

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 121/2009

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

Date of Hearing: 21.9.2010

Date of Order: 30 .1.2012

In the matter of:

Review under Regulation 103 Central Electricity Regulation Commission (Conduct of Business) Regulations, 1999 against order dated 30.4.2009 in Petition No. 131/2008 in respect of Talcher – Kolar HVDC Bipole upgradation scheme of Powergrid for the period from DOCO(1.8.2007) to 31.3.2009.

And

In the matter of:

Tamil Nadu Electricity Board, Chennai

..... **Petitioner**

Vs

1. Power Grid Corporation of India Ltd., Gurgaon
 2. Karnataka Power Transmission Corporation Ltd., Bangalore
 3. Transmission Corporation of Andhra Pradesh Ltd, Hyderabad
 4. Kerala State Electricity Board, Thiruvananthapuram
 5. Electricity Department, Puducherry
- **Respondents**

The following were present:

1. Shri. R. Krishnaswami, TNEB
2. Shri. S. Balaguru, TNEB

ORDER

This review petition has been filed by Tamil Nadu Electricity Board (hereinafter “the Review Petitioner”) under Regulation 103 Central Electricity Regulation Commission (Conduct of Business) Regulations, 1999 seeking



review of the order dated 30.4.2009 in Petition No. 131/2008 under which the final transmission tariff including tariff for capital expenditure incurred during 2007-08 for up-gradation of transfer capacity of Talcher–Kolar HVDC Bipole from 1.8.2007 to 31.3.2009 in Southern Region was approved by the Commission.

2. The Review Petitioner has submitted that the order dated 30.4.2009 in Petition No.131 of 2008 was received on 11.5.2009 and the period of 45 days as specified in Regulation 103 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 expires on 24.6.2009. The review petition has been filed within the specified time limit.

3. The Review Petitioner has submitted that NTPC commissioned a thermal generating station with capacity of 2000 MW at Talcher, Odisha. Initially the entire power from this generating station was allocated to Southern Region constituents and subsequently, 200 MW was allocated to the home state. The power from the generating station from Eastern Region to the Southern Region is evacuated through Talcher–Kolar HVDC Bi-pole with capacity of 1000 MW without having any provision for redundancy in case of one pole outage. This resulted in voltage fluctuations in the Eastern region. To overcome the voltage fluctuations, the transfer capacity of each pole of the Talcher-Kolar scheme was upgraded by 125 MW and commissioned for commercial operation with effect from 1.8.2007.

4. The Review Petitioner has further submitted that Power Grid Corporation of India Ltd. (PGCIL) filed Petition No. 131/2008 seeking determination of

transmission tariff including tariff on additional capital expenditure incurred during 2007-08 towards up-gradation of transfer capacity of Talcher-Kolar HVDC Bipole. In that petition, PGCIL had submitted that upgradation of transmission capacity of Talcher-Kolar Bi-pole required shutdown for 12 days/pole(approx) which had resulted in loss of revenue and incentive amounting to ₹ 2144.96 lakh. PGCIL had sought that the above Incidental Expenditure During Construction (IEDC) should either be capitalized or reimbursed in two equal installments as was done in case of Renovation and Modernisation taken by NTPC in respect of Talcher Stage I in order dated 25.9.2006 in Petition No.35/2004.

5. The Review Petitioner has submitted that in its counter reply to Petition No.131 of 2008 filed vide affidavit dated 11.2.2009, it had requested the Commission to exclude the IEDC on account of shutdown of Bi-pole for upgradation purposes from the project cost for tariff determination since PGCIL would be rewarded by additional tariff taking into account the additional investment. The Commission in order dated 30.4.2009 has allowed limiting the charges to be capitalized towards under recovery of transmission charges to ₹.369.09 lakh only. It has been submitted that the Commission's order would result in payment of ₹.1910.44 lakh by way of transmission charges by the beneficiaries exclusive of incentive in case Minimum Alternate Tax(MAT) is considered for entire life of the asset resulting in an Internal Rate of Return (IRR) of 21.94% and the transmission charges payable exclusive of incentive would be ₹. 2317.24 lakh in case MAT is considered only for 2009-14 period and normal tax is considered thereafter resulting in an IRR of 23.74%.The Review Petitioner has submitted that if the Commission had

ordered to reimburse the same in two equal monthly installments as was done in case of Renovation & Modernisation of Talcher Stage-I in order dated 25.9.2006 in Petition No.35/2004, it would be advantageous to the Review Petitioner.

6. The Review Petitioner has sought review of the order on the following grounds:

(a) If the order is not reviewed, it will result in adopting two methods with regard to reimbursement of an expenditure incurred during construction/renovation of an asset which will result in regulatory uncertainty.

(b) If the order is not reviewed, it will result in servicing the expenditure incurred during construction/renovation of an asset at an IRR of about 21.94% excluding incentive if MAT is considered for entire life of the asset or at 23.74% if MAT is considered for the tariff period 2009-14 and normal tax is considered for the rest of the life.

(c) If the order is not reviewed, it will result in unjust enrichment of PGCIL at the cost of the end consumers.

7. PGCIL in its reply dated 11.9.2009 has submitted that it had claimed an amount of ₹. 2144.96 lakh as part of incidental expenditure in the capital cost of the project as on the date of commercial operation on account of the reduction of transmission charges and incentives due to lower availability as a result of shutdown for execution of the project. However, the Commission in the order dated 30.4.2009 has allowed only ₹.369.09 lakh as against the claimed amount of ₹. 2144.96 lakh. PGCIL has filed an appeal in the

Appellate Tribunal for Electricity seeking approval of the IEDC of ₹. 2144.96 lakh in full. PGCIL has submitted that the amount of IEDC approved by the Appellate Tribunal shall be paid by all beneficiaries in the manner proposed by TNEB provided all other Southern Region beneficiaries agree to the proposal of TNEB.

8. During the hearing on 22.10.2009, the representative of the PGCIL submitted that the calculations made by the Review Petitioner were not correct as IEDC of ₹ 369.09 lakh had been considered by the Review Petitioner as equity component whereas said amount had been apportioned between debt and equity in the ratio of 70:30. He further submitted that PGCIL did not have any objection to upfront payment of IEDC by the beneficiaries, but the cost of servicing the second installment should be allowed. In response, the representative of the Review Petitioner submitted that it was willing to pay the entire amount in one installment. In response to our query as to whether other beneficiaries are willing to make payment as proposed by TNEB, the Review Petitioner was not able to give an affirmative reply.

9. We have considered the submissions of the Review Petitioner and PGCIL. It is noted that Appeal No. No.127/2009 filed by PGCIL in the Hon'ble Appellate Tribunal for Electricity challenging the order dated 30.4.2009 in Petition No. 131/2008 has been dismissed by judgement dated 20.1.2011. PGCIL has preferred Civil Appeal No. 3172 of 2011 before the Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003 which is presently pending.

10. We notice that the main ground for review in the present petition is that the Commission had allowed reimbursement in two installments the IEDC in respect of Renovation & Modernisation of Talcher Stage-I in the order dated 25.9.2006 in Petition No.35/2004 whereas the IEDC on account of shutdown has been capitalized in this case. Therefore, the Commission has adopted two methods for reimbursement of expenditure during construction/renovation of an asset which would result in regulatory uncertainty. Other grounds are that the Review Petitioner would have to pay high IRR during the life of the assets resulting in unjust enrichment of PGCIL.

11. The question for consideration is that whether the grounds relied upon by the Review Petitioner are covered under any of the grounds of review under Order 47 Rule 1 of the Civil Procedure Code, 1908. Order 47 Rule 1 provides that an order can be reviewed under any of the following grounds:

- (a) Discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge or could not be produced at the time when the order was passed;
- (b) On account of some mistake or error apparent on the face of record;
- (c) For any other sufficient reasons (which has been interpreted to be analogous to the other reasons specified above)

12. The order dated 25.9.2006 in Petition No.35/2004 on which the Review Petitioner has placed reliance was in the public domain before the order dated 30.4.2009 in Petition No.131/2008 was passed. The Review Petitioner has neither prayed in its counter nor during the oral hearing that the IEDC should

be allowed to be reimbursed upfront instead of capitalizing the same in the light of the decision in order dated 25.9.2006 in Petition no.35/2004. The relevant portion of the order dated 30.4.2009 in Petition No.131/2008 is extracted below:

“12. Upgradation of transmission capacity resulted in shutdown of HVDC system, resulting in loss of revenue and incentive amounting to Rs. 2144.96 lakh. The petitioner has submitted that the completion target as per investment approval was 24 months. However, the project was commissioned ahead of schedule at the estimated completion cost of Rs. 10154 lakh against the approved cost of Rs. 11833 lakh by taking minimum possible shutdown period to achieve maximum system availability for utilization by the beneficiaries. The system has been upgraded by taking shutdown for 12 days/pole (approximately). The petitioner has submitted that this upgradation work was not possible without taking shutdown of the system. However, the outage duration has been considered as attributable to the petitioner by Member-Secretary, SRPC while certifying availability. As shutdown period required for undertaking such major upgradation work was sufficiently long, the availability of this system reduced by 4.43% and finally the availability certified by SRPC is 92.26%. This being less than 95%, the normative target availability for claiming full transmission tariff for HVDC system, has a huge impact on the petitioner's revenues for no fault of its own. In fact, it has been stated, this work was taken up for the benefit of Southern Region respondents only. The petitioner has claimed the transmission charges, by claiming the loss suffered as a part of the capital cost.

13. TNEB in its reply has requested to exclude from the capital cost on account of loss of revenue and incentive for the purpose of determination of tariff. TNEB has also requested to limit the mandatory spares capitalized to 1.5% capital cost in accordance with regulation 52 of the 2004 regulations. TNEB has further submitted to restrict equity to Rs. 465.92 lakh in respect of additional capital expenditure during 2007-08 and to disallow the claim of O & M expenses for five bays. TNEB has also requested to consider the expenditure as additional capital expenditure to main equipment and award tariff by combining all the assets.

14. The petitioner in its written submissions dated 17.2.2009 has requested either to allow the loss of revenue etc. on account of reduction in availability resulting from the shut down as a part of capital cost or not to consider the same as reduction in the availability of the transmission system for the purpose of incentive. The petitioner has further submitted that otherwise it will suffer significant loss and damages, notwithstanding that the upgradation work was undertaken essentially for the benefit of the respondents with their concurrence and the shut down was known to all concerned, before upgradation was undertaken .

15. The petitioner has added an amount of Rs. 2144.96 lakh as a part of incidental expenditure in the capital cost of the project as on the date of commercial operation on account of reduction of the transmission charges (Rs. 1187.16 lakh) and incentive (Rs. 957.80 lakh) on account of lower availability as result of shut down.

16. The incentive of Rs. 957.80 lakh has not been considered as a part of capital cost. However, the under-recovery of the transmission charges on account of shutdown has been allowed to the extent of less recovery of debt liabilities and O&M expenditure during the shutdown period. The *pro rata* reduction in the interest on loan and O&M expenses in the year 2007-08 have been computed based on the transmission charges which has been worked out as Rs. 369.09 lakh. Therefore, an amount of Rs. 369.09 lakh on account of revenue loss during shutdown has been capitalised as on the date of commercial operation, against the petitioner's claim of Rs. 2144.96 lakh."

13. It is apparent from para 13 of the order dated 30.4.2009 that the Review Petitioner had never brought to the notice of the Commission that the IEDC should be treated as per the decision in Petition No.35/2004. Therefore, the first ground of review has not been made out in this case.

14. Next we consider the question as to whether there is an error apparent on the face of the record in order dated 30.4.2009 by not considering the decision dated 30.4.2006 in Petition No.35/2004 with regard to the reimbursement of IEDC. In order dated 25.9.2006 in Petition No.35/2004 relating to the approval of revised fixed charges due to additional capitalisation for the years 2000-2004 for the Talcher Thermal Power Station (460 MW), the Commission had decided the relatable fixed charges during shutdown period as under :

"26. The petitioner has claimed the following relatable fixed charges corresponding to the period when the unit remained under shut down due to R&M work:

	2000 – 01	2001– 02	2002–03	2003-04	Total
Relatable fixed charges	625	729	3866	2186	7406

27. R&M work on these units has been a major exercise, with considerable cost, time and effort. It has also borne fruit, both in terms of improvement in generating station performance and in life extension. In this connection, the respondent has vehemently contended that consequent to R&M the petitioner has claimed life extension amounting to 15 years only and the same must be made 20 or 25 years. To remove the apprehension of the respondent we

make it clear that in the order dated 19.6.2002 in Petition No. 62/2000, the Commission has already held that the life of the generating station stands extended by 20 years w.e.f. 1.4.2001 (for the purpose of calculation of depreciation amount in the tariff for the future years). This was further reiterated in the Commission's order dated 30.9.2004. Under these circumstances, it is necessary and reasonable to adequately compensate the petitioner for R&M work.

28. The petitioner has been paid annual fixed charges for the period 2000-2004 based only on the station capacity in service, and has not been paid any fixed cost for the units under shut down due to R&M. Further, the petitioner would also have been required to discharge debt liabilities during the above period. On these grounds, there is a genuine need to compensate the petitioner.

29. Accordingly it has been decided to allow actual expenditure incurred towards administrative and general expenses and interest on existing loan prior to R&M. However, we do not propose to accept relatable fixed charges as claimed by the petitioner as a part of the tariff. Total expenditure on this account comes to Rs. 2713 lakh. During the hearing, the respondent has agreed to its reimbursement rather than including it in the capital cost. Accordingly, this expenditure will be reimbursed by the respondent in two equal annual instalments along with revised tariff as per this order."

15. The Commission had taken a view in the order dated 30.4.2006 that the relatable fixed charges corresponding to the period of shut down of the unit due to R & M work should not be capitalized. However, the Commission had allowed reimbursement of the charges in two installments only with the consent of the sole respondent GRIDCO. In our view, the facts of the present case stand on a different footing as none of the respondents including the Review Petitioner had given its consent for reimbursement of the IEDC in two installments at the time of hearing of Petition No. 131/2008. Therefore, there is no error apparent on the face of record in the order dated 30.4.2009 by not considering the decision in Petition No.35/2004. We are not inclined to agree with the Review Petitioner that not adopting the methodology for reimbursement decided in Petition No.35/2004 in the present petition would lead to regulatory uncertainty. Even at the stage of review petition, PGCIL has agreed to the payment methodology proposed by the Review Petitioner

provided all other Southern Region beneficiaries agree to the proposal. However, none of the other beneficiaries of the transmission system viz. Karnataka Power Transmission Corporation Ltd., Transmission Corporation of Andhra Pradesh Ltd, Kerala State Electricity Board, and Electricity Department, Puducherry has consented to the proposed methodology of payment. In fact, these beneficiaries have neither filed any reply to the review petition nor appeared before the Commission during hearing despite notice.

16. In view of the above, Review Petition No.121/2009 is dismissed.

Sd/-	sd/-	sd/-	sd/-
(M. Deena Dayalan) Member	(V.S. Verma) Member	(S. Jayaraman) Member	(Dr. Pramod Deo) Chairperson