

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 52/RP/2016

in

Petition No. 411/TT/2014

Coram:

Shri A. K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M. K. Iyer, Member

Date of Order : 20.07.2018

In the matter of:

Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 30.7.2016 in Petition No. 411/TT/2014.

And in the matter of:

Parbati Koldam Transmission Company Ltd.
5th Floor, JMD Galleria,
Sector-48, Sohna Road,
Gurgaon-122018

...Petitioner

Vs

1. Power Grid Corporation of India Ltd.
"SAUDAMINI", Plot No-2,
Sector-29, Gurgaon -122 001 (Haryana).
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005
3. Ajmer Vidyut Vitran Nigam Ltd.
400 kV GSS Building (Ground Floor),
Ajmer Road Heerapura, Jaipur
4. Jaipur Vidyut Vitran Nigam Ltd.
400 kV GSS Building (Ground Floor),
Ajmer Road Heerapura, Jaipur



5. Jodhpur Vidyut Vitran Nigam Ltd.
400 kV GSS Building (Ground Floor),
Ajmer Road Heerapura
Jaipur
6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan,
Kumar House Complex Building II
Shimla-171004
7. Punjab State Power Corporation Ltd.
Thermal Shed T1 A,
Near 22 Phatak Patiala-147001
8. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6
Panchkula (Haryana) 134 109
9. Power Development Deptt.
Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
10. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 226001
11. Delhi Transco Ltd.
Shakti Sadan, Kotla Road
New Delhi- 110002
12. BSES Yamuna Power Ltd.
BSES Bhawan,
Nehru Place New Delhi
13. BSES Rajdhani Power Ltd.
BSES Bhawan,
Nehru Place New Delhi
14. North Delhi Power Ltd.
Power Trading & Load Dispatch Group
Cennet Building,
Adjacent to 66/11 kV Pitampura-3 Grid Building,
Near PP Jewellers, Pitampura,
New Delhi-110034



15. Chandigarh Administration
Sector-9, Chandigarh
16. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road
Dehradun
17. North Central Railway
Allahabad
18. New Delhi Municipal Council
Palika Kendra,
Sansad Marg
New Delhi-110002
19. NHPC Ltd.
NHPC Office Complex,
Sector-33, Faridabad,
Haryana- 121003

....Respondents

For Petitioner : Shri Amit Kapur, Advocate, PKTCL
Ms. Nishtha Kumar, Advocate, PKTCL
Ms. Aparajita Upadhyay, Advocate, PKTCL
Shri Azad Akber, PKTCL
Shri Lokendra Singh, PKTCL

For Respondent : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Aryaman Saxena, PGCIL
Shri S. K. Venkatesan, PGCIL
Shri Rakesh Prasad, PGCIL

ORDER

This review petition has been filed by Parbati Koldam Transmission Company Limited (PKTCL) seeking review of the Commission's order dated 30.7.2016 in Petition No. 411/TT/2014, wherein tariff was allowed provisionally to PGCIL in respect of LILO of 1st ckt. of 400 kV D/C Parbati-II-Koldam Transmission Line at Parbati Pooling Station (Banala) (hereinafter referred to as transmission assets) under Transmission System



associated with Parbati-III HEP in Western Region (hereinafter referred as "transmission system") for 2014-19 tariff period.

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

“(a) Admit the present Review Petition;

(b) Review its Impugned Order dated 30.07.2016 to the extent it holds PKTCL responsible for delay in commissioning of the asset in question and fixes the liability upon PKTCL to pay IDC and IEDC for the period starting from 30.06.2014 till the date of usage of the Loop-in and Loop-out portion i.e. 03.11.2015 and 10.10.2014;

(c) Pass such furtherand other order as may be deemed necessary by this Hon’ble Commission.”

Brief background

3. As per the Investment Approval dated 31.7.2006 by the Board of PGCIL, the scheduled COD (SCOD) of the transmission system was 30.1.2010. PGCIL and the Review Petitioner entered into an Implementation Agreement on 23.11.2007. As per Clause 4.4 of the Implementation Agreement, the parties may mutually agree to revise SCOD in case of adverse progress in implementation of the transmission system. As per the Amendment No. IV to the Implementation Agreement dated 24.1.2014, the COD of the instant asset was revised to 30.6.2014. However, PGCIL sought approval of the COD of the instant assets as 1.4.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the upstream assets under the scope of the Review Petitioner were not put into commercial operation. PGCIL submitted in the main petition that loop-in and loop-out portion of the Parbati-Koldam Transmission Line were put to use on 3.11.2015 and 10.10.2014 respectively. The Commission vide the impugned order approved 3.11.2015 and 10.10.2014 as COD of loop-in and loop-out portions. It was



further observed in the impugned order that the time over-run in case of the instant asset was due to delay in COD of the transmission line by PKTCL and accordingly, it was held that the IDC and IEDC from the revised SCOD of 30.6.2014 (as per Amendment No. IV) till the date of usage of Loop-in and Loop-out would be borne by the Review Petitioner. Annual Fixed Charges (AFC) under Regulation 7(7) of the 2014 Tariff Regulations was granted for the instant assets vide order dated 24.12.2014 for inclusion in the PoC computation for 2014-15 and 2015-16. Further, PGCIL was directed to file a fresh petition giving the capital cost of loop-in and loop-out portions as on 3.11.2015 and 10.10.2014 respectively within 30 days of the issue of the impugned order. The relevant portion of the order dated 30.7.2016 is extracted hereunder:-

“15. It is observed that the Loop-in and Loop-out portion of the instant asset were put into use only on 3.11.2015 and 10.10.2014 as against the scheduled COD on 30.1.2010 because of the delay in commissioning of the transmission lines by PKTCL. Accordingly, the COD of the Loop-in and Loop-out portions shall be reckoned as 3.11.2015 and 10.10.2014, respectively. We are of the view that the IDC and IEDC from 30.6.2014 till the date of usage of the Loop-in and Loop-out portion i.e. 3.11.2015 and 9.10.2014 respectively would be borne by PKTCL. The petitioner is directed to submit the capital cost of Loop-in and Loop-out portions of the instant asset as on 10.10.2014 and 3.11.2015, respectively, along with the Auditor’s Certificate, RLDC certificate as required under Regulation 5(2) of the 2014 Tariff Regulations, details of IDC and IEDC on cash basis for both the Loop-in and Loop-out portions within 30 days of the date of this order.

16. It is observed that the capital cost of Loop-in and Loop-out portions as on 3.11.2015 and 10.10.2014, the IDC and IEDC details upto 30.6.2014 and from 30.6.2014 to 3.11.2015 and from 30.6.2014 to 10.10.2014 have not been brought by the petitioner on record. Accordingly, we direct the petitioner to file fresh petition along with all relevant information within 30 days from the date of this order.....”

4. In compliance with the directions in order dated 30.7.2016, PGCIL filed Petition No. 136/TT/2017 giving the details sought in the impugned order. The Commission allowed provisional tariff for the said assets vide order dated 5.10.2017. Orders for final determination of tariff are reserved in Petition No.136/TT/2017.



5. The Review Petitioner has sought review of the decision of the Commission to assign the liability on PKTCL to bear the IDC and IEDC from 30.6.2014 till the assets were put into use. The Review Petitioner has made the following submissions in support of its claim.

6. The Review Petitioner has submitted that the SCOD of the upstream system of the Review Petitioner as per Amendment No. IV to IA was 31.12.2014. The scheduled COD of the instant assets was 30.1.2010. The Review Petitioner has submitted that PGCIL contended in the main petition that PGCIL requested the Review Petitioner on 17.9.2013 to complete the erection of work at Tower 37 and 38 and after the work at Tower locations 37 and 38 was completed by the Review Petitioner in March, 2014, PGCIL completed the LILO work and put the asset into commercial operation in March, 2014. Accordingly, there was a time over-run of 50 months. As PGCIL attributed the time over-run of 6 months out of 50 months to the Review Petitioner and the evacuation system was meant for evacuation of power from the project of NHPC, the Commission directed PGCIL to implead the Review Petitioner and NHPC as respondents. Accordingly, PGCIL impleaded the Review Petitioner and NHPC as respondents in the main petition. The Review Petitioner has submitted that it filed its reply in the main petition on 15.12.2015, stating that as per the Amendment No. IV to the IA, the upstream elements were to be completed by 31.12.2014 and the downstream assets by 30.6.2014. The Review Petitioner has submitted that it was informed about the early completion of location no. 37 and 38 by PGCIL on 24.1.2014 and though there was no contractual obligation under the IA, it completed the work at



location no. 37 and 38 on 17.4.2014 and 18.4.2014 respectively. However, in accordance with Amendment No IV dated 24.1.2014 of the IA, the assets of Review Petitioner in question were to be completed by 31.12.2014 (upstream system) and 30.6.2014 (downstream system). There was no occasion for the Review Petitioner to file its reply for the alleged delay beyond 30.6.2014 and it filed reply only with respect to the 6 months delay attributed to the Review Petitioner. The Review Petitioner submitted that PKTCL commissioned the transmission lines within the timeframe as agreed upon in the Implementation Agreement dated 23.11.2007 and its various Amendments, entered into between PGCIL and PKTCL and thus it is not liable to pay the IDC and IEDC. There is error in the impugned order dated 30.7.2016 in fixing the liability upon PKTCL to pay IDC and IEDC for the period starting from 30.6.2014 till the date of usage of the loop-in and loop-out portion, i.e. 3.11.2015 and 10.10.2014 respectively without giving any opportunity to PKTCL to place on record the documentary evidence including the orders passed by the Commission. The Review Petitioner has submitted that non-consideration of revised dates of COD given in the Amendments V and VI to the Implementation Agreement is an apparent error which needs to be rectified.

7. As regards the claim of the Review Petitioner that Ckt-II of the transmission system connecting Parbati-III to Banala (Pooling Station) via Parbati II Power Station could not be commissioned in time due to non-availability of 2nd Bay of Parbati-III Power Station and the IDC and IEDC payable by the Review Petitioner to PGCIL should be reviewed, NHPC has submitted that the first Unit of Parbati-III and the complete Parbati-



III Power Stations were considered as 24.3.2016 and 6.6.2014 respectively. However, due to non-availability of 2nd evacuation cut of Parbati-III Power Station which was being implemented by the Review petitioner, the power station was operationalized with only one evacuation ckt till 3.10.2015. This fact was brought to the notice of the Commission by NHPC in its reply dated 14.12.2015 in which NHPC had pleaded not to allow the AFC of part LILO at the Parbati-III Power Station and Banala pooling station to PGCIL. NHPC has submitted that for the first time, the Review Petitioner vide its letter dated 12.6.2015 had intimated NHPC that its transmission was likely to be charged on 20.6.2015 and had requested for co-operation for changing of the line between Parbati-III to Banala pooling station and Parbati-III. In response to the said letter, NHPC vide its e-mail dated 2.7.2015 intimated the Review Petitioner that since the Bay no. 2 of the power station was tested and commissioned long back, the re-changing of the bay requires re-testing/re-commissioning to ensure safety and security of the system. NHPC has submitted that contrary to the condition of the Review Petitioner, the bay and Parbati-III was ready and changed, but could not be utilized on account of non-availability of the 2nd evacuation cut of Parbati-III by the Review Petitioner. Therefore, the claim of the Review Petitioner to transfer the liability for IDC and IEDC to NHPC is without merit.

8. PKTCL in its rejoinder dated 29.11.2016 to NHPC's reply has submitted that the section of transmission line section was completed on 8.6.2015 as detailed in PKTCL's Petition No. 156/TT/2015. After the readiness, the transmission line section was inspected by CEA Electrical Inspectorate and was declared fit for charging vide



certificate dated 30.6.2015 and the final charging and COD of the line was achieved on 3.11.2015. In the 26th & 29th Standing Committee Meetings of Northern Region planning and subsequent Amendment Nos. 1 & 2 to the Implementation Agreement, PKTCL was asked to construct only the section of 400 kV Single Circuit Parbati-Koldam Transmission lines starting from LILO point of Parbati-III HEP to LILO point Banala (Parbat I) Pooling Station matching with the commissioning of Parbati-III HEP and its associated ATS (400 kV D/C Banala-Amritsar Transmission line constructed by PGCIL). The PKTCL was never asked to construct the other section matching with the time frame of commissioning Parbati-III HEP and was required to commission the line as provided under the Implementation Agreement. PKTCL submitted that the changes reflected in the Implementation Agreement are outcome of thorough discussions and changes suggested by various power utilities, beneficiaries and CEA/NRPC by way of Standing Committee Meetings and NRPC Meetings. PKTCL was never a part of these meetings and only attended the meetings when invited whereas NHPC has always been a part of all these meetings and also a governing factor in making these changes.

Analysis and Decision

9. We have considered the submissions of the parties. PGCIL filed Petition No.411/TT/2014 claiming tariff for LILO of 1st ckt. of 400 kV D/C Parbati-II-Koldam Transmission Line at Parbati Pooling Station (Banala). The said asset was scheduled to be put into commercial operation on 30.1.2010, as per the Investment Approval dated 31.7.2006 accorded by the Board of PGCIL. Subsequently, the Review Petitioner and PGCIL entered into an Implementation Agreement on 23.11.2007. PGCIL and the



Review Petitioner mutually revised the SCOD of the instant assets to 30.6.2014 through Amendment No. IV (dated 24.1.2014) to the Implementation Agreement. PGCIL sought approval of the COD of the instant assets as 1.4.2014 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations on the ground that its assets were ready as on 1.4.2014 but was prevented from putting the instant assets into use as the upstream assets under the scope of the Review Petitioner were not ready. However, the Commission after taking into the fact that the Loop-in and Loop-out portions of the instant assets were put into use only on 3.11.2015 and 10.10.2014 respectively approved the COD of these assets as 3.11.2015 and 10.10.2014 respectively. The Commission further held that the IDC and IEDC for the period starting from 30.6.2014 till the COD of the Loop-in on 3.11.2015 and Loop-out on 10.10.2014 would be borne by the Review Petitioner as the Review Petitioner was held responsible for the said delay. However, final tariff was not allowed for the instant assets in Petition No.411/TT/2014 as the audited capital cost as on 3.11.2015 and 10.10.2014 of Loop-in and Loop-out were not placed on record by PGCIL. Further, the AFC granted in order dated 24.11.2012 under Regulation 7(7) of the 2014 Tariff Regulations was continued with effect from 3.11.2015 and 10.10.2014 respectively, with liberty to PGCIL to file a fresh petition alongwith the relevant information. Accordingly, PGCIL has subsequently filed Petition No.136/TT/2017. After hearing the parties, orders are reserved in the said petition.

10. In the above factual matrix, we are considering the grounds raised in the review petition. The basic contention of the Review Petitioner is that the Implementation



Agreement between the Review Petitioner and PGCIL was amended vide Amendment No. V dated 17.3.2015 and Amendment No. VI dated 10.2.2016 revising the SCOD of the instant assets (Loop-in and Loop-out) as 30.11.2015 and 10.10.2014. However, the impugned order has been passed without considering the fact of shifting of the SCOD through Amendment VI to the IA. According to the Review Petitioner, had the Amendment No. VI to the Implementation Agreement been considered by the Commission, the SCOD of Loop-out portion and Loop-in portion could not have been declared as 10.10.2014, since, PGCIL had agreed to the revised COD of the said asset as 3.11.2015 and 10.10.2014 respectively. The Review Petitioner has submitted that since the COD was approved without considering the Amendment VI to the Implementation Agreement, the Review Petitioner cannot be made liable for the IDC and IEDC from 30.6.2014 to 3.11.2015 of Loop-in and from 30.6.2014 to 10.10.2014 of the Loop-out portion. It is observed that Amendments Nos. V and VI to the Implementation Agreement were not brought to the notice of the Commission either by PGCIL in the main petition or by the Review Petitioner. Accordingly, the revised COD of 30.6.2014 as mentioned in Amendment No. IV to the Implementation Agreement was considered as the scheduled date of commercial operation of the instant assets in the impugned order of 30.7.2016. In our view, there is no apparent error in the impugned order as all relevant documents were considered while preparing the impugned order.

11. Notwithstanding our finding that there is no apparent error on the face of record, we notice that PGCIL has not disclosed about signing of Amendment No. V and VI to the Implementation Agreement, though these Amendments were entered into by PGCIL



prior to the issue of the impugned order. These amendments were relevant to decide the COD of the Loop-in and Loop-out portions of the instant asset as PGCIL has mutually agreed with the Review Petitioner to revise the COD. Para 2.0 of the Amendment VI is extracted as under:-

“2.0 RCOD for the section LILO of Parbati-II HEP to Parbati-II HEP and LILO of Parbati Pooling station to Parbati-II HEP is hereby amended as follows:-

| Transmission System | RCOD | Revised RCOD |
|--|----------------------------|----------------------------|
| Lilo of Parbati-III HEP to Parbati-II HEP and LILO of Parbati Pooling stations to Parbati-II HEP | 30 th May, 2015 | 3 rd Nov., 2015 |

12. In our view, PGCIL having agreed to the revised SCOD of the LILO as 3.11.2015 in Amendment to the Implementation Agreement dated 10.2.2016 was under obligation to bring the said fact to the notice of the Commission. Had the said fact been brought to the notice of the Commission, PGCIL could not have been granted COD prior to the date of revised SCOD. We therefore find sufficient reasons to review our earlier decision to grant COD of the Loop-out portion from 10.10.2014 and Loop-in portion from 3.11.2015.

13. Accordingly, the review of the impugned order has been allowed to this extent. It is pertinent to mention that the Commission directed PGCIL to file a fresh petition with amended capital cost considering the COD Loop-in and Loop-out as 3.11.2015 and 10.10.2014. PGCIL has filed Petition No.136/TT/2017 as per the directions in the impugned order dated 30.7.2016. It is observed that in Petition No. 136/TT/2017 PGCIL has claimed the COD of Loop-out and Loop-in of the 1st Ckt of 400 kV D/C Parbati-II-Koldam Transmission Line at Banala as 10.10.2014 and 3.11.2015.



14. The Review Petition No.52/RP/2016 is disposed of in terms of the above. Since, we have allowed the review, the issue of COD of Loop-in and Loop-out and other related issues raised by the Review Petitioner which are consequential to the issue of COD shall be decided afresh. The Petition No.136/TT/2017 shall be heard again limited to the issue of COD of Loop-out portion.

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

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

