

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 33/RP/2016

in

Petition Nos. 173/TT/2013 and 111/TT/2015

Subject: Review petition under Section 94(1) (f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for review of the order dated 15.6.2016 in Petition No. 173/TT/2013 alongwith I.A. No. 38/IA/2015 and Petition No. 111/TT/2015 in the matter of determination of transmission tariff of assets covered under Stage-I of the project and truing-up of tariff for 2009-14 tariff block in Western Region.

Date of Hearing: 20.9.2016

Coram: Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner: Essar Power Transmission Company Limited (EPTCL)

Respondents: Essar Power M.P. Limited and 5 others

Parties present: Shri Sudhir Nandrajog, Sr. Advocate for EPTCL
Shri Gautam Chawla, Advocate for EPTCL
Shri Sandeep Sharma, EPTCL
Ms. Shruti Verma, EPTCL
Shri S. Bhujabe, EPTCL

Record of Proceedings

Learned senior counsel for the review petitioner submitted the instant review petitioner has been filed for review of the order dated 15.6.2016 in Petition No. 173/TT/2013 and Petition No. 111/TT/2015 on account of errors apparent on the face of the record as certain important documents placed on record by the petitioner has not been considered.



2. Learned senior counsel submitted that as directed in the interim order dated 26.8.2016, a copy of the review petition was served on all the respondents, but none of the respondents have filed reply.

3. Learned senior counsel for the review petitioner submitted that certain claims of the review petitioner, relating to project/capital cost, time over-run due to uncontrollable factors, interest during construction (IDC) and incidental expenses during construction (IEDC) have been disallowed in order dated 15.6.2016, as a result of which the review petitioner is suffering hardship on account of severe cash flow crunch of about ₹1400 lakh a month, being the difference of tariff claimed and allowed vide order dated 15.6.2016 and requested to stay the operation of the impugned order.

4. The learned counsel for the review petitioner submitted that though the complete details of compensation of ₹7673 lakh paid was submitted it was not considered.

3. The Commission observed that usually compensation is paid towards the damage to the crops while stringing and no land is acquired for the reason of erection of towers. The Commission enquired about the purpose for paying the compensation to the landowners and the basis for arriving at the compensation paid. The Commission enquired whether the circle rates announced by the district authorities have been taken into consideration for arriving at the amount of compensation. The Commission further observed that for the purpose of prudence check, the basis on which the compensation amounts were arrived at and paid to the land owners should have been placed on record in the main petition.

4. Learned senior counsel for the review petitioner submitted that the compensation paid by the petitioner is for the damage to the standing crop, land and for the deprivation from the use of land wherever the towers have been erected. As per Section 10 (d) of the Telegraph Act, compensation has to be paid to the land owner for any damage and the compensation amount is to be mutually agreed by the land owner and the project developer. Only in case of a dispute, the District Magistrate or any other State Authority would decide the amount of compensation to be paid as provided under Section 16(3) of the Telegraph Act. Accordingly, compensation was paid to 2500 land owners out of which only in 70 cases, the land owners have disputed the amount of compensation and those cases are pending before the District Judge for resolution. Learned senior counsel further submitted that Auditor's certificate certifying the payments made has also been submitted. Learned senior counsel further submitted that the amount of compensation paid is lesser than the minimum amount notified by the Ministry of Power, rates fixed by the independent valuer and the price fixed for crop compensation under the Minimum Support Price.

5. In response to a query regarding the details of the compensation paid, learned senior counsel submitted that the details were submitted vide affidavit dated 17.12.2015 at Annexure-4 in the original petition. The Commission observed that it does not contain the details regarding the method of calculation of compensation. The Commission also



observed that the Auditor Certificate only certifies the details as per books of account of the petitioner and it does not certify that the payments were received by the actual owners.

6. The Commission observed that the guidelines notified by Ministry of Power regarding the minimum amount of compensation to be paid, are to be applied prospectively and not retrospectively. The Commission also enquired whether any agreement was entered into with the owners regarding the amount of compensation and reason for payment of compensation. Learned senior counsel admitted that no detailed agreements have been entered into with the owners, however a receipt cum authorization slip containing khasra number, amount of compensation paid and loss details etc. duly signed by each owner is available and the amount of compensation is arrived at on the basis of the general rates of each area. In response to a query of the Commission regarding the availability of "7/12" extracts for each case to establish ownership of various payees, the learned senior counsel submitted that they are available. The Commission directed the petitioner to submit the orders of Minimum Support Price of each year on the basis of which comparison was made, the "7/12 extract" of each land owner alongwith the receipts issued by the land owners by 7.10.2016 on affidavit with an advance copy to the respondents.

7. In response, to a query regarding the alleged double recovery, learned senior counsel for the review petitioner referring to para 2.57 of the review petition submitted that while considering the cost of additional work, the additional administrative and specialist costs was disallowed.

8. The Commission directed the review petitioner to submit the following information on affidavit with an advance copy to the respondents within two weeks alongwith a consolidated submissions of its claim supported by relevant documents:-

(a) As regard to time over-run due to ROW issues on account of court cases, the details of all the court cases along with status;

(b) As regards the time over-run on account of forest clearance, the techno commercial reasons due to which the forest clearance proposal was revised and the benefits that accrued to the beneficiaries/consumers be explained;

(c) Submit the computation of IDC on the basis of loan drawal schedule and computation of IEDC paid from the date of investment approval upto COD;

d. The following information:-



Annexure 1

Srl. No.	Land Survey No. as submitted in connection with Section 164 approval	Name of landowner as per "7/12" and 8-A certificate*	Type of compensation (for land compensation or crop compensation or damage compensation)	In case of land compensation for towers, tower location no falling in that area	Any other information	Remarks
1	2	3	4	5	6	7

* Submit the 7/12 and 8-A certificate

Annexure 2

Land Compensation						
Area of land affected [#]	Circle rate of land [@]	Amount as per Government Valuer	Basis of claim: Demand or request letter of the landowner (or letter of authority for compensation)	Criteria for verification and payment	Amount paid to the landowner [@] (Final payment or interim payment)	Proof of payment along with name of beneficiaries
1	2	3	4	5	6	7

[#] Submit the basis of estimate [@] Submit proof

Annexure 3

Crop Compensation					
Name and quantity of crop affected [#]	Prevailing Rate of Crop at the time of claim [@]	Basis of claim: Demand or request letter of the farmer (or letter of authority for compensation)	Criteria for verification and payment	Amount paid to the beneficiaries [@] (Final payment or interim payment)	Proof of payment along with name of beneficiaries
1	2	3	4	5	6

[#] Submit the basis of estimate [@] Submit proof

Annexure 4

Damage Compensation					
Type of damage (crop or land) [#]	Basis of claim: Demand or request letter of the land owner (or letter of authority for compensation)	Compensation rate as per market survey or prudent industrial practice	Criteria for verification and payment	Amount paid to the beneficiaries [@] (Final payment or interim payment)	Proof of payment along with name of beneficiaries
1	2	3	4	5	6

[#] Submit the basis of estimate [@] Submit proof



8. Learned senior counsel for the review petitioner submitted that on account of disallowance of certain expenditure, there is a huge difference between the provisional tariff allowed and the final tariff and the petitioner is required to refund the same. Learned senior counsel submitted that on account of the financial constraints being faced by the petitioner, the recovery of the differential amount between the provisional tariff and final tariff be deferred till the tariff is revised in the light of the decision of the Commission in Review Petition.

9. The Commission directed that the petitioner shall be entitled to recover the transmission chares as determined in the order dated 15.6.2016 with effect from the date of said order. As regards the differential amount between the provisional tariff and the final tariff, the recovery shall be effected after the issue of final order in the instant review petition, subject to the condition that the petitioner shall be liable to pay the interest, in accordance with the 2014 Tariff Regulations, on the amount which may be due after the issue of the order on any amount due as provided under the 2014 Tariff Regulations.

10. The Commission further directed the petitioner to submit the information within the specified time, failing which the matter would be decided on the basis of the information already available on record.

11. The Commission directed to list the petition for hearing on 3.11.2016.

By Order of the Commission

sd/-
(T. Rout)
Chief (Legal)

