

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

**Appeal Nos. 91 & 92 of 2009**

**Dated 23rd March, 2011**

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

**In the matter of:**

**Powergrid Corporation of India Limited  
Suadamani, Plot No. 2, Sector-29,  
Gurgaon 122001,  
Haryana**

**... Appellant(s)**

**Versus**

- 1. Central Electricity Regularity Commission,  
Through its Secretary,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi-110 001.**
- 2. Rajasthan Rajya Vidyut Prasaran Nigam Limited, Jaipur  
Represented by its Chairman,  
Vidyut Bhawan,  
Janpath, Jyoti Nagar,  
Jaipur-302005, Rajasthan**
- 3. Ajmer Vidyut Vitaran Nigam Ltd.,  
Represented by its Managing Director,  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer-305 001**
- 4. Jaipur Vidyut Vitaran Nigam Limited,  
Represented by its Managing Director,  
Vidyut Bhawan, Janpath,  
Jaipur-302 005.**

5. **Jodhpur Vidyut Vitaran Nigam Limited,  
Represented by its Managing Director  
New Power House, Industrial Area,  
Jodhpur-342001, Rajasthan**
6. **Himachal Pradesh State Electricity Board,  
Represented by its Chairman,  
Kumar House, Vidyut Bhawan,  
Shimla-171004**
7. **Punjab State Electricity Board,  
Represented by its Chairman,  
The Mall, Patiala-147 001  
Punjab**
8. **Haryana Vidyut Prasaran Nigam Limited,  
Represented by its Chairman,  
Shakti Bhawan, Sector-6,  
Panchkula-134 109.**
9. **Power Development Department,  
Through its Commissioner,  
Government of Jammu & Kashmir,  
Mini Secretariat, Jammu-180 001**
10. **Uttar Pradesh Power Corporation Ltd., Lucknow  
Represented by its Chairman,  
Shakti Bhawan, 14 Ashoka Marg,  
Lucknow-226 001**
11. **Delhi Transco Ltd., New Delhi  
Represented by its Chairman,  
Shakti Sadan, Kotla Road,  
New Delhi-110 002**
12. **BSES Yamuna Power Ltd.,  
Represented by its Managing Director,  
Shakti Kiran Building,  
Karkardooma, Delhi-110 092.**
13. **BSES Rajdhani Power Ltd.,  
Represented by its Managing Director,  
BSES Bhawan, Nehru Place,  
New Delhi-110 019.**

**14. North Delhi Power Ltd.,  
Represented by its CEO  
Grid Sub Station Building,  
Hudson Lines, Kingsway Camp,  
Delhi-110 009.**

**15. Chief Engineer, Engineering Department,  
Chandigarh Administration, Sector-9,  
Chandigarh-160 009.**

**16. Uttaranchal Power Corporation Ltd.,  
Represented by its Chairman,  
Urja Bhawan, Kanwali Road,  
Dehradun-248 001, Uttaranchal**

**17. North Central Railway, Allahabad  
Represented by its Chief Electrical  
Distribution Engineer**

**...Respondent(s)**

Counsel for the Appellant(s): Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan,  
Ms. Swapna Seshdari  
Ms. Sneha Venkataramani  
Mr. Rohit Shukla

Counsel for the Respondent(s): Mr. Pradeep Misra with  
Mr. Daleep Dhayani for UPPCL

## **JUDGMENT**

### **HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

These appeals (nos. 91 and 92 of 2009) have been filed by Powergrid Corporation of India Ltd. (POWERGRID) against two separate orders, both dated

3.2.2009, by the Central Electricity Regulatory Commission (Central Commission) in Petition nos. 68 of 2008 and 80 of 2008 respectively disallowing the claim of the appellant regarding additional capitalization of the transformers replacing the damaged transformers.

2. Both these Appeals are disposed of through this common Judgment as the issue is common. The appellant undertakes the activities of inter-state transmission of electricity and is also the Central Transmission Utility. Respondent-1 is the Central Commission. Respondent 2 to 17 are the beneficiaries of the transmission system of the appellant.

3. The brief facts of the cases are described in the following paragraphs.

#### 4. **Appeal No. 91 of 2009**

4.1. One of the transmission systems owned and operated by the appellant is Rihand-II Transmission system in Northern Region comprising sub-stations at Kaithal, Mainpuri and Abdullapur alongwith associated Inter-Connecting Transformers and transmission lines which were commissioned between November 2005 and November 2006. The provisional transmission charges for the above transmission assets were approved by the Central Commission by its orders dated 21.9.2006 and 22.5.2007.

4.2. One of the other transmission systems of the Appellant is Rihand-I Transmission system comprising various transmission assets which include the Inter-Connecting Transformers at Ballabgarh and Mandola sub-stations.

4.3. Three Inter-Connecting Transformers at Mandola (transformers- II & IV) and Ballabgarh (transformer-I) got burnt and damaged during the period from 28.4.2006 to 9.5.2006 due to internal faults. These transformers were required to be replaced immediately to meet the peak summer load of the National Capital Territory of Delhi. As procurement of new transformers would have taken a long time, it was decided to temporarily take out one transformer each installed at sub-stations at Mainpuri and Kaithal and divert to Ballabgarh and Mandola pending the procurement of new transformers. It was also decided to divert one transformer which was procured for another sub-station namely Bahadurgarh as commissioning schedule of Bahadurgarh was due later.

4.4. Accordingly, the appellant restored the transformers at Ballabgarh and Mandola sub-stations from the transformers taken out from Mainpuri and Kaithal and use of one transformer procured for Bahadurgarh sub-station during the period from 29.5.2006 to 19.6.2006. Subsequently, the Inter-Connecting Transformers dismantled and diverted from Mainpuri and Kaithal sub-stations were restored in January and February 2007 respectively by new/repaired transformers.

4.5. On 16.5.2008 the appellant filed a petition being No. 68 of 2008 for approval of transmission charges for Rihand-II system including the additional capitalization incurred during the period 2005-06 and 2006-07. In the petition, the appellant had claimed de-capitalization for transformers taken out from the sub-station at Mainpuri and Kaithal and additional

capitalization for new/repared transformers installed at these sub-stations from 27.1.2007 to 23.2.2007.

4.6. By order dated 3.2.2009 in Petition No. 68/2008 the Central Commission did not allow the claim of the appellant for net additional capitalization during the year 2006-07 due to shifting of the transformers. Aggrieved by this order the Appellant has filed this Appeal (91 of 2009).

#### 5. **Appeal No. 92 of 2009**

5.1. The Rihand Transmission System was commissioned progressively from 14.3.1987 to 10.1.1992. Three Inter-Connecting Transformers at Mandola (transformer-II & IV) and Ballabgarh (transformer-I) which are part of Rihand Transmission System failed during the period 28.4.2006 to 9.5.2006.



5.2. These transformers were replaced by diverting transformers from Mainpuri and Kaithal forming part of Rihand Stage-II transmission system and Bahadurgarh sub-station as explained in the preceding paragraphs under para-3.

5.3. In the meantime on 9.5.2006 the tariff for Rihand Transmission System of the appellant was determined by the Central Commission for the period from 1.4.2004 to 31.3.2009. On 4.9.2008 the appellant filed a petition being Petition No. 80 of 2008 for revision of tariff for the period 2004-09 for Rihand transmission system considering the net additional capitalization on account of replacement of 3 burnt Inter-Connecting Transformers at Mandola and Ballabgarh. The appellant also prayed for a direction to Member Secretary, Northern Regional Power Committee (NRPC) for issuance of revised availability

certificate excluding the period when the three Inter-Connecting Transformers were decapitalized and not in use. Availability certificate is required by the appellant for claiming full transmission charges and incentive.

5.4. The Central Commission by its order dated 3.2.2009 decided the Petition No. 80 of 2008 disallowing the claim of the appellant for decapitalisation of damaged transformer and re-capitalisation of the transformers installed as replacement of the damaged transformers. The Central Commission also held that the net cost of the replacement of the damaged transformers has to be met out of the insurance fund reserve maintained by the appellant under the internal insurance policy for which contribution is being paid by the beneficiaries in the form of O&M expenses. The Central Commission

also did not accept the prayer of the appellant/POWER GRID for giving directions to the NRPC for revising availability certificate.

5.5. Aggrieved by the order dated 3.2.2009 of the Central Commission in Petition No. 80/2008, the Appellant has filed the Appeal no. 92/2009.

**Submissions of the Appellant/POWER GRID**

6. Learned counsel for the appellant assailing the orders of the Central Commission submitted the following arguments:

6.1. There was no deficiency on the part of the appellant in operation and maintenance of the Inter-Connecting Transformers of Rihand transmission system and therefore, it can not be penalized by depriving the appellant of the cost connected with restoration of the system.

6.2. The shifting of transformers to Mandola and Ballabgarh was done in public interest to meet the demand of National Capital Territory of Delhi during the crucial summer months. The appellant should not be penalized for acting in a prudent manner.

6.3. The appellant has not taken the value of the new transformers towards additional capitalization for sub-station at Mandola and Ballabgarh forming part of Rihand-I transmission system, which the Appellant would have been entitled to if the new transformer were installed at the above sub-stations. The new transformers were installed at Mainpuri and Kaithal forming part of Rihand II transmission system and therefore, the Central Commission ought to have considered additional capitalization for the value of

new transformers in regard to Rihand II transmission system.

6.4. The Central Commission failed to appreciate that the fire has not been the immediate cause of the damage to the Inter-Connecting Transformers. The cause is machinery failure which may have resulted in fire. The mere fact that the transformer has burnt as an end result does not mean that it is covered by self insurance policy.

6.5. The Central Commission should have also allowed revision of Availability of the appellant for the FY 2006-07 by excluding the total outage period of the transformers as these transformers were removed and decapitalised during this period.

**Submissions of the Respondent-10 (UPPCL)**

7. The learned counsel for Respondent-10, U.P. Power Corporation Ltd. argued in support of the impugned order of the Central Commission as follows:

7.1. The appellant is under obligation to maintain its transmission assets and if for maintenance of the assets any transformer has been replaced then the appellant is not entitled to any additional capitalization. By replacement of damaged transformer no additional benefit has been given to the beneficiaries; hence no additional capitalization can be allowed. The Appellant has claimed the difference between the cost of the new/repared transformer replacing the damaged transformer and the depreciated value of the damaged transformer as additional capitalization and the Central Commission has rightly not allowed the same as it was the

obligation of the appellant to maintain a healthy transmission system.

7.2. Regulation 53 of the Central Commission's Tariff Regulations of 2004 regarding Additional Capitalization does not provide for Additional Capitalization for replacement of damaged transformers.

7.3. In the year 1994-95 the appellant decided to follow the policy of self-insurance for which they have claimed amount under Operation & Maintenance expenses from the beneficiaries. Thus, the Central Commission was fully justified in holding that Appellant can recover the amount from the self insurance policy.

## **Issues**

8. Considering the rival contentions of the parties, the following questions would arise:

- i) Whether the Central Commission was right in not allowing additional capitalization on account of replacement of the damaged transformers by transformers diverted from other sub-stations?
- ii) Whether the replacement cost of the damaged transformer can be met out of the insurance fund reserve of the Appellant created under internal insurance policy?
- iii) Whether the Central Commission should have directed the Northern Regional Power Committee for exclusion of total period of outage of transformers which were removed



from the system and decapitalized while computing the Annual Availability of Appellant's transmission system?

9. Let us now take up the first issue regarding additional capitalization.

9.1. According to the appellant, the failure of transformers was not due to its negligence or default in maintenance and it should not be penalized for acting in a prudent manner by diverting the transformers in the interest of reliability of the supply to the NCT of Delhi. According to respondent no. 10, it was a part of Operation & Maintenance responsibility of the appellant.

9.2. Let us now examine the Regulation 53 of the 2004 Regulations which is reproduced below:

**“53. *Additional capitalization:***

*(1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:*

- (i) Deferred liabilities;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares in the original scope of works subject to the ceiling norm specified in regulation 52;*
- (iv) Liabilities to meet award of arbitration or compliance of the order or decree of a court; and*
- (v) On account of change in law.*

*Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.*

*Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the transmission system.*

*(2) Subject to the provisions of clause (3) of this regulation, the capital expenditure of the following nature actually incurred after the cut off date may be admitted by the Commission, subject to prudence check:*

- (i) Deferred liabilities relating to works/ services within the original scope of work;*
- (ii) Liabilities to meet award of arbitration or compliance of the order or decree of a court;*
- (iii) On account of change in law; and*
- (iv) Any additional works/service which have become necessary for efficient and successful operation of the project, but not included in the original project cost.*

*(3) Any expenditure on minor items/assets brought after the cut off date like tools and tackles, personal computers, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, T.V., washing machine, heat-convectors. Mattresses, carpets, etc shall not be considered for additional capitalization for determination of tariff with effect from 1.4.2004.*

**Note**

*The list of items is illustrative and not exhaustive.*

*(4) Impact of additional capitalization in tariff revision may be considered by the Commission twice in tariff period, including revision of tariff after the cut off date.*

**Note 1**

*Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in regulation 54.*

**Note 2**

*Any expenditure on replacement of old assets shall be considered after writing off the entire value of the original assets from the original capital cost”.*

9.3. It is clear from the above Regulations that there is no provision for capitalization on account of replacement of existing assets due to failure/damage.

Learned Counsel for the appellant argued that additional capitalization on account of replacement of damaged transformer could be admissible under Regulation 53(2)(iv) read with note 2. We do not agree with the contentions of the learned counsel for the appellant as replacement of a damaged transformer would not be covered under these provisions since it is neither “any additional work/service which have become necessary for efficient and successful operation of the project” nor an “old asset” requiring replacement.

9.4. The Central Commission in the impugned order in Petition No. 68/2008 has held as under:

*“As the responsibility of maintenance of healthy transmission system has been assigned to Central Transmission Utility, de-capitalization and additional capitalization has not been allowed on account of shifting of transformers. Accordingly,*

*net additional capital expenditure during 2006-07 of Rs. 330.49 lakhs and Rs. 23.26 lakh for Asset-1 and Asset-II respectively claimed by the petitioner is not being allowed”.*

We agree with above findings of the Central Commission that replacement of damaged equipment is a part of Operation & Maintenance and it is the responsibility of the Appellant for maintenance of a healthy transmission system.

10. Let us now take up the second issue regarding self insurance policy.

10.1. According to the appellant the self insurance policy would not cover damage of transformer due to internal fault/machinery break-down. According to the respondent no.10, the self-insurance reserve has been created for this purpose by charges paid by the beneficiaries.

10.2. The findings of the State Commission in this regard in the impugned order dated 3.2.2009 in Petition No. 80 of 2008 are as under:

*“10. We have gone through the details of self-insurance policy being pursued by the petitioner. We do not find any distinction between the internal and external cause of damage in the policy papers submitted by the petitioner. Even the inclusion or exclusions on this account also have not been indicated . The cause of fire resulting in burning of the ICT, whether internal or external necessitating its replacement does not alter the basic fact that the ICT was burnt. The insurance policy covers damages to the equipment because of fire, without exception. So, the cause of fire, whether internal or external, is really not material, for meeting the expenditure.*

*11. We are not convinced by the petitioner’s argument for capitalization of net cost which is to be financed out of insurance fund reserve created*

*under internal insurance policy towards which contribution is being regularly made by the beneficiaries as part of the O & M expenses. Accordingly, neither the decapitalisation nor the additional capitalization on account of the ICTs replaced can be considered.*

*12. Earlier in July 2000 a similar incident of fire took place at Ballabgarh substation, when one ICT was burnt and had to be replaced by a new ICT. The petitioner sought capitalization on the expenditure incurred on replacement. The Commission vide order dated 9.5.2004 in Petition 96/2004 had not allowed the additional capital expenditure”.*

Thus, the Central Commission has held that burning of the Inter-Connecting Transformers (ICT) is to be financed out of the insurance fund reserve created under internal insurance policy towards which



contribution is being made by the beneficiaries from the O&M expenses.

10.3. Let us now examine the paper on Management Policy on creation of insurance reserve submitted by the Appellant. The relevant extracts from the policy paper are as under:

*“Since its incorporation, the Corporation was following the Policy of taking insurance cover from reputed nationalized Insurance Companies. However, during the year 1994-95, company decided to follow the policy of self Insurance Reserve based on the experience of the corporation on premium payment vis-à-vis insurance claims and as per practice in the industry. It was decided that an appropriation on estimated basis is made in the accounts in respect of future losses which may arise from uninsured risks of machinery breakdown for Shunt Reactors and fire risk for the equipments in operating sub-stations including buildings and cable galleries,etc. and created a*

*Self Insurance reserve Account except for machinery breakdown for valve halls of HVDC and fire risks for HVDC equipments and SVC substations”*

*“Insurance Reserve is created @ 0.1% on gross value of fixed assets as at the close of the year in respect of future losses which may arise from uninsured risk except for machinery breakdown for valve halls of HVDC and fire risk for HVDC equipments and SVC substations” Accordingly, the policy generally covers the losses due to following events:*

*a) Fire*

*Lightning*

*Explosion/Implosion*

*Bush Fire*

*The losses of assets caused by above events are adjusted against insurance reserve as per Corporation guidelines as and when incurred. The insurance reserve has been created for insuring the*

*risks of assets of the corporation in the event of any mis-happening of assets of the Corporation”.*

10.4. The Management Policy paper clearly indicates that the future losses cover uninsured risks of machinery break-down for Shunt Reactors and fire risk for the equipments in operating sub-stations. The only exception is machinery break-down for valve halls of HVDC and fire risks for HVDC equipments and SVC sub-stations. We agree with the findings of the Central Commission that no distinction has been made between the internal and external cause of fire in the policy paper and the inclusion or exclusion on this account have also not been indicated. The insurance policy covers damages to the equipment because of fire, without exception. We also find that the Commission had given same finding in its order dated 9.5.2004 in Petition No. 96 of 2004 which also related

to replacement of ICT at Ballabgarh due to the burning of the transformer. Thus, the Central Commission has been maintaining a consistent stand on this issue.

10.5. Reliance on the decision in *New India Assurance Co. Ltd. vs. Zuari Industries Ltd. & Ors.* reported in (2009) 9 SCC 70 made by the learned counsel for the appellant would also not provide any help to the appellant. Thus, this issue is also decided against the appellant.

11. The third issue is regarding directions to Northern Regional Power Committee for issuing revised availability certificate.

11.1. According to the Appellant, the Central Commission ought to have revised the availability for Northern Region Transmission system for the year

2006-07 excluding the period of outage between de-capitalization and additional capitalization of ICTs.

11.2. The Central Commission has held that the availability certificate is not the subject matter of the tariff Petition. The Central Commission further held that since the Member Secretary, NRPC was not impleaded, no directions could be issued on their petition. However, the appellant was given liberty to approach the Central Commission through appropriate petition. The appellant instead of approaching the Central Commission separately preferred to file appeal against the said direction of the Central Commission.

11.3. We have noticed that the availability certificate has been issued by Northern Regional Power Committee considering the period of outage of the Inter-Connecting Transformers due to damage of

transformers at Mandola and Ballabgarh sub-stations as unavailable due to outage attributable to the POWERGRID. The appellant has prayed that the period of outage between de-capitalization and additional capitalization of ICTs needs to be excluded from the total number of elements and also from the outage period for the purpose of availability calculations for the FY 2006-07. In our opinion, the outage on ICTs due to damage is attributable to the appellant. Further, the de-capitalization of the ICT which was taken out from the sub-station and the re-capitalization on account of replacement of ICT has been disallowed by the Central Commission which has also been confirmed by this Tribunal in this Judgment. Accordingly, the question of revising availability as claimed by the appellant does not arise.

Accordingly, this issue is decided against the Appellant.

**12. Summary of findings:**

**12.1. The first issue is regarding additional capitalization on account of replacement of burnt/damaged Inter-Connecting Transformer. The relevant Regulation 53 of the 2004 Regulations on Additional Capitalization does not provide for additional capitalization on account of replacement of existing assets due to failure/damage. The replacement of damaged transformer is a part of Operation & Maintenance activity and it is the responsibility of the Appellant for maintenance of healthy transmission system. Thus, this issue is decided against the Appellant.**

**12.2. The second issue is regarding Self Insurance Policy. According to the Appellant, the self insurance policy would not cover damage of the transformer due to internal fault/machinery break-down. According to the paper on Management Policy on creation of insurance reserve by the Appellant, there is no distinction between the internal and external cause of fire. Also the inclusion or exclusion on this account have not been indicated. The Insurance Policy covers damages to the equipment because of fire without any exception. Thus the net cost on account of replacement of damaged transformer has to be financed out of the insurance fund reserve created under internal insurance policy of the Appellant towards which contribution is being made by the beneficiaries as part of O&M expenses.**



**12.3. The last issue is regarding revision of certification of availability by NRPC. In our opinion, the outage of ICTs due to damage is attributable to the Appellant/POWERGRID. Further, in view of the Central Commission's order not allowing de-capitalization and re-capitalisation on account of replacement of transformers which has been confirmed by the Tribunal in this Appeal the question of revision in availability by Northern Regional Power Committee would not arise. Thus, this issue is decided against the Appellant.**

**13. Conclusion:**

In view of the above, we conclude that the appeals are devoid of any merit. Accordingly, both the appeals are dismissed and the orders of the Central Commission are confirmed. No order as to cost.

14. Pronounced in the open court on this  
**23rd day of March, 2011.**

**(Justice P.S. Datta) ( Rakesh Nath) (Justice M. Karpaga Vinayagam)**  
**Judicial Member Technical Member Chairperson**

REPORTABLE / NON-REPORTABLE

VS