

BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION, NEW
DELHI

I.A. No. /IA/2018

IN

REVIEW PETITION NO. /RP/2018

IN

PETITION No. 175/TT/2017



IN THE MATTER OF:

Delhi Transco Limited

... Review Petitioner

VERSUS

Powergrid Corporation of India Ltd. & Ors.

..Respondents

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THROUGH

DATED: 31/08/2018

PLACE: NEW DELHI

(MSA PARTNERS)

ADVOCATES FOR THE REVIEW PETITIONER

C-66, Ground Floor, Nizamuddin East,

New Delhi-110013

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IN THE HON'BLE CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

REVIEW PETITION NO...../RP/2018

IN

PETITION No. 175/ TT / 2017

IN THE MATTER OF :

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 103 of the CERC (Conduct of Business) Regulations, 1999 for review of the Order dated 29.06.2018 passed by this Hon'ble Commission in Petition No. 175 / TT / 2017.

AND

IN THE MATTER OF:

Delhi Transco Limited
Shakti Sadan, Kotla Road,
New Delhi - 110002

...Review Petitioner

VERSUS

1. Power Grid Corporation of India Ltd.,
Through its Chairman & Managing Director,
SAUDAMINI, Plot No. 2, Sector-29,
Gurgaon - 122001 (Haryana)
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Through its Chairman
Vidyut Bhawan, Janpath
Jaipur - 302 005
3. Ajmer Vidyut Vitran Nigam Limited
Through its Chairman
Vidyut Bhawan, Panchsheel Nagar
Makarwali Road
Ajmer - 305 004
4. Jaipur Vidyut Vitran Nigam Limited
Through its Chairman
Vidyut Bhawan, Jyoti Nagar
Jaipur - 302 005
5. Jodhpur Vidyut Vitran Nigam Limited
Through its Chairman
New Power House, Industrial Area
Jodhpur - 342 003

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General Manager
DELHI TRANS CO LIMITED
NCT of Delhi (undertaking)
New Delhi-110002

6. Himachal Pradesh Electricity Board Limited
Through its Chief Engineer
Vidyut Bhawan
Kumar House, Complex Building II,
Shimla – 171 004
7. Punjab State Power Corporation Limited
Through its Chairman & Managing Director,
PSEB Head Office, The Mall,
Patiala – 147 001
8. Haryana Power Purchase Centre
Through its Chief Engineer
Shakti Bhawan, Sector-6
Panchkula (Haryana) – 134 109
9. Power Development Department
Through its Secretary,
Government of Jammu & Kashmir
Mini Secretariat, Jammu
10. Uttar Pradesh Power Corporation Limited
Through its Chairman
Shakti Bhawan, 14, Ashok Marg
Lucknow – 226 001
11. BSES Yamuna Power Limited
Through its Chairman,
Shakti Kiran Building, Karkardooma
Delhi – 110 092
12. BSES Rajdhani Power Limited
Through its Chairman
BSES Bhawan, Nehru Place
New Delhi – 110 019
13. Tata Power Delhi Distribution Ltd.
Through its CEO
Grid Sub-station Building, Hudson Lines
Kingsway Camp, Delhi – 110 009
14. Chandigarh Administration
Through its Administrator
4th Floor, Additional Deluxe Building,
Sector 9-D, Chandigarh – 160 009

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General Manager (C&RA)
DELHI TRANSCO LIMITED
(A Govt. of NCT of Delhi Undertaking)
P. D. Estate, New Delhi-110002

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15. Uttarakhand Power Corporation Limited
Through its Chairperson
Victoria Cross Vijeyta Gabar Singh Urja Bhawan ,
Kanwali Road, Balliwala Chowk,
Dehradun – 248 001
 16. North Central Railway
Through its Chief Electrical Engineer (PCEE)
Subedar Ganj Road, Subedarganj
Allahabad – 211 015
 17. New Delhi Municipal Council
Through its Chairman
Palika Kendra, Parliament Street,
New Delhi – 110 001

...Respondents

MEMORANDUM OF REVIEW PETITION

MOST RESPECTFULLY SHOWETH:

1. Delhi Transco Limited (“**Petitioner/DTL**”) is a Company formed under the Companies Act 1956. The Government of Delhi in exercise of its power under Section 38 (1) of the Electricity Act, 2003 had declared DTL as a State Transmission Utility (STU). DTL is a deemed transmission licensee under Section 14 of the Electricity Act, 2003, and is required to build, maintain and operate a coordinated and economical intra-State transmission system as per Section 39 and 40 of the Electricity Act, 2003.
2. DTL, the Petitioner had moved Petition No. 175/TT/2017 before this Hon’ble Commission for the determination of inter-State transmission tariff for its ISTS transmission lines for the tariff period 2014-19. The transmission system of DTL consists of Asset-1: 400 KV D/C Mandaula-Bawana and Asset-2: 400 KV/DC Bamnauli-Ballabgharh, which are being used for inter-State transmission of power.
3. This Hon’ble Commission vide its Order dated 29.06.2018 has determined the tariff for the Petitioner’s ISTS transmission lines for the tariff period 2014-19.


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4. The findings of this Hon'ble Commission in the Order dated 29.06.2018 are as under:

"6. We have considered the submissions of DTL and respondents placed on record. The instant petition has been filed by DTL claiming tariff for the two inter-State transmission lines owned by DTL for the 2014-19 tariff period as per the 2014 Tariff Regulations. Similar petitions have been filed by other States claiming tariff for inter-State transmission lines owned by them. The information submitted by some State Utilities were incomplete and inconsistent. Further, some of the lines were more than 25 years old and the States were not having the details of the capital cost, funding, etc. To overcome these difficulties, the Commission has evolved a methodology for allowing transmission charges for such transmission lines connecting two States in orders dated 19.12.2017 in Petition Nos. 88/TT/2017, 173/TT/2016 and 168/TT/2016 filed by Madhya Pradesh Power Transmission Corporation Limited, Maharashtra State Electricity Regulatory Commission and Uttar Pradesh Power Transmission Corporation Limited respectively. The Commission adopted the same methodology in order dated 4.5.2018 in Petition No.112/TT/2017, while granting tariff for ISTS connecting Rajasthan with other States and owned by Rajasthan Rajya Vidyut Prasaran Limited. The Commission derived the benchmark cost on the basis of the transmission lines owned by PGCIL. The useful life of the transmission line was considered as 25 years and for lines more than or equal to 25 years, only O & M Expenses and Interest on Working Capital (IWC) has been decided to be allowed as per the existing Tariff Regulations. For assets put into commercial operation on or after 1.4.2014, tariff has been decided to be allowed on the basis of the audited financial capital cost. The relevant portion of the order dated 4.5.2018 is extracted hereunder:-

"13. It is observed that the information submitted by the petitioner States for computation of transmission charges for the deemed ISTS lines are not uniform, thereby causing divergence in working out the tariff. In some cases, the data related to funding and depreciation was not available and in some cases the assets have already completed, or nearing, their useful life. In most of the petitions, the states have expressed their inability to furnish the audited capital cost of transmission lines as the lines are old. As a result, tariff workings for old assets are ending in skewed results. It is further observed that the YTC figures emerging out by the existing ARR methodology are on the higher side. Considering these facts, we have conceptualized a modified methodology for determining the tariff of the inter-State transmission lines. The methodology is broadly based on the following:-

(a) PGCIL's Annual Report data has been used as the reference data; based on which, year wise benchmark cost has been derived.

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(b) Useful life of Transmission Line has been considered as 25 years. Thus, if life is more than or equal to 25 years as on 1.4.2014, only O & M Expenses and Interest on Working Capital (IWC) shall be allowed as per the existing Tariff Regulations, in lieu of complete tariff.

(c) It is expected that the States do have the audited financial data of recently commissioned (i.e. on or after 1.4.2014) lines.

Tariff Methodology

14. As per the petitions filed by the states, their ISTS lines generally have the configuration of 132 kV, 220 kV or 400 kV. In the absence of an established tariff data base, in order to develop this methodology Annual Reports of PGCIL from 1989-90 to 2013-14 have been referred to. The Annual Reports depict, inter alia, the information pertaining to year wise total length of transmission lines in ckt-km and corresponding Gross Block. This pan-India data represents all the five transmission regions and is a composite mix of parameters like terrains, wind-zones, tower and conductor type etc. +/- 500 kV HVDC and 765 kV and above voltage level AC lines too have come up in between and the data also includes those lines. Voltage level-wise data as on 30th April 2017, obtained from PGCIL indicates that the percentage of 220 kV, 132 kV and 66 kV Transmission Line taken together makes it around 8.3 % of the total line length owned by PGCIL. Further, 132 kV Transmission Lines were established in NER prior to 1990, and Transmission Lines of 220 kV voltage levels were last commissioned in around the year 2004 in NR. Majority of the transmission lines consist of 400 kV which corresponds to 66% of the total transmission line lengths. Thus, the 400 kV and lesser voltage levels account for approximately 75% of the transmission lines. Assuming the above referred spread of voltage wise percentages for earlier years too, it can be said that the year wise average Transmission Line cost figures derived from PGCIL data, when further reduced by 25%, fairly represent the average transmission line capital cost corresponding to a 400 KV S/C line. Considering 400 kV S/C transmission line cost as reference cost, analysis of PGCIL's indicative cost data (P/L Feb 2017) suggests the following:-

	Reference cost of 400 kV S/C TL	Rs X lakh/km
1.	400 kV D/C TL	1.39 X
2.	220 kV D/C TL	0.57 X
3.	220 kV S/C TL	0.36 X
4.	132 kV D/C TL	0.43 X
5.	132 kV S/C TL	0.31 X

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15. Therefore, for arriving at the costs of transmission lines of other voltage levels and circuit configurations, the average transmission line cost data shall be multiplied by the factors illustrated in the above table. Lower voltage levels can be treated as part of 132 kV. The above table contemplates Twin Moose conductor which is widely used in State transmission lines.

16. Based on respective year end data, average transmission line length during the year has been worked out. Difference between a particular year's average transmission line length figures and that for the immediate preceding year provides us the transmission line length added during that year. Average gross block corresponding to transmission lines has been divided by the average transmission line length to arrive at the Average Cost of transmission line (in ` lakh per ckt-km) during the year. Thus, considering the year of COD of a State's ISTS line and its ckt-km, its cost would be worked out by relating it to PGCIL's transmission line cost during that year. Although the Commission has relied on PGCIL's Annual Reports, there are certain deviations in the cost data worked out. The year 1989-90 was the year of incorporation for PGCIL, and the transmission assets of NTPC, NHPC, NEEPCO etc. were taken over by PGCIL by mid 1991-92. Thus, as the base data for these years was not available, the corresponding average cost of transmission line could not be worked out. The average cost from 1992-93 onwards up to 2013-14 shows an increasing trend at a CAGR of 5.17%. Therefore, for the years 1989-90, 1990-91 and 1991-92, the average cost of transmission line has been back derived considering the 1992-93 average cost. Similarly, abnormal dip/spikes in the transmission line cost for the years 1996-97, 2001-02 and 2004-05 has been corrected by considering the average values of the transmission line costs in the immediate preceding and succeeding years.

17. While calculating tariff, the following has been considered:-

(i) Useful life of the transmission line shall be deemed to be 25 years.

(ii) Prevailing depreciation rates as per the 2014 Tariff Regulations shall be considered uniformly for all the previous tariff periods so as to do away with the Advance Against Depreciation which was in vogue during earlier tariff periods. Notwithstanding the depreciation considered as recovered earlier, for the purpose of these tariff calculations, remaining depreciable value shall be spread over the remaining

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useful life of the transmission line, where the elapsed life is more than or equal to 12 years.

(iii) Normative Debt-Equity ratio shall be 70:30.

(iv) Normative loan repayment during a year shall be deemed to be equal to the depreciation allowed for that year.

(v) Rate of Interest on normative loan shall be the weighted average rate of interest as derived on the basis of PGCIL's Balance Sheet.

(vi) In order to avoid complexity, grossing up of rate of Return on Equity with tax rate is being dispensed with.

(vii) Bank rate as defined in 2014 Tariff Regulations, 2014 as on 1.4.2014 shall be applied for calculating the rate of interest on working capital on normative basis.

(viii) O & M Expenses as per the 2014 Tariff Regulations shall be considered.

(ix) Where the life of transmission line is more than or equal to 25 years as on 1.4.2014, only O & M Expenses and IWC shall be allowed in lieu of complete tariff.

18. Thus, in effect, this is a normative tariff working methodology which shall be applied in those cases where the audited capital cost information is not available."

7. DTL has not submitted the Audited capital cost certificates in case of the instant assets. Accordingly, tariff is allowed for the instant two inter-State transmission lines in line with the methodology explained in foregoing paragraphs.

[Emphasis Supplied]

A copy of the Order dated 29.06.2018 is attached hereto and marked as **Annexure A.**

5. This Hon'ble Commission has proceeded on the basis that since the Petitioner has not submitted its Audited Capital Cost Certificates, the methodology devised by the Hon'ble Commission for the determination of tariff in such instances based on its Order dated 04.05.2018 in Petition No. 112/TT/2017 & Order dated 19.12.2017 in Petition Nos. 88/TT/2017, 173/TT/2016 and 168/TT/2016 would be applicable.


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6. In the Order dated 19.12.2017 which is the base Order, the Hon'ble Commission had devised the methodology because the ISTS lines for which tariff had been sought were more than 25 years old and no proper details for tariff fixation had been provided by the respective licensees. A copy of the Order dated 19.12.2017 in Petition No. 88/TT/2017 is attached hereto and marked as **Annexure B**.
7. The above Order had been applied by the Hon'ble Commission in the Order dated 04.05.2018 in Petition No. 112/TT/2017 filed by RRVPNL again on the basis that the Audited Capital Cost information.
8. However, this principle has no application to the Petitioner. The finding of the Hon'ble Commission in Para 7 of the Order under review, namely that "*DTL has not submitted the audited capital cost certificates in case of the instant assets*" is an error apparent on the face of record since the Petitioner had submitted the audited acquisition cost of the ISTS lines in the petition that it had filed before this Hon'ble Commission at Page No. 126 of the consolidated pleadings. This Hon'ble Commission has however applied the principle of the Orders dated 19.12.2017 & 04.05.2018 on the basis that the audited capital cost has not been filed by the Petitioner. A copy of the filing of the Petitioner regarding audited capital cost of the ISTS lines is attached hereto and marked as **Annexure C**.
9. It is submitted that the methodology devised by this Hon'ble Commission as mentioned above, was for the utilities which were not able to provide complete details pertaining to the lines owned by them. In the instant case, the Petitioner had submitted all such requisite details in compliance of this Hon'ble Commission's directions.
10. It is submitted that the application of the said methodology for the determination of tariff for DTL's lines is incorrect since DTL had submitted all the requisite information. Just because the other utilities in similar matters, were unable to provide the relevant data, the Petitioner cannot be prejudiced in any manner. This Hon'ble

Commission ought to consider the submissions made by the parties on a case to case basis, so as to ensure fair treatment of the utilities.

11. Moreover, the methodology cannot be uniformly applied since there are differences in the transmission lines of the utilities. While some lines are more than 25 years without relevant details, other lines are newer with the capital cost / acquisition cost available with the utility.
12. This Hon'ble Commission has reduced the tariff for the Petitioner's transmission lines without providing any calculations or basis in the Order dated 29.06.2018. A table showing the comparison of the tariff as sought for by the Petitioner, and the tariff allowed by this Hon'ble Commission is provided as under:

S. NO.	PARTICULARS	AS FILED (in Rs. Lakh)	AS APPROVED (in Rs. Lakh)
2014-2015			
1.	400 kV/D/C Bawana-Mandola	543.27	148.54
2.	400 kVD/C Bamnauli-Ballabhgarh	900.11	279.43
2015-2016			
1.	400 kV/D/C Bawana-Mandola	399.72	109.27
2.	400 kVD/C Bamnauli-Ballabhgarh	875.79	273.93
2016-2017			
1.	400 kV/D/C Bawana-Mandola	394.31	108.50
2.	400 kVD/C Bamnauli-Ballabhgarh	846.20	205.82
2017-2018			
1.	400 kV/D/C Bawana-Mandola	388.31	107.76
2.	400 kVD/C Bamnauli-Ballabhgarh	599.80	204.97
2018-2019			
1.	400 kV D/C Bawana-Mandola	382.35	107.68
2.	400 kV D/C Bamnauli-Ballabhgarh	592.67	204.17

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13. As can be seen from the above table, the tariff for the Petitioner's transmission lines has been reduced substantially by this Hon'ble Commission in the Order dated 29.06.2018.
 14. Further, the Petitioner vide its letter dated 13.07.2018 had requested the office of the Hon'ble Commission to provide the Tariff computation details and the Hon'ble Commission vide its letter dated 01.08.2018 has provided the calculation details. Copies of the letters dated 13.07.2018 & 01.08.2018 are attached hereto and marked as **Annexure D**.
 15. The Hon'ble Commission has, despite all the details having been provided by the Petitioner, reduced the weighted average rate of interest on loan. The Petitioner has been drawing loans from State Government/Government Agencies i.e. GNCTD and Commercial Banks on overall requirement basis. A comparison of the claim made by the Petitioner and the claim allowed by the Hon'ble Commission is as under:

	2014-15	2015-16	2016-17	2017-18	2018-19
Submitted by Petitioner	9.87%	10.25%	10.19%	10.19%	10.19%
Approved by Hon'ble Commission	7.1141%	7.1680%	7.2104%	7.2104%	7.2104%

16. The above is an error in the Order as it is in the teeth of Regulation 26 of the Tariff Regulations, 2014 which provides as under –

“26. Interest on loan capital:

(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.

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(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

....."

17. As per directions of Hon'ble Commission in ROP after the hearing dated 08.05.2018, the Petitioner had submitted the revised income tax rate for FY 2014-15 to FY 2018-19. However, this Hon'ble Commission in its Order dated 29.06.2018 has not allowed the income tax by grossing up the Return on Equity. This is not in line with Regulation 25 of the Tariff Regulations, 2014 which reads as under:

"25. Tax on Return on Equity

(1) The base rate of return on equity as allowed by the Commission under Regulation 24 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respect of the financial year in line with the provisions of the relevant Finance Acts by the concerned generating company or the transmission licensee, as the case may be.

["The actual tax on income from other business streams including deferred tax liability (i.e. income on business other than business of generation or transmission, as the case may be) shall not be considered for the calculation of effective tax rate".]

(2) Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$

Where "t" is the effective tax rate in accordance with Clause (1) of this regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation or non-transmission business, as the case may be, and the corresponding tax thereon. In case of generating company or transmission licensee paying Minimum Alternate Tax (MAT), "t" shall be considered as MAT rate including surcharge and cess.

Illustration: -

(i) In case of the generating company or the transmission licensee paying Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:

$\text{Rate of return on equity} = 15.50 / (1-0.2096) = 19.610\%$

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(ii) In case of generating company or the transmission licensee paying normal corporate tax including surcharge and cess:

(a) Estimated Gross Income from generation or transmission business for FY 2014-15 is Rs 1000 crore.

(b) Estimated Advance Tax for the year on above is Rs 240 crore.

(c) Effective Tax Rate for the year 2014-15 = Rs 240 Crore/Rs 1000 Crore = 24%

(d) Rate of return on equity = $15.50 / (1 - 0.24) = 20.395\%$

(3) The generating company or the transmission licensee, as the case may be, shall true up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2014-15 to 2018-19 on actual gross income of any financial year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company or the transmission licensee as the case may be. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be recovered or refunded to beneficiaries or the long term transmission customers/DICs as the case may be on year to year basis."

18. It is submitted that the grossing up of the Return on Equity is provided for under the Tariff Regulations, 2014. As can be seen from a mere reading of Regulation 25 as extracted above this Hon'ble Commission ought to have allowed for the income tax by grossing up the Return on Equity.

19. This is a clear error in the Order dated 29.06.2018 and needs to be reviewed. It is a well settled principle that Statutory Regulations, once framed are binding on all including on the Hon'ble Commission. The Petitioner relies on the following judgments –

- (i) Haryana Power Generation Corporation Ltd. v. Haryana Electricity Regulatory Commission Appeal No.131 of 2011 - Judgment dated 1.3.2012


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(ii) Haryana Vidyut Prasaran Nigam Limited v. Haryana Electricity Regulatory Commission Appeal No.102 of 2011 - Judgment dated 18.04.2012.

20. For the above reason also, the present Order needs to be reviewed.

PRAYER :

21. In view of the above stated facts and submissions, it is most respectfully prayed that this Hon'ble Commission may kindly be pleased to:

- a) Admit the Review Petition;
- b) Allow the present Review Petition on the aspects of tariff determination, rate of interest on loan and grossing up of return on equity;
- c) Modify the Tariff calculations in the Order under review;
- d) Pass such further order(s) or direction(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

DATE: 31-08-2018

PLACE: NEW

DELHI


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