

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 7/RP/2012 In Petition No.136/2010

Coram:

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

**Date of Hearing: 22.11.2012
Date of Order : 09.05.2013**

In the matter of:

Review of order of Commission dated 11.1.2012 in Petition No. 136/2010 for tariff period 2009-14 in respect of assets commissioned on 1.8.2009/1.9.2009 under ATS of NLC-II Expansion Project in Southern Region.

And In the matter of:

Power Grid Corporation of India Ltd., Gurgaon

..... **Review Petitioner**

Vs

1. Karnataka Power Transmission Corporation Ltd., Bangalore
2. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
3. Kerala State Electricity Board, Thiruvananthapuram
4. Tamilnadu State Electricity Board, Chennai
5. Electricity Department, Government of Goa, Goa
6. Electricity Department, Government of Pondicherry, Pondicherry
7. Eastern Power Distribution Company of Andhra Pradesh Ltd., Vishakhapatnam
8. Southern Power Distribution Company of Andhra Pradesh Ltd., Tirupati
9. Central Power Distribution Company of Andhra Pradesh Ltd., Hyderabad
10. Northern Power Distribution Company of Andhra Pradesh Ltd., Warangal
11. Bangalore Electricity Supply Company Ltd., Bangalore
12. Gulbarga Electricity Supply Company Ltd., Karnataka
13. Hubli Electricity Supply Company Ltd., Hubli
14. MESCOM, Mangalore
15. Chamundeshwari Electricity Supply Corporation Ltd., Mysore
16. Neyveli Lignite Corporation Limited, Neyveli, Tamil Nadu

....**Respondents**

Parties present:

1. Shri M.G. Ramachandran, Advocate for PGCIL
2. Ms. Swapana Seshadri, Advocate for PGCIL
3. Shri Prashant Sharma, PGCIL
4. Shri M.M. Mondal, PGCIL
5. Shri S.S. Raju, PGCIL
6. Shri S. Vallinayagam, Advocate for TANGEDCO
7. Shri S. Balaguru, TANGEDCO
8. Shri Rathinasabapathy, NLC

ORDER

Power Grid Corporation of India Limited (PGCIL) has filed the instant review petition seeking review of the Commission's order dated 11.1.2012 in Petition No.136/2010. PGCIL has prayed for review and modification of the impugned order on the issue of IDC and IEDC.

Brief facts of the case

2. PGCIL filed Petition No. 136/2010 seeking transmission tariff in respect of (a) LILO of Ramagundam- Khammam T/L at Warangal Sub-Station (Asset 1) (b) 2X315 MVA Auto Transformer & 444/220 kV Bays Equipment at Warangal Sub-station (Asset 2) (c) Combined assets kV DC TL (Asset 3) and (d) 2X315 MVA Auto Transformer & 400/220 kV Bays Equipment at Pugalur Sub-Station (Asset 4) under Transmission System associated with NLC-II Expansion Project in Southern Region for the tariff block 2009-14 period, in accordance with and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ("the 2009 Tariff Regulations"). The Commission by the impugned order determined the annual transmission tariff of the above mentioned transmission assets.

3. As per the Investment Approval dated 11.1.2005, the assets were to be commissioned within 35 months from the date of Investment Approval, i.e. 1.1.2008. The commissioning of the generating station was rescheduled by NLC to February 2009 and accordingly PGCIL also rescheduled commissioning of its transmission lines to February 2009. Further, PGCIL entered into an Indemnification Agreement (IA) with NLC with zero date as February 2009. The IA was modified and according to the modified IA, in case of delay the actual date of commissioning of generating unit or associated transmission system whichever is commissioned earlier after the original zero date shall be considered as the revised zero date. Assets 1 & 2 were commissioned on 1.8.2009 and Assets 3 & 4 were commissioned on 1.9.2009. The delay from January 2008 to January 2009 was not attributable to the petitioner as the commissioning was extended to match the commissioning of generating station and accordingly time over-run from January 2008 to January 2009 was condoned. Time over-run beyond January 2009 was not condoned and IDC and IEDC for the time over-run from 1.2.2009 to 1.8.2009 in case of Assets 1 & 2 and to 1.9.2009 in case of Assets 3 & 4 were not allowed and PGCIL was given the liberty to claim the loss on account of disallowance of IDC and IEDC from NLC in accordance with the IA. While dealing with issue of time over-run in the impugned order, we have held as under:-

"14. As regards the cost overrun, it is observed that the project was due for commissioning in January 2008 i.e. 35 months from date of Investment Approval dated 11.1.2005. Against this, Asset 1 and Asset 2 were commissioned on 1.8.2009 and Asset 3 and Asset 4 were commissioned on 1.9.2009. Accordingly, there is a delay of 20 months for Asset-1 and Asset-2 and 21 months for Asset-3 and Asset-4. The petitioner has submitted that during the coordination meeting with NLC in December 2006, the NLC had indicated the revised schedule of the commissioning of the first unit of the generation project as February 2009 as against March 2008, as indicated earlier. Accordingly, the petitioner rescheduled its implementation activities so as to commission its transmission lines matching with the commissioning of the generation project in February 2009. The petitioner has signed an Indemnification Agreement with NLC with Zero date as February 2009. Subsequently, a modification to the Indemnification Agreement was signed with NLC specifying that in case of delay, the actual date of the commissioning of generating unit or associated transmission system whichever is commissioned earlier after the

original zero date shall be considered as the revised zero date. For the period from January 2008 till February 2009, the delay cannot be attributable to the petitioner as the date of commissioning was extended till February 2009 after consultation with NLC to match with the commissioning of the generating station. The petitioner was expected to commission the assets by zero date i.e. February 2009. However, Asset 1 and 2 were commissioned on 1.8.2009 and Asset 3 and 4 were commissioned on 1.9.2009. There has been a delay of 6 months in the case of Asset 1 and 2 and 7 months in the case of Asset 3 and 4. Accordingly, IDC and IEDC for 6 months in case of Assets 1 and 2 and 7 months in case of Assets 3 and 4 are not allowed. The petitioner is at liberty to claim the loss on account of disallowance of IDC and IEDC from NLC in accordance with the Indemnification Agreement.

15. Based on the above, IDC and IEDC have been deducted for six months upto 31.7.2009 for Asset-1 and Asset-2 and upto 31.8.2009 for Asset- 3 and Asset-4. As per Investment approval dated 11.1.2005, project ought to have been completed within 35 months. As noted above, there is a delay of 20 months for Asset-1 and Asset-2 and 21 months for Asset-3 and Asset-4. Thus total Construction period for Asset-1 and Asset-2 is 55 months i.e. (35+20) months and for Asset-3 and Asset-4 it is 56 months i.e. (35+21) months.

16. Details of the disallowed IDC and IEDC are as under:-

(₹ in lakh)

Details of IDC and IEDC as per CA Certificate dated 2.11.2009								
Particular	Asset-1		Asset-2		Asset-3		Asset-4	
	IDC	IEDC	IDC	IEDC	IDC	IEDC	IDC	IEDC
Up to 31.3.2009	358.58	255.62	389.38	297.53	4197.67	3151.16	418.81	308.18
From April' 09 to July' 09/Aug'09	38.07	49.52	45.31	20.53	686.97	308.68	80.43	51.10
Total IDC and IEDC Claimed	396.65	305.14	434.69	318.06	4884.64	3459.84	499.24	359.28
Details of IDC and IEDC Disallowed for 6/7 months								
From Feb'09 - March'09	14.06	10.02	15.27	11.67	164.61	123.58	16.42	12.09
From April '09 to July'09/Aug'09 (for 4/5 months)	38.07	49.52	45.31	20.53	686.97	308.68	80.43	51.10
Total Disallowed IDC and IEDC (for 12 months)	52.13	59.54	60.58	32.20	851.58	432.26	96.85	63.19

17. Disallowed IDC and IEDC have been deducted proportionately from the capital cost of the elements (excluding land) of the respective assets as on date of commercial operation. Consequently, capital cost of ₹ 3788.53 lakh, ₹ 4361.13 lakh, ₹ 46797.49 lakh (₹ 3788.53 lakh for asset 1 and ₹ 43008.96 lakh for asset-3) and ₹ 4246.81 lakh for Asset-1, Asset 2 , combined Asset-1 & 3, and Asset-4 respectively, as on date of commercial operation has been considered for the purpose of calculation after deducting IDC and IEDC.

18. Actual dates of commercial operation of the Assets clubbed in the instant petition i.e. individual Asset-1 and individual Asset-3 are 1.8.2009 and 1.9.2009 respectively. Both the assets have been clubbed for the purpose of tariff determination as on 1.9.2009 (notional date of commercial operation) as per Commission letter Ref. No. C-7/189(204)/2009-CERC dated 31.10.2009. The petitioner has claimed projected additional capital expenditure for 2009-10 and details of breakup of additional capital expenditure for August 2009 is not available, capital cost as on date of commercial operation of both the assets has been clubbed for the purpose of tariff calculation. However, capital cost will be reviewed at the time of truing up."

4. Aggrieved by the above order, PGCIL has filed the instant review petition seeking review of the order dated 11.1.2012. The review petition was admitted and notices were issued to the respondents. Reply to the application has been filed by TANGEDCO (Respondent no. 4), successor to TNEB, vide its affidavit dated 30.6.2012. PGCIL, vide its affidavit dated 13.9.2012, has filed its rejoinder to TANGEDCO's reply and PGCIL has also filed its written submissions on 5.11.2012.

5. We have heard both PGCIL and TANGEDCO. Having heard the parties and examined the documents on record, we proceed to dispose the petition.

6. PGCIL has submitted that the instant Review Petition has been filed on the limited issue of disallowance of IDC & IEDC as part of capital cost and it is an apparent error on the face of the record and there is sufficient cause for reviewing the impugned order. PGCIL has submitted that the Commission while approving the capital cost has disallowed the IDC & IEDC for 6 months in case of Assets 1 and 2 and 7 months in case of Assets 3 and 4 on account of time over-run. The delay in commissioning of the ATS is due to delay in completion of NLC-II generation project and downstream system of APTRANSCO. As far as the downstream system of APTRANSCO is concerned, it has been submitted that in the 7th SRPC meeting held on 7.6.2008 it has decided to advance

the commissioning of Warangal Sub-station to February, 2009. However, APTRANSCO informed in the 9th SRPC meeting held on 6.3.2009 that the system would be ready by July 2009 and further in the 10th SRPC meeting held on 2.7.2009, APTRANSCO confirmed that Warangal Sub-station along with the Ramagundam-Khammam line would be put under commercial operation with effect from 1.8.2009. Accordingly, Assets 1 & 2 were put under commercial operation on 1.8.2009. PGCIL has also submitted that during the 9th SRPC meeting held on 6.3.2009 it was agreed to commission Neyveli-Pugalur-Madurai 400 kV DC TL along with 2X315 MVA Auto Transformer & 400/220 kV Bays Equipment at Pugalur Sub-station and accordingly Assets 3 & 4 were put under commercial operation on 1.9.2009.

7. PGCIL has submitted that an Indemnification Agreement (IA) was entered into between PGCIL and NLC and Para 2 (a) of the IA was amended. Though the Commission has referred to amendment to Para 2(a) of the IA (dated 29.12.2004 and signed on 26.12.2007) in the impugned order, it has not been considered by the Commission for the purpose of defining the revised schedule of commissioning. The amendment to the IA reads as under:-

"In case of commissioning schedule of generating units and Associated Transmission System is delayed beyond the Zero date, the actual date of commissioning of generating units or Associated Transmission system whichever is commissioned earlier after the zero date shall be considered as the revised Zero date."

8. PGCIL has also submitted that in terms of the impugned order, Neyveli Lignite Corporation (NLC) was requested to pay the deducted amount of IDC & IEDC. However, NLC has refused to pay the deducted amount stating that IDC & IEDC is payable only from 1.8.2009/1.9.2009 and not from 28.2.2009, as the original zero date has been shifted to 1.8.2009/1.9.2009.

9. PGCIL has further submitted that as per the investment approval dated 11.1.2005, the transmission assets were scheduled to be commissioned within 35 months from the date of investment approval, i.e. by January 2008. However, the Assets 1 & 2 were commissioned on 1.8.2009 and Assets 3 & 4 on 1.9.2009 and thus there was a delay of only 19 months in case of Assets 1 & 2 and 20 months in case of Assets 3 & 4 and not 20 months and 21 months respectively as concluded by the Commission in the impugned order. PGCIL has also submitted that the deduction of IDC & IEDC is an error apparent on the face of the record and requested to restore the deducted IDC & IEDC as it would suffer unbearable loss.

10. TANGEDCO in its reply has submitted that the IA, entered into by PGCIL and NLC, was not provided to TANGEDCO at the time of filing the original petition and it has been served on them only along with the instant review petition. It has been submitted that zero date has not been indicated in the IA dated 29.12.2004 and hence it does not have any legal sanction. The IA was modified on 26.12.2007 and this modification was also not brought to the notice of beneficiaries. PGCIL and NLC are trying to pass on the IDC by extending the zero date. TANGEDCO has submitted that the scheduled commissioning of the ATS is January 2008, i.e. 35 months from the date of investment approval dated 11.1.2005. IDC beyond January 2008 should not be included in the capital cost of NLC or PGCIL or in the capital cost of the NLC-II Expansion Project. TANGEDCO has requested to treat January 2008 as the scheduled date of commissioning of the ATS and to revise the transmission tariff allowed for the subject assets by limiting the IDC upto January 2008. TANGEDCO has also requested the

Commission to direct NLC not to include the IDC beyond January 2008 of the ATS to the capital cost of NLC-II Expansion Project.

11. PGCIL in its rejoinder to TANGEDCO's reply has clarified that TANGEDCO cannot raise the issues pertaining to delay in the generation projects of NLC in the instant matter and requested not to consider TANGEDCO's request to not include the IDC beyond January 2008 in the capital cost of NLC. PGCIL has submitted that the IA signed between PGCIL and NLC is a generic agreement and as per the IA both the parties are required to finalize the zero date for generation and ATS. Accordingly, 25.6.2008 was mutually agreed as the zero date and it became the part of the IA. The IA was modified on 26.12.2007 and as per the modification, if the commissioning of the generation project and the ATS is delayed beyond the agreed date then the actual date of commissioning of generating units or ATS whichever is commissioned earlier shall be the revised zero date. As per the modified IA, the zero date has been revised to 1.8.2009. PGCIL has also submitted that Para 2(a) of the modified IA provides for a situation where one of the parties to the IA commissions its assets, the other party shall be liable for the delay for one year. This modified clause is not applicable in the present case where the IDC and IEDC are claimed for the period prior to the commercial operation of the transmission system.

12. During the hearing on 12.11.2012, PGCIL submitted that Assets 1 & 2 were ready for commissioning in February, 2009 and it was asked by APTRANSCO to delay the

commissioning as APTRANSCO's downstream system had not come. It was also submitted that in case of Assets 3 & 4, there was realignment of towers and it led to dispute/ litigation and finally the height of the towers was increased as per the directions of the Hon'ble Supreme Court and it led to delay in commissioning of the said assets. The respondent, TANGEDCO, submitted that PGCIL has not submitted the above said reasons for delay in commissioning of the assets at the time of finalizing the original petition and it cannot raise these issues in the review petition. TANGEDCO further submitted that PGCIL should have diligently placed all these documents and information before the Commission at the time of filing the original petition. The instant review petition is an appeal in disguise.

13. PGCIL in its written submissions, dated 5.12.2012, has submitted that there is an error apparent in the impugned order as the Commission has adopted 1.2.2009 as the zero date whereas it is actually 1.8.2009/1.9.2009. PGCIL has further submitted that reasons for delay in commissioning Assets 1 & 2 and Assets 3 & 4 are different.

14. On the basis of above submissions, the issues raised by PGCIL can be summarized as follows:-

(a) The total time over-run in case of Assets 1 & 2 and Assets 3 & 4 is 19 months and 20 months respectively and not 20 months and 21 months as held in the impugned order;

(b) IDC and IEDC was not allowed for 6 and 7 months for Assets 1 & 2 and Assets 3 & 4 respectively and this delay of 6 and 7 months is not attributable to PGCIL and hence IDC and IEDC should be allowed; and

(c) NLC has declined to pay the loss on account of disallowance of IDC and IEDC as IDC & IEDC is payable only from 1.8.2009/1.9.2009 and not from 28.2.2009, as the original zero date has been shifted to 1.8.2009/1.9.2009.

15. We deal with these issues one by one.

16. As regards the first issue of time over-run, it is noted that the Investment Approval for the project was granted on 11.1.2005 and the time schedule was 35 months from the date of Investment Approval. Accordingly, the date of scheduled commissioning of the assets work out to 11.12.2007. Assets 1 & 2 were commissioned on 1.8.2009 and Assets 3 & 4 were commissioned 1.9.2009 and thus there was a delay of 19 months and 20 months in commissioning Assets 1 & 2 and Assets 3 & 4 respectively and not 20 and 21 months as held in the impugned order. This is an error apparent on the face of record and this inadvertent error is corrected. The impugned order stands corrected accordingly.

17. We consider the second issue of disallowance of IDC and IEDC for 6 and 7 months in case of Assets 1 & 2 and Assets 3 & 4 respectively. It is an admitted fact that all the four assets were scheduled to be commissioned in January 2008. However, the assets were commissioned only 1.8.2009 and 1.9.2009. The delay from January 2008 to February 2009 was condoned as PGCIL had rescheduled the commissioning of the transmission lines to February 2009 to match with the revised commissioning schedule of NLC, which was also discussed and agreed upon by the beneficiaries in the SRPC meetings. The delays beyond February 2009, i.e. 6 months in the case of Asset 1 and 2 and 7 months in the case of Asset 3 and 4 were not condoned and accordingly, IDC and

IEDC were not allowed for the said period. It has been brought to our notice that PGCIL had submitted in the original petition (Petition No.136/2010) that APTRANSCO in the 9th and 10th SRPC meetings informed that Warangal Sub-station along with LILO of Ramagundam- Khammam line would be ready by July 2009 and accordingly Assets 1 & 2 were commissioned on 1.8.2009. This aspect was overlooked while passing the impugned order. Since PGCIL had delayed the commissioning of Assets 1 & 2 to match the APTRANSCO downstream assets, we are of the view that the delay cannot be attributed to PGCIL. Accordingly, IDC & IEDC for the period from 1.2.2009 to 31.7.2009 are allowed to be capitalised. The impugned order stands corrected to that extent.

18. As regards Assets 3 & 4, IDC & IEDC was not allowed from 1.2.2009 to 31.8.2009. PGCIL has submitted, in Petition No.136/2010, that commissioning of Assets 3 & 4 was discussed and agreed in the 9th SRPC meeting held on 6.3.2009 and accordingly the assets were commissioned on 1.9.2009. PGCIL has also filed a copy of the minutes of the 9th SRPC meeting. It is observed that though the document shows that the Committee agreed for commissioning of the said assets, it does not state when the assets are to be commissioned. During the hearing of the instant Review Petition on 22.11.2012, PGCIL has submitted that commissioning of Assets 3 & 4 was delayed due to litigation and due to the work related to increasing the height of the towers as per the directions of the Hon'ble Supreme Court. These reasons for delay were not submitted by PGCIL in the original petition. Moreover, these were not even mentioned in the instant review petition. This contention of delay due to litigation has been raised only during the hearing of the review petition. PGCIL was in the knowledge of the reasons for delay in commissioning of Assets 3 & 4 at the time of filing the original petition and it has failed to furnish those details at that point of time. It appears that PGCIL was not diligent in

pursuing the matter. We are of the view that PGCIL cannot be allowed to bring in new facts in the instant Review Petition. As such PGCIL's prayer to allow IDC and IEDC and its capitalisation in the case of Assets 3 & 4 is rejected.

19. PGCIL has submitted that NLC is not paying the compensation in terms of the Indemnification Agreement as directed by the Commission in the impugned order. It is clarified that IDC and IEDC was disallowed on account of the time over-run attributable to PGCIL. Since PGCIL had an Indemnification Agreement with NLC, PGCIL was granted liberty to claim the loss from NLC in terms of the Indemnification Agreement. NLC's refusal to pay the compensation cannot be a ground for allowing the IDC/IEDC to PGCIL. Indemnification Agreement is a bilateral issue between PGCIL and NLC and the issue of compensation should be settled between the parties in terms of the said Agreement. We do not consider it necessary to pass any order or directions in this regard. The third issue is disposed of accordingly.

20. The instant Review Petition is partly allowed and consequential orders to this effect shall be issued separately.

21. This order disposes of Review Petition No.7/RP/2012.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson