

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 03/RP/2014

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A. K. Singhal, Member**

**Date of Hearing : 17.04.2014
Date of Order : 11.06.2014**

In the matter of:

Review of order dated 14.11.2013 passed by this Commission in Petition No. 57/TT/2012 in respect of determination of Fees and Charges for Unified Load Despatch & Communication Scheme (Powergrid Portion i.e. Communication system portion and SLDC system retained by the petitioner after formation of POSOCO) in Western Region for the period 2009-14 block under sub-section (4) of Section 28 of Electricity Act 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999

And in the matter of:

Power Grid Corporation of India Limited
"Saudamani", Plot No.2,
Sector-29, Gurgaon -122 001.

.....**Petitioner**

Vs

1. NTPC,
NTPC Bhawan,
Core-7, scope Complex,
7, institutional Area, Lodhi Road
New Delhi- 110 003.
2. Nuclear Power Corporation of India Ltd,
Nabhkiya Bhawan,
Anu-Shakti Nagar
Mumbai-400094
3. Narmada Control Authority
Narmada Sadan, Sector-B, Scheme No. 74,
Vijaynagar, Indore
Madhya Pradesh-452 010



4. Jindal Power Ltd
OP Jindal STPS, PO: Tamnar, Gjarghoda Tehsil,
District Raigarh,
Chhattisgarh-496 107
5. CSPDCL
P.O. Sundernagar
Dangania
Raipur-492 013
6. Lanco Power Ltd
Plot No. 397, Phase-III, Udyog Vihar
Gurgaon
Haryana-122 016
7. Gujarat Urja Vikas Nigam Ltd (GUVNL)
Sardar Patel Vidyut Bhawan
Race Course
Vadodara-390 007
8. Maharashtra State Electricity Distribution Company Ltd (MSEDCL)
Prakashgad, 5th floor
Bandra East
Mumbai-400 051
9. MP Power Trading Company Ltd
Shakti Bhawan
Vidyut Nagar, Rampur
Jabalpur-482 008
10. Goa Electricity Department
Government of Goa,
3rd floor, Vidyut Bhawan
Panjim-403 001
11. Electricity Department, Union Territory of Daman and Diu
Sachivalaya,
Moti Daman,
Daman- 396 230
12. Electricity Department, Union Territory of Dadra and Nagar Haveli
Secretariat, Electricity Department,
66 kV Amli Road

Silvassa-396 230

13. Western Region Transmission (Maharashtra) Pvt. Ltd
12th floor, Building No. 10-B, DLF, Cyber city
Gurgaon
Haryana-122 022

14. Western Region Transmission (Gujarat) Pvt. Ltd
12th floor, Building No. 10-B, DLF, Cyber city,
Gurgaon

....Respondents

For petitioner : Shri M. M. Mondal, PGCIL
Shri S.K. Venkatesan
Shri S.S Raju, PGCIL
Mrs. Sangeeta Edwards, PGCIL
Mrs. Seema Gupta, PGCIL

For respondent : Shri M.G. Ramachandran, Advocate, NCA
Shri Hemant Pandey, NCA

ORDER

This review petition is filed by Power Grid Corporation of India Limited (PGCIL) seeking review of the order dated 14.11.2013 in Petition No. 57/TT/2012, wherein the Commission determined the fees and charges for Unified Load Despatch & Communication Scheme (ULDC) in Western Region for the period from 1.4.2009 to 31.3.2014. The Review Petitioner has prayed to review and modify the impugned order on the issue of interest on working capital and operation and maintenance expenses as mentioned in the petition. Subsequently, vide affidavit dated 28.3.2014, the petitioner has prayed for allowance of recovery of deferred tax up to 31.3.2009.



2. The review petition was heard on 13.2.2014 and notice was issued to all the respondents. In response, M.P. Power Management Company Limited (MPPMCL), Respondent No.9, filed its reply, vide its affidavit dated 5.3.2014. The matter was again listed for hearing on 17.4.2014. During the hearing, the learned counsel for Narmada Control Authority (NCA) submitted that NCA is a statutory body set up to generate power on behalf of Madhya Pradesh, Maharashtra and Gujarat and all the expenses related to generation are borne by the three States. It was further submitted that NCA *per se* is not against allowing the present review petition.

3. After having heard the parties and perused the material on record, we proceed to dispose of the review petition.

Interest on working capital

4. The Review Petitioner has submitted that spares, as part of interest on working capital, was allowed @ 15% of the O&M cost in the impugned order for the 2009-14 period, whereas the same was being allowed @1% of the capital cost along with escalation @ 6% per annum since the date of commercial operation of WRULDC, i.e. 1.2.2006, for the tariff block 2004-09. The same norm was adopted by the Commission for allowing the interest on working capital for the other ULDC assets since 2002-03. The Review Petitioner has pleaded that the same principle should be adopted for working out the interest on working capital in the absence of any specific tariff norms for determination of tariff for ULDC assets. The Review Petitioner has submitted that in view of this change in

the method of calculation, it has been subjected to under recovery of working capital. The Review Petitioner has requested to allow the maintenance spares on the basis of the rates already settled for this category of ULDC assets which are based on the principle of levelled tariff since beginning. The Review Petitioner has further submitted that the levelled tariff is different from the transmission tariff mechanism and overall period of tariff recovery is restricted up to 15 years unlike transmission which is recovered over a period of 35 years. MPPMCL has submitted, in its reply, that the petitioner's claim for the maintenance spares @ 1% of the historical cost escalated @ 6% per annum from the date of commercial operation is not proper and maintenance spares @ 15% should be allowed for the purpose of calculation of working capital as provided under Regulation 18 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "2009 Tariff Regulations").

5. We have examined the submissions made by the Review Petitioner and MPPMCL with regard to the Review Petitioner's claim for change of the method of calculation of interest on working capital. In the absence of regulation for ULDC scheme, the Commission has adopted the computation of maintenance spares as applicable during the relevant tariff period. Accordingly, during 2004-09, maintenance spares were allowed @ 1% of the capital cost along with escalation @ 6% in accordance with the tariff regulations applicable for 2004-09. By the same logic, the Commission allowed maintenance spares @ of 15% of the O&M cost in accordance with Regulation 18 of the 2009 Tariff Regulations for the 2009-14 period. The Commission has taken conscious decision while

allowing maintenance spares at a particular rate during a particular tariff period. At no point of time, the Commission has held out that the rate of maintenance spares determined during the 2004-09 period would remain applicable for the rest of useful life of the asset. Further, the Review Petitioner's contention that the levelised tariff is different from the transmission tariff mechanism on the ground that the overall period of tariff recovery is restricted to 15 years unlike transmission which is recovered over a period of 35 years is not relevant and the Review Petitioner is trying to argue the issue on merit which is not permitted in review. It is a settled principle of law that review cannot be treated as an appeal in disguise. In our view, there is no error apparent on the face of record in the impugned order in so far as computation of maintenance spares as part of Interest of Working Capital is concerned and accordingly, review on this count is rejected.

Operation and maintenance expenses

6. The Review Petitioner has submitted that following O& M expenses during the 2009-14 tariff period were disallowed by the Commission in the impugned order on the ground that the details were not provided by the Review Petitioner:-

Year	Expenditure disallowed (` in lakh)	Reason for disallowance
2009-10	0.43	Details not provided
2011-12	14.77	Details not provided
2012-13	94.21	Details not provided
2013-14	99.45	Details not provided

7. The Review Petitioner has submitted that it adopted the same format for submission of details of the O&M expenses during the 2004-09 and 2009-14 periods, since separate format was not specified for submission of information during 2009-14 period. The Review Petitioner has submitted that it was neither given the opportunity to submit the additional details of the O&M expenses nor was it sought from the Review Petitioner before disallowing expenses on certain elements. The Review Petitioner has submitted that since the Commission, vide its order dated 8.12.2011 in Petition No. 68/2010, has decided to allow the O&M expenses on actual basis for the communication system already in operation under ULDC schemes in different regions, the O&M expenses claimed by the petitioner should have been allowed on actual basis.

8. MPPMCL has submitted that O&M expenses during the year from 2009-10 to 2011-12 and projected O&M expenses during the years 2012-13 and 2013-14 were rightly disallowed as the details of these expenses were not submitted by the Review Petitioner.

9. We have considered the submissions made by the Review Petitioner and the respondent regarding the O&M expenses. While dealing with the main petition, the Review Petitioner was directed to submit the detailed break-up of the O&M expenses during the years 2009-10 to 2011-12 and the projected O&M expenses during 2012-13 and 2013-14 vide letter dated 27.12.2012. In response, the petitioner, vide affidavit dated 28.1.2013, submitted the details of

O&M expenses at Encl. 2 of the affidavit. The Review Petitioner submitted the following details in respect of the expenses which were disallowed:-

(` in lakh)

Srl. No.	Description	2009-10	2011-12	2012-13	2013-14
1	Miscellaneous	0.43	-	-	-
2	Others	-	0.40	2.13	1.85
3	Other Expenses- Telecom	-	13.46	90.68	96.00
4	Loss on disposal of fixed assets	-	0.91	1.40	1.60
	TOTAL	0.43	14.77	94.21	99.45

10. Since the details of the expenses under the above heads were not furnished by the Review Petitioner which were necessary for prudence check, the same were disallowed. In our view, there is no error on the face of record.

11. The Review Petitioner has now submitted the following justifications of the O&M expenses incurred during 2009-14 period, which were not submitted earlier:-

(` in lakh)

Year	Expenditure Disallowed	Details submitted in Affidavit	Detailed Justification
2009-10	0.43	Misc Expenses	Petition filing fee
2011-12	14.77	Others-0.40 Other Exp Telecom-13.46 Loss on Disposal of fixed assets-0.91	Petition filing fee-0.40 50% share of Telecom Expenses (RoW rental charges demand received for the first time in 2011-12) from Vadodara Municipal Corporation, for underground OFC net work for Asoj-Gotri and Jambua-Gotri ULDC Links-13.46
2012-13	94.21	Projected: Others-2.13 Others Exp Telecom-90.68 Loss on Disposal of fixed assets-1.40	Actual: Petition filing fee-1.60 (Wage revision of ULDC) AMC (Ericsson) for wideband comm. maintenance for Central sector ULDC-108.12
2013-14	99.45	Projected: Others-1.85 Others Exp Telecom-96.00 Loss on Disposal of fixed assets-1.60	Actual: Petition filing fee-1.60 (Wage revision of ULDC) AMC (Ericsson) for wideband comm. maintenance for Central sector ULDC-104.82 (Other details are projected)

12. Though we have held in the previous paragraph that there was no error in the order on account of disallowance of the O&M expenses for want of detailed justification, on perusal of the justification provided, it appears to us that the expenditures have been actually incurred and should be serviced by the users of the ULDC system.

(a) As regards the expenditure claimed in 2009-10, the same pertains to petition filing fee. Similarly, during the years 2011-12, 2012-13 and 2013-14, the petition filing fee have been claimed as `0.40 lakh, `1.60 lakh and `1.60 lakh respectively. In this connection, it is clarified that under Regulation 42 of the 2009 Tariff regulations, the generating company and transmission licensees were allowed reimbursement of filing fee for main tariff petition only and the filing fee for review petition and miscellaneous petition was not allowed. Accordingly, the filing fee paid for the petitions filed for wage revision of ULDC charges are not allowed. The Review Petitioner shall however be entitled for petition filing fee in respect of Petition No.57/TT/2012, which shall be charged by the petitioner directly from the beneficiaries.

(b) As regards the expenditure of `13.46 lakh during 2011-12, the Review Petitioner is stated to have paid 50% of share of telecom expenses (RoM rental charges for underground OFC network for Asoj-Gotri and Jaambua-Gotri line) as per the demand received from Vadodara Municipal Corporation. In our view, the expenditure which was incurred for laying the communication line should be allowed to be reimbursed.

(c) During 2012-13 and 2013-14, the Review Petitioner has paid `108.12 lakh and `104.82 lakh as AMC to Ericsson for wide band communication maintenance for Central ULDC scheme. Since this expenditure has been incurred in connection with the wide band communication, the same is allowed to be reimbursed. The Review Petitioner is given liberty to claim the expenditure as part of Repairs & Maintenance at the time of truing up.

(d) The Review Petitioner has claimed `0.91 lakh, `1.40 lakh and `1.60 lakh on account of loss on disposal of fixed assets during 2011-12, 2012-13 and 2013-14 respectively. The said expenditure has not been allowed as the Review Petitioner has not explained as to how disposal of fixed asset has resulted in loss.

Deferred tax

13. The Review Petitioner, vide affidavit dated 18.3.2014, has submitted that as per Regulation 39 of the 2009 Tariff Regulations, the deferred tax accumulated upto 31.3.2009 in case of transmission licensees has to be recovered from the beneficiaries. Accordingly, the deferred tax in the case of the fees and charges for ULDC communication portion upto 31.3.2009 may be allowed to be recovered from the beneficiaries whenever it materializes besides the recovery of income tax.

14. Regulation 39 of 2009 Tariff Regulations provides as follows:-

"Tax on the income streams of the generating company or the transmission licensee, as the case may be, shall not be recovered from the beneficiaries, or the long-term transmission customers, as the case may be:

Provided that the deferred tax liability, excluding Fringe Benefit Tax, for the period up to 31st March, 2009 whenever it materializes, shall be recoverable directly from the beneficiaries and the long-term customers:"

15. As mentioned at para 5 above, no regulations are specified for determination of fees and charges for ULDC assets and accordingly fees and charges for ULDC assets are determined on the basis of the prevailing tariff regulations. We would extend the same principle to deal with the issue of deferred tax liability for the period upto 31.3.2009. Regulation 39 of the 2009 Tariff Regulations provides for recovery of deferred tax from the beneficiaries and accordingly the Review Petitioner is allowed to recover the deferred tax accumulated upto 31.3.2009 from the beneficiaries whenever it materializes.

16. In the light of the expenditure allowed under para 12 above, there is a requirement to revise the paras pertaining to O&M expenses, Interest on Working Capital and Annual Capital Cost Recovery Charges. Accordingly, the paras under para 35, para 24 and Annexure (Central Portion) of the order dated 14.11.2013 in Petition No. 57/TT/2012 are revised as under:-

Revised O&M expenses

(` in lakh)

Year	O&M Expenses Claimed	O&M Expenses Allowed	Revised O&M Expenses after considering other expenses
2009-10	304.36	303.93	303.93
2010-11	206.42	206.42	206.42
2011-12	208.23	193.46	206.92
2012-13	302.64	208.43	208.43
2013-14	324.66	225.21	225.21

Revised Interest on Working Capital

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Central Portion					
Maintenance Spares	45.59	30.96	31.04	31.26	33.78
O&M Expenses	25.33	17.20	17.24	17.37	18.77
Receivables	205.04	187.98	188.07	188.33	191.27
Total	275.96	236.14	236.35	236.96	243.82
Rate of Interest	12.25%	12.25%	12.25%	12.25%	12.25%
Interest	33.81	28.93	28.95	29.03	29.87

Central Portion- Annual Capital Recovery Charges (2009-14)

(` in lakh)

Particular / Year	As on 1.4.2009	2009-10	2010-11	2011-12	2012-13	2013-14
Gross Capital Cost		7978.83				
Net Capital Cost		6988.73				
Net Notional loan		5167.77				
Net Equity		1820.96				
No. of years		11.8333				
No. of Months		142.00				
Rate of Interest p.a.	4.2305%					
Rate of Interest p.m.	0.35254%					
Monthly Recovery factor - Loan		0.008964				
Monthly Capital Recovery Charges - Loan		46.3217				
Annual Capital Recovery Charges - Loan		555.86				
Rate of Return on Equity p.a.	15.500%					
Rate of Return on Equity p.m.	1.292%					
Monthly Recovery factor - Equity		0.015407				
Monthly Capital Recovery Charges - Equity		28.0555				
Annual Capital Recovery Charges - Equity		336.67				
Monthly Capital Recovery Charges - Total		74.38				
Annual Capital Recovery Charges - Total		892.53	892.53	892.53	892.53	892.53
O & M expenses		303.93	206.42	206.92	208.43	225.21
Interest on Working Capital⁺		33.81	28.93	28.95	29.03	29.87
TOTAL ANNUAL CHARGES		1230.26	1127.87	1128.40	1129.98	1147.60

17. Accordingly, Review Petition No.03/RP/2014 is disposed in terms of the above. Except for the above, all other terms contained in order dated 14.11.2013 in Petition No. 57/TT/2012 remains unchanged.

sd/-

(A. K. Singhal)
Member

sd/-

(M. Deena Dayalan)
Member

sd/-

(Gireesh B. Pradhan)
Chairperson

