

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**Review Petition No. 12 of 2022**

**&**

**Review Petition No. 13 of 2022**

**Dated: 6<sup>th</sup> July, 2023**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

**IN THE MATTER OF:**

Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Through its Managing Director  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur – 302005

...Petitioner

Versus

1. Power Grid Corporation of India Ltd.  
Through its Managing Director  
Saudamini, Plot No. 2, Sector-29,  
Near IFFCO Chowk, Gurgaon-122 001.
2. Haryana Vidyut Prasaran Nigam  
Through its Managing Director  
Shakti Bhawan, Sector-6,  
Panchkula-134109.
3. Haryana Power Purchase Centre  
Through its Managing Director  
2<sup>nd</sup>Floor, Shakti Bhawan, Sector-6,  
Panchkula (Haryana) - 134 109
4. M. P. Power Transmission Company Ltd.  
Through its Managing Director  
Block No. 2, Shakti Bhawan,  
Rampur, Jabalpur-482008

5. M. P. Power Management Company Ltd.  
Through its Managing Director  
Block No. 11, 1<sup>st</sup> Floor, Shakti Bhawan,  
Rampur, Jabalpur-482008.
6. Delhi Transco Ltd.  
Through its General Manager (Commercial)  
2<sup>nd</sup> Floor, 33 kV Grid Sub-Station,  
I.P. Estate, Near Vikas Bhawan,  
New Delhi-110 002
7. BSES Yamuna Power Ltd.  
Through its Managing Director  
BSES Bhawan, Nehru Place,  
New Delhi - 110019
8. BSES Rajdhani Power Ltd,  
Through its Managing Director  
BSES Bhawan, Nehru Place,  
New Delhi – 110019.
9. Tata Power Delhi Distribution Limited  
(Formerly known as North Delhi Power Ltd.)  
Through its Managing Director  
Power Trading and Load Dispatch Group,  
CENNET Building, Pitampura,  
New Delhi – 110034.
10. U.P. Power Transmission Corporation Ltd,  
Through its Managing Director  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226001.
11. U.P. Power Corporation Ltd,  
Through its Managing Director  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226001.
12. Central Electricity Regulatory Commission  
Through its Secretary,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chandralok Building,  
36, Janpath, New Delhi – 110 001.

...Respondents

Counsel for the Appellant(s) : Ms. Poorva Saigal  
Mr. Shubham Arya  
Ms. Anumeha Smiti  
Mr. Ravi Nair  
Ms. Shikha Sood  
Ms. Reeha Singh

Counsel for the Respondent(s) : Mr. Aditya Singh for R-5  
Mr. Suresh Tripathi  
Ms. Shailja Kulshreshtha for R-6  
  
Mr. Raj Bahadur Sharma  
Mr. Mohit K. Mudgal  
Mr. Sachin Dubey  
Ms. Aanchal for R-8

**ORDER**

**PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The captioned Review Petition Nos. 12 & 13 of 2022 have been filed seeking review of the judgment dated 14.11.2022 rendered by this Hon'ble Tribunal whereby allowing the Appeal Nos. 267 & 274 of 2018 filed by M/s. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. ( hereinafter referred as "Review Petitioner") inter-alia setting aside the Orders dated 20.06.2018 & 04.05.2018 passed by the Central Electricity Regulatory Commission (hereinafter referred as "Central Commission") in Petition Nos. 215/TT/2017 and 112/TT/2017.

2. This Tribunal while rendering the aforementioned judgment has noted as under:

*"10. During the hearing, the Appellants had submitted that the only issue which they are challenging is the consideration of useful life of the said deemed ISTS lines as 25 years for the purpose of computing the Transmission Charges under POC mechanism as against the 35 years*

*of useful life as prescribed in the Tariff Regulations, 2014 and the earlier notified regulations for the ISTS lines owned by the ISTS licensees, this having resulted into a curtailment of useful life which have not completed even their 35 years of service as on 01.04.2014 and the tariff is restricted to O&M expenses and IWC only.”*

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*30. Accordingly, as observed above, it is opined that the decision of the Central Commission for considering the useful life of the State owned Deemed ISTS lines as 25 years is not correct. The useful life of the subject transmission lines shall be the same as for the ISTS lines as specified in the Tariff Regulations 2014 and the Sharing Regulations, 2010 which is 35 years.*

#### **ORDER**

*For foregoing reasons as stated supra, we are of the considered view that the captioned Appeal No. 267 of 2018, Appeal No. 274 of 2018 and Appeal No. 415 of 2019 have merit and are allowed.*

*The impugned orders dated 20.06.2018 in Petition No. 215/TT/2017, dated 04.05.2018 in Petition No.112/TT/2017 and dated 19.12.2017 in Petition No. 88/TT/2017 read with the order dated 12.06.2019 in Review Petition 11/RP/2018 passed by the Central Electricity Regulatory Commission are set aside.*

*The Central Electricity Regulatory Commission is directed to revisit the impugned orders and pass the consequential orders in accordance with the observations made in the foregoing paragraphs.”*

3. Accordingly, the Impugned Orders dated 20.06.2018 and 04.05.2018 passed by the Central Commission were set aside and the matter was remitted back to the Central Commission for revisiting and passing the orders afresh.

4. The Appeal Nos. 267 & 274 of 2018 were filed assailing the Impugned Orders passed by the Central Commission on two issues that is 1) consideration of the useful life of the Deemed Inter-State Transmission System ('ISTS') Lines to be 25 years instead of the 35 years as prescribed in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014 ('**Tariff Regulations, 2014**'), and 2) direction to the Review Petitioner to file a fresh Petition in respect of ISTS lines on the purported ground that the data in the prescribed format (Line- wise format) was not provided.

5. However, while passing the judgment dated 14.11.2022, this Tribunal allowed the appeals to the extent of aforementioned issue no. 1), also noting that the Issue mentioned at 2) is not being pressed and accordingly, no finding has been passed on this issue, hence the captioned Review Petitions limited to this extent.

6. On examination of the pleadings/ facts and the Written Submissions filed by the Review Petitioner in Appeal Nos. 267 & 274 of 2018, being the Appellant therein, we find it appropriate to consider the Review Petitions for adjudication, the submissions made by the Appellants are similar in appeal nos. 267 & 274 of 2018, relevant extracts in appeal no. 267 of 2018 are reproduced hereunder:

**a) MEMORANDUM OF APPEAL NO. 267 OF 2018 FILED ON 09.08.2018:**

***"7. FACTS OF THE CASE:***

.....

J. On 05.04.2015, the Central Commission notified Central Electricity Regulatory Commission [Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 (hereinafter referred to as '**Sharing Regulations 2010 (Third Amendment)**'). The

relevant substituted regulations introduced by Sharing Regulations, 2010 (Third Amendment) reads as under:

“7. Process to determine Point of Connection Transmission Charges and Losses allocations

.....  
 (n) For the computation of transmission charges at each node as per Hybrid Methodology, cost of ISTS transmission licensees whose lines feature on the Basic Network shall be considered:

Provided that in case of STU lines which are physically inter-State lines and whose tariff is approved by the Commission, such tariff shall be considered for computation of PoC charges:

**Provided further that in case of non-ISTS lines (lines owned by STUs but being used for carrying inter-State power as certified by respective RPCs), the asset-wise tariff as approved by the respective State Commission shall be considered. Where asset-wise tariff is not available, the tariff as computed by the Commission based on the ARR of the STUs (as approved by respective State Commissions) by adopting the methodology similar to the methodology used for ISTS transmission licensees shall be considered. The transmission charges received by the concerned STU on this account shall be adjusted in its approved Annual Revenue Requirement.”**

.....  
 11. Amendment to Annexure-I of the Principal Regulations:

(3) Sub-paras under Para 2.1.3 of the Annexure-I to the Principal Regulations shall be substituted as under:

The line-wise YTC of the entire network shall be provided by the Transmission Licensees. In case a line is likely to be commissioned during the Application Period, the data in respect of the same, along with the anticipated COD will be provided by the CTU/ Transmission Licensee to the Implementing Agency.

For the determination of the transmission charges based on Hybrid Methodology applicable in the next Application Period, all the above data shall be provided to the Implementing Agency as per the timelines specified by the Implementing Agency.

Overall charges to be allocated among nodes shall be computed by adopting the YTC of transmission assets of the ISTS licensees, deemed ISTS licensees and owners of the non-ISTS lines which

have been certified by the respective Regional Power Committee (RPC) for carrying inter-State power. The Yearly Transmission Charge, computed for assets at each voltage level and conductor configuration in accordance with the provisions of these regulations shall be calculated for each ISTS transmission licensee based on indicative cost provided by the Central Transmission Utility for different voltage levels and conductor configuration. The YTC for the RPC certified non-ISTS lines which carry inter-State power shall be approved by the Appropriate Commission.

In case line-wise tariff for the RPC certified non-ISTS lines has not been specified by the Appropriate Commission, the tariff as computed for the relevant voltage level and conductor configuration shall be used. **The methodology for computation of tariff of individual asset shall be similar to the methodology adopted for the ISTS transmission licensees and shall be based on ARR of the STU as approved by the respective State Commission.**

Certification of non-ISTS lines carrying inter-State power, which were not approved by the RPCs on the date of notification of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2009, shall be done on the basis of load flow studies. For this purpose, STU shall put up proposal to the respective RPC Secretariat for approval. RPC Secretariat, in consultation with RLDC, using WebNet Software would examine the proposal. The results of the load flow studies and participation factor indicating flow of Inter State power on these lines shall be used to compute the percentage of usage of these lines as inter State transmission. The software in the considered scenario will give percentage of usage of these lines by home State and other than home State. For testing the usage, tariff of similar ISTS line may be used. The tariff of the line will also be allocated by software to the home State and other than home State. Based on percentage usage of ISTS in base case, RPC will approve whether the particular State line is being used as ISTS or not. Concerned STU will submit asset-wise tariff. If asset wise tariff is not available, STU will file petition before the Commission for approval of tariff of such lines. The tariff in respect of these lines shall be computed based on Approved ARR and it shall be allocated to lines of different voltage levels and configurations on the basis of methodology which is being done for ISTS lines.”

[Emphasis supplied]

.....

*Z. ....Further, the Central Commission has acted contrary to the provisions of the Sharing Regulations 2010 (Third Amendment) by directing the Appellant to file a Petition in respect of Assets at Item (18), (19) and (20), when it has been specifically provided that in the absence of asset-wise data, the Central Commission will determine the tariff based on the approved ARR by the State Commission and allocated in terms of different voltage and configuration.*

.....

**8. (ii) QUESTIONS OF LAW:**

.....

*E. Whether the Central Commission has acted in accordance with the provisions of the Sharing Regulations, 2010 when it directed the Appellant to file a fresh petition in respect of three transmission lines which achieved commercial operation on 29.03.2015, 25.03.2015 and 13.04.2016 respectively?*

**9. GROUNDS WITH LEGAL PROVISIONS:**

.....

*E. **THAT** the Central Commission has acted contrary to the provisions of the Sharing Regulations, 2010 which provide that in the absence of asset wise tariff by the State Commission, ‘the methodology for computation of tariff of individual asset shall be similar to the methodology adopted for the ISTS transmission licensees and shall be based on ARR of the STU as approved by the respective State Commission’. Accordingly, the Central Commission ought to have considered the tariff methodology, as determined by the State Commission in its ARR. It is not open for the Central Commission to deviate from the methodology being followed by the State Commission i.e. the consideration of the useful life of an asset as 35 years, to the detriment of the Appellant.*

***F. **THAT** the Central Commission has acted contrary to the provisions of the Sharing Regulations, 2010 (Third Amendment) which provide that in the absence of asset wise tariff by the State Commission, the ‘tariff in respect of these lines shall be computed based on Approved ARR and it shall be allocated to lines of different voltage levels and configurations on the basis of methodology which is being done for ISTS lines. Accordingly, in respect of Assets 18, 19 and 20 (mentioned in Para 1), the Central Commission should have***



proceeded to determine the tariff on the basis of the approved ARR of the State Commission instead of directing the Appellant to file a fresh Petition.”

**b) WRITTEN SUBMISSIONS FILED BY THE REVIEW PETITIONER ON 19.10.2022:**

**“C. METHODOLOGY ADOPTED BY CENTRAL COMMISSION CONTRARY TO SHARING REGULATIONS, 2010**

14. In the Impugned Order, the Central Commission has directed RRVPNL to file a fresh Petition in respect of Assets (18), (19) and (20) on the purported ground that the data in the prescribed format (Line- wise format) was not provided (**Ref: Para 14 @ Page 45**).

15. The Central Electricity Regulatory Commission [Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 [**Sharing Regulations 2010 (Third Amendment)**] provide that in the absence of asset wise tariff, the methodology for computation of tariff of individual asset shall be similar to that adopted for the ISTS transmission licensees before the respective State Commission and such tariff shall be based on the Annual Revenue Requirement (**‘ARR’**) of the STUs approved by the respective State Commission:

“7. Process to determine Point of Connection Transmission Charges and Losses allocations

.....

**Provided further that in case of non-ISTS lines (lines owned by STUs but being used for carrying inter-State power as certified by respective RPCs), the asset-wise tariff as approved by the respective State Commission shall be considered. Where asset-wise tariff is not available, the tariff as computed by the Commission based on the ARR of the STUs (as approved by respective State Commissions) by adopting the methodology similar to the methodology used for ISTS transmission licensees shall be considered. The transmission charges received by the concerned STU on this account shall be adjusted in its approved Annual Revenue Requirement.”**

16. Prior to the Central Commission exercising jurisdiction, the tariff of such ISTS lines was determined in terms of the Tariff Regulations

*notified by the State Commission wherein useful life of transmission lines were stated as 35 years. Accordingly, in the absence of data pertaining to the said Line, the Central Commission ought to have adopted the methodology being followed by the State Commission.*

*17. Further, Rajasthan Electricity Regulatory Commission (**'State Commission'**) did not prescribe an Element wise tariff determination and the tariff was being determined for the Transmission system as a whole, on the basis of the cumulative data provided by the RRVPNL.*

*18. Accordingly, as regards Assets 18, 19 and 20, the Central Commission should have considered the approved ARR of the State Commission for determination of tariff in the absence of asset wise tariff instead of directing RRVPN to file a fresh Petition."*

7. As seen from above, the Review Petitioner herein i.e. the Appellant in 267 & 274 of 2018 has assailed both the issues in the said appeals, as such, both the issues required adjudication, therefore, the Review Petitions have merit and justify to be allowed for judicious conclusion of the appeals nos. 267 & 274 of 2018.

8. As the second issue assailed by the Appellant in Appeal Nos. 267 & 274 of 2018 has not been considered and decided, is an error which is evident on a mere relook at the prayers made in the aforesaid appeals and the written submissions placed on record by the Appellant, and does not require re-examination or detailed discussions.

9. Therefore, we find it most appropriate to review the earlier judgment of this Tribunal.

10. The Review Petitioner in Appeal Nos. 267 & 274 of 2018 and through the Written Submission pleaded that the Central Commission through the Impugned Orders has directed it to file a fresh Petition in respect of some assets as the data in the prescribed format (Line- wise format) was not provided/ available, whereas, the CERC (Sharing of

Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 (in short “CERC Sharing Regulations”) provide that in the absence of asset wise tariff, the methodology for computation of tariff of individual asset shall be similar to that adopted for the ISTS transmission licensees before the respective State Commission and such tariff shall be based on the Annual Revenue Requirement (in short “ARR”) of the STUs approved by the respective State Commission, the relevant extract of the aforesaid Regulations is quoted as under:

“7. Process to determine Point of Connection Transmission Charges and Losses allocations

.....

*(n) For the computation of transmission charges at each node as per Hybrid Methodology, cost of ISTS transmission licensees whose lines feature on the Basic Network shall be considered:*

.....

***Provided further that in case of non-ISTS lines (lines owned by STUs but being used for carrying inter-State power as certified by respective RPCs), the asset-wise tariff as approved by the respective State Commission shall be considered. Where asset-wise tariff is not available, the tariff as computed by the Commission based on the ARR of the STUs (as approved by respective State Commissions) by adopting the methodology similar to the methodology used for ISTS transmission licensees shall be considered. The transmission charges received by the concerned STU on this account shall be adjusted in its approved Annual Revenue Requirement.”***

11. It was further submitted that the tariff of such ISTS lines, before being brought under the jurisdiction of the Central Commission, was determined in terms of the Tariff Regulations notified by the State Commission wherein useful life of transmission lines were considered as 35 years, and also, in case data pertaining to the such Lines is not available, the Central Commission, in accordance with the CERC Sharing Regulations, ought to have adopted the methodology as was followed by the State Commission, i.e. determination of the tariff considering the transmission system as a whole instead of carrying out element wise tariff determination as per the cumulative data provided by the RRVPNL.

12. The Review Petitioners argued that, in accordance with the aforesaid CERC Sharing Regulations, the Central Commission is bound to consider the approved ARR of the State Commission for the determination of tariff in the absence of asset wise tariff and has erred in directing the Review Petitioner to file a fresh Petition.

13. From the CERC Regulations, it is seen that there is no mandate to maintain the asset wise or Line wise detail in respect of the Transmission assets in question and in case, the tariff for such assets/ lines was determined by the State Commission in terms of the Tariff Regulations notified by the State Commission, wherein the methodology specified tariff determination for the Transmission system as a whole, on the basis of the cumulative data provided by the Review Petitioner and not an Element wise tariff determination, before the tariff determination is brought under the jurisdiction of CERC, the tariff ought to be determined on the basis of ARR of the Review Petitioner as determined by the State Commission.

14. It was also pleaded by the Review Petitioner that it has succeeded to the Transmission function and assets of the erstwhile Rajasthan State Electricity Board which was an integrated entity undertaking all electricity activities in the State for a long time prior to its re-organization in the year 1999 and therefore, no individual Asset wise details are available, accordingly, to deal with such contingencies, the Central

Commission had notified the aforesaid CERC Regulations which provides that in the absence of the asset wise tariff, the tariff as computed by the State Commission in the respective ARRs shall be considered.

15. The Constitutional Bench Judgment of the Hon'ble Supreme Court in PTC India Limited V CERC & Ors.(2010) 4 SCC 603 has held as under:-

*“56. Similarly, while exercising power to frame the terms and conditions for determination of tariff under Section 178, the commission has been guided with the factors specified in Section 61. It is open for the Central Commission to specify terms and conditions for determination of tariff even in the absence of Regulation under Section 178. **However, if a Regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the Regulations under Section 178.**”*

16. As seen from above, that the CERC Sharing Regulations evidently specify the methodology to be adopted in case asset wise details of the transmission system are not available, the Central Commission is bound to pass the orders in strict compliance to its Regulations,

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the Review Petitions have merit and are allowed, the earlier judgment dated 14.11.2022 passed by this Tribunal in Appeal Nos. 267 & 274 of 2018 is amended to the extent as concluded above.

The orders dated 20.06.2018 in Petition No. 215/TT/2017, dated 04.05.2018 in Petition No.112/TT/2017 and dated 19.12.2017 in Petition No. 88/TT/2017 read with the order dated 12.06.2019 in Review Petition 11/RP/2018 passed by the Central Electricity Regulatory Commission are set aside.

The Central Commission shall pass consequential orders by considering the useful life of the State owned Deemed ISTS lines same as for the ISTS lines as specified in the Tariff Regulations 2014 and the Sharing Regulations, 2010 which is 35 years and determining the tariff in accordance with the Regulations specified.

The Review Petitions alongwith IAs, if any, are disposed of accordingly.

**PRONOUNCED IN THE OPEN COURT ON THIS 6<sup>th</sup> DAY OF JULY, 2023.**

**(Sandesh Kumar Sharma)**  
**Technical Member**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

*pr/mkj*