

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

Appeal No. 123 of 2011

Dated: 2nd July, 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

Punjab State Power Corporation Ltd.,
The Mall,
Patiala – 147 001

....Appellant

Versus

1. Power Grid Corporation of India Ltd.,
B-9, Qutab Institutional Area,
Katwaria Sarai
New Delhi – 110 016

.....Respondent(s)

2. Uttar Pradesh Power Corporation Ltd.,
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhaan, 14, Ashok Marg,
Lucknow – 226 001

3. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Vidyut Marg
Jaipur – 302 005

4. Ajmer Vidyut Nigam Ltd.,
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur

- 5. Jaipur Vidyut Vitran Nigam Ltd.,**
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur
- 6. Jodhpur Vidyut Vitran Nigam Ltd.,**
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur
- 7. Himachal Pradesh State Electricity Board**
Vidyut Bhawan, Kumar House Complex
Building II
Shimla 171 004
- 8. Haryana Power Purchase Centre**
Shakti Bhawan
Sector 6, Panchkula
Haryana 134 109
- 9. Power Development Department**
Govt. of Jammu & Kashmir
Mini Secretariat
Jammu
- 10. Delhi Transco Ltd.,**
Shakti Sadan, Kotla Road
New Delhi – 110 002
- 11. BSES Yamuna Power Ltd.**
Shakti Kiran Building,
Karkardooma,
New Delhi - 110 092
- 12. BSES Rajdhani Power Ltd.**
BSES Bhawan, Nehru Place
New Delhi – 110 019

- 13. North Delhi Power Ltd.,**
Power Trading & Load Dispatch Group
Cennet Building adjacent to 66/11
KV Pitampura – 3, Grid Building, Near PP
Jewellers, Pitampura
New Delhi – 110 034
- 14. Chandigarh Administration**
Sector -9
Chandigarh
- 15. Uttarakhand Power Corporation Ltd**
Urja Bhawan
Kanwali Road, Dehradun
- 16. North Central Railway**
Allahabad
- 17. New Delhi Municipal Council**
Palika Kendra, Sansad Marg
New Delhi 110 002
- 18. Central Electricity Regulatory Commission**
4th Floor, Chanderlok Building
36, Janpath
New Delhi – 110 001

Counsel for the Appellant (s) : Mr. Pradeep Misra
Mr. Padamjit Singh
Mr. Manoj Kumar Sharma
Mr. T.P.S. Bawa (Rep.)
Mr. Daleep Kr. Dhayani

Counsel for the Respondent (s) : Mr. M.G. Ramachandran
Ms. Swapna Seshadri
Ms. S. Mishra
Mr. S.K. Chalimedi
Mr. Anand K. Ganesan
Ms. Sneha Venkataramani

JUDGEMENT

RAKESH NATH, TECHNICAL MEMBER

Whether a new transmission line charged from one end by the transmission licensee without the switchgear, protection system and metering arrangement at the other end not in the scope of works of the transmission licensee being ready and without flow of power on the line could be declared as commissioned for the purpose of raising the transmission charges on the beneficiaries?

The above question that has been posed in this Appeal is required to be answered by us.

2. Punjab State Power Corporation Ltd., the successor in interest of Punjab State Electricity Board is the Appellant. Power Grid Corporation of India (“POWERGRID”), a transmission licensee, is the Respondent no.1. The power utilities of Northern Region

and the beneficiaries of 400 kV Barh-Balia double circuit transmission line constructed by POWERGRID are the Respondents 2 to 17. The Central Electricity Regulatory Commission (“Central Commission”) is the Respondent no.18.

3. The Appellant has challenged the impugned order dated 29.04.2011 of the Central Commission declaring the Date of Commercial Operation (“COD”) of 400 kV Barh-Balia double circuit transmission line of POWERGRID w.e.f. 01.07.2010.

4. The brief background of the case is as under:-

4.1. National Thermal Power Corporation (“NTPC”) was constructing a Super Thermal Power Station at Barh in the State of Bihar. For evacuation of power from Stage I of Barh STPS comprising 3 units of 660 MW each, associated transmission system comprising sub-stations, transmission lines, etc., including 400 kV Barh-Balia

double circuit line was taken up by POWERGRID. Construction of Balia Sub-station and the transmission line was under the scope of POWERGRID but the construction of Barh Sub-station and the switchgear of the line at Barh end was under the scope of NTPC.

4.2 Barh STPS Stage I of NTPC got delayed for some reason. However, POWERGRID completed the works of 400 kV Barh-Balia double circuit line and charged the line from Balia end on 30.06.2010 without the switchgear and metering and protection arrangements being ready at Barh end and declared the line as having achieved the Commercial Operation w.e.f. 01.07.2010.

4.3 On 01.10.2010, the Respondent no.1 filed a petition for determination of tariff for Barh-Balia transmission line even though the line was practically idle and unutilized because of pending works at Barh Sub-station of NTPC. The petition was heard on 25.01.2011. However, according to the Appellant till then they were not aware

that the line was idle and no power was flowing through the line.

4.4 Subsequently when it came to the notice of the Appellant that line was idle and not loaded, they filed objections before the Central Commission by way of affidavits on 04.03.2011, 15.03.2011 and 07.04.2011.

4.5 The Central Commission by its order passed on 29.04.2011 decided the tariff for Barh-Balia line w.e.f. 01.07.2010 to be paid by the Appellant and other beneficiaries. Aggrieved by the order dated 29.04.2011, the Appellant has filed this Appeal.

5. The Appellant has made the following submissions, assailing the impugned order.

5.1 The Tariff Regulations provide that for declaration of Date of Commercial Operation (“COD”), three conditions viz., successful charging, trial operation and regular service

have to be fulfilled. The Central Commission failed to consider that the petition filed by the Respondent no.1 did not contain any averments regarding trial operation conducted on the transmission line and its regular service. In spite of this, the Central Commission passed the impugned order without considering the provisions of the Act, Regulations and Indian Electricity Grid Code and the objections filed by the Appellant through three affidavits filed on different dates.

5.2 The Central Commission under its conduct of Business Regulations should have considered the vital information submitted by the Appellant through affidavits, and only after considering the objections of the Respondent no.1, should have taken the decision regarding declaration of COD of the Barh-Balia line.

5.3 It was also the obligation of the Central Commission to satisfy itself of fulfillment of the conditions laid down in the Tariff Regulations for COD of the transmission line.

5.4 According to the Indian Electricity Grid Code (“Grid Code”), metering and data collection is an exclusive function of Regional Load Dispatch Central (“RLDC”), the function being performed by the Respondent no.1. Before declaration of COD of the line, it was the obligation of the Respondent no.1 to ensure that Special Energy Meters (SEM) were duly installed and tested on both the ends of the line i.e. at Barh as well as at Balia end. According to the information available with the Appellant the said meters had not been installed as on 16.05.2011. In the absence of the meters, the line could not have been declared as commissioned.

5.5 The Central Commission also failed to appreciate that in the Petition filed by the Respondent no.1, the minutes of meeting dated 16.11.2009 of the 11th Commercial Committee Meeting of Eastern Region Power Committee were attached according to which Patna-Kahalgaon line

was looped in-looped out at Barh Grid Sub-Station with appropriate cost of Rs.171 crores. It was recorded in the minutes that till the COD of the first unit at Barh STPS, the transmission charges would be borne by NTPC and thereafter by the concerned beneficiaries as per the Tariff Regulations of the Central Commission.

- 5.6 The Central Commission has failed to consider that in case where transmission line is to be constructed for evacuation of power from an identified power project, an indemnification agreement is generally signed between the generating company and transmission company with provision of compensation by the generating company to the transmission company if the transmission line is completed as per schedule and the generating project is delayed.

6. The Respondent no.1 in support of the impugned order has submitted the following:-

6.1 The petition for determination of tariff was filed by the Respondent no.1 before the Central Commission on 01.10.2010 duly disclosing that the construction of Barh-Balia line was completed in June, 2010. This was after several meetings with the Northern Regional Power Committee ("NRPC"), in which the Appellant is a Member, wherein the declaration under commercial operation effective 01.07.2010 was duly deliberated and intimated. The Appellant was, therefore, fully aware of the position taken by POWERGRID that notwithstanding the generating station and Barh Sub-station being not ready, POWERGRID was proceeding to claim the commercial operation w.e.f. 01.07.2010, having completed the construction of transmission elements which was within the scope of work of POWERGRID. Despite this the Appellant did not raise the objection in the proceedings

before the Central Commission till the hearing held on 25.01.2011, when the Central Commission reserved the matter.

6.2 Much after the order was reserved by the Central Commission, the Appellant sent the objections to the petition on 04.03.2011, 15.03.2011 and 07.04.2011. The Appellant also did not file any application before the Central Commission for re-hearing the matter.

6.3 According to the Tariff Regulations, in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, the Commission may approve the COD prior to the element coming into regular service. Accordingly, notwithstanding that Barh generating station of NPTC was not ready to generate electricity, the transmission line having been completed in all respects by POWERGRID is to be taken as under commercial operation.

6.4 The switchgear at the Barh end of the Barh-Balia line and CTs/PTs required for protection and metering were to be installed by NTPC. Both main and check meters are only to be provided by POWERGRID as CTU in discharge of its statutory function. These meters could only be installed only after NTPC had established the control room/panel at Barh station and was ready to energise the line from Barh end.

7. We have heard the Ld. Counsel for the Appellant and the Respondent no.1 on the above issue and carefully considered their rival contentions. In the light of their submissions, the only issue that is to be decided by us is as under:-

“Whether on idle charging of a new transmission line connecting a sub-station of a transmission licensee to a generating station of a generating company from one end when the switchgear and metering and protection system

at the generating station end is not made ready by the generating company, could it be declared as having achieved the COD for recovery of transmission charges from the beneficiaries?

8. Let us first examine the sequence of events of the case.

8.1 400 kV Barh-Balia double circuit transmission line was planned by the Respondent no.1 for evacuation of power output from Barh STPS of NTPC. While the construction of transmission line and switchgear at the Balia end was in the scope of works of the Respondent no.1, the switchgear and sub-station at Barh end was to be constructed by NTPC, as per the policy laid down by the Government of India.

8.2 The commissioning of Barh STPS by NTPC was delayed due to some reasons. In the meantime the works of Barh-Balia line in the scope of the Respondent no.1 were completed in June, 2010 and the line was idle charged

- from Balia end by the Respondent no.1 on 30.06.2010. Respondent no.1 declared the commercial operation of the line w.e.f. 01.07.2010.
- 8.3 On 01.10.2010 the Respondent no.1 filed a petition before the Central Commission for determination of tariff. The Central Commission heard the matter on 25.01.2011.
- 8.4 After the hearing was completed, the Appellant filed objections before the Central Commission by way of affidavits on 04.03.2011. 15.03.2011 and 07.04.2011.
- 8.5 The Central Commission passed the impugned order on 29.04.2011 determining the tariff applicable from 01.07.2010.
- 8.6 According to the Appellant, the works at the Barh end were completed by NTPC only in August, 2011 and the

first circuit of Barh-Balia line was loaded on 02.08.2011 while the second circuit was loaded on 19.08.2011.

9. Let us now examine the Tariff Regulations, 2009, defining the COD for transmission system. The relevant extract is reproduced below:-

“(12) date of commercial operation or COD means

(a).....

(b).....

(c) In relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of transmission system is in regular service after successful charging and trial operation.

Provided that the date shall be the first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date;

Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of

commercial operation prior to the element coming into regular service.”

10. A transmission system may comprise of one or more transmission lines and sub-station, inter-connecting transformer, etc. According to above definition an element of the transmission system which includes a transmission line, could be declared as attained COD if the following conditions are met.

- i) It has been charged successfully,
- ii) its trial operation has been successfully carried out,
and
- iii) it is in regular service.

11. Thus, Barh-Balia line in order to achieve COD should have been charged successfully, its trial operation should have been completed and it should have been in regular service. While the line was idle charged only from Balia end on 30.06.2010, its charging from Barh end, its trial operation and regular service was not possible as the

- switchgear at Barh end of the line was not ready. Admittedly, the switchgear, protection system and metering arrangement of the transmission line at Barh end were not ready on 01.07.2010 and reported to have been completed only in August, 2011. Thus, all the conditions laid down in the Tariff Regulations for attaining COD had not been complied with.
12. Ld. Counsel for the Respondent no.1 has argued that the second proviso to Regulation 3 (12) (c) of the Tariff Regulations stipulates that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, the Commission may approve COD prior to the element coming into service.
13. In our opinion this proviso is not applicable in this case as Barh-Balia line was not ready for regular service due to non-installation of the switchgear at Barh end. Merely

because the components of the transmission line in the scope of POWERGRID (R-1) were ready, the line could not be considered as completed and ready for use till the switchgear and protection and metering arrangements, etc; at the Barh end of the line were completed. Both ends of the switchgear protection and metering systems along with the overhead line are components of the transmission line. If for the sake of convenience of construction and operation and maintenance, the scope of work of the components of transmission line at the generating station end has been entrusted to the generating company, the transmission line could not be considered as completed unless all the components of the transmission are ready for use. The second proviso to the definition of COD, in our opinion, will be applicable if the transmission line is ready in all respect for regular use but is prevented for use due to some reasons beyond the control of transmission licensee, e.g. high voltage in the system.

14. We made a specific query to the Ld. Counsel for the Respondent no.1 about the trial operation procedure and trial operation report of Barh-Balia line but we could not get any specific reply in this regard. Thus, the Respondent no.1 could not produce any evidence to establish that the trial operation of the line was completed before declaration of COD on 01.07.2010. In our opinion, the trial operation of the transmission line could not have been completed till the switchgear and associated systems at Barh end were made ready for use.

15. Ld. Counsel for the Respondent no.1 has stated that the Appellant did not raise any objection till the completion of hearing of the petition for determination of tariff before the Central Commission and only after completion of hearing they raised the objections by filing the affidavits.

16. We notice that the Appellant had filed three affidavits on 04.03.2011, 15.03.2011 and 07.04.2011 before the

Central Commission, between date of hearing on 25.01.2011 and the date of the impugned order on 29.04.2011. It is noticed that these affidavits were not considered by the Central Commission. This is evident from the recording in paragraph 6 of the impugned order which is reproduced below:

“6. No comments or suggestions have been received from the general public in response to the public notice published by the petitioner on 19/21.9.2010 as required under Section 64 of the Electricity Act, 2003 (the Act) read with Regulation 3 (6) of the Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of the application and other related matters) Regulations, 2004. No reply has been filed by the respondents.”

17. In our opinion when an important issue regarding COD of the line was raised by the Appellant much before passing the impugned order in the matter, the Central Commission ought to have re-heard the matter by giving further opportunity to both the parties before deciding the issue.

18. We also notice from the petition filed by the Respondent no.1 before the Central Commission that the important fact of declaration of COD of Barh-Balia line without installation of the switchgear at Barh end was not indicated. This fact has also not been discussed anywhere in the impugned order. Thus, it appears that the Central Commission has decided the transmission tariff of Barh-Balia line w.e.f. 01.07.2010 without ascertaining that the line was ready for use after successful completion of trial operation.

19. In view of above, the question framed by us is answered in negative and in favour of the Appellant. Accordingly, we set aside the impugned order and remand the matter to the Central Commission to redetermine the COD and tariff of 400 kV Barh-Balia double circuit line after hearing all concerned within 3 months of the date of this judgment.

20. **Summary of our findings:**

According to Tariff Regulations, the COD of a transmission line shall be achieved when the following conditions are met.

- i) The line has been charged successfully,**
- ii) its trial operation has been successfully carried out, and**
- iii) it is in regular service.**

The above conditions in the case of 400 kV Barh-Balia line were not fulfilled on 01.07.2010, the date on which COD was declared by the Respondent no.1. Merely charging of the line from one end without the switchgear, protection and metering arrangements being ready at the other end, even if not in the scope of works of the transmission license, would not entitle the line for declaration of commercial operation.

21. In view of the above, the Appeal is allowed, the impugned order is set aside and matter is remanded back to the Central Commission for redetermining the COD and tariff of 400 kV Barh-Balia double circuit line after hearing all concerned within 3 months of the date of this judgment. No order as to costs.

Pronounced in open court on 2nd Day of July, 2012.

**(Rakesh Nath)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

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REPORTABLE/~~NON-REPORTABLE~~

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