

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

Appeal No. 73 of 2008 & I.A. No. 104 of 2008

Dated: November 4, 2008

**Present: Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

Powergrid Corporation of India Ltd. -Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors. -Respondent(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran and
Mr. Ramnesh Jerath

Counsel for the Respondent(s) : Mr. M. Debbarma, AGM, TSECL

ORDER

I.A. No. 104 of 2008

1. The delay in filing the appeal is only of 3 days. The application for condonation of delay is not opposed by the respondents. The delay is condoned.

Appeal No. 73 of 2008

1. Heard.

2. The appeal is admitted subject to any other just exceptions. Neither party except the respondent Tripura State Electricity Corporation Limited has put in appearance.

3. The issue involved is brief.

4. The present appeal challenges the order of the Central Electricity Regulatory Commission ('Commission' for short) whereby transmission tariff for Ranaganadi Transmission System owned by the petitioner, Powergrid

Corporation of India Ltd. ('PGCIL' for short) for the North Eastern Region in the country for the period, 1.04.2004 to 31.03.2009 was determined. M/s. Assam State Electricity Board, Meghalaya State Electricity Board, Government of Arunachal Pradesh, Government of Mizoram, Government of Manipur, Government of Nagaland and the Tripura State Electricity Corporation Ltd. were parties to the hearing leading to the passing of the impugned order till 31.03.2004. The Appellant, PGCIL was being paid transmission tariff at the Uniform Common Pool Transmission Tariff Formula (UCPTT formula) for certain reasons. This tariff was not based on the usual method of fixing tariff based on the cost of the service provided as per the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2004 ('Regulations' for short) prevailing for such purpose. Admittedly, the UCPTT tariff did not meet the revenue requirement of the PGCIL. The Commission had been asking the PGCIL to look for grant from the Government of India to cover the gap between the revenue and the expenditure. However, with effect from 1.4.2004, the Commission had undertaken to apply the Regulations. Nonetheless, the Commission in the impugned order directed that the UCPTT formula should continue upto 31.3.2007 and the Regulations be given effect to from 1.04.2007. The appellant is aggrieved with the denial of tariff as per the Regulations for the period of 1.4.2004 to 31.03.2007 and hence the appeal.

5. In the impugned order, the Commission has made a reference to its order dated 16.01.2008 in Petition No. 85 of 2006 wherein, the Commission claims, reasons for giving effect to the Regulations only from 1.04.2007 have been given. Accordingly, we are taken through the order dated 16.1.2008. A copy of the order dated 16.01.2008 is available in the file of Appeal No. 77/2008 which has also been listed today and is being heard alongwith the present Appeal No. 73/08. The "reasons" is available in para-8 of this order, which is as under:-

" 8. Energy availability from the central generating stations in the region has gradually gone up in the recent years. On the other hand, the annual transmission charges, had they been calculated following the principles laid down in the Commission's tariff regulations, would have been coming

down with repayment of loans over the years. A stage has thus come where continuation of the UCPTT may no longer be beneficial to the States in the region. The UCPTT scheme has already continued much beyond the date contemplated by the Commission for its termination in the order dated 1.1.2002. We are, therefore, keen that the tariff for the transmission assets in the region be regulated under the 2004 regulations, without further delay. Since this change –over has to be effected from the beginning of a financial year, it has been decided that with effect from 1.4.2007, the transmission charges for all the transmission assets in the region are to be determined under the 2004 regulations, as indicated by the Commission in its order dated 27.4.2007 while approving the provisional transmission charges for the petitioner’s transmission assets in the region.”

6. The Commission, the extracted paragraph-8 clearly shows, is aware of its responsibility and the need to fix tariff with effect from 1.4.2004 according to the Regulations in force from 1.04.2004. The Commission also declares that it is keen that the tariff for transmission assets be regulated under those Regulations. The Commission, however, says that since the change over has to be effected from the beginning of a financial year, it has been decided that the Regulations be given effect to from 1.4.2007.

7. This, however, is not any reason. It only conveys a decision to implement the Regulations w.e.f. 1.04.2007. This is only a declaration of intention and not a decision arrived at on the basis of any reason. Even if the Commission thinks that the Regulations have to be applied from the beginning of a particular financial year, the Commission has to give reason as to why the Regulation was not put to effect from 1.04.2004. As such the decision to give effect to the Regulations from 1.04.2007 is entirely an arbitrarily decision and accordingly cannot be upheld.

8. The impugned order has been challenged on various other grounds. However, if the transmission tariff is determined on the basis of Regulations, all the other grounds of challenge will also be taken care of.

9. It may be mentioned here that Mr. Debbarma, AGM, appearing for the Tripura State Electricity Corporation Ltd. also endorses that the Commission

should have implemented the Regulations for fixing the transmission tariff w.e.f. 1.04.2004 for the North Eastern Region, as it has been done in the rest of the country.

10. In view of the above, we set aside the impugned order and allow the appeal and direct the Commission to re-determine the transmission tariff for the appellant, PGCIL for the period from 1.04.2004 to 31.03.2007, according to the Regulations.

(H.L. Bajaj)
Technical Member

(Manju Goel)
Judicial Member