

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 59/RP/2016

In

Petition No. 87/TT/2015

Coram:

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order : 13.02.2018

In the matter of:

Review of the Commission's order dated 18.4.2016 in Petition No. 87/TT/2015 under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 103 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

In the matter of:

Determination of transmission tariff for Meerut-Moga 765 kV S/C transmission line along with associated bays at Meerut and Moga 765/400 kV Sub-station with 02 Nos. 240 MVAR line reactors (01 no. switchable and 01 no. non switchable line reactor) each at Meerut and Moga under Northern Regional Strengthening Scheme-XXVI" under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions for Tariff) Regulations, 2009 in Northern Region for tariff block 2014-19 period.

And in the matter of:

Power Grid Corporation of India Ltd.,
"SAUDAMINI", Plot No. 2, sector 29,
Gurugram – 122001

.....Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg, Jaipur- 302 005
2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur



3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
4. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171 004
6. Punjab State Electricity Board,
The Mall, Patiala- 147001
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109 8.
8. Power Development Department,
Government of Jammu and Kashmir,
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110 002
11. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma, Delhi- 110092
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place, New Delhi
13. North Delhi Power Limited,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent to 66/11 kV
Pitampura- Grid Building, Near PP Jewellers,
Pitampura, New Delhi-110 034



14. Chandigarh Administration,
Sector-9, Chandigarh
15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road, Dehradun
16. North Central Railway,
Allahabad
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi- 110002.

...Respondents

For petitioner : Shri Sanjay Sen, Sr. Advocate, PGCIL
Shri Matrugupta Mishra, Advocate for PGCIL
Shri Nimesh Kumar Jha, Advocate for PGCIL
Shri V.P. Rastogi, PGCIL
Shri S.S. Raju, PGCIL
Shri M.M. Mondal, PGCIL
Shri S.K. Venkatesan, PGCIL
Ms. Pratibha Raje Parmar, PGCIL

For respondents : None

ORDER

Power Grid Corporation of India Limited (PGCIL) has filed the instant review petition seeking review of the Commission's order dated 18.4.2016 in Petition No.87/TT/2015, wherein transmission tariff was granted for Meerut-Moga 765 kV S/C Transmission Line alongwith associated bays at Meerut & Moga 765/400 kV Substation with 2 Nos. 240 MVAR line reactors (1 no. switchable and 1 no. non-switchable line reactor) each at Meerut & Moga under "Northern Regional Strengthening Scheme-XXVI" (hereinafter referred to as "transmission assets") for the 2014-19 tariff period. PGCIL has also filed an Interlocutory Application No.50/2016 seeking condonation of the delay in filing of the instant review petition.



Brief facts

2. As per the investment approval dated 27.9.2012, the scheduled date of commercial operation of the assets was 25.3.2015. PGCIL filed Petition No. 87/TT/2015 indicating the anticipated date of commercial operation as 1.3.2015. The assets were put under commercial operation on 12.5.2015, resulting in time over-run of 1 month and 18 days. PGCIL was directed vide RoP dated 12.5.2015 to file the details of time over-run alongwith documentary evidence and chronology of activities. In response, PGCIL vide affidavit dated 30.6.2015 submitted that time over-run was attributed to theft and communal violence. PGCIL submitted that there were instances of beating and even firing on gang members by looters leading to delay in construction of the transmission lines. In support of its contention, PGCIL submitted the copies of the FIRs lodged with police authorities and newspaper cuttings. PGCIL further submitted that the communal violence in Muzaffarnagar and Shamli districts in 2013 resulted in delay in COD of the transmission assets. In support, PGCIL filed copy of the newspaper cuttings as evidence regarding occurrence of violence. The Commission after considering the submission and the documents placed on record by PGCIL rejected the claims of the PGCIL vide order dated 18.4.2016. The Commission in the said order observed that safety of materials is the responsibility of PGCIL and accordingly, PGCIL should have taken adequate measures for safety of materials. As regards violence, the Commission observed that PGCIL has not demonstrated how the violence affected the execution of the work, and accordingly the time over-run was not condoned. The relevant portion of the order dated 18.4.2016 is extracted hereunder:-

“11. We have considered the submission of the petitioner regarding the time over-run in execution of the transmission asset. It is evident from the FIR copies



submitted by the petitioner that there was theft of the transmission tower material from the sites. We are of the view that safety of the materials and equipment of the transmission asset are the responsibility of the petitioner and the petitioner should have taken adequate security measures for the safety of the materials and equipment. The Hon'ble APTEL in its judgement in Appeal No. 134 of 2011 has observed as follows:-

“8. As indicated above, the Central Commission has, in the impugned order, in respect of 4 months delay has held that the theft of the equipment cannot be considered to be valid reason to condone the delay as the safety of material was the responsibility of the Appellant and delay due to theft could not be treated as force majeure event. This finding for rejecting the explanation with regard to delay of 4 months due to the theft cannot be said to be perverse. As correctly pointed out by the Central Commission, the Appellant who was well aware of the route of transmission line, should have made adequate measures to ensure the safety of the locations during construction. As this was not done, we cannot hold the explanation for 4 months delay by citing the theft incident as satisfactory.

9. Therefore, we confirm the finding of the Central Commission in respect of 4 months delay.”

12. Thus, in view of the above, any delay due to theft of the material cannot be condoned. It is observed that violence due to clashes in Muzaffarnagar and Shamli districts of Uttar Pradesh took place during August and September, 2013 and has also submitted the newspaper reports regarding the violence. However, the petitioner has not demonstrated how these events affected the execution of work. In view of the above, we are not inclined to condone the delay of 1 month and 18 days. Accordingly, IDC and IEDC for the said period are disallowed.”

3. The impugned order was issued on 18.4.2016 and posted on website of the Commission on 3.5.2016. As per Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter referred to as “1999 Business Regulations”), a review petition should be filed within 45 days of issue of the order. PGCIL has filed the instant review petition on 15.10.2016, i.e. 165 days after posting of the order on the website. Thus, there is delay of 120 days in filing of the instant review petition. PGCIL has filed Interlocutory Application No.50/2016 seeking condonation of delay in filing of the review petition. PGCIL has submitted that being a Government Company, it requires approval from various levels apart from obtaining legal opinion and engaging the counsel for filing the



review petition. PGCIL has submitted that the delay is not intentional and has prayed that delay be condoned.

Grounds for seeking review

4. PGCIL has submitted that its affidavit dated 10.3.2016 explaining the circumstances leading to time over-run has been overlooked by the Commission in the impugned order. PGCIL has submitted that even though the Commission acknowledged about the occurrence of riots in Mazaafarnagar and Shamli Districts during August and September, 2013, the Commission declined to condone the delay on the ground that PGCIL failed to demonstrate how the riots affected the execution of work by PGCIL. PGCIL has argued that the newspaper cuttings submitted in the main petition clearly indicated that curfew was imposed in the concerned districts and security forces were deployed to control riots. PGCIL has submitted that since normal life was affected due to riots and curfew, the men working at the site were demobilised to avoid losses of men and materials. PGCIL has submitted that demobilisation due to riots and subsequent remobilisation of demobilised staff, construction material and machinery took more than 2 months. PGCIL has submitted that through its extra efforts, PGCIL could reduce the overall time over-run to 1 month and 18 days. PGCIL has submitted that the riots and the related violence and beating of the gang members and disruption in work which were placed on record vide affidavit dated 10.3.2016 in the main petition were not considered by the Commission in the impugned order dated 18.4.2016 which is an error apparent on the face of record and requires to be rectified in review.

5. PGCIL vide affidavit dated 22.12.2016 has placed on record certain additional documents as under:-



Srl. No.	Details of document	Subject of the document
1.	Letter dated 7.10.2014 from PGCIL to Executive Engineer, Jal Nigam, UP	Seeking estimate from Jal Nigam for shifting of tube well/submersible motor under the transmission line corridor and installation
2.	Letter dated 2.5.2015 from PGCIL to the Station Officer, Police Station, Daurala	RoW issue at Loc. No. 11/0 in Mataur village regarding manhandling of staff and workers by villagers leading to stoppage of work
3.	Letter dated 5.2.2015 from PGCIL to District Magistrate	Seeking the cooperation of DM, Shamli to resolve the issue of demand for higher compensation for smooth of work
4.	Letter dated 12.1.2015 from PGCIL to Dy. D.M., Sardhana, Meerut	To resolve the issues raised by certain land owners in Kheda and Bamauri, Meerut at Loc. No.17/3 and 15/0 respectively
5.	Letter dated 5.1.2015 from PGCIL to SDM, Sardhana, Meerut	Letter intimating the SDM, Sardhana, Meerut, about the obstruction caused by the farmers in installation of cable and transmission lines
6.	Letter dated 10.9.2013 from Gammon India Ltd. to PGCIL	Highlighting the unfavourable conditions for work in Budhana and Shamli due to riots resulting in stoppage of work
7.	Letter dated 24.10.2013 from Gammon India Ltd. to PGCIL	Enclosing the newspaper cuttings of riots in project areas
8.	Letter dated 25.10.2013 from Gammon India Ltd. to PGCIL	Regarding immobilization of gangs for foundation due to riots and curfew in UP. Recalling of workers of Gammon India and stoppage of work for two months. Requesting administrative support for deploying the gangs and loss of time due to RoW conditions.

6. PGCIL has submitted that the above documents were in the possession of the contractor and since the contract had expired at the time of filing the main petition, PGCIL could not file the documents despite due diligence. PGCIL has submitted that the documents filed now are in support of the contentions of PGCIL and will aid and assist the Commission in appreciating the facts and no prejudice will be caused to any party if the present application is allowed. PGCIL has submitted that the documents have been brought on record in interest of justice and if not considered, would cause irreparable loss and injury to PGCIL.

7. After going through the documents filed by PGCIL, the Commission in RoP dated 24.1.2017 observed that documents filed by PGCIL under the affidavit dated



22.12.2016 were written by PGCIL to various government authorities in Shamli and Meerut Districts but proof of service of these letters on the concerned addressees has not been filed. It was further pointed out that the letters from Gammon India have not been stamped "as received" in the office of PGCIL. PGCIL in its affidavit dated 9.2.2017 has clarified that since the original letter dated 25.10.2013 from Gammon India Ltd. is not in its possession, PGCIL is not relying on the said document. As regards the letter dated 10.9.2013, the same was received by e-mail and accordingly, has been filed alongwith copy of the covering mail.

Analysis and decision

8. PGCIL has filed the petition after 165 days of the issue of the impugned order and therefore, a delay of 120 days has taken place after the statutory period of 45 days allowed under the 1999 Business Regulations of the Commission for filing review petition. PGCIL has submitted that the delay in filing of the review petition is due to the time taken for obtaining approval from various levels of management, legal opinion obtained for filing the review petition and engagement of legal counsel. In our view, the PGCIL being a Central PSU and Navaratna company, it is expected to have a well-defined procedure for dealing with the orders after it is issued including the examination and inter-divisional consultation, seeking legal opinion and engagement of legal counsel. In fact, a period of 45 days has been prescribed in the 1999 Business Regulations after taking into account the time involved in meeting the procedural requirements by the aggrieved party before filing the review petition. Further, PGCIL has not substantiated with detailed chronology of events which resulted in delay of 120 days in filing the review petition. It is observed that PGCIL has not taken any steps to streamline its procedure for filing the review petitions in



spite of directions issued by the Commission to that effect in some of the earlier review petitions. However, we are allowing the application for condonation of delay as a last chance and direct PGCIL to streamline its procedure to ensure that the review applications are filed within 45 days of issue of the order.

9. Next we consider whether PGCIL has made out a case for review on the ground of error apparent on the face of record. PGCIL has contended that the Commission's finding regarding time over-run in the impugned order has not considered the incidence of riots and violence in Muzaffarnagar and Shamli Districts of Uttar Pradesh in 2013 on the staff, contractors and construction of the transmission assets and its consequent impact on the delay in commercial operation of the transmission assets. Since PGCIL in its affidavit dated 10.3.2016 in the main petition did not demonstrate as to how the riots and the related violence affected the execution of the work, the Commission in its order dated 18.4.2016 did not condone the time over-run of 1 month and 18 days. PGCIL has now brought on record certain documents to demonstrate that its works were affected by riots. The details of the documents are given in para 5 above. On perusal of the documents, it revealed that the documents at Sl. no. 1 to 5 were written by PGCIL to various administrative authorities in UP. Out of them, the document at Sl. No.1 pertains to shifting of tube well and documents at Sl. No. 2 to 5 pertain to RoW and compensation issues. Therefore, these documents do not relate to riots and violence. The documents at Sl. No. 6 to 8 were written by Gammon India Ltd. to PGCIL regarding unfavourable working conditions due to riots and immobilization and remobilization of gangs. After going through the documents, the Commission directed PGCIL to produce the proof of service of these letters on PGCIL. In response, PGCIL in its affidavit dated



9.2.2017 has referred to only two letters dated 10.9.2013 and 25.10.2013 (Sl. No. 6 and 8) written by Gammon India. PGCIL has submitted that since the original letter dated 25.10.2013 of Gammon India is not in possession, it is no more relying on the said document and has sought withdrawal of the same. The relevant portion of the letter dated 10.9.2013 written by Gammon India to PGCIL is extracted hereunder:-

“With reference to the above cited project, we have to deploy Foundation & Erection gangs in U.P. portion as per our commitment. It is to bring in your kind notice that the conditions of Shamli and Budhana are not favourable for work due to communal riots in Shamli. Yesterday some miscreants came to our store and misbehaved with the staff but fortunately they did not cause any harm. So we will mobilize gangs only after normalization of conditions in the area.”

10. PGCIL has not placed any document as to whether PGCIL or Gammon India took up the matter with local police authorizes for protection from violence and the results thereof. There is also no document to show when the demobilization started, the duration for which work remained suspended and when the remobilization started. Therefore, there is no sufficient evidence to establish that the work was suspended for two months on account of riots and violence. In our view, the averments made in affidavit dated 10.3.2016 are not supported by the evidences produced by PGCIL vide affidavit dated 22.12.2016. Therefore, the observations of the Commission in the impugned order that PGCIL failed to demonstrate as to how these events prevented execution of work do not suffer from any error. Accordingly, PGCIL has failed to make out any case for review of the impugned order.

11. It is pertinent to observe that PGCIL filed the main petition in the year 2015 wherein there was no mention that the work was affected due the theft or riot in UP even though these events as per the averment of PGCIL in the affidavit dated 10.3.2016 and in the review petitions took place in the year 2013. In fact PGCIL in the main petition had indicated the expected date of commercial operation of the



assets as 1.3.2015 which was prior to the scheduled date of commercial operation of 25.3.2015. In other words, PGCIL had indicated the expected date of commercial operation as 1.3.2015 after taking into account the various factors including riot and theft. The plea of theft and communal riots has been taken in the affidavit dated 10.3.2016 for the first time after the assets were put under commercial operation on 12.5.2016 with a time overrun of 1 month 18 days. In our view, linking the time overrun to the riots and theft in the affidavit dated 10.3.2016 and the review petition is an afterthought on the part of PGCIL.

12. In the light of the above discussion, we are of the considered view that no case has been made out by PGCIL for review of order dated 18.4.2016. Accordingly, the review petition is disposed of at the stage of admissibility.

sd/-

(Dr. M.K. Iyer)
Member

sd/-

(A.S. Bakshi)
Member

sd/-

(A.K. Singhal)
Member

