company or its beneficiaries. Additional losses so payable have to be established by system studies for transmission system as a whole not for single as is being sought by the Appellant. Even, otherwise, there cannot be a study of losses for a part of the line even under CEA (Technical Standard for connectivity to grid) Regulations, 2007 and, further, no study ever produced by the Appellant before the State Commission.

- (j) that the Appellant has failed to appreciate a simple fact that a generating station near the load centre leads to reduction in losses. The Appellant has not furnished any study which would suggest that the losses in Rajasthan system have increased owing to such connectivity. In fact, losses in Rajasthan system would reduce because of the fact that Respondent's power plant is situated in centre of Rajasthan, very near to major load centre.

**OUR DISCUSSION AND CONCLUSION:**

8. During the arguments of the Appeal, the learned counsel for the Respondent No.1 placed the relevant extracts of the Truing up orders, dated 16.9.2010 and 23.12.2011, passed by the State Commission wherein the transmission losses on a pooled basis were fixed as 4.4% and 4.2% respectively. The Respondent No.1 also placed copies such as No Objection Certificates (NOCs), dated 29.10.2010, 15.11.2011 and 9.12.2011, issued by the Appellant for sale of power through power exchange, wherein the transmission losses are shown as 4.8% (i.e. 4.4% pooled loss + 0.4% notional loss) and in the NOCs, dated 27.11.2012, 26.11.2013 and 1.12.2014, wherein transmission losses are shown as 4.6% (i.e. 4.2% pooled loss + 0.4% notional loss). Even, otherwise, the Appellant herein has been admittedly imposing 0.4% additional notional loss on the Respondent No.1, a power generating plant.

9. Without reiterating the facts and rival contentions made by the parties, we directly come to the issue involved in the present Appeal. The undisputed facts of the matter are as under:

- (a) The Respondent No.1 namely, M/s Shree Cement Limited, applied for connectivity to the State Transmission Utility/ Appellant herein, on 220 KV Beawar – Merta Line for evacuation of power from its 2x50 MW Captive Power Plant. At that time, the Respondent No.1 and the Appellant entered into an agreement, dated 29.7.2010, for the purpose of providing connectivity to the transmission network of the Appellant with the conditions mentioned at serial no. 1 from 1.1 to 1.11. The condition No.1.1 was regarding the construction to 220 KV switching station at RAS. As per the condition 1.5, the Respondent (Shree Cement) was allowed to temporarily connect the line at their switch yard till the switching station is developed by the Appellant. The condition No.1.9 of the agreement further permits the Appellant to levy notional losses @ 0.4% on energy injected by the Respondent in the system of



Appellant till switching station and the metering system is shifted to the switching station.

- (b) Aggrieved by the aforesaid agreement, dated 29.7.2010, the Respondent No.1 (Shree Cement) filed a petition No. 241 of 2010 before the State Commission against the aforesaid condition of the PPA regarding imposition of notional loss of 0.4%, by the Appellant. The State Commission, vide its order, dated 8.4.2011, while disposing of the said petition, inter-alia, held that the imposition of notional loss was within the jurisdiction of the State Commission and the STU on its own cannot impose any notional loss. The State Commission then directed the Appellant/STU to file a petition within 30 days thereof seeking determination of losses in the temporary arrangement further, directing that the losses as per agreement be continued on a provisional basis subject to adjustment as per the order of the State Commission in the said petition on levy of notional loss and its quantum.
- (c) Thereafter, the Respondent No.1 approached the State Commission by filing a separate Petition No. 251 of 2011 challenging the aforesaid condition of construction of Switching Station seeking declaration of such condition as unwarranted, unreasonable and contrary to law.
- (d) The State Commission, appointed one Technical Expert as amicus curie namely, Shri K.L. Vyas. Mr. Vyas, in its report, dated 9.3.2012, clearly stated that no switching station was required and that as the meter was to be placed at outgoing feeder of Respondent No.1 according to the CEA metering Regulations, no notional loss should be imposed and the said notional losses should be determined on a pooled basis for the whole system of the Appellant. Accordingly, the State Commission, vide its order, dated 28.12.2012, in Petition No. 251 of 2011, held the said condition of construction of a



switching station at the cost of the Respondent No.1 for providing LILO for inter-connection to their captive power plant was unreasonable and contrary to the provisions of law and directed the Appellant not to insist on this for providing connectivity having concluded that the condition of construction of a switchyard at the cost of the Respondent No.1 was contrary to provision of law and was agreed on account of the dominant position of the Appellant in the agreement.

- (e) The Appellant filed a review petition before the State Commission seeking review of the order, dated 28.12.2012, which was dismissed by the review order, dated 14.8.2013, of the State Commission, which further reiterated that the switching station as insisted upon by the Appellant was not necessary and uncalled for.
- (f) The Appellant challenged the said order of the State Commission by filing a time barred appeal being DFR No. 2309 of 2013 before this Appellate Tribunal with a delay of 293 days and the said appeal was dismissed by this Appellate Tribunal vide its judgment/order, dated 10.1.2014, refusing to condone the delay.
- (g) The Appellant, thereafter, challenged the order, dated 10.1.2014, of this Appellate Tribunal before the Hon'ble Supreme Court by filing a Civil Appeal No. 3787 of 2014. Subsequently, the Hon'ble Supreme Court, vide its order, dated 14.8.2014, dismissed the said civil appeal filed by the Appellant and observed that the Appellate Tribunal had correctly refused to condone the delay.

10. In view of the above facts situation, it is clearly established on record that the State Commission's order, dated 8.4.2011, holding the imposition of notional loss as invalid as also the State Commission's order, dated 28.12.2012, holding the condition of constructing a switching station at

the cost of Respondent No.1 for providing LILO for inter-connection to the captive power plant of the Appellant as unreasonable and contrary to law attained finality because as stated above, the time barred appeal filed by the Appellant before the Appellate Tribunal was dismissed and, further, the civil appeal filed by the Appellant before the Hon'ble Supreme Court against the judgment/order of this Appellate Tribunal was also dismissed.

11. We may mention here that during the pendency of the above civil appeal before the Hon'ble Supreme Court, the Appellant filed the impugned petition before the State Commission seeking determination of notional charges, which petition was dismissed by the impugned order, dated 29.5.2014, of the State Commission narrating the above facts and settled legal position. The impugned petition was filed before the State Commission praying for determination of notional losses in the temporary arrangement made as per the agreement, dated 29.7.2010. The State Commission, by the impugned order, dated 29.5.2014, dismissed the said petition of the Appellant seeking determination of notional losses in the temporary arrangement as per order, dated 8.4.2011, of the State Commission holding that the question of determination of notional losses does not arise because the Commission had already held the said condition of construction of 220 KV switching station as unwarranted and contrary to law.

12. The main contention of the Appellant against the impugned order is that despite the condition of construction of 220 KV switching station having been declared unwarranted and illegal, since the Appellant provided temporary connection to the Respondent No.1 to connect the line at their switchyard till the switching station was developed by the Appellant with proper metering and protection. As per condition No.1.9 of the agreement, the notional losses @ 0.4% shall be levied on energy injected by the Respondent No.1 till the construction of switching station and shifting of metering station to switching station.

13. The learned counsel for the Respondent terming the aforesaid main contention of the Appellant as misplaced, has submitted that the Appellant in the impugned petition sought the relief of determination of notional losses in temporary arrangement as per the aforesaid condition of the agreement and, further, the quantification of the quantum of the said notional losses, the same could not be legally granted by the State Commission to the Appellant. The State Commission, once again, vide its impugned order, dated 29.5.2014, rejected the said petition of the Appellant clearly holding that no notional losses are to be levied on the Respondent No.1. The Appellant is indirectly seeking a review of the orders, dated 8.4.2011 and 28.12.2012 and review order, dated 14.08.2013, passed by the State Commission under the garb of the present Appeal which orders had already attained finality in the aforesaid circumstances.

14. The notional loss of 0.4% sought to be levied under Clause 1.9 of the Agreement, dated 29.7.2010, wherein it is incidental to construction of switching station. We clearly hold that once the said condition of construction of switching station had been held to be illegal by the aforesaid earlier orders of the State Commission, the notional loss could not be levied upon the Respondent No.1 by the Appellant.

15. As per Regulation 7 of the CEA (Metering) Regulations, the meter was to be placed at the outgoing feeder of the captive power plant of the Respondent No.1 which is a generating station in terms of section 9(1) of the Electricity Act, 2003. Further, the Respondent No.1 has been granted open access under Section 9(2), section 38(2)(d)(i), section 39(2)(d)(i) and section 40(c)(i) read with section 42(2) of the Electricity Act, 2003 by the State Commission like other open access consumers mentioned at serial no. 4 of Regulation 7 of the CEA (Metering) Regulations. Further, Regulation 3(2) of the State (Metering) Regulations provides that in case of any inconsistency, the CEA (Metering) Regulations will be preferred.

Therefore, there is no substance in the contention of the Appellant that the meters were to be placed at its sub-station.

16. Further, according to the State Commission (Open Access) Regulations, the meter had to be installed at the outgoing feeder of the Respondent No.1 in terms of CEA (Metering) Regulations and not at the substation of the Appellant. We have narrated the real factual position in para 8.1 of our judgment which we do not want to repeat again. It means, the transmission losses on a pooled basis were fixed at the relevant time as is evident from the copies of the NOCs issued by the Appellant for sale of power. Thus, the notional losses are being recovered by the Appellant for the whole transmission system of the Appellant and the Appellant is not loosing anything in monetary terms.

17. In view of the above discussions, we do not find any merit in the contentions of the Appellant. We find that the findings recorded in the impugned order of the State Commission are legal, just and proper one requiring no interference at this stage by us and we agree to the same. We hold that the State Commission is justified in passing the impugned order and has rightly and legally not determined the notional losses in the temporary connectivity as per the condition no. 1.9 of the agreement, dated 29.7.2010, in the aforesaid circumstances and previous part of the litigation which reached up to this Appellate Tribunal by way of filing time barred appeal by the Appellant and, ultimately, the Appellant reached up to Hon'ble Supreme Court by filing the aforesaid civil appeal which had been dismissed subsequently, by holding the judgment/order of this Appellate Tribunal. Since, the aforesaid condition of construction of 220 KV sub-station had already been held unwarranted and contrary to law, by the order of the State Commission, which order attained finality, there was no reason for the Appellant to further seek determination of notional losses in the temporary connectivity in terms of the condition 1.9 of the agreement, dated 29.7.2010. **Consequently, the issue is decided against the Appellant and the Appeal is liable to be dismissed.**

**ORDER**

The instant Appeal, being Appeal No. 209 of 2014, is hereby dismissed and the impugned Order, dated 29.5.2014, passed by the Rajasthan Electricity Regulatory Commission, is hereby affirmed. There shall be no order as to costs.

**PRONOUNCED IN THE OPEN COURT ON THIS 29<sup>TH</sup> DAY OF MAY, 2015.**

**(T. Munikrishnaiah)  
Technical Member**

**(Justice Surendra Kumar)  
Judicial Member**

**√ REPORTABLE/~~NON-REPORTABLE~~**

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