

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 321 of 2009

Coram:

1. Dr. Pramod Deo, Chairperson
2. Shri V.S.Verma, Member
3. Shri M. Deena Dayalan, Member

DATE OF HEARING: 28.4.2010

DATE OF ORDER: 7.2.2012

In the matter of

Review of the order dated 7.9.2009 in Petition No. 87/2006 relating to determination of transmission tariff for transmission system associated with Kathalguri gas based combined cycle project in North Eastern Region for the period from 1.4.2004 to 31.3.2009.

**And
In the matter of**

Lower Assam Electricity Distribution Company Limited **..Applicant**
Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. North Eastern Electric Power Corporation Limited, Shillong
3. National Hydro Electric Power Corporation Limited, Faridabad
4. North Eastern Regional Power Committee, Shillong
5. North Eastern Regional Load Despatch Centre, Shillong
6. Meghalaya State Electricity Board, Shillong
7. Secretary (Power), Government of Arunachal Pradesh

..Respondents

Following was present:

Shri M. K. Adhikari, LAEDCL



ORDER

This application has been made by the petitioner, Lower Assam Electricity Distribution Company Limited, successor company of Assam State Electricity Board, seeking review of the Commission's order dated 7.9.2009 in petition No. 87/2006, determining the transmission tariff for transmission system associated with Kathalguri Gas based combined cycle project in North Eastern Region for the period from 1.4.2004 to 31.3.2009.

Background

2. Power Grid Corporation of India Limited had filed petitions No. 82/2006 to 90/2006 for determination of transmission tariff for various transmission systems of NER for the period from 1.4.2009 to 31.3.2009. Based on these petitions, the Commission initially issued tariff orders of Associated Transmission System (ATS) of various Central Sector Generating Stations (CSGS) of North Eastern Region for the period 2007-09. The Commission vide its order dated 31.12.2007 in Petition No. 82/2006, order dated 10.3.2008 in Petition No. 83/2006, order dated 7.3.2008 in Petition No. 84/2006, order dated 16.1.2008 in Petition No. 85/2006, order dated 25.3.2008 in Petition No. 86/2006, order dated 16.4.2008 in Petition No. 87/2006, order dated 13.2.2008 in Petition No. 88/2006, order dated 21.2.2008 in Petition No. 89/2006 and order dated 19.2.2008 in Petition No. 90/2006 had determined the transmission charges for associated transmission system of North Eastern Region in accordance with Central

Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 tariff regulations"). Aggrieved by the said orders, the Power Grid Corporation of India Limited filed Appeal Nos. 73 of 2008 to 81 of 2008 before the Appellate Tribunal for Electricity against orders *ibid*. The Appellate Tribunal vide its judgment dated 4.11.2008 set aside the said orders and remanded the matters for re-determination of the transmission tariff for the period from 1.4.2004 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004. In view of the decision of the Appellate Tribunal, the petitions were re-heard. After hearing the concerned parties, the Commission vide its orders dated 11.8.2009 in Petition No. 82/2006, 8.9.2009 in Petition No. 83/2006, 19.8.2009 in Petition No. 84/2006, 12.8.2009 in Petition No. 85/2006, 21.8.2009 in Petition No. 86/2006, 7.9.2009 in Petition No. 87/2006 and 21.8.2009 in petitions No. 88/2006, 89/2006 and 90/2006 had determined the transmission charges for associated transmission system in North Eastern Region.

3. Initially the review petitioner had filed review petition for review of the order dated 11.8.2009 in Petition No. 82/2006, order dated 8.9.2009 in Petition No. 83/2006, order dated 19.8.2009 in Petition No. 84/2006, order dated 12.8.2009 in Petition No. 85/2006, order dated 21.8.2009 in Petition No. 86/2006, order dated 7.9.2009 in Petition No.

87/2006 and orders dated 21.8.2009 in petitions No. 88/2006, 89/2006 and 90/2006 by filing a single petition. The review petitioner was directed to file the separate review applications against each petition as per Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. Accordingly, the review petitioner vide its affidavit dated 4.3.2010 filed the review petition for review of the order dated 7.9.2009 in Petition No. 87/2006 only. The petitioner has made the following specific prayers:

- (a) Review and rectify the order dated 7.9.2009 in Petition No. 87 of 2006 in respect of following issues:
 - (i) The figures of Interest on loan specified in Annexure of the order with the interest on loan figures considered for calculation of tariff are not tallying with each other;
 - (ii) Advance Against Depreciation has accrued only in order dated 7.9.2009;
 - (iii) Rectify the error in calculation of interest on loan and Advance Against Depreciation.
- (b) Relieve from paying the fee of review petition as the error in order appears to be due to mistake on part of the Commission; and
- (c) Pass any other orders which the Commission deems fit and just in the circumstances of the matter and interest of justice.

4. We have heard the representative of the petitioner, on admission on 20.4.2010.

5. The petitioner has prayed for condonation of delay in filing the review petition. The review petitioner has submitted that the Commission's order dated 7.9.2009 was received on 6.10.2009. Therefore, the delay was neither willful nor wanton. It has been further submitted that substantial time was required in examining the both sets of orders and find out the cause of differences in between them and certain time was also required in the process of obtaining internal approval of filing the review petition. The review petitioner has requested to condone the unintentional delay in filing the review petition.

6. Regulations 103 and 116 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as "Conduct of Business Regulations") provides as under:

Review of the decisions, directions, and orders

103. (1) The Commission may at any time, on its own motion, or on an application of any of the persons or parties concerned, within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit:

Provided that power of review by the Commission on its own motion under this clause may be exercised only for correction of clerical or arithmetical mistakes arising from any accidental slip or omission.]

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations.

Extension or abridgement of time prescribed

116. Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission."

7. As per Regulation 103 of Conduct of Business Regulations, the limitation period for making application for review is 45 days from the date of the order. This period can be extended or abridged by the Commission for "sufficient reason" under Regulation 116 *ibid*. The reasons explained by the review petitioner for delay in filing the review petition are sufficient to extend the time for filing the petition under Regulation 114 of Conduct of Business Regulations. In view of this, the delay in filing the review petition is condoned.

8. Next we proceed to examine issues raised by the petitioner, on merits.

9. Section 94 (1) (f) of the Electricity Act, 2003 provides that Commission shall have the same power as vested in a civil court under the Code of Civil Procedure, 1908 (CPC) for reviewing its decisions, directions and orders. Order 47 Rule 1 of CPC provides that any person considering himself aggrieved by an order may apply for its review to the court, which passed the order under the following circumstances:

(a) On discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced at the time when the decree was passed or order made, or

(b) *on account of some mistake or error apparent on the face of the record, or*

(c) *for any other sufficient reasons.*

10. Under Regulation 103 of Conduct of Business Regulations, the Commission has the power to review its order *suo-motu* for correction of clerical or arithmetical mistakes arising from any accidental slip or omission.

11. The review petitioner's plea for review is to be considered in the light of the above noted legal position. The petitioner has raised the following three issues in the review petition:

(a) The Commission has annexed the details of Interest on Loan with order as Annexure showing loan details and interest accrued thereupon. However, the figures of Interest on Loan considered for tariff calculation does not tally with the figures of Annexure showing annual interest on loan accrued. Interest on loan considered for the purpose of tariff are higher than the interest shown in Annexure. The item such as gross loan opening, cumulative repayments etc do not tally with the figures of Annexure.

(b) Vide order dated 16.4.2008, no Advance Against Depreciation was allowed. However, the Commission by its order dated 7.9.2009 had allowed Advance Against Depreciation for the

transmission assets. The amount of gross loan opening, repayment of loan during the year, cumulative repayment of loan considered for calculation of Advance Against Depreciation do not tally with figures shown in the Annexure of the order. During the UCPTT regime there were recovery of Interest on Loan and Depreciation against certain associated transmission system. However, in order dated 7.9.2009, the details of such recoveries during the UCPTT period and adjustments thereof in the cumulative repayment and cumulative deprecation have not been shown separately.

(c) As per tariff regulations, 2004, the Interest on Working Capital is dependent on maintenance spares, O & M Spares and receivables. The changes in Interest on Working Capital (IWC) in order dated 7.9.2009 are on account of receivables and the same is related with the total annual transmission charges. In the event of any changes in the annual transmission charges, IWC will be automatically changed.

12. The review petitioner has further submitted that subsequent to the directions of the Appellate Tribunal, the Commission vide its order dated 7.9.2010 has increased annual transmission tariff due to advancement of the date of the effect of the order from 1.4.2007 to 1.4.2004. It has been

submitted that transmission charges should not be increased as in both the orders dated 16.8.2008 and 7.9.2010 transmission charges were allowed in accordance with 2004 tariff regulations.

13. As regards the first issue, it emerges from perusal of the order dated 7.9.2009 that in para 30 of the order, while working out the tariff for the period 2007-09 for the purpose of calculating the interest on loan to be recovered in tariff, cumulative repayment up to the year 31.3.2004 was considered. Annual depreciation during the years 2004-05, 2005-06 and 2006-07 was considered as respective year's repayment. Average outstanding loan thereafter, was computed considering notional loan repayment equal to the depreciation allowed during the years 2007-08 and 2008-09. The rates of interest as on 1.4.2007 corresponding to various loans (including loans with floating rate of interest) were considered to work out the weighted average rate of interest. However, in the revised calculation the interest on loan was worked out as per Regulation 56 (i) of the 2004 tariff regulations as under:

- (i) Gross amount of loan, repayment of instalments and rate of interest as per the Form-13 of the petition have been used to work out weighted average rate of interest on actual loan;
- (ii) Notional loan corresponding to additional capitalisation from date of commercial operation to 31.3.2004 has been added

to the loan amount as on the date of commercial operation to arrive at total notional loan. This adjusted gross loan has been considered as normative loan for tariff calculation.

- (iii) Tariff has been worked out considering normative loan and normative repayments. Normative repayments are worked out by the following formula:

$$\frac{\text{Actual repayment of actual loan during the year}}{\text{Opening balance of actual loan during the year}} \times \text{Opening balance of normative loan during the year}$$

- (iv) Weighted average rate of interest on actual loan worked out as per (i) above has been applied on the average loan during the year to arrive at the interest on loan.

Further, the individual loan's interest rate as on 1.4.2004 was considered for the purpose of weighted average rate of interest. It is clarified that the details of loans provided at the Annexure indicate the actual loans utilized for funding the transmission assets(s) and the weighted average rate of interest worked out from the loan details was applied on the notional loan amount for the purpose of working out the notional interest. Therefore, it is natural that loan details such as opening gross loan, cumulative repayments, etc. would not tally with the figure of interest on loan specified in Annexure of order dated 7.9.2009 with the interest

on loan figures considered for calculation of tariff. The break-up of Interest on Loan calculations is as under:

(₹ in lakh)

Name of Assets	Calculations	Year				
		2004-05	2005-06	2006-07	2007-08	2008-09
400 kV D/C Kathalguri-Mariani transmission line (Asset- I)	As per Annexure annexed with petition	136.79	124.05	111.78	99.78	88.04
	Order dated 16.4.2008	-	-	-	5.15	0.00
	Order dated 7.9.2009	135.98	122.32	108.93	95.69	82.59
400 kV D/C Mariani-Misa and 400 kV Kathalguri-Misa transmission line (Asset- II)	As per Annexure annexed with petition	306.05	277.87	250.57	223.76	197.43
	Order dated 16.4.2008	-	-	-	211.09	180.56
	Order dated 7.9.2009	304.54	272.96	241.88	211.09	180.56
400 kV D/C Misa-Balipara Ckt-I & II, 400 kV Blipara-Boingaigaon transmission line and 220 kV S/C Balipara-Tezpur transmission line (Asset- III)	As per Annexure annexed with petition	1251.42	1098.74	946.06	884.44	728.31
	Order dated 16.4.2008	-	-	-	1153.50	1052.13
	Order dated 7.9.2009	1286.16	1129.39	972.59	815.63	665.19
Total	As per Annexure annexed with petition	1694.27	1500.67	1308.42	1207.98	1013.78
	16.4.2008	-	-	-	1369.73	1232.69
	7.9.2009	1726.68	1524.66	1323.40	1122.40	928.34

14. However, we do not find any error on the face of the record in the calculation in the order 7.9.2009, which requires review.

15. With regards to second issue, the 2004 tariff regulations provides that Advance Against Depreciation is permissible only if loan repayment in a year exceeds the depreciation, and the cumulative repayment up to a particular year exceeds the cumulative depreciation up to that year. It is noticed on scrutiny of record that Power Grid

Corporation of India Ltd. in number of assets had indicated the figures of (i) cumulative depreciation due up to 31.3.2004 and (ii) the depreciation recovered till that date. Thus, there was cumulative depreciation, which had remained partly un-recovered or fully un-recovered. To resolve this problem, the depreciation claimed in the petition was considered for the cumulative depreciation up to 31.3.2004 in the revised calculations. Accordingly, for the purpose of tariff,-

- (i) For Asset-I and Asset-II, cumulative depreciation due for the period from the date of commercial operation to 31.3.2004 was considered as per enclosure 12 of the petition;
- (ii) For Asset-III, depreciation for the period date of commercial operation to 31.3.2004 was worked out by considering the capital costs and applicable depreciation rates; and
- (iii) Depreciation for the period 2004-05 onwards was considered on the capital expenditure as on 1.4.2004.

16. While working out the transmission charges for the period 2007-09, notional loan repayment was considered to be equal to the depreciation recovered in tariff. Therefore, no Advance Against Depreciation was allowed in the order dated 14.6.2008. However, Advance Against Depreciation has arisen after the tariff was re-determined carrying the

entire tariff period from 2004-09. The Break-up of Advance Against Depreciation for the Asset-III is as under:

(₹ in lakh)

Name of Asset	Date of orders	2004-05	2005-06	2006-07	2007-08	2008-09
Asset-III	16.4.2008	0.00	0.00	0.00	0.00	0.00
	7.9.2009	0.00	508.51	954.22	954.22	858.61

17. As regards the third issue, it is noticed that the difference in annual transmission charges has arisen due to change in the account of interest on loan and Advance Against Depreciation in the order dated 7.9.2009. The change in the Annual Transmission Charges has been reflected in receivables and this has resulted in change in Interest on working capital. Break-up of the Interest on working capital is as under:

(₹ in lakh)

Name of Asset	Date of orders	2004-05	2005-06	2006-07	2007-08	2008-09
Asset-I	16.4.2008	-	-	-	32.65	32.61
	7.9.2009	32.00	32.68	33.43	34.22	35.09
Asset-II	16.4.2008	-	-	-	73.10	74.76
	7.9.2009	68.87	70.17	71.59	73.10	74.76
Asset-III	16.4.2008	-	-	-	176.91	180.16
	7.9.2009	165.76	176.12	185.64	187.62	188.36
Total	16.4.2008	-	-	-	282.66	287.54
	7.9.2009	266.63	278.97	290.65	294.94	298.21

18. In view of the above, the transmission charges allowed vide order dated 7.9.2009 are in order and does not call for any review.

19. Review Petition No. 321/2009 stands disposed of at the admission-stage, in terms of the above.

Sd/-
(M.DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON