

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 4/2011 in Petition No. 123/2010

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

Date of Hearing: 8.9.2011

Date of Order: 26 .9.2012

In the matter of:

Review of order of Commission dated 8.3.2011 in Petition No. 123/2010 in the matter of approval of transmission tariff for combined elements of (a) LILO of Nagarjunasagar- Raichur 400 kV S/C line at Mehboobnagar; and (b) LILO of both the circuits of Nelloor- Sriperumbudur 400 kV D/C line at Almathi along with associated bays under System Strengthening Scheme- IV in Southern Region for the period from 1.4.2009 to 31.3.2014

And

In the matter of:

Tamil Nadu Generation and Distribution Corporation Ltd.,
Chennai

.....Petitioner

Vs

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

....Respondents

Parties present:

1. Shri S. Vallinayagam, Advocate, TANGEDCO
2. Shri S. Balaguru, TANGEDCO
3. Shri M.G.Ramachandran, Advocate, PGCIL
4. Shri Prashant Sharma, PGCIL
5. Shri Danie R. Selvaraju, PGCIL
6. Shri S.S. Raju, PGCIL

ORDER

Power Grid Corporation of India Ltd. filed Petition No. 123/ 2010 for approval of transmission tariff for combined elements of (a) LILO of Nagarjunasagar- Raichur 400 kV S/C line at Mehboobnagar; and (b) LILO of both the circuits of Nellore- Sriperumbudur 400 kV D/C line at Almathi along with associated bays under System Strengthening Scheme- IV in Southern Region for the period from 1.4.2009 to 31.3.2014, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009 regulations'). The Commission by its order dated 8.3.2011 determined the transmission tariff of the assets covered under the petition.

2. Aggrieved by the said order, the Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO), the Review Petitioner herein, has filed the present petition for review of the order dated 8.3.2011 in Petition No. 123/ 2011. The petitioner has submitted that in its additional counter filed vide affidavit dated 22.1.2011, the petitioner had requested to decide the O&M expenses claimed in the petition after decision in Petition No. 11/2010 and to

stay the payment of O&M expenses to PGCIL till the disposal of petition No. 11/2010 and the present review petition.

3. By order dated 7.7.2011, the Commission directed to issue notice to the respondents on the question of admissibility of the review petition. Reply to the application has been filed by PGCIL, Respondent no. 1 in the review petition, and the petitioner has filed its rejoinder to the said reply.

4. The Review Petitioner has submitted that since the four bays of PGCIL at Alamathi in the substation of TANGEDCO are being maintained by it, Respondent No. 1 should either pay the O&M charges received by it under the orders of the Commission or in the alternative, Respondent No. 1 should not claim O&M expenses in respect of the four bays. The Review Petitioner has submitted that the issue was raised by it in its additional affidavit dated 22.1.2011 that since Petition No. 11/ 2010 filed by the Review Petitioner regarding reimbursement of O&M expenses by PGCIL to TANGEDCO as per the norms in the Tariff regulations was still pending, the Commission should not have passed any order regarding O&M expenses in Petition No. 123/2010 without disposing of the Petition No. 11/2010. However, the Commission in its order dated 8.3.2011 in Petition No. 123/2010 has allowed the O&M expenses as per the regulations and non-consideration of its prayer to allow O&M expwnses in the light of the decision in Petition No. 11/2010 is an error apparent on the face of the record.

5. PGCIL in its counter affidavit dated 17.8.2011 has submitted that its bays in Alamathi substation of TANGEDCO were constructed by TANGEDCO on behalf of PGCIL as depository work. PGCIL has further submitted that it enters into agreements with the Utilities for O&M of its bays installed in their premises and any issue arising out of such agreement is purely a bilateral issue. PGCIL forwarded a MoU to TNEB on 17.1.2007 and subsequently sent a modified MoU on 18.12.2007. PGCIL also pursued the matter with TNEB vide its letters dated 4.2.2008 and 29.6.2009 to sign the MoU which was in line with the MoUs signed with other Utilities in the country but TNEB/ TANGEDCO was yet to sign the MoU. PGCIL has submitted that the MoUs signed by it with all utilities for payment of O&M for maintenance of its bays generally include the following:-

- (i) Concerned Utility shall carry out normal operation and maintenance of the bays including testing of protections & PLCC etc. on behalf of PGCIL.
- (ii) Deployment of personnel for proper maintenance/replacement of bay equipments is covered in the scope of work to be undertaken by concerned utility.
- (iii) Thermo – vision scanning is covered in the scope of work of PGCIL.
- (iv) In case services of the manufacturers or any outside agency are required on any particular occasion, same will be carried out at PGCIL'S cost.

- (v) The agreement does not cover supply of any equipment / spares including emergency replacements by the Utility, all these are provided by PGCIL based on request of 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 provides initially the spares required for at least two years as recommended by the suppliers and subsequently based on consumption of the same.
- (viii) In case of major overhauling to be carried out as per manufacturer recommendation, 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.

6. PGCIL has submitted that during last few years, PGCIL deployed its manpower on a number of occasions along with testing kits and other Tools and Plants for carrying out maintenance in Alamathi Substation and provided spare equipment for the bays installed in Alamathi Substation. PGCIL has submitted that in Alamathi Substation, only line bays are owned by PGCIL and there are no cost intensive equipment like transformers, reactors, TCSC or FSCs etc. Moreover, day to day operation & maintenance activities are being carried out by TANGEDCO and any major maintenance activities including major overhauling, hiring services from the equipment manufacturers and supplying

of capital equipments / supply of spares is in the scope of PGCIL. As such, much larger expenditure is made by PGCIL in maintenance of these bays than TANGEDCO.

7. TANGEDCO in its rejoinder vide affidavit dated 29.8.2011 has reiterated its submission made in the review petition. The Review Petitioner has further submitted that the Commission has wide power under Regulations 111, 112, and 113 of the CERC (Conduct of Business) Regulations 1999, to grant any relief and accordingly, has requested the Commission to direct PGCIL to pay it the O&M expenses as per the norms of the tariff regulations for maintenance of the bays in the Alamathi substation.

8. During the hearing on 8.9.2011, the learned counsel for the Review Petitioner submitted that the Review Petitioner has raised the issue of reimbursement of O&M expenses as per the norms of the regulations in its additional affidavit filed on 24.1.2011 in Petition No. 123/ 2010 and submitted that non-consideration of the same is an error apparent on the face of record. In this regard, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court of India in Assistant Commr., Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd. (2008) 14 SCC 171, and submitted that as per the law laid down by the Supreme Court, error in the judgment of the Court is a ground for review. Since the Commission has passed the impugned order without considering its submission, review is maintainable in this case.

9. We have heard the parties and examined the documents on record. We now proceed to consider whether review petition is maintainable. Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 provides as under:

"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."

Under Section 94(f) of the Electricity Act, 2003, the Commission exercises same power of review as vested in a civil court under the Code of Civil Procedure. Order 47 Rule 1 of the Code of Civil Procedure (CPC) provides that any person feeling aggrieved by any order made by the Commission, may apply for review of the order under the following circumstances:-

- (a) Discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when order was made, or
- (b) On account of some mistake or error apparent on face of record, or
- (c) For any other sufficient reason.

10. The main ground for review is that the Commission failed to take into account the issue raised in Petition No. 11/2010 and the submission made in the additional affidavit dated 22.1.2011 while determining the O&M expenses admissible to PGCIL in respect of the bays at Alamathi in order dated 8.3.2011 in Petition No. 123/2010 and it amounted to an error apparent on the face of record.

11. The issue raised in Petition No. 11/2010 was that the Review Petitioner should be reimbursed O&M expenses as per the norms of the regulations since it is maintaining the bays at Alamathi in place of PGCIL. Under the tariff regulations, it is the transmission licensee (including deemed licensee) who is entitled for reimbursement of the annual transmission charges including O&M expenses from the beneficiaries. The relationship of PGCIL with the Review Petitioner in the context of maintenance of the bays at Alamathi substation is that of a transmission licensee with its O&M contractor and such bilateral issue falls outside the purview of tariff determination. Therefore, the submission of the Review Petitioner in its additional affidavit that the O&M expenses for the transmission assets should be decided only in terms of the decision in Petition No. 11/2010 which was pending at that time was not relevant for determination of the transmission charges including O&M expenses for the transmission assets as per the Tariff Regulation of the Commission. In our view, determination of O&M expenses in the impugned order without deciding the issue raised in Petition No. 11/2010 is not an error apparent on the face of record. The judgment of Hon'ble Supreme Court relied upon by the learned counsel for Review Petitioner does not advance the case of the Review Petitioner.

12. In view of the above, no case has been made out for review of the order dated 8.3.2011 in Petition No. 123/ 2010 and accordingly Review Petition No. 4/2011 is dismissed.

Sd/-
(M.DEENA DAYALAN)
MEMBER

Sd/-
(V.S.VERMA)
MEMBER

Sd/-
(S. JAYARAMAN)
MEMBER

Sd/-
(DR. PRAMOD DEO)
CHAIRPERSON