

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

**Appeal No. 179 of 2011**

**Dated 28<sup>th</sup> February, 2012**

**Coram:** HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER  
HON'BLE MR. V. J. TALWAR TECHNICAL MEMBER

**In the matter of:**

- i) Power Grid Corporation of India Ltd.  
Saudamini. Plat No. 2,  
Sector 29, Gurgaon-122 001  
Haryana.

..... Appellant

**Versus**

- i) Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001.
- ii) Karnataka Power Transmission Corporation Limited  
Represented by its Chairman,  
Kavery Bhavan, Bangalore- 560 009.
- iii) Transmission Corporation of Andhra Pradesh Limited  
Represented by its Chairman,  
Vidyut Soudha, Hyderabad- 500 082.

- iv) Kerala State Electricity Board  
Represented by its Chairman,  
Vaidyuthi Bhavanam,  
Pattom, Thiruvananthapuram – 695 004.
- v) Tamil Nadu Electricity Board  
Represented by its Chairman  
NPKRR Maaligai, 800, Anna Salai,  
Chennai – 600 002.
- vi) Electricity Department, Government of Goa,  
Represented by Chief Engineer (Electrical),  
Vidyuti Bhawan, Panaji,  
Goa- 403 001.
- vii) Electricity Department, Government of Pandicherry,  
Represented by Chief Secretary,  
Pondicherry – 605 001.
- viii) Eastern Power Distribution Company of  
Andhra Pradesh Limited,  
Represented by its Managing Director,  
APEPDCL, P& T Colony, Seethmmadhara,  
Vishakhapatnam- 5300 013  
Andhra Pradesh.
- ix) Southern Power Distribution Company of  
Andhra Pradesh Limited,  
Represented by its Managing Director,  
Srinivasa Kalyana Mandapam Backside,  
Tiruchanoor Road, Kesavayana Gunta,  
Tirupati- 517 501, Andhra Pradesh.
- x) Central Power Distribution Company of  
Andhra Pradesh Limited,  
Represented by its Managing Director,  
Corporate Office, Mint Compound,  
Hyderabad – 500 063, Andhra Pradesh.

- xi) Northern Power Distribution Company of  
Andhra Pradesh Limited,  
Opp. NIT Petrol Pump, Chaitanyapuri, Kazipet,  
Warangal- 506 004, Andhra Pradesh.
- xii) Bangalore Electricity Supply Company Limited  
Represented by its Managing Director,  
Corporate Office, K.R. Circle,  
Bangalore- 560 001.
- xiii) Gulbarga Electricity Supply Company Limited  
Represented by its Managing Director,  
Station Main Road, Gulbarga- 585 102.
- xiv) Hubli Electricity Supply Company Limited  
Represented by its Managing Director,  
Navanagar, PB Road,  
Hubli- 580 025, Karnataka.
- xv) MESCOM Corporate Office,  
Represented by its Managing Director,  
Paradigm Plaza, AB Shetty Circle,  
Mangalore – 575 001.
- xvi) Chamundeswari Electricity Supply Corporation Limited  
Represented by its Managing Director,  
#927, L J Avenue, Ground Floor,  
New Kantharaj Urs Road, Saraswatipuram,  
Mysore- 570 009. .... Respondents

Counsel for the Appellant : Mr. M.G. Ramachandran  
Ms. Sneha Venkataramani

Counsel for the Respondent(s): Mr. S. Vallinayagam for TNEB

### **JUDGMENT**

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

The Power Grid Corporation of India Ltd., a Government Company that discharges the function of Central Transmission Utility amongst other functions under the provisions of the Electricity Act,2003 has preferred this appeal being aggrieved with the order dated 19.08.2011 passed by the Central Electricity Regulatory Commission whereby it determined Transmission Tariff in respect of certain transmission project by reckoning the period of execution of the project from 31.05.2005 which was the date of approval of the project by the Board of Directors of the appellant in stead of considering the scheduled commissioning within a period of 36 months from the dated of first letter of award which was 23.08.2006.

2. The project was undertaken in respect of the following;
  - a) LILO on one circuit of Madurai- Trichy 400 Kv D/C line along with 1x80 MVAR Line Reactor at Karaikudi S/S
  - b) 400/220 kv, 2x315 MVA Auto Transformers & Down stream system with associated bays and equipments at Karaikudi S/S.

- c) LILO of one circuit of existing Talaguppa ( KPTCL) – Neelamangala (KPTCL) 400 kv D/C line at Hassan along with 1x80 MVAR Line Reactor at Hassan.
- d) 400 /220kv,2x315 MVA Transformers & Down stream system with associated bays and equipments at Hassan S/S

3. The project was scheduled to be commissioned within a period of 36 months from the date of first letter of award which was 23.08.2006 and accordingly the scheduled date of completion was 22.08.2009 and the date of commercial operation came to be 1.09.2009. In respect of the first two items the appellant filed a petition on 9.03.2010 for determination of tariff being petition no. 72 of 2010 which was decided by the Central Commission by an order dated 1.06.2011 against which an appeal being appeal no. 104 of 2001 was filed by the appellant which has been disposed of by a Bench of this Tribunal on 12.01.2012. The present appeal relates to the last two items.

4. According to the appellant by a notification dated 31.05 2010 the item no. c) was declared under commercial operation with effect from 1.06.2010 and item no. d) was declared under commercial operation on 1.07.2010 .The delay in commissioning

of the asset was an account of delay in the readiness of the 220 kV downstream line of respondent no. 2 namely Kanataka Power Transmission Corporation Limited (KPTCL).

5. The appellant on 30.11.2010 filed a petition being no. 310 of 2010 before the CERC for approval of the transmission tariff of the above asset under the System Strengthening VII of the Southern Regional Grid for the period from 1.06.2010 to 31.03.2014 in the Southern Region and the Commission by order dated 19.08.2011 held inter alia that there was delay in the commissioning of the transmission system by 14 months and as such disallowed Interest During Construction and Incidental Expenses During Construction for the said period. The CERC held that the completion time schedule has to be reckoned from the date of approval which was 31.05.2005 .

6. This order of the Commission is being objected to by the appellant to be not a rational approach and the said Commission had in the past where period of execution was approved by the appellant's Board of Directors proceeded on the basis of the first letter of award and had not made any consideration of the execution period of the project from the date of investment

approval . A copy of such order dated 1.12.2010 passed by the CECR in petition no. 79 of 2010 (Northern Region System Strengthening in Roorkee ) has been annexed to the memo of appeal.

7. It is the case of the appellant that in the absence of any provision in the Tariff Regulations, 2009 the Commission was not correct in reckoning the period for completion from the date of investment approval made by the Board of Directors of the appellant for the purpose of deciding the capital cost and elements of interest during construction and incidental expenses.

8. There are 16 respondents in this appeal including the CERC which is the respondent no. 1. The other 15 respondents include KPTCL, Transmission Corporation of Andhra Pradesh Limited, Kerala State Electricity Board, Tamil Nadu State Electricity Board , Electricity Departments of Governments of Goa and Pondichery, four Distribution Companies of Andhra Pradesh and five Distribution Companies of Karnataka. None of the respondents except the respondent no. 5 namely Tamil Nadu Electricity Board represented by Mr. S. Vallinayagam appears to contest the appeal

though no counter affidavit was filed by the respondent no 5, the TNEB to the memorandum of the appeal.

9. The respondent no. 5 filed a written submission reproducing therein paragraph 13.12.1 of the Objects and Reasons to the CERC Regulations which are quoted below:

*“13.12.1 In case of projects commissioned on or after 1<sup>st</sup> April, 2009 an additional return of 0.5% shall be allowed if such projects are completed within the following timeline decided in consultation with CEA.*

*1. The completion time schedule shall be reckoned from the date of 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 block or element or transmission project as applicable.”*

It is submitted that the Board of Directors of the appellant cannot fix the starting point of the time limit from the first letter of award as it would be contrary to the provisions and object and reasons of the Regulations that govern the calculation of time of 36 months as per 13.12.1 of objects and reasons . It is further submitted that



the contention of the appellant that no IDC is claimed for the period till award of work is misleading. Each month's interest gets added up to the loan principal and forms a new principal. Therefore, the contention of the appellant that it is not claiming any IDC for the period prior to issue of work contract is totally unjustified and misleading. The interest gets added to the original loan and forms a new principal, which is taken up for calculating interest. Therefore, IDC on the date of award of work, already has the interest from the date of disbursement of loan, which is benefited by the appellant. It is this portion of IDC & IEDC, which the regulations sought to curtail.

10. The point for consideration is whether the CERC was legally justified in reckoning the period of execution from the date of investment approval instead of the date of letter of award in respect of the elements of Interest During Construction and Incidental Expenditure During Construction ?

11. Mr. M.G. Ramachandran appearing with Ms. Sneha Venkataramani, learned advocates for the appellant produced a copy of the order 1.12.2010 passed by the CERC in petition no. 79 of 2010 filed by the present appellant in the matter of approval of

Transmission Tariff in respect of two different assets at Roorkee along with associated bays under the System Strengthening Scheme for the period from 1.04.2009 to 31.03. 2004. The Commission in that case referred to Regulation 7 and Regulation 9 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 which we quote below;

**“7. Capital Cost.** (1) *Capital cost for a project shall include:*  
(a) *the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan - (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;*  
(b) *capitalised initial spares subject to the ceiling rates specified in regulation 8; and*  
(c) *additional capital expenditure determined under regulation 9:*  
*Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.*

(2) *The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff:*

*Provided that in case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time:*

*Provided further that in cases where benchmark norms have not been specified, prudence check may include*

*scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff: \**

**9. Additional Capitalisation.** (1) *The capital expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:*

- (i) Undischarged liabilities;*
- (ii) Works deferred for execution;*
- (iii) Procurement of initial capital spares within the original scope of work, subject to the provisions of regulation 8;*
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*
- (v) Change in law:*

*Provided that the details of works included in the original scope of work along with estimates of expenditure, undischarged liabilities and the works deferred for execution shall be submitted along with the application for determination of tariff.*

(2) *The capital expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:*

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;*
- (ii) Change in law;*
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work;*
- (iv) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation; and*

*(v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:*

*Provided that in respect sub-clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009.”*

12. In this order dated 1.12.2010 the CERC while according tariff approval took into the consideration the execution period of project from the date of first letter of award .

13. According to Mr. Ramachandran, the Central Commission rejected interest during construction and incidental expenditure during construction amounting to Rs. 371.32 lakh and Rs. 135.14 lakh respectively for the period from May, 2008 to July, 2009 but the period of completion is to be reckoned from the date of award of the contract and not from the date of investment approval and secondly, no interest during construction has been claimed by the appellant for the period till the award of the contract. Since, similar

matter was decided by this Tribunal in appeal 104 of 2011 by a judgment dated 12.01.2012 Mr. Ramachandran has furnished a copy of that judgment which we will presently see. Now, regulation 7 dealing with capital cost makes it clear that capital cost includes interest during construction till the date of commercial operation without specifying the time limit during which the period will commence. The submission of the learned counsel for the TNEB that Para 13.12.1 of the Objects and Reasons and regulation 15 of the Regulations prescribe that the completion time schedule should be reckoned from the date of investment approval of the Board of Directors and not from the date of the letter of award was extensively considered by this Tribunal in Appeal no.104 of 2011 but the contention was not accepted on the ground that this regulation 15 together with Appendix II and Para 13.12.1 of the Statement of Objects and Reasons deal with Return on Equity and the time limit of completion relates to the additional return on equity of 0.5% with no connection with the time frame for calculation of interest during construction. In this connection, we reproduce below the finding of this Tribunal exactly on this point:

*“13. Perusal of Regulation 15 along with Appendix II and Para 13.12.1 of SoR would amply reveal that these deal with Return on Equity and completion time frame provided therein*

*refers only to additional Return on Equity of 0.5%. It does to limit the time frame for calculation of IDC.*

*14. The period of 36 months is the actual construction period allowed. Regulation 7 (1) does not provide for the construction period to commence from the date of the Investment Approval. In fact, such construction period cannot be construed to be commenced immediately from the date of Investment Approval. After the Investment Approval is given, the Appellant has to initiate the process of awarding the contract, select the contractor and then issue the Letter of Award. Thus, the construction can start only after the award of contract and not before.*

*15. In the present case, the Appellant has not claimed any Interest During Construction from the date of Investment Approval till the date of the Letter of Award and even thereafter till the capital expenditure is incurred. The Interest During Construction cannot be calculated on any notional basis from the date of the Investment Approval. On the other hand, it has to be calculated on the basis of the capital expenditure during construction. Accordingly, the period from the date of Investment Approval till the date of award of the contractor was not subject to any capital expenditure. Therefore, it has not contributed to any Interest During Construction being allowed to the Appellant as during that period, construction has not started.*

*16. The Central Commission while arriving at a conclusion rejecting the claim of the Appellant has proceeded on the basis of the statement of reasons contained in the Regulations 15 of the Tariff Regulations 2009. As correctly pointed out by the Learned Counsel for the Appellant, these Regulation only deal with the additional Return on Equity and they do not deal with the capital cost to be calculated. The provisions of Regulation 15 which deal with the incentives for early completion cannot be applied to the calculation of the capital expenditure. The appropriate Regulation would be Regulation 7 of the Tariff Regulations 2009 which has to be applied in the present case for calculation of the capital expenditure and Interest During Construction. So, the decision of the Central Commission in*

*the present case, in our view, is contrary to the clause 7 of the Tariff Regulation 2009.*

*17. It is to be reiterated that no Interest During Construction has been claimed by the Appellant for the period from the date of the Investment Approval till the award of the contract.*

*18. In view of the above, the question of putting the additional burden on the beneficiaries does not arise as such we have to conclude that there is an obvious mistake in the approach adopted by the Central Commission and consequently impugned order of the Central Commission in the present case is liable to be set aside.”*

14. It is, therefore, clear that Regulation 7 of the Tariff Regulations 2009 that provides for the capital cost for a project to include the interest during construction and also incidental expenditure during construction is applicable to the instant case instead of para 13.12 of the Statement of Object and Reasons as it concerns with additional return on equity and not capital cost. Consequently, the period of 36 months is computable from the date of letter of award and not from the date of investment approval in respect of interest during construction and incidental expenditure during construction .

15. Accordingly, the appeal is allowed but without cost. The impugned order is set aside. The CERC will pass an appropriate order in the light of the decision rendered herein.

**(V.J. Talwar)**  
**Technical Member**

**(P.S. Datta)**  
**Judicial Member**

KS

REPORTABLE /NON- REPORTABLE