

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 45/RP/2017

Coram:

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

Date of Order : 19.07.2018

In the matter of:

Petition for review and modification of the order dated 20.9.2017 in Petition No. 272/TT/2015 under Section 94(1)(f) of the Electricity Act, 2003

And in the matter of:

Power Grid Corporation of India Limited
"Soudamini", Plot No. 2,
Sector 29, Gurgaon -122001.

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Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur - 302005
2. Ajmer Vidyut Vitran Nigam Limited,
132 kV GSS RVPNL Sub-station Building
Caligiri Road, Malviya Nagar, Jaipur-302017.
3. Jaipur Vidyut Vitran Nigam Limited,
132 kV GSS RVPNL Sub-station Building
Caligiri Road, Malviya Nagar, Jaipur-302017.
4. Jodhpur Vidyut Vitran Nigam Limited,
132 kV GSS RVPNL Sub-station Building Caligiri Road,
Malviya Nagar Jaipur-302017.
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla-171004



6. Punjab State Power Corporation Ltd.,
Thermal Shed TIA
Near 22 Phatak,
Patiala-147001.
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6
Panchkula (Haryana) 134 109.
8. Power Development Department,
Government of Jammu & Kashmir,
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226 001
10. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110002
11. BSES Yamuna Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi.
12. BSES Rajdhani Power Ltd.,
Shakti Kiran Building, Karkardooma
Delhi-110092.
13. North Delhi Power Ltd.,
Vivekanand Puri, Sarai Rohilla,
Delhi-110007.
14. New Delhi Municipal Council,
Palika Kendra, Sansad Marg
New Delhi-110002.
15. U. P. Power Transmission Corporation Ltd.,
11th Floor, Shakti Bhawan,
14 Ashok Marg,
Lucknow-226001.
16. Chief Electrical Distribution Limited,
North Central Railway, Allahabad.



17. Tata Power Delhi Distribution Ltd.,
33 kV Sub-station Building Hudson Lane,
Kingsway Camp,
North Delhi-110009.

18. Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road, Dehradun. Respondents

For Review Petitioner : Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri S.K. Venkatesh, PGCIL
Shri Vivek Kumar Singh, PGCIL
Shri Aryaman Saxena, PGCIL
Shri Rakesh Prasad, PGCIL
Shri B. Dash, PGCIL
Shri A. Choudhary, PGCIL

For Respondents : Shri S.K. Singh, Advocate, DTL
Shri P.K. Shandilya, Advocate, DTL
Shri R.B. Sharma, Advocate, BRPL

ORDER

The instant Review Petition has been filed by Power Grid Corporation of India Limited (“the Review Petitioner”) seeking review of the order dated 20.9.2017 in Petition No. 272/TT/2015 wherein transmission tariff in respect of four assets, namely, (a) 315 MVA 400/220 kV ICT-I and associated bays and 03 Nos. 220 kV line bays at Saharanpur Sub-station, (b) 315 MVA 400/220 kV ICT-II and associated bays and 03 Nos. 220 kV line bays at Saharanpur Sub-station, (c) 50 MVA, 400 kV Bus Reactor-I at Saharanpur Sub-station and (d) 50 MVA, 400 kV Bus Reactor-II at Saharanpur Sub-station under “Northern Region Transmission Strengthening Scheme” in Northern Region was allowed under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) for the period from date of commercial operation to 31.3.2019.



2. The Review Petitioner has made the following prayers:-

“a) Review and modify the Impugned Order dated 20.9.2017 passed by this Hon’ble Commission in Petition No.272/TT/2015, in terms of the submissions set out in the present petition;

b) Allow the capital cost of Rs.8.00 Cr. with respect to the 4 nos. 220 kV line bays at Saharanpur and approve the DOCO of these bays;

c) Consider the RCE as submitted vide the Review Petitioner’s Affidavit dated 14.06.2017 and appropriately modify the Order dated 20.09.2017 in regard to the disallowance of cost-overrun claimed by the Review Petitioner;

d) Allow the Capital Cost claimed by the Review Petitioner in Petition No.272/TT2015 and appropriately revise the amounts allowed in respect of the tariff parameters related to Capital Cost; and

e) pass such further order(s) or directions(s) as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the case.”

3. The Review Petitioner has sought the review of order dated 20.9.2017 on the following three issues:-

(a) Disallowance of the cost of the 4 nos. of line bays of 220 kV at Saharanpur amounting to ₹800 lakh.

(b) Non-consideration of the Revised Cost Estimate (“RCE”) placed on record by the Review Petitioner vide affidavit dated 14.6.2017 and consequently restricting the capital cost to the FR cost.

(c) Non-consideration of the time over-run of 1271 days in case of the instant assets and deferring it to be considered alongwith the 400 kV D/C (Quad) Roorkee-Saharanpur line at the time of truing up.



4. The Review Petitioner has set out the following grounds for modification of the order dated 20.9.2017:-

A. Disallowance of cost of 4 nos. of 220 kV line bays at Saharanpur

- (i) The Commission in the impugned order did not approve the date of commercial operation (COD) of the 4 220 kV line bays at Saharanpur. However, vide affidavit dated 25.5.2016, RLDC certificates of all six nos. of 220 kV line bays indicating the completion of trial operation was submitted. The 4 nos. of bays were charged on “no load basis” because the connecting downstream 220 kV transmission lines in the scope of UPPTCL were not put into commercial operation by UPPTCL. However, it was erroneously held that the 4 bays were not put into commercial operation.
- (ii) The COD of the 4 bays should have been approved under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the Review Petitioner was prevented from putting the 4 bays into regular use for reasons not attributable to the Review Petitioner or its suppliers or contractors but due to non-commissioning of the downstream assets by UPPTCL.
- (iii) In accordance with the directions of the Commission, leave is sought to place on record in the instant petition the certificate of Chairman and Managing Director specifying the charging of the aforesaid 4 nos. of 220 kV line bays at Saharanpur Sub-Station on “no load” due to non-availability of connecting downstream transmission system.



- (iv) All the requisite documents supporting the charging of the 4 bays in accordance with proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations has already been placed on record. Denying the tariff to a transmission licensee on the ground that a part of the asset of a transmission scheme/system is prevented from undertaking regular service merely by reason of non-commissioning of a downstream system is prejudicial to the financial recovery of the investments made by the Review Petitioner.
- (v) Deferring the transmission charges for the said 4 nos. of 220 kV line bays until the commissioning of the associated downstream system will attract a higher IDC towards transmission charges to be shared by the beneficiaries for the duration of mismatch from the COD of the said bays until the connectivity with the downstream transmission network.
- (vi) Decision to disallow cost of 4 bays not only adversely affects the Review Petitioner but also increases the cost of the transmission assets thereby increasing the liability of the beneficiaries.

B. Non-consideration of RCE

- (i) The Commission erroneously did not consider the RCE approved by the Board of the Review Petitioner while sanctioning the capital cost. No justification was given in the impugned order for not considering the RCE.
- (ii) As per the RCE placed on record in the main petition, vide affidavit dated 14.6.2017, the completed cost of the assets covered in the main petition



as per the Auditor's Certificate is ₹15600.20 lakh which was well within the ceiling limit of ₹16007.61. Restricting the capital cost to ₹7869.72 lakh is an error. Further, the Commission's failure to sanction the cost over-run of ₹69.30 crore by overlooking RCE constitutes error apparent on the face of record.

C. Failure to condone time over-run

- (i) The Commission in the impugned order held that the time over-run in case of the instant assets would be considered alongwith the time over-run in case of the 400 kV D/C (Quad) Roorkee-Saharanpur line at the time of truing up. Such deferment of cost impacts the cash inflows and has a negative impact on future investments of the Review Petitioner. This also causes undue hardship to the DICs as they have to bear additional accumulated IDC and IEDC.

5. The Review Petition was admitted vide order dated 12.3.2018 and the respondents were directed to file their reply. In response, Delhi Transco Limited (DTL), Respondent No. 10 and BRPL, Respondent No. 12 have filed their replies on 14.5.2018 and 18.4.2018 respectively.

6. DTL has submitted that it has been improperly impleaded in the array of respondents in view of the directions contained in letter no. F.11 (24)/2005/Power/Vol.-II/1532 dated 28.6.2006 issued by the Government of NCT of Delhi. Consequent to the said directions, the Power Purchase Agreements/Contracts signed by the DTL prior to



1.4.2007 were in terms of provisions of the DERA, Electricity Act, 2003 and the directions issued by GNCTD from time to time prior to 1.4.2007 and the DTL was acting only as nodal agency to purchase power for the Discoms i.e. BRPL, BYPL and NDPL, etc. which were the actual beneficiaries. After 1.4.2007, the Power Purchase Agreements were directed to be re-assigned to the concerned Discoms functioning in the NCT of Delhi. DTL is neither the beneficiary nor liable in any manner whatsoever and as such the subject-matter of Review Petition does not pertain to DTL. DTL is neither a necessary nor a proper party.

7. BRPL has submitted that disallowance of the capital cost in respect of 4 nos. of line bays at Saharanpur is in terms of Regulation 5(2) of the 2014 Tariff Regulations which prescribes for trial operation in relation to the transmission system or an element thereof shall mean successful charging of the transmission system or an element thereof for 24 hours at continuous flow of power. Since the bays were charged on “no load” and thus the requirements of Regulation 5(2) of the 2014 Tariff Regulations are not met and thus the capital cost of 4 nos. line bays at Saharanpur cannot be capitalized for the purposes of tariff. BRPL has further submitted that proviso (ii) to Regulation 4(3) of 2014 Tariff Regulations is applicable only when all the components of the transmission line are ready but is prevented for use due to some reasons beyond the control of the transmission licensee, e.g. high voltage in the system. On the issue of non-consideration of RCE, BRPL has contended that the Review Petitioner itself has furnished the apportioned approved cost as per FR and the apportioned approved cost as per RCE, a perusal of which shows that the cost over-run is almost double of FR cost. The RCE does not indicate the reasons for the cost and time over-run nor does it



mention the reasons why the work could not be completed within the scheduled time. The Review Petitioner should furnish justifications, if any, for time over-run of 1271 days in terms of the Commission's observation in the impugned order.

8. Learned counsel for the Review Petitioner while reiterating the submissions in the petition submitted that non-approval of COD and disallowance of the capital cost of ₹800 lakh for 4 nos. line bays of 220 kV at Saharanpur, non-consideration of RCE submitted vide affidavit dated 14.6.2017 and restricting the capital cost to FR are erroneous and constitute errors apparent on the face of record. He prayed for modification of the impugned order by approving the COD and capital cost of ₹800 lakh incurred on 4 nos. of 220 kV line bays at Saharanpur, consider the RCE submitted vide affidavit dated 14.6.2017 and appropriately modify the capital cost by revision of the tariff components.

Analysis and Decision

9. The main contention of the Review Petitioner is that the Commission should have approved the COD of the 4 bays at Saharanpur under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations taking into consideration the RLDC certificate dated 16.5.2016, indicating the completion of successful trial operation of the asset under Regulation 5 (2) of the 2014 Tariff Regulations submitted in the main petition and allow the capital cost of the 4 nos. of 220 kV line bays at Saharanpur. The Review Petitioner had not prayed for approval of the COD of the 4 bays at Saharanpur under 4(3) of the 2014 Tariff Regulations in the main petition. The Review Petitioner has sought approval of the COD of the 4 bays for the first time under Regulation 4(3) of the 2014 Tariff Regulations in the instant review



petition. It is observed that the Review Petitioner had submitted the RLDC certificate under Regulation 5(2) of the 2014 Tariff Regulations certifying the successful charging of the transmission system. Further, the Review Petitioner has submitted the CMD certificate confirming that the 4 bays at Saharanpur conform to the relevant Grid Standard and Grid Code and are capable of operation to their full capacity as required under the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2016 in the instant review petition. The Review Petitioner has also submitted the energisation certificate under Regulation 43 of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 in the main petition. We are of the view that the Review Petitioner was ready on 9.5.2016 but was prevented from putting the 4 bays into regular use as the downstream assets under the scope of UPPTCL were not ready. Therefore, we approve the COD of the 4 bays at Saharanpur as 9.5.2016 under proviso (ii) of Regulations 4(3) of the 2014 Tariff Regulations. Consequently, the transmission charges of the 4 bays from 9.5.2016 upto the date of commercial operation of the downstream assets under the scope of UPPTCL will be borne by UPPTCL. Accordingly, the review on this count is allowed.

10. The second contention of the Review Petitioner is that in the impugned order the Commission did not consider the RCE approved by its Board of Directors while allowing the capital cost. In the impugned order, the capital cost of the assets covered in the main petition was restricted to the FR apportioned cost. We have perused the record. The Review Petitioner vide its affidavit dated 14.6.2017 has placed on record the RCE. In para 3, of the said affidavit, the Review Petitioner has deposed that the apportioned cost of the combined asset as per FR is ₹8295.10 lakh, apportioned cost as per RCE is ₹16007.61 lakh and the completed cost as per Auditor's certificate is ₹15600.20 lakh



which was within the ceiling of ₹16007.61 of the RCE. We have considered the submissions of the Review Petitioner. The Commission while approving the capital cost of the assets inadvertently failed to take into consideration the RCE placed on record vide affidavit dated 14.6.2017, as a result of which cost over-run of ₹6930 lakh was not allowed. Non-consideration of the RCE that was placed on record is an error apparent on the face of the record and is required to be modified. Review on this account is therefore allowed.

11. The third contention of the Review Petitioner is that the deferment of the issue of time over-run in case of the assets covered in the main petition to the truing up stage alongwith the 400 kV D/C (Quad) Roorkee-Saharanpur line impacts the cash inflows of the Review Petitioner which has negative impact on its investments. The assets covered in the main petition and the 400 kV D/C (Quad) Roorkee-Saharanpur line are related. Hence, it was held in the impugned order that the issue of time over-run of 1271 days in case of the instant assets would be considered alongwith the 400 kV D/C (Quad) Roorkee-Saharanpur line. The Commission has taken a considered view that time over-run in the case of the instant assets and the 400 kV D/C (Quad) Roorkee-Saharanpur line will be considered at the time of truing up of 2014-19 tariff keeping in mind the peculiar circumstances of the case. In our opinion, no review on this issue is called for at this stage.



12. The instant review is partly allowed. Consequential order would be issued.

13. The Review Petition No. 45/RP/2017 is disposed of in terms of the above.

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

sd/-
(A.S. Bakshi)
Member

