

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 18/RP/2016
in
Petition No. 278/TT/2015

Coram:

Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of Hearing: 06.04.2016
Date of Order : 31.05.2016

In the matter of

Review of Commission's order dated 25.1.2016 in Petition No. 278/TT/2015 in the matter of approval of transmission tariff for Assets (11 nos.) under "Eastern Region Strengthening Scheme - III (ERSS-III)" in Eastern Region for tariff block 2014-19.

And in the matter of

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

.....Petitioner

Vs

1. Bihar State Power (Holding) Company Ltd
(formerly Bihar State Electricity Board -BSEB)
Vidyut bhavan, bailey road, Patna – 800 001
2. West Bengal State Electricity Distribution Company
Bidyut bhawan, bidhan nagar
Block dj, sector-ii, salt lake city
Calcutta - 700 091
3. Grid Corporation of Orissa Ltd.
Shahid nagar, Bhubaneswar - 751 007
4. Damodar Valley Corporation
Dvctower, maniktala
Civic centre, vip road, Calcutta - 700 054
5. Power department
Govt. Of sikkim, Gangtok - 737 101
6. Jharkhand State Electricity Board



In front of main secretariat
Doranda, Ranchi - 834002

7. Jharkhand Urja Sancharan Nigam Ltd.
Engineering Building, H.E.C.,
Dhurwa, Ranchi-834004
8. Odisha Power Transmission Corporation Ltd. (OPTCL)
Acharya Nagar, Bhubaneshwar,
Odisha 751013

.....Respondents

Parties present:

Shri Anand K Ganesan, Advocate, PGCIL
Smt. Sangeeta Edwards, PGCIL
Shri M. M. Mondal, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Subhash C Taneja, PGCIL
Shri S. K. Venkatasan, PGCIL
Shri S. S Raju, PGCIL
Shri Pankaj Sharma, PGCIL
Shri Mayank Sharma, Advocate, PSPCL
Shri Gaurav Gupta, Advocate, PSPCL

Order

This Review Petition has been filed by Power Grid Corporation of India (PGCIL) seeking for review of order dated 25.1.2016 in Petition No. 278/TT/2015.

2. The facts of the case are that the Petition No. 278/TT/2015 was filed for determination of tariff by Eastern Region Strengthening Scheme-III consisting of 11 assets in accordance with the provisions of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014. The petitioner submitted that the Asset-I was commissioned during the period 2009-14 and the remaining assets were commissioned/anticipated to be commissioned during 2014-19 period. Since the downstream assets being developed by OPTCL and JSUNL had not been commissioned, the Commission was requested to consider the declaration of the commercial operation (COD) under Regulation 3(12)(c) of the 2009 Tariff Regulations



in respect of Asset I and under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in respect of Assets II to XI. The petitioner also prayed for approval of Annual Fixed Charges (AFC) under Regulation 7(7) of the 2014 Tariff Regulations for inclusion in the PoC charges.

3. The petition was taken up for hearing for consideration of the prayer of the petitioner for determination of tariff under Regulation 7(7) of the 2014 Tariff Regulations. OPTCL and JSUNL were directed to file the status of downstream assets. However, no reply was filed by OPTCL and JSUNL in this regard. It was submitted during the hearing by the representative of the petitioner that the petitioner followed up with OPTCL and JSUNL for timely commissioning of the downstream assets, and since the downstream assets were not ready for commissioning, the petitioner could not delay the commissioning of the assets under its scope further and declared commercial operation of the assets. The petitioner sought approval of the Commission under Regulation 3(12)(c) of the 2009 Tariff Regulations in respect of Asset-I and under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations in respect of Assets-II to XI. The Commission after considering the request of the petitioner decided in the impugned order that a view with regard to the declaration of COD of these assets in terms of proviso (ii) under Regulation 4(3) of the 2014 Tariff Regulations would be taken after the lines were certified for regular service by concerned RLDC. The Commission while determining the tariff under Regulation 7(7) of the 2014 Tariff Regulations based on the anticipated COD of the transmission lines as prayed by the review petitioner clarified that the transmission charges determined would be borne by OPTCL and JSUNL till the downstream assets are commissioned by them and after commissioning of the downstream assets, the transmission charges would be included in the PoC mechanism.



4. In the Review Petition, the petitioner has submitted that its case is squarely covered under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the petitioner has duly completed its scope but has not been able to charge the system due to delay on the part of the State Transmission Utility of Odisha and Jharkhand in executing the downstream systems.

5. The petitioner has submitted that Regulation 4 of 2014 Tariff Regulations defines the date of commercial operation of a transmission system as “the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end.” “Trial operation” has been defined as the successful charging of the transmission system or an element thereof for 24 hours at continuous flow of power and communication signal from sending end to receiving end and with requisite metering system, telemetry and protection system in service enclosing certificate to that effect from concerned RLDC. “Regular Service” has been defined as putting into use a transmission system or element thereof after successful trial operation and a certificate to that effect has been issued by the concerned RLDC. The petitioner has submitted that the date of commercial operation under Regulation 4(3) can occur only after assets have been put to regular service after a successful trial operation which shall be certified by the concerned RLDC. According to the petitioner, proviso (ii) under Regulation 4(3) of the 2014 Tariff Regulations is an exception of the above scheme of declaration of commercial operation and is applicable in the case where the transmission licensee has built its scope of work associated with the transmission scheme, but is prevented from putting the transmission assets into regular service (could not be successfully charged after trial operation) due to reasons not attributable to the transmission



licensee or its contractor or suppliers but on account of delay in commissioning of the downstream system. In such a situation, the transmission licensee is required to approach the Commission for declaration of COD and the Commission in terms of proviso (ii) under Regulation 4 (3) of the 2014 Tariff Regulations has the power to examine the matter and decide the date of commercial operation of the transmission system/element in regular service. Therefore, in case of declaration of COD with the approval of the Commission under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, RLDC certificate for charging of the assets is not necessary. The petitioner has submitted that once the RLDC certificate is available, it would be a regular COD and there would be no need to approach the Commission under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner has prayed that COD be declared in terms of proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in order to enable the petitioner to provisionally start billing tariff.

6. The petitioner has submitted that the Commission has directed the petitioner to bill the tariff to OPTCL/JSUNL till the downstream system is made available. The petitioner has submitted that lining the recovery of the transmission charges and rather postponing the recovery through the Sharing Regulations till the availability of the downstream system is neither envisaged in the Tariff Regulations nor Sharing Regulations nor do the STUs have contractual liability to pay the transmission charges to the petitioner. The petitioner has further submitted that there is not formula at all for part recovery through POC mechanism and therefore it is not clear as to how and under what provision the petitioner would bill the transmission charges to STUs and thereafter from a date, the very same tariff would become part of PoC mechanism.



7. The petitioner has filed the present review petition for consideration of the aspects as discussed above.

8. During the hearing of the petition it was pointed out to the learned counsel of the petitioner that similar directions for recovery of charges from STU had been issued in order dated 5.8.2015 in Petition No.11/SM/2014 and the petitioner did not appear to have any problem with the said directions, learned counsel submitted that the said order contained only directions to the staff of the Commission to work on the amendments to the 2014 Tariff Regulations.

9. We have considered the submissions of the petitioner. Review of the impugned order has been sought on the following two counts:-

(a) When the assets are prevented from being put into regular service due to reasons beyond the control of the transmission licensee or its contractors, the Commission may allow the declaration of commercial operation under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations, and for that purpose certificate from RLDC regarding regular service (charging after successful trial operation) is not necessary.

(b) There is no provision either in the Tariff Regulations of Sharing Regulations to make the STUs pay for the transmission assets till the downstream assets are ready.

10. In the impugned order, it was observed that-

“The Commission will take a view with regard to the declaration of COD of the instant assets under regulation proviso (ii) of Regulation 4(3) after the lines are certified for regular service by the concern RLDC”.

The petitioner has submitted that the certificate by concerned RLDC regarding regular service is not required for declaration of COD under proviso (ii) to Regulation 4 (3) of



2014 Tariff Regulations. The petitioner has further submitted in para 18 of the review petition that “it is imperative that DOCO be decided in terms of Regulation 4(3) proviso (ii) in order for the Petitioner to provisionally start billing the tariff”. The issue whether the transmission assets of the petitioner shall be declared under commercial operation under proviso (ii) to Regulation 4 (3) of 2014 Tariff Regulations is not a mechanical exercise and is a matter to be decided by the Commission after hearing all concerned including the petitioner, LTTCs, concerned STU and the concerned RLDC, and after satisfying ourselves that the assets are ready for commissioning but are prevented from being put into regular service for reasons not attributable to the petitioner or its supplier or its contractor but due to delay in commissioning of the upstream or downstream transmission system. As regards the directions for certificate regarding regular service from RLDC for declaration of COD under proviso (ii) of Regulation 4(3) of 2014 Tariff Regulation, we find merit in the submission of the petitioner that RLDC cannot issue a certificate prior to full charging after successful trial operation which is not possible before the downstream assets are not ready. However, there is a necessity for certification that the transmission assets are ready in all respects but is prevented from regular service (i.e. full charging after successful trial operation) due to reasons not attributable to the petitioner or its contractors. Therefore in exercise of our power of review under section 94(f) of the Act read with Regulation 103 of the Conduct of Business Regulations we modify our direction in para 11 as under:-

“The Commission will take a view with regard to the declaration of COD of the instant assets under proviso (ii) to Regulation 4 (3) of 2014 Tariff Regulations after hearing all concerned including the developers of the downstream transmission lines and concerned RLDCs. The petitioner is directed to submit the following:-

- (a) A certificate from the CMD/CEO/MD of the Company that the transmission line, sub-station and communication system conform to the relevant Grid Standard and Grid



Code, and are capable of operation in terms of Regulation 6.3A.4 (iv) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016.

- (b) The details of coordination made by the petitioner with OPTCL and JUSNL with regard to the matching of the commissioning of its transmission systems with the commissioning of the downstream transmission systems supported by the all relevant correspondences and minutes of the meetings.
- (c) The petitioner has submitted in some of the petitions a certificate from RLDC regarding the trial operation of the assets under no load condition for which approval of CoD is sought under proviso (ii) to Regulation 4(3) of 2014 Tariff Regulation. In the present case also, the petitioner should submit a certificate regarding trial operation under no load condition.”

11. On the second issue that there is no provision in the Sharing Regulations or Tariff Regulations that payment shall be made by the STU till the downstream assets are commissioned, it is clarified that absence of clear provisions in the Regulations in this regard does not prevent the Commission to issue appropriate directions after considering the facts of the case. In this case, both OPTCL and JUSNL were put under notice regarding the hearing of the petition and were specifically directed to file their replies. However, OPTCL had filed its replies to the petitioner but had not dealt with the issue of date of commercial operation of the instant assets or the status of the downstream assets. The representative of OPTCL was present before the Commission has issued the directions in the impugned order that petitioner can recover the transmission charges for the intervening period between the declaration of the commercial operation and the actual commissioning of the downstream transmission assets. Our directions in the impugned order are in line with the order dated 5.8.2015 in Petition No. 11/SM/2014 wherein the Commission had directed that till the



downstream assets are commissioned, the STUs shall pay the transmission charges.

The relevant portion of the order is extracted as under:-

“17. PGCIL has already completed its work covered under scope of work. However, the concerned STUs have not completed their work as provided under scope of work. Since, PGCIL undertook erection of 220 kV downstream bays as per norms agreed in 23rd Standing Committee meeting of Northern Region held on 16.2.2008 and these bays were for exclusive use of concerned STUs, we are of the view that till commissioning of associated assets, the concerned STUs shall bear the transmission charges of these bays which have been built exclusively for them.”

12. The directions in the impugned order is consistent with the order of the Commission in order dated 5.8.2015 in Petition No.11/SM/2014. The petitioner was expected to approach OPTCL/JSUNL in terms of our order dated 25.1.2016 instead of seeking review of the said directions. If case of difficulty in implementation of the order, the petitioner could have approached the Commission under appropriate provisions of the Electricity Act, 2003 to ensure compliance with the directions. However, the petitioner instead of approaching OPTCL and JUSNL has approached the Commission for review of the said direction. In our view, the directions to recover the transmission charges from OPTCL and JUSNL do not suffer from any infirmity in terms of Rule 1 Order 47 of the CPC requiring review.

13. It is pertinent to observe that billing of transmission charges can occur only from the date of commercial operation. The tariff approved through impugned order under Regulation 7 (7) of the 2014 Tariff Regulations can be recovered after the date of commercial operation is decided. We have already directed in this order to hear all concerned parties for deciding the petitioner's prayer for declaration of the commercial operation of the assets under proviso (ii) to Regulation 4(3) of 2014 Tariff Regulation. Till the matter is decided our directions in para 11 of the impugned order shall not be given effect to.

14. Accordingly, the Review Petition is disposed of at the admission stage.



15. We direct that the petition be listed for hearing on 4.7.2016 on the issue of declaration of COD under proviso (ii) to Regulation 4 (3) of 2014 Tariff Regulations in respect of the assets covered in the petition. We direct OPTCL and JSUNL who are developing the downstream assets to be present during the hearing to explain the reasons for delay in commissioning of the downstream assets and assist the Commission. We also direct ERLDC to submit a report regarding the readiness of the transmission assets covered under the petition for declaration of COD and depute its representative to assist the Commission during the hearing.

16. The Commission has observed that the petitioner has been seeking approval of COD under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations in the petition filed for determination of tariff. We feel that the issue of declaration of COD in such cases should be decided first before the petitioner files the petition for determination of tariff. This will facilitate disposal of the tariff petition expeditiously. The petitioner should file separate application for obtaining approval of the Commission under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulation only if the transmission assets are ready in all respects for commissioning but cannot be commissioned due to non-commissioning of generating station or upstream/downstream transmission system as case may be. The petitioner shall also be required to obtain a trial operation under no load condition from the RLDC concerned. Accordingly, we direct that whatever the petitioner requires approval of COD under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, it should file a separate petition setting out the facts in details, the efforts made by the petitioner for matching commissioning of the transmission assets with the commissioning of the generating station of upstream/downstream assets as the case may be, the readiness of the transmission assets for commissioning



supported by a certificate for the CMD in terms of sub-clause (vi) of Clause(4) of Regulation 6.3A of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation 2010, the certificate from concerned RLDC for trial operation under no load condition. The petitioner should also implead the generator or developer of the upstream/downstream assets as the case may be and concerned STU, DICs and RLDC so that an informed decision regarding the COD can be taken.

Sd/-
(Dr. M.K. Iyer)
Member

Sd/-
(A.S. Bakshi)
Member

