

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.11/2010

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

DATE OF HEARING: 12.8.2010

DATE OF ORDER:19.9.2012

In the matter of

Miscellaneous petition seeking intervention of the Commission under Regulation 12 "*Power To Remove Difficulties*" and Regulation 13 "*Power To Relax*" of the CERC (Terms & Conditions of Tariff) Regulations, 2004 on the issue of payment of O&M charges to TNEB by Powergrid for the 400 kV bays erected by the Powergrid at Board's Almathi substation and maintained by Tamil Nadu Electricity Board at Almathi Substation from DOCO (1.6.2006).

And in the matter of

Tamil Nadu Electricity Board (TNEB)

.... Petitioner

Vs

Power Grid Corporation of India Limited, Gurgaon
Karnataka Power Transmission Corporation Limited, Bangalore
Transmission Corporation of Andhra Pradesh Limited, Hyderabad
Kerala State Electricity Board, Thiruvananthapuram
Electricity Department, Government of Puducherry, Puducherry

.....Respondents

The following were present:

1. Shri S. Vallinayagam, Advocate for TNEB
2. Ms. S. Geetha, TNEB
3. Shri S. Balaguru, TNEB
4. Shri R. Srinivasan, TNEB
5. Shri U.K. Tyagi, PGCIL

ORDER

This petition has been filed by the Tamil Nadu Electricity Board (TNEB) seeking intervention of the Commission under Regulation 12 "*Power To Remove Difficulties*" and Regulation 13 "*Power To Relax*" of the CERC (Terms

& Conditions of Tariff) Regulations, 2004 (hereinafter referred to as “2004 regulations”) on the issue of payment of Operation & Maintenance charges (O&M charges) to TNEB by Powergrid Corporation of India Limited (PGCIL) for the 400 kV bays erected by the PGCIL at TNEB’s Almathi sub-station and maintained by TNEB at Almathi sub-station from the date of commercial operation, i.e. 1.6.2006.

2. TNEB has prayed to direct the PGCIL to pay O&M charges for the PGCIL’s bays maintained by TNEB in their Almathi 400 kV sub-station at the normative O&M rates as specified in Regulation 56 (iv) the 2004 regulations, from the date of commercial operation and to enter into O&M contract. TNEB has also requested to direct the PGCIL to settle the amount that would be awarded by Commission in one installment along with interest from the date of commercial operation.

3. TNEB is a monolithic organisation dealing with the generation, transmission and distribution of power from Central Generating Stations (CGSs) located at Ramagundam, Talcher, Neyveli, Kalpakkam and Kaiga. The power from CGS and imported from outside the region is evacuated through the 400 kV network owned and operated by PGCIL and delivered to the constituents of the Southern Region (SR).

4. TNEB has submitted that in the 12th Standing Committee meeting on Power System Planning in SR, held at Chennai on 13.2.2010, it was decided to establish a new 400 kV sub-station at Almathi by making LILO of both the

circuits of Sriperumbudur–Nellore 400 kV line under System Strengthening IV of Southern Region for safe and reliable operation of the regional grid. It was approved by the SREB in its 131st meeting held at Bangalore on 22.2.2003. Subsequently, TNEB with the concurrence of PGCIL and the Standing Committee executed the sub-station with its funds and limited the scope of work of PGCIL to the LILO of both the circuits of Sriperumbudur-Nellore at the sub-station.

5. TNEB has submitted that the terminal equipments for controlling the four feeders which are to be erected by PGCIL in the Almathi sub-station, owned by TNEB, were erected by it under Deposit Contribution works basis at total estimated cost of ₹1295 lakhs. The equipments were energized and put under commercial operation on 1.6.2006 along with the LILO portion of the line and the sub-station. It was agreed between PGCIL and the constituents of the SR that the maintenance of these equipments will be carried out by the respective SEBs, which own the sub-station and a maintenance contract would be entered into with PGCIL for maintenance of the equipments. As such, PGCIL is obliged to enter into a maintenance contract with TNEB for maintenance of 4 nos. 400 kV bays at Almathi sub-station.

6. TNEB has submitted that PGCIL has provided it with a draft maintenance agreement and according to clause 3.0 “O&M expenses” of the proposed agreement, PGCIL has proposed to pay TNEB O&M charges at 1.5% of the capital cost of the erected equipments. The cost of erected equipment is ₹620 lakhs. The O&M charges for the subsequent financial year shall be

arrived at by considering an escalation at 10% over the previous the year which shall be subject to year-end adjustment as per the weighted price index taking into account 60% of the weightage for Whole Sale Price Index (WPI) and 40% for Consumer Price Index (CPI). The O&M charges for the base year, 2006-07 works out to ₹ 7.75 lakhs (pro-rata for 10 months) for the 4 bays at Almathi.

7. TNEB has also submitted that the PGCIL's proposal of 1.5% O&M charges is based on the O&M norms notified by Government of India vide Notification No. F/No/2/3/Powergrid/Tariff/97 dated 16.12.1997 applicable for the period 1997-2001. The Commission has restricted the validity of norms based on the above notification up to 2001 and has specified the norms for O&M charges for the period 2001-04 based on the average of the actuals for the years 1995-96 to 1999-2000 and allowed annual escalation of 6% linking it with WPI & CPI. As per Regulation 56(iv) of the 2004 regulations, the O&M charges per bay for the year 2006-07 are ₹30.42. The Commission has awarded transmission tariff for LILO of both circuits of Nellore-Sriperumbudur line at Almathi sub-station for the year 2006-07 and it is ₹936.75 lakhs (pro-rata for 10 months) and it includes O&M charges of ₹30.42 lakhs per lakh per annum. PGCIL is billing TNEB and other constituents of SR, the transmission charges for the above asset from the date of commercial operation. The transmission charges for the 4 bays at Almathi work out to ₹ 101.40 lakhs (pro-rata for 10 months) for the year 2006-07.

8. The petitioner has submitted that PGCIL has refused to pay the O&M charges for the 4 bays at Almathi as per the norms specified and awarded by

the Commission and requested TNEB to furnish the actual expenditure incurred towards operation and maintenance of Powergrid bays at Almathi 400 kV Substation. The maintenance of the switchyard equipments is the same whether it is maintained by PGCIL or the petitioner. The agreement provides for reimbursement of the cost of spares if any supplied by PGCIL. The petitioner has also offered to carry out any other maintenance works as specified by PGCIL. The terminal equipment of PGCIL is maintained by TNEB from the date of commercial operation to the satisfaction of PGCIL. No bill could be raised and no payment has been made by PGCIL.

9. The petitioner has further submitted that PGCIL is charging normative rate of O&M charges from the SEBs as per the regulations and hence PGCIL must be directed to pay the normative rate of O&M charges as per the regulations from the SEBs, wherever their equipments are managed by the SEBs. In the alternative, the normative O&M charges of PGCIL bays may be revised to 1.5% of the cost of the equipment in service or the O&M charges awarded by the Commission for the 4 bays at Almathi sub-station be limited to the amount that would be agreed between the petitioner and PGCIL.

10. PGCIL, vide its affidavit dated 7.3.2011, has submitted that generally it is having agreements with the Utilities for operation and maintenance of PGCIL owned bays installed in Utility premises which generally includes the following:-

(i) Concerned Utility shall carry out normal operation and maintenance of the bays including testing of protections & PLCC etc.

- (ii) Deployment of personnel for proper maintenance/replacement of bay equipments to be undertaken by concerned Utility.
- (iii) Thermo-vision scanning is to be done by PGCIL.
- (iv) Services of manufacturers or any outside agency is to be carried out at PGCIL's cost.
- (v) The agreement does not cover supply of any equipment/spares including emergency replacements by the Utility.
- (vi) All major consumables like SF6 gas for circuit breakers, special hydraulic oil, CT, CVT oil etc. and mandatory spares are provided by PGCIL at its own cost.
- (vii) PGCIL to provide for initial spares required for at least two years as recommended by the suppliers and subsequently based on consumption of the same.
- (viii) In case major overhauling on the recommendation of the manufacturer, spares / items required during the overhauling process are procured by PGCIL. The cost of the above including the service charges of the manufacturer for deployment of their service Engineer is borne by PGCIL.

11. The respondent, PGCIL has submitted that in their sub-stations, many other items like Transformers, Reactors, Tie bays, Bus coupler bays, Transfer bus couplers bays, equipment for TCSCs, equipment for FSCs in addition to the above bays and equipments for SVCs exist for which no separate norms on O&M expenditure is admissible as per transmission tariff regulations. The actual O&M expenditure considered by the Commission while deriving the

norms for O&M expenditure per bay includes all expenditures of all the above mentioned equipments/ bays. This clearly indicates that O&M charges of various equipment mentioned herein are also recovered through tariff i.e. through O&M charges of the below mentioned bays on which the normative expenditure are admissible:-

- (i) Main Bays of Transmission Lines.
- (ii) Switchable Line Reactors Bays.
- (iii) FSC and TCSC's main Bays.
- (iv) Transformers Bays.
- (v) Bus Reactor Bays.
- (vi) Bus Sectionalizer Bays.
- (vii) 220 kV Feeder Bays.

12. PGCIL has submitted that the cost of the transformers and reactors is much higher than the total cost of other equipment in a bay and cost of repair of transformers, reactors, FSCs, TCSCs, SVCs and other bays are also included in the normative O&M charges per bay on average basis along with the expenditure incurred for major overhauling of equipment. PGCIL owns only the line bays in the Almathi sub-station and also carries out the day to day operation and maintenance activities of the bays. Major maintenance activities including major overhauling, hiring services from the equipment manufacturers and supplying of capital equipment/ supply of spares are also in the scope of PGCIL.

13. PGCIL has also submitted that it deployed its manpower on 21 occasions during last three years along with testing kits and other tools and plants for carrying out maintenance in Almathi sub-station. PGCIL also provided spare equipment for replacing the defective equipment installed in Almathi sub-station. The expenditure incurred for the above activities was borne by PGCIL. The respondent has further submitted that it has entered into various MoUs with Utilities (beneficiaries/generators), wherever the bays of the respondent are in the premises of the Utilities and are being maintained by the Utilities. The payments for the same are being made/received as per the extant MoU. The O&M agreement, with the same terms and conditions as signed with other Utilities for maintenance of bays was also given to TNEB for signing but TNEB has not signed it.

14. In the present petition, TNEB has requested to direct PGCIL to pay O&M charges of 4 nos. of bays at Alamathi sub-station, maintained by TNEB, as per the 2004 regulations.

15. TNEB and PGCIL entered into an agreement on 6.1.2006. As per this agreement TNEB has to execute 4 nos. 400 kV feeder bays at Alamathi and the ownership of assets to rest with PGCIL. The bays at Alamathi are to be maintained perpetually by TNEB. The O&M charges payable are to be finalized and a MOU was required to be signed in this regard.

16. The petitioner has submitted that the Commission approved the transmission tariff, including the O&M charges vide its order in Petition No. 143/2007 for the following assets:-

(a) LILO of Nagarjunasagar- Raichur 400 kV S/C transmission line at Mehboobnagar along with associated bays;

(b) LILO of both the circuits of Nellore-Sriperumbudur 400 kV D/C transmission line at Almathi along with associated bays.

The bays in the asset (b) above are maintained by the petitioner and so the O&M charges allowed by the Commission should be reimbursed by the PGCIL to the petitioner. However, PGCIL has not been paying the petitioner the O&M charges allowed by the Commission.

17. Therefore, the core issue raised for adjudication in the petition is in regard to the payment of O&M charges by PGCIL to the petitioner TNEB.

18. Before going into the merits of the case, it is necessary to examine certain preliminary issues regarding jurisdiction of the Commission to adjudicate the dispute in question, and also with regard to the locus standi of the petitioner to raise this dispute, and consequently whether the petition is maintainable.

19. Section 79 (1) of the Electricity Act, 2003 ("2003 Act") reads as under:

"Section 79. (Functions of Central Commission): --- (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter

into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.”

20. It is evident from the provisions of Section 79(1)(f) that the Commission has the jurisdiction to adjudicate only the dispute involving the generating companies or transmission licensees in regard to matters connected with Clauses (a) to (d) of Section 79(1). However, the present petition raises a dispute between an Utility and a transmission licensee. The issue raised for adjudication in the petition is in regard to the payment of O&M charges by PGCIL to TNEB not with regard to matters connected with determination of tariff of the respondent. The petition has been filed by the petitioner in the capacity of an O&M Contractor. Under Section 79(1)(f), the Commission can “*adjudicate upon disputes involving generating companies or transmission licensee*” and not adjudicate upon disputes involving transmission licensee and O&M Contractors and other contractors. Therefore, the present petition falls outside the scope of Section 79(1)(f) of the Act and is accordingly not maintainable.

21. TNEB has raised an issue that PGCIL has executed agreements with NTPC agreeing to pay the O&M Charges as per GOI/CERC notifications from time to time. PGCIL has replied that it has entered into various MOUs with utilities (beneficiaries/generators) and is paying in accordance with the said MOUs. PGCIL has not placed on record the copies of MOUs signed with other utilities. We are of the view that in accordance with prudent practice, PGCIL should adopt a uniform approach towards all utilities. While we are not inclined to grant the relief prayed for in the petition as it is beyond the scope of section 79(1) (f) of the Act, we direct PGCIL and TNEB to negotiate and settle the matter for a mutually acceptable solution.

22. In the circumstances, the petition is disposed of in terms of the above.

Sd/-
(M.DEENA DAYALAN)
MEMBER

Sd/-
(V.S.VERMA)
MEMBER

Sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON