

Appellate Tribunal for Electricity

(Appellate Jurisdiction)

Appeal No. 155 of 2011

Dated 10th May, 2012

Coram : Hon'ble Mr. Justice P.S. Datta, Judicial Member

Hon'ble Mr. V.J.Talwar, Technical Member

In the matter of

Power Grid Corporation of India Ltd.
Saudamini, Plot No. 2,
Sector 29, Gurgaon – 122001,
Haryana

.... Appellant(s)

1. Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001.
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005.
3. Ajmer Vidyut Vitran Nigam Ltd.,
Old Power House,
Hathi Bhata, Jaipur Road,
Ajmer – 305 001,
Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd.,
Vidyut Bhawan, Janapath,
Jaipur – 302005,
Rajasthan

5. Jodhpur Vidyut Vitran Nigam Ltd.,
New Power House, Industrial Area,
Jodhpur – 342003,
Rajasthan
6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla – 171004
7. Punjab State Electricity Board,
The Mall, Patiala – 147 001.
8. Haryana Power Purchase Centre,
Shakti Bhawan, Sector – 6,
Panchkula (Haryana) 134 109.
9. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu – 180006.
10. Uttar Pradesh Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001.
11. Delhi Transco Ltd.
Shakti Sadan, Kotla Road,
New Delhi – 110019
12. BSES Yamuna Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi – 110019.
13. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi – 110019.
14. North Delhi Power Ltd.
Power Trading & Load Dispatch Group
Cennet Building, Pitampura,
New Delhi – 110034.

15. Chandigarh Administration,
Sector 9, Chandigarh – 160022.
16. Uttarakhand Power Corporation Ltd,
Urja Bhawan, Kanwali Road,
Dehradun – 248 001.
17. North Central Railway
Regional Headquarters,
Civil Lines, Allahabad – 211 001.
18. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi – 110002.

.....Respondent(s)

Counsel for the Appellant (s) : Mr. M.G. Ramachandran
Mr. Anand K. Ganesan

Counsel for the Respondent (s) : Mr. Pradeep Misra &
Mr. Suraj Singh for R-10
Mr. R.B. Sharma for R-13
Mr. Manu Seshadri for R-1

JUDGEMENT

HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER

1. Power Grid Corporation of India , a Central Transmission Utility within the meaning of Section 38 of the Electricity Act, 2003, engaged in the transmission of electricity and other functions as assigned under the said Act preferred this appeal being aggrieved with the order dated 1.8.2011 passed in the Petition no. 329 of 2010 passed by the Central Electricity

Regulatory Commission determining the transmission tariff for the 400 kV D/C Kanpur- Ballabgarh line along with its associated bays under the transmission system associated with the Northern Region System Strengthening Scheme –IX in Northern Region for the period from the date of the commercial operation , i.e. 1.11.2010 to 31.3.2014.

2. Along with the Central Electricity Regulatory Commission which is the respondent no 1 there are 17 other respondents who include amongst others distribution companies of the States of Rajasthan, Himachal Pradesh, Punjab , , Power Development Department of the State of Jammu & Kashmir, Chandigarh Administration, North Central Railway, New Delhi Municipal Council, Delhi Transco Ltd, BSES Yamuna Power Ltd, BSES Rajdhani Power Ltd, and North Delhi Power Limited , and Uttar Pradesh Power Corporation Limited, and of these 18 respondents the Uttar Pradesh Power Corporation Limited (respondent no 10) and the BSES Rajdhani Power Limited, (respondent no 13) are contesting the appeal by filing their respective written responses, and the respondent no 1, CERC though it has not filed any written response made its oral submissions in support of the impugned order, while others are not contesting despite service.

3. While adjudicating upon the disputes raised in the appeal we will have occasion to refer to some of the provisions of the CERC Tariff Regulations,2009 that came into force with effect from 1.4.2009, but for the present it is worthwhile to refer to certain facts relevant for determination of the dispute. The appellant is said to had undertaken implementation of the Transmission System associated with the Northern Region System Strengthening Scheme-IX in the Northern Region. The Board of Directors of the appellant by a memorandum dated 7.7.2008 accorded approval and expenditure sanction to the transmission project and approved an investment of Rs525.14crore based on 1st.quarter of 2008 price level. The scope of the project was scheduled to be commissioned within a period of 36 months from the date of investment approval. The scheduled date of the completion worked out as 7.7.2011.. The first element of the project , i.e., the 400 kV D/C Kanpur- Ballabhpgarh Transmission line along with its associated bays was actually put under commercial operation on 1.11.2010 ,that is, in less than 28 months from the date of investment approval and well before the Scheduled Date of completion. Pursuant to such commercial operation of the above element of the transmission system line /element, the respondent beneficiaries are having the benefit

of such line as such line is being used to service the conveyance of power for the respondent beneficiaries . Accordingly, the appellant has become entitled to tariff for the above transmission line with effect from 1.11.2010 notwithstanding that the other elements of the project as a whole was not commissioned on 1.11.2010. In the circumstances, the appellant also became entitled to claim additional Return on Equity as per Regulation 15 read with the Appendix II to the Tariff Regulations, 2009 for early commissioning of the particular transmission element / line, namely ,400 KV D/C Kanpur- Ballabhpur Transmission Line. The appellant on 13.12.2010 filed a petition, being Petition no. 329 of 2010 before the Central Commission for approval of the final transmission tariff from the date of commercial operation of the above element of the system i.e., 1.11.2010 to 31.3.2014. On 1.8.2010 the CERC passed the impugned order inter alia holding that the Annexure II to the Tariff Regulations,2009 provides additional return on equity only for commissioning of the entire project before the Scheduled Date and not individual elements of the project.

4. The appellant contends as follows:-

- a) The CERC narrowly interpreted the provisions of the Tariff Regulations independent of the provisions of Appendix II to the Tariff regulations,2009 and Regulations 3(31), 3(40) and regulation no 4 and more importantly contrary to the scheme and objective of incentivizing the Utilities for early commissioning of the transmission line and early availability of such line for the beneficiaries. Regulation 15 deals with the early commissioning of the project in a general manner and the same has to be read with the time line specified for completion of each unit or block or element of the transmission project as provided in Appendix II to the Tariff Regulations,2009. This is further in the context of regulation no 4 providing for the transmission line, the definition of the term “Project” and the fact that the transmission element or line forming part of the Project can be independently commissioned and put to service for the benefit of the beneficiaries.
- b) The Commission failed to appreciate that an individual transmission line can also be a transaction system and, therefore a Project within the meaning of the regulation no 3(31)read with regulation 15 entitles the Utility to the additional return on equity of 0.5%.

- c) The Central Commission failed to appreciate that the Appendix II to the Tariff Regulations, 2009 specifically provides that the completion time schedule is to be reckoned from the date of investment approval up to the date of commercial operation of the units or block or element of transmission project as applicable. The Appendix II does not provide that the entire project has to be completed within the time frame specified.
- d) The Central Commission erred in construing the provisions of Regulation 15 and Appendix ii to the Tariff Regulations, 2009 to mean that the entire project has to be completed within the time frame specified for the same. Regulation 15 provides that an additional return on equity would be allowed in the event of the project being completed within timelines specified in the Appendix II to the Tariff Regulations, 2009 regarding the completion of individual elements of the transmission projects, the same has to be harmoniously construed to mean that the time period specified in the Appendix II applies to the individual elements of the project.
- e) The Central Commission failed to appreciate that the early availability of the transmission line has resulted in the system being available early as well as reducing the cost of interest during construction which is to be borne by the beneficiaries of the

project. The appellant ought to be incentivized for providing such benefit to the beneficiaries.

5. The respondent no 13 of the appeal, namely BSES Rajdhani Power Limited filed a counter affidavit contending that the word 'project' has a wide and flexible meaning and its applicability is required to be examined on the basis of the facts and figures of each case. The first proviso to the regulation no 15(2) provides an additional return on equity of 0.5% if the project is completed within the time line specified in Appendix II of the Tariff Regulations, 2009. The time line for the completion of the transmission project is calculated in accordance with the timeline stipulated for the applicable element of the transmission project from the various elements of the transmission project mentioned in the Appendix II. Given the description of the transmission line and the sub-station it would appear that the transmission line, associated sub-station including equipment associated fall strictly within the ambit of 'project' as defined under regulation no 3 (31) read with the regulation 3(40) of the Tariff Regulations, 2009. Thus, all the elements mentioned in the Investment Approval are part of the project and unless the project as a whole is completed, the appellant is not entitled to the additional return on equity in terms of the regulation 15(2) of the Tariff Regulations,

2009. The Investment Approval clearly stipulates the scope of the project. The change in the stance and the contention by the appellant especially after incorporation of the first proviso under Regulation 15(2) of the Tariff Regulations, 2009, by misconstruing and misinterpreting the provisions of the Regulation 15 and the Appendix Ii of the said Regulations, 2009 is solely guided by unreasonable profit motive. The contention of the appellant that the respondents have only benefited as a result of early availability of the transmission line being one of the elements of the transmission project is not entirely correct. The appellant also stands benefited in getting the early return on 30% of the equity capital in the form of return on equity. Of Course, the appellant is entitled to return on equity capital only from the date of the commercial operation. Accordingly, it is submitted that the appeal may be dismissed.

6. The respondent no 10, the UP Power Corporation Limited has filed a written note of submission which actually takes the place of reply to the memorandum of the appeal of this respondent. It contends that even though a unit of a generating station may be completed before the time schedule but that will not give a right to the Generation Company a claim of 0.5% additional return unless all the units of a generating station are completed and the generating station itself has achieved the date of

commercial operation. It is further contended that the first proviso to regulation 15 of Regulations, 2009 is that the Generation Company or the Transmission Licensee shall be provided with 0.5% additional return on equity so that they may make an endeavour to complete the entire transmission system before the time schedule which will ultimately save the interest during construction and this will also be beneficial to the beneficiaries. This proviso makes a balance between the Transmission Licensee / Generation Company and the beneficiaries. On the one hand, the generator / Transmission Licensee gets 0.5% additional return on equity for the entire life of the transmitting system / generating station while the beneficiaries get the benefit of reduction in capital cost due to less interest during construction.

7. The point for consideration is whether the Appellant is entitled to additional return on equity of 0.5% in terms of Regulation No.15 (2) of the Central Electricity Regulatory Commission Tariff Regulations', 2009.

8. We have heard Mr.M.G. Ramachandran, appearing with Mr.Anand K. Ganesan, Learned Advocates for the Appellant, Mr. Pradeep Mishra and Mr. Suraj Singh, Learned Advocates for the Respondent No.-10, Mr.

R.B. Sharma, Learned Advocate appearing for Responder No.-13 and Mr. Manu Sheshadri, Learned Advocate appearing for the Central Commission.

9. The facts are not in dispute. This was the implementation scheme for implementation of the transmission system associated with Northern Region System Strengthening Scheme – IX in the Northern Region. Investment approval was made by the Board of Directors' on 7.7.2008. The scope of the work covered under the project was:-

Transmission Line :

- a) Kanpur-Ballabgarh 400 kV D/C line

Sub-stations :

- a) Extension of existing Kanpur substation
- b) Extension of existing Ballabgarh substation
 - i. 40% series compensation on proposed Kanpur-Ballabgarh 400 kV D/C Line
- c) Reactive Compensation

80 MVAR line reactors on each circuit at both ends on proposed Kanpur-Ballabgarh 400 kV D/C Line

10. The project was to be commissioned within a period of 36 months from the date of investment approval and the scheduled date of completion was worked out at 7.7.2011. According to the Appellant, the first element of the Project i.e. 400 kv D/C Line along with this associated bays was actually put under commercial operation on 1.11.2010 which was less than 28 months and well before the scheduled date of completion. Thus, the beneficiaries are having the benefit of such line which has been put to service and accordingly the Appellant is also entitled to tariff for the above transmission line with effect from 1.11.2010 although the other elements of the project as a whole was not commissioned on 1.11.2010. In the circumstances, the Appellant is entitled to claim additional return of equity as per Regulation 15(2) read with Appendix-II to the Tariff Regulations'2009. According to Mr. Ramachandran , in the context of the definition of the transmission system as we find in regulation 3(40) and the definition of the term 'project' as appearing in regulation 3(31) one transmission element or line forming part of the project can be independently commissioned for the benefit of the beneficiaries, and that would entitle a transmission

licensee to additional return on equity of 0.5%. That is to say, an individual transmission line can also be a transmission system and, therefore, a project within the meaning of Regulation 3 (31) read with Regulation 15 entitles the utility for additional return on equity. Appendix II specifically provides that the completion time schedule is to be reckoned from the date of investment approval up to the date of commercial operation of the units or block or element of transmission project as a whole. Thus, Regulation 4 enables determination of tariff either for the transmission system as a whole or for transmission line or substation, and the transmission system, as defined in Section 3 (4) means a line or a group of line with association sub-station etc.. Appendix-II specifies the completion schedule for elements of transmission project and not the entire transmission system as a whole.

11. Mr.R.B.Sharma, Learned Advocate appearing for Respondent No.13 submits that the argument of Mr.Ramachandran is not sound enough because for the purpose of acquisition of additional return on equity of 0.5%, law demands completion of the project as a whole and completion of a unit or units, or line or a group of line which forms part of the total transmission system which is the project in question here does not entitle the developer or the Transmission Licensee to the additional

return on equity of 0.5%. According to Mr. Sharma, interpretation of Appendix-II, as made by Mr. Ramachandran is not a correct one because there has to be a harmonious reading of the relevant provision of the Regulations, 2009 and for the purpose of claiming additional return on equity, it is the system as a whole that has to be pressed into service. It is further submitted that all the elements mentioned in investment approval are parts of the project and if the project is not completed as a whole, the Appellant is not entitled to additional return on equity. It is further submitted that the contention of the Appellant that the Respondents have benefited as a result of early availability of transmission line being one of the elements of the transmission project is not correct. On the other hand, the Appellant has been benefited in getting the early return on equity of 30%.

12. Mr. Pradeep Mishra, Learned Advocate appearing for the Respondent No.10 contradicted Mr. Ramachandran submitting that a unit of a Generating Station may be completed before the time schedule but that will not entitle the Generation Company or the Transmission Licensee to claim additional return on equity because unless the total system is commissioned and put to the use of the beneficiaries, there cannot be any question of providing additional return on equity of 0.5%.

The logic behind avoiding additional return on equity of 0.5% is to incentivise the developer in order that in the interest of the beneficiaries, the project is completed and furthermore, interest during construction could be saved.

13. Mr. Manu Seshadri, the learned Advocate appearing for the Commission supports the reasoning of the Commission made in the impugned order and prays for dismissal of the appeal.

14. Mr. Ramachandran in his written note of argument extensively referred to the provisions of section 2(16), 7, 10, 38, 39 and 40 of the Electricity Act, 2003 in support of his submission that it is the duty of the Central Transmission Utility to ensure smooth flow of electricity from the Generating Stations to the load centre and the importance of the Central Transmission Utility cannot be under-rated. To our mind, the provisions of these sections extensively quoted in the written note of argument can hardly have any manner of application to the facts and circumstances of the present Appeal. The role of the Central Transmission Utility is not the issue here. It is further submitted that the decision of the Central Electricity Regulatory Commission amounts to substitution in effect the

words 'transmission project as a whole' in place of 'element of transmission project' as appearing in Appendix-II of the Tariff Regulations 2009. It is submitted that there needs to be adopted a consistent view and if the tariff for the transmission element is to be determined all logical consequences including application of the additional return on equity for early completion needs to be applied, and once the tariff determination process is undertaken, there cannot be any artificial restriction on the application of Tariff Regulations.

15. The central point in this appeal is whether a Transmission Licensee is entitled to additional return on equity of 0.5% in case instead of commissioning of the entire project as a whole a unit or units or a line or a group of lines are commissioned. Admittedly, in the case, the project as a whole was not commissioned although, according to the Appellant, within a period of less than 28 months, a unit was commissioned and whether that commissioning of unit or a group of lines forming part of the transmission system in question will entitle the Appellant to claim additional return on equity of 0.5% is the question here.. It is necessary for us to read the Regulations 3(31), 3(40), 4 and 15 (2) together with Appendix-II to the said Regulations 15(2).

“(31) 'project' means a generating station or the transmission system, as the case may be, and in case of a hydro generating station includes all components of generating facility such as dam, intake water conductor system, power generating station and generating units of the scheme, as apportioned to power generation

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(40) 'transmission system' means a line or a group of lines with or without associated sub-station, and includes equipment associated with transmission lines and sub-stations;

4. Tariff determination. (1) Tariff in respect of a generating station may be determined for the whole of the generating station or a stage or unit or block of the generating station, and tariff for the transmission system may be determined for the whole of the transmission system or the transmission line or sub-station.

(2) For the purpose of determination of tariff, the capital cost of the project may be broken up into stages and distinct units or blocks, transmission lines and sub-systems forming part of the project, if required:

Provided that where break-up of the capital cost of the project for different stages or units or blocks and transmission lines or sub-stations is not available and in case of on-going projects, the common facilities shall be apportioned on the basis of the installed capacity of the units, line length and number of bays:

Provided further that in relation to multi-purpose hydro schemes, with irrigation, flood control and power components, the capital cost chargeable to the power component of the scheme only shall be considered for determination of tariff.

15. Return on Equity. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation: Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in Appendix-II:”

The Appendix-II of the Tariff Regulations, 2009 provides as follows:-

“The completion time shall be reckoned from the date of the investment approval by the Board (of the generating company or the transmission licensee), or the CCEA clearance as the case may be, up to the date of commercial operation of the units or element of transmission project as applicable.”

There are two notes after the heading “C. Transmission Schemes”. Note

1 is relevant. It is as follows:-

“ In case a scheme having combination of the above mentioned types of projects, the qualifying time schedule of the activity having maximum time period shall be considered for the scheme as a whole.”

16. Now, the thrust of the of the argument of the learned counsel for the appellant lies in reading the definition of the word ‘project’ and that of the ‘transmission system’ together in order that , according to the learned counsel, there is no difficulty in accepting the proposition that even when one element or a unit or a line or a group of lines are completed the generator or the transmission licensee would be entitled to the additional return on equity of 0.05% as per regulation no 15 (2) of the Central Electricity Regulatory Commission Tariff Regulations,2009 and the efficacy of the Note 1 to the Appendix II to the said regulation 15(2) will have no effect. It is submitted that if the definition of the word ‘project’ and the definition of the words ‘transmission system’ are not

read together then the very purpose of the scheme of the Act becomes otiose and gets defeated. After having read the relevant provisions of the Act and those of the Regulations as were referred to us it appears to us that the argument of the learned counsel for the appellant is difficult to accept for the primary reason that the import of the word 'project' as appearing in section 2(31) of the Act comprises both generation and transmission because the Regulations, 2009 is meant for both . Definitely, the import of the word 'transmission system' as occurring in section 2(40) of the Act has been incorporated in to the definition of the word 'project' because transmission system is also a project as a generation is also a project and the transmission system means a line or a group of lines with or without associated sub-station, and it also includes equipment associated with transmission lines and sub – stations. In fact, over emphasis on reading the two words together do not lead us anywhere. A transmission system may be in a case of a particular project a line or any number of groups of lines and they again may be with or without associated sub-station, and inclusively the transmission system may comprise equipment associated with transmission lines and sub-stations. Now, having seen the scope of the work or project it appears that this transmission project consisted of laying down a 400 kV D/C line and two extension works of the two

existing substations and one reactive compensation on proposed Kanpur- Ballabgarh 400 kV D/C line. This is the transmission project that was required to be completed within the time frame. In this scenario the definition of the word 'project' as we find in section 2(31) of the Act does not really render any assistance to the appellant, for having read the regulation 15(2) together with the Appendix II as also the note 1 to the said regulation no 15 (2) of the Tariff Regulations, 2009 it does not appear that completion of a part of the project does entitle the appellant to claim for additional return on equity of 0.5%. The words "***up to the date of commercial operation of the units or block or element of transmission project as applicable***" as occurring in Appendix II of the regulation 15(2) of the Regulations, 2009 has no magical charm in it . The argument of the learned counsel for the appellant that the impugned order of the Commission has the effect of substituting the words 'transmission project as a whole' in the place of the expression 'element of transmission project' can hardly be agreed to because the definition of the word 'transmission system' is a comprehensive one and the completion in time schedule may relate to, in case of any particular project, units, or block or element of transmission project as may be applicable to such project. The description of the work covered under the transmission project is what we have seen earlier .Completion of a part

of the total work covered under the project is not what is contemplated in the regulation 15(2) read with the Appendix II and the Note thereto. The element of the transmission project appertains to the scope and ambit of the word transmission system. It means that element of the transmission work which is applicable in a given situation. If it had been the intention of the authors of the Regulations that completion of a part of a work or a part of the project or a part of the transmission system would entitle the transmission licensee to claim additional return on equity then they would have expressly made provision there for and made separate time frame for each of the units or each of the parts of the total works to be implemented within a specific timeframe from the date of investment approval. That has not been done. It is the scheme as a whole, not a part thereof, that would qualify a transmission licensee to the entitlement to the additional return on equity. Interpretation of different provisions of the Act does hardly have too much of relevance in the conspectus of the fact situation in which interpretation of the regulation 15 (2) of the Regulations, 2009 is called for. The element of the transmission project does not mean only one element to the exclusion of others, if there are more than one, and the Commission does appear to have rightly held that the project as a whole has not been commissioned within the time schedule.

17. Thus in ultimate analysis in our considered view the appeal does not succeed. Accordingly, the appeal is dismissed but without costs.

(V.J. Talwar)
Technical Member

(P.S. Datta)
Judicial Member

Reportable/Not-reportable

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