

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 98/TT/2016

Coram:

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

**Date of Hearing : 10.08.2016
Date of Order : 30.08.2016**

In the matter of:

Revision of true up transmission tariff of 2009-14 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and determination of transmission tariff for 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 of LILO of existing Bangalore-Salem 400 kV S/C line at Hosur under System Strengthening-XVIII in Southern Regional Grid under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the matter of:

Power Grid Corporation of India Ltd.
'SAUDAMINI', Plot No-2,
Sector-29, Gurgaon -122 001 (Haryana).

.....**Petitioner**

Versus

1. Karnataka Power Transmission Corporation Ltd.
(KPTCL), KaveriBhavan, Bangalore -560 009
2. Transmission Corporation of Andhra Pradesh Ltd.
(APTRANSCO), VidyutSoudha, Hyderabad- 500082
3. Kerala State Electricity Board (KSEB)
VaidyuthiBhavanam, Pattom,
Thiruvananthapuram- 695 004
4. Tami Nadu Generation and Distribution
Corporation Ltd., NPKRR Maaligai, 800,
Anna Salai, Chennai- 600 002



5. Electricity Department
Government of Pondicherry,
Pondicherry- 605 001
6. Eastern Power Distribution Company of
Andhra Pradesh Limited (APEPDCL),
P&T Colony, Seethmmadhara,
Vishakhapatnam
7. Southern Power Distribution Company of
Andhra Pradesh Limited (APSPDCL),
Tirupati- 517 501, Chittoor District,
Andhra Pradesh
8. Central Power Distribution Company of
Andhra Pradesh Limited (APCPDCL),
Corporate Office, Mint Compound,
Hyderabad- 500 063
9. Northern Power Distribution Company of
Andhra Pradesh Limited (APNPDCL),
Opp. NIT Petrol Pump, Chaitanyapuri,
Warangal- 506 004
10. Bangalore Electricity Supply Company Limited (BESCOM)
Corporate Office, K.R Circle,
Bangalore- 560 001, Karnataka
11. Gulbarga Electricity Supply Company Limited (GESCOM)
Station Road, Gulbarga, Karnataka
12. Hubli Electricity Supply Company Limited (HESCOM)
Navanagar, PB Road, Hubli, Karnataka
13. MESCOM Corporate Office
Paradigm Plaza, AB Shetty Circle,
Mangalore- 575 001
14. Chamundeswari Electricity Supply Corporation Limited (CESC)
#927, L J Avenue, Ground Floor,
Saraswatipuram, Mysore- 570 009



15. Electricity Department
Government of Goa, VidyutiBhawan, Panaji,
Goa- 403001
16. Transmission Corporation of Telangana Limited,
Vidhyut Sudha, Khairatabad,
Hyderabad – 500 082

....**Respondents**

The following were present:-

For Petitioner: Shri Jasbir Singh, PGCIL
Shri S. S. Raju, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Piyush Awasthi
Shri S. K. Venkatesan, PGCIL
Shri M. M. Mondal, PGCIL

For Respondent: Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

The present petition has been filed by Power Grid Corporation of India Ltd. (“the petitioner”) for revision of true up capital expenditure of LILO of existing Bangalore-Salem 400 kV S/C line at Hosur under System Strengthening-XVIII in Southern Region (hereinafter referred as “transmission asset”) under Regulation 6 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the 2009 Tariff Regulations”) based on actual capital expenditure for the period from 1.2.2014(COD) to 31.3.2014, and for determination of tariff under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) for the period from 1.4.2014 to 31.3.2019.



2. The petitioner has served the petition on the respondents and notice of this application has been published in the newspapers in accordance with Section 64 of the Electricity Act, 2003 ("the Act"). No comments have been received from the public in response to the notices published by the petitioner under Section 64 of the Act. Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO), Respondent No.4 has filed its reply to the petition vide affidavit dated 6.8.2016 and the petitioner has submitted its rejoinder to the reply filed by TANGEDCO vide affidavit dated 17.8.2016.

3. Having heard the representatives of the petitioner and perused the material on record, we proceed to dispose of the petition.

Facts of the case

4. The investment approval for the instant project was accorded by Board of Directors of the petitioner company vide Memorandum No. C/CP/SRSS-XVIII, dated 4.6.2012 at an estimated cost of ₹126326 lakh, which included IDC of ₹7855 lakh. The date of the commercial operation of the instant transmission asset was 1.2.2014. The tariff for the instant asset for the 2009-14 period was allowed vide order dated 29.1.2015 in Petition No. 165/TT/2013 in accordance with the 2009 Tariff Regulations. The tariff of 2009-14 tariff period was trued up and tariff for 2014- 19 tariff period was allowed in order dated 24.2.2016 in Petition No. 147/TT/2015. In the said orders, the capital cost of the instant asset was restricted to the approved apportioned cost in the absence of RCE.



5. Subsequent to the issuance of the order dated 24.2.2016 in Petition No. 147/TT/2015, the Revised Cost Estimates of the project was approved by the petitioner's Board on 11.3.2016. The petitioner has filed the instant petition on 21.6.2016 alongwith the RCE. The petitioner has requested to admit the RCE and approve the trued up tariff for the 2009-14 tariff period. The petitioner has also requested to admit the capital cost as on 31.3.2014 and approve the additional capital expenditure incurred during 2009-14 period and the additional capital expenditure projected to be incurred during 2014-19 period.

6. During the hearing on 10.8.2016, the learned counsel for TANGEDCO has submitted that the petition has been filed for revising the trued up tariff of 2009-14 tariff period, which is against the Regulation 6 (1) of the 2009 Tariff Regulations. He submitted that instant petition is not maintainable as it is against the 2009 Tariff Regulations. He also submitted that the petitioner by filing this petition for revising the trued up tariff is burdening the beneficiaries.

7. TANGEDCO while reiterating the submissions made during the hearing, has made the following submissions:-

a) The present petition is not maintainable as the petitioner has not submitted the RCE as directed by the Commission in order dated 29.1.2015 in Petition No.165/TT/2013, wherein the final tariff for 2009-14 period was allowed for the instant asset. Further, the petitioner has failed to submit the RCE in the true up Petition No.147/TT/2015. As the requisite details were not furnished by the



petitioner, the capital cost of the instant asset was restricted to the original apportioned capital cost;

b) The petitioner did not file appeal against the order of 24.2.2016. The order of the Commission can either be reviewed or appealed against. No fresh cause of action arises in respect of issues already raised and decided. Once an issue is decided for or against in a petition, the Commission becomes “functus officio”;

c) The Commission has approved the capital cost of ₹1974 lakh inclusive of additional capitalization as on 31.3.2014 vide its order dated 29.1.2015 in Petition No. 165/TT/2013. The Commission has disallowed the excess capital cost of ₹1033 lakh due to the cost over-run against the apportioned approved cost of ₹1974 lakh. The petitioner was aware of the fact that the excess capital cost claimed has been disallowed, still failed to furnish the RCE detailing the element wise revised approval as well as justification for revision of the capital cost;

d) Requested to restrict the capital cost and projected additional capitalization to apportioned approved cost as the petitioner had failed to submit the approved RCE and due justification for cost escalation even during truing up process. TANGEDCO also cited the Hon'ble Appellate Tribunal for Electricity order dated 28.11.2013 in the Appeal No. 165 of 2012 according to which the capital cost of the individual assets is required to be restricted to its approved apportioned cost;



e) The petitioner has not furnished any documentary evidence for cost over-run, deferred work for execution and balance and retention payment after COD with detail explanation for retention of payment. The petitioner is bound to furnish the details and explanation to the beneficiaries since the completion cost is being recovered from the beneficiaries through tariff;

f) The petitioner was given enough opportunity but has failed to submit the approved revised cost estimate of each individual element of the project from the Board of the petitioner as mandated in the judgement of APTEL in Appeal No. 165 of 2012. The RCE submitted by the petitioner along with this instant petition shows that the approval is accorded for a revised cost estimate of ₹123684 lakh including IDC of ₹7394 lakh against the original investment approval of ₹126326 lakh including IDC of ₹7855 lakh. It is evident from the RCE that the original approved cost has been reduced. Further, individual element wise apportioned approval has not been provided by the petitioner which is mandatory for checking the prudence;

g) As per Regulation 6 of the 2009 Tariff Regulations, the petitioner is entitled to file tariff petition for revising the tariff based on additional capital expenditure or any other relevant fact one time prior filing the truing up petition. The control period is over and the tariff has been trued up and there is no provision in 2009 Tariff Regulations for revising the trued up tariff; and



h) The present petition is an abuse of process of law. It is wastage of public money and the present petition should be dismissed with exemplary cost. The cost incurred in filing the present petition should be borne by the petitioner and should not be passed over to the beneficiaries.

8. In response, the petitioner vide its affidavit dated 17.8.2016 has submitted the following clarifications:-

a) The RCE is prepared for the entire project and not for the individual element. In the instant case, at the time of filing the true up Petition No. 147/TT/2015, entire scope of the project was not completed and few elements were commissioned after submission of the true up petition. It is further submitted that as per the practice, the process of preparation of RCE of a project is initiated only after substantial amount of expenditure has been incurred in the project so that the RCE is based on the anticipated expenditure of the project. The details of the assets commissioned in the instant project are as tabulated below:-

(₹ in lakh)

Srl. No.	Name of the Line	COD	Approved apportioned cost	RCE cost	Completed cost	Covered in the petition
1.	2 No 63 MVAR Line Reactors charged as Bus reactor at Nellore	16.3.2015	1879	1997	1997	405/TT/2014
2.	Vijayawada-Nellore 400 kV D/C line along with extension of S/S	8.8.2015	46695	53123	52886	
3.	400 kV D/C Nellore-Thiruvalam T/L along with associated bays	16.4.2014	52281	46005	46005	108/TT/2014
4.	400 kV D/c Thiruvalam-	1.8.2014	23750	19305	17221	



Srl. No.	Name of the Line	COD	Approved apporportioned cost	RCE cost	Completed cost	Covered in the petition
	Melakottaiyur T/L along with associated bays					
5.	LILO of 400kV Bangalore-Salem at Hosur	1.2.2014	1974	3254	3007	147/TT/2015 and 98/TT/2016 (RP)
	Total		126579	123684	121117	

b) The revised apporportioned approved cost of the instant asset i.e. LILO of Bangalore-Salem at Hosur was submitted as ₹3071 lakh in the petition. However, the revised apporportionment for the current asset is ₹3254 lakh as against ₹3071 lakh as given above. The RCE apporportionment has undergone changes due to final material reconciliation and allocation of IDC and IEDC.

c) The instant asset, which is very small, was only commissioned during 2009-14 period and all other assets have been commissioned in 2014-19 period. Accordingly, RCE was not initiated and therefore was not submitted in Petition No. 165/TT/2013. The true up petition for the instant asset was filed on 26.5.2015. However, the entire scope was completed only on 8.8.2015 i.e. after submission of the true up petition and thus process of RCE could be initiated only after August, 2015 which resulted in the delay in filing the RCE.

d) As regards filing fresh petition instead of review petition, the petitioner submitted that the same process was followed by the petitioner earlier in case of assets commissioned in 2009-14 wherein revised petition for submission of RCE



was filed before the Commission after receipt of final order. The same has been considered by the Commission in Petition No. 106/TT/2013 in Eastern Region and in Petition No. 241/TT/2013 in Western Region. The same approach has been adopted in the instant case also for submission of RCE.

e) The justification for cost over-run has already been placed on record in Petition No. 165/TT/2013 vide affidavit dated 30.12.2013 and 14.8.2014 and the same was considered by the Commission in its order dated 29.1.2015 in Petition No. 165/TT/2013.

f) The entire scope of the project has been completed and the over-all completion cost of the project is within the FR cost. However, as per APTEL order in Appeal No 165 of 2012, petitioner has to submit the RCE of each individual element in case of cost over-run. Accordingly, RCE for the project was approved based on the completion cost of the project which is less than the FR cost.

9. We have considered the submissions made by the petitioner and the respondent. The petitioner has prayed for revising the trued up tariff of the 2009-14 period of instant asset and allowing the additional capital expenditure during 2009-14 tariff period and projected additional capital expenditure during 2014-19 tariff period taking into consideration the RCE. TANGEDCO has submitted that the petitioner has not submitted the RCE inspite of repeated opportunities and there is no provision in the 2009 Tariff Regulations for revising the trued up tariff and the Commission has become “functus officio” once the tariff has been trued up and it cannot be reopened by the Commission.



We consider the objections raised by TANGEDCO and the clarification given by the petitioner in the subsequent paragraphs.

10. The cost of the instant asset was more than the approved apportioned cost and hence the capital cost of the asset was restricted to the apportioned cost of the asset in accordance with the judgement of APTEL dated 28.11.2013 in Appeal No 165 of 2012 while allowing tariff for the 2009-14 tariff period and the petitioner was directed to submit the RCE of the asset at the time of truing up. The relevant portion of the order dated 29.1.2015 in Petition No. 165/TT/2013 is extracted hereunder:-

“17. We have considered the submissions made by the petitioner regarding the increase in cost. It has been observed that the cost over-run for assets in the instant petition has substantial variation as compared to the approved apportioned cost estimates. Therefore, the petitioner is required to submit the revised cost estimate (RCE) duly approved by its Board. The petitioner has not furnished the RCE for assets covered in the instant case. Accordingly, the capital cost of these assets is restricted to the apportioned approved cost. However, the capital cost in case of these assets shall be reviewed at the time of truing up, subject to the petitioner filing the RCE and justification for cost over-run. This approach has been upheld by the Appellate Tribunal for Electricity in its order dated 28.11.2013 in Appeal No. 165 of 2012, and subsequently the Commission, vide its order dated 18.2.2014 in Petition No. 216/TT/2012, has considered the apportioned approved cost of individual asset for restricting the capital expenditure due to cost over-run for the purpose of tariff determination. The same approach has been adopted in the present case and capital expenditure has been restricted to apportioned approved cost.”

Accordingly, the petitioner was directed to file the RCE while truing up the tariff of 2009-14 tariff period, however the petitioner failed to do so and accordingly the capital cost of the instant asset was trued up by restricting the cost to the initial approved apportioned



cost. The relevant portion of the order dated 24.2.2016 in Petition No. 147/TT/2014 is extracted hereunder:-

“16. It is observed that total completion cost of ₹2538.16 lakh as on 31.3.2014 claimed by the petitioner exceeds the approved cost of ₹1974.00 lakh. In this regard, the petitioner was directed to submit approval for RCE. In response, the petitioner vide affidavit dated 5.2.2016 submitted that the management approval for the same has already been obtained and is put upto the board for approval and will be submitted shortly. However, the petitioner has not filed the RCE. Therefore, we have restricted the completion cost to approved apportioned cost. Accordingly, the true up of the transmission tariff is being worked out to the extent of variation in floating rate of interest and MAT rate by restricting capital cost to the ₹1917.34 lakh after deducting excess initial spares of ₹43.29 lakh from actual cost as on COD.”

11. The petitioner was directed to submit the RCE by the Commission vide order dated 29.1.2015 in Petition No. 165/TT/2013 and the petitioner was given one more opportunity for filing the RCE at the time of truing up. However, the petitioner, as pointed out by TANGEDCO, has not submitted the RCE inspite of having been given sufficient opportunities.

12. As regards the delay in submission of the RCE, the petitioner has submitted that usually the RCE is approved only after commissioning of all assets covered in the transmission scheme or project. The petitioner has submitted that the RCE is initiated only after substantial amount of expenditure has been incurred in the project so that the RCE is based on the anticipated expenditure of the project. The petitioner has submitted that the truing up petition, Petition No.147/TT/2015, was filed before the commissioning of all the assets covered in the scheme and hence the RCE was not submitted. We have considered the submissions of the petitioner. On perusal of the



RCE approved vide order dated 11.3.2016, it is observed that all the elements of the project were commissioned by 8.8.2015 and the petitioner took more than six months after commissioning of all the assets covered in the scheme for approval of the RCE. We feel that the petitioner should have started the process of approval of RCE immediately after the completion of the scheme and six months is too long a period for approval of the RCE and there was laxity on the part of the petitioner in getting the RCE approved. As the petitioner has not submitted that RCE even after commissioning all the assets covered in the scheme, the Commission took the conscious decision of not granting the liberty to the petitioner for revising the trued up tariff after approval of RCE.

13. The petitioner has submitted that the Commission has revised the tariff on the basis of RCE earlier Petition Nos. 106/TT/2013 and 241/TT/2013 and requested to revise the trued up tariff similarly in the instant case based on the RCE. We have gone through orders dated 29.2.2016 in Petition No. 241/TT/2013 and 13.5.2015 in Petition No. 106/TT/2013. It is observed that the facts in Petition Nos. 241/TT/2013 and 106/TT/2013 are different from the facts in the instant case. It is noticed that trued up tariff was not allowed in both the cases and only the final tariff allowed for the assets covered in the respective petitions for 2009-14 tariff period was revised as provided under the proviso clause (1) of Regulation 6 of the 2009 Tariff Regulations, however in the instant case the tariff of 2009-14 was already trued up as provided under Regulation 6(2) of the 2009 Tariff Regulations as the petitioner has filed a petition praying of 2009-14 tariff period and hence the instant case is different from the cases quoted by the petitioner.



14. Regulation 6(1) and 6(2) of the 2009 tariff Regulations provide as under:-

“6. Truing up of Capital Expenditure and Tariff

(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.

Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.

(2) The generating company or the transmission licensee, as the case may be, shall make an application, as per Appendix I to these regulations, for carrying out truing up exercise in respect of the generating station a unit or block thereof or the transmission system or the transmission lines or sub-stations thereof by 31.3.2014;”

15. As per the above said Regulation, the petitioner is required to file a truing petition for truing up of the tariff of the 2009-14 period. Further, the petitioner can come up for mid-term truing up as provided in the proviso to Regulation 6(1) and there is no provision for revising the trued up tariff in the 2009 Tariff Regulations, as submitted by TANGEDCO. In the absence of any provision for revising the trued up tariff in the 2009 Tariff Regulations we are not able to revise the trued up tariff of the instant asset.

16. It is observed that the instant petition covers LILO of 400 kV Bangalore-Salem S/C line at Hosur for which the original approved cost was ₹1974 lakh and was later revised to ₹3254 lakh after the issuance of true up order dated 24.2.2016 in Petition No. 147/TT/2015.



17. Further, the RCE was approved after disposal of the truing up petition on 24.2.2016, we are of the view that a petition cannot be re-opened on the basis of the developments after disposal of the petition. Accordingly, the instant petition seeking revision of the trued petition is rejected and the capital cost of the instant assets is restricted to its approved apportioned cost as held by APTEL in its judgement dated in 28.11.2013 in Appeal No.165 of 2012.

17. This order disposes of Petition No. 98/TT/2016.

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

Sd/-
(A.S. Bakshi)
Member

