

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 7/RP/2018 in

Petition No.60/TT/2017

Coram:

**Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 20.06.2018

In the matter of:

Petition for review and modification of the order dated 30.11.2017 in Petition No. 60/TT/2017.

And in the matter of:

NRSS XXXI (B) Transmission Limited
Essel House, B-10, Lawrence Road,
New Delhi- 110035

....Review Petitioner

Vs

1. Power Grid Corporation of India Ltd.
"SAUDAMINI", Plot No-2, Sector-29,
Gurgaon -122 001 (Haryana).
2. Rajasthan Urja Vikas Nigam Limited
Vidut Bhawan, Janpath, Jyoti Nagar, Jaipur-147001
3. Punjab State Power Corporation Limited
Thermal Shed TIA
Near 22 Phatak, Patiala-147001
4. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6
Panchkula (Haryana) 134 109



5. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg
Lucknow - 226 001
6. TATA Power Delhi Distribution Limited
33 kV Sub-station Building, Hudson Lines,
Kingsway Camp, New Dlehi- 110009.
7. Jaipur Vidyut Vitran Nigam Limited
400 kV GSS Building
Ajmer Road, Heerapura, Jaipur
8. Ajmer Vidyut Vitran Nigam Limited
400 kV GSS Building
Ajmer Road, Heerapura, Jaipur
9. Jodhpur Vidyut Vitran Nigam Limited
400 kV GSS Building
Ajmer Road, Heerapura, Jaipur
10. Power Development Department
Government of Jammu & Kashmir
SLDC Building, 220 kV Grid Station Premises, Gladni
Narwal-Bala, Jammu-180006
11. Delhi Transco Ltd.
Shakti Sadan, Kotla Road,
New Delhi-110002
12. North Central Railway,
Head quarter's office, Subedarganj,
Allahabad- 211003
13. BSES Yamuna Power Ltd.
2nd floor, Shakti Kiran Building,
Karkardooma, New Delhi- 110092
14. BSES Rajdhani Power Ltd.
BSES Bhawan, Nehru Place,
New Delhi- 110019



15. New Delhi Municipal Council
Palika Kendra, Parliament Street,
New Delhi-110001.
16. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun.
17. Electricity Wing of Engineering Department,
Union Territory of Chandigarh
Electricity OP Circle, 5th Floor, New Deluxe Building, Sector-9,
Chandigarh- 160009
18. Himachal Pradesh State Electricity Board Limited
HPSEB Limited, Vidyut bhawan,
Shimla- 171004

....Respondents

- For petitioner** : Shri Prashanto Sen, Senior Advocate, NRSS XXXI (B)
Shri Upayan, Advocate, NRSS XXXI (B)
Shri Amal Nair, Advocate, NRSS XXXI (B)
Shri Neeraj Verma, NRSS XXXI (B)
- For respondents** : Ms. Suparna Srivastava, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri V.P. Rastogi, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Varun Shankar, Advocate, TPDDL
Shri Abhishek Upadhyay, Advocate, TPDDL

ORDER

This Review Petition has been filed by NRSS XXXI (B) Transmission Limited (NTL) seeking review of order dated 30.11.2017 in Petition No. 60/TT/2017, whereby the Commission had determined the transmission tariff for Asset-I: 02 Nos. 400 kV line bays at Amritsar 400/220 kV Sub-station and Asset-II: 04 Nos. 400 kV line bays at



Malerkotla GIS 400/220 kV Sub-station, which were owned by PGCIL, (hereinafter instant assets) under “Northern Region System Strengthening Scheme-XXXI (B)” in Northern Region for 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (referred as "2014 Tariff Regulations”)

Brief background

2. The two line bays at Amritsar and 4 line bays at Malerkotla are under the scope of PGCIL and the associated transmission lines were executed by NTL under TBCB route. The line bays at Amritsar sub-station are associated with the 400 kV Amritsar-Malerkotla TBCB line of NTL and the line bays at Malerkotla are associated with 400 kV D/C Kurukshetra-Malerkotla TBCB line of NTL. PGCIL submitted in the main petition that the bays under its scope were ready on 1.12.2016 and sought approval of COD of the instant assets as 1.12.2016 under Regulation 4(3) of the 2014 Tariff Regulations as the associated transmission under the scope of NTL were not ready on 1.12.2016. The ckt-I and ckt-II of the transmission lines associated with Asset-I were put into commercial operation on 31.3.2017 and 2.4.2017 respectively. The ckt-I and ckt-II of the transmission lines, under the scope of the Review Petitioner, associated with Asset-II were put into commercial operation on 3.4.2017 and 18.1.2017 respectively. As the bays at Amritsar and Malerkotla cannot be put into operation without the associated transmission lines under the scope of NTL, the COD of Asset-I was approved as 3.4.2017 and the COD of two line bays at Malerkotla was approved as 3.4.2017 and the remaining two bays as 18.1.2017 matching with the COD of the associated transmission



lines. NTL was made liable for the IDC and IEDC charges from 1.10.2016 to 3.4.2017 in case of Asset-I and the two line bays at Malerkotla GIS Sub-station and from 1.10.2016 to 18.1.2017 in case of the remaining two line bays at Malerkotla.

3. Aggrieved by the impugned order, the Review Petitioner has filed the instant review petition praying for an order striking off the Review Petitioner from the array of parties in the main petition till the finding in Petition No.195/MP/2017. The Review Petitioner has also requested to modify the impugned order by holding that the Review Petitioner is not liable to bear the IDC and IEDC charges for the delayed period.

4. The Review Petitioner has submitted that it is not the beneficiary of the instant assets and being an inter-State Transmission Service Provider, it should not have been impleaded as a respondent in the main petition. The Review Petitioner has submitted that the Commission failed to consider the various contentions raised in the main petition vide affidavits dated 5.5.2017, 10.7.2017 and 12.10.2017. The Review Petitioner has submitted that no cost (IDC and IEDC) should have been imposed on the Review Petitioner until the issue of detailed force majeure reasons explaining the time and cost over-run is decided in Petition No. 195/MP/2017, which is pending before the Commission. The Review Petitioner has submitted that despite the delay, which was beyond the control of the Review Petitioner, the Review Petitioner was successful in putting under commercial operation all the elements of project in tandem with the upstream 800 kV HVDC Champa-Kurukshetra bi-pole and there has been no constraint even for a single day. The Review Petitioner has further submitted that the COD of the



transmission line has been delayed due to unforeseen and uncontrollable events which were beyond the control of the Review Petitioner.

Grounds for review

5. The Review Petitioner has submitted that non-consideration of the contentions raised by the Review Petitioner is an established ground for review. The Review Petitioner submitted the following grounds for review of order dated 30.11.2017:-

(a) Improper impleading of Review Petitioner:-

The Review Petitioner has been improperly impleaded as a respondent in Petition No. 60/TT/2017 as it is not a beneficiary of the system being built by PGCIL and is only an inter-State transmission service provider and only beneficiaries are liable for payment of the transmission charges. He further submitted that the tariff determined in the impugned order is to be borne by the beneficiaries which do not include the Review Petitioner.

(b) Non readiness of upstream transmission system i.e. + 800 kV Champa-Kurukshetra HVDC”:-

As per clause 6.3 (A) 4 (V) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, an element shall be declared to have achieved COD only after all the elements which are pre-required to achieve COD as per the TSA are put under commercial operation. The Commission has failed to take into consideration that the source of power to flow on 400 kV D/C Kurukshetra-Malerkotla-Amritsar transmission line is from +800 kV Champa-



Kurukshetra HVDC link and purposeful power will flow only after commissioning of +800 kV Champa-Kurukshetra HVDC link. The Review Petitioner has successfully commissioned all the elements of project in tandem with the upstream system 800 kV Champa-Kurukshetra bi-pole and the liability of IDC and IEDC should not have been imposed on the Review Petitioner.

(c) Delay in grant of forest clearance:-

The Commission has failed to consider that during the execution of the project, the Review Petitioner encountered forest areas in various districts for 400 kV D/C Kurukshetra-Malerkotla transmission line as well as for 400 kV D/C Malerkotla-Amritsar transmission line, whereas RFP documents categorically specified that there is no forest in the route. Due to unforeseen delay in issuance of forest clearance the implementation of the transmission project fell beyond the schedule date of commissioning, the Review Petitioner was unable to start the transmission line construction work in respective forest stretches.

(d) Withholding of tree cutting permission in the State of Punjab due to National Green Tribunal order:-

The Hon'ble National Green Tribunal vide its order dated 19.5.2016 (Case No.:OA 161&162 of 2016) restrained the State of Punjab, any Project Proponent, various Authorities and Department of State of Punjab from felling and cutting of any tree in the entire State of Punjab without specific permission of the Tribunal, which caused undue delay for project completion beyond the scheduled COD.



(e) Force Majeure events:-

The Commission failed to consider several force majeure events which affected and hampered the project progress drastically. The same are briefed as under:-

- i. Conflict between Sikh community on management of Gurudwara;
- ii. Conflict and communal tension in Malerkotla;
- iii. Several agitation by the farmers in the State of Punjab for claiming compensation for their crops;
- iv. Agitation by the locals throughout the Punjab against dishonoring of Shri Guru Granth Sahib;
- v. Several agitation and riot like situation in the whole of the State of Haryana on account of reservation issues;
- vi. Several incidences of violence, blockade and agitation in Malerkotla following the alleged desecration of Quran;
- vii. Adverse climatic conditions in Punjab and Haryana;
- viii. Several cold wave and dense foggy conditions from 15.12.2014 to 15.3.2015, the project execution work was severally affected; and
- ix. Unexpected rainfall from 6.3.2016 to 13.3.2016 also hampered site progress drastically.

6. The Review Petitioner has further submitted that Petition No. 195/MP/2017 has been filled making detailed averments with respect to delay qua commissioning of the transmission assets being developed by the Review Petitioner. The time and cost over-



run in completion of the transmission system is on account of occurrence of force majeure events which is beyond the control of the Review Petitioner. The Commission has overlooked such uncontrollable reasons attributable to delay in completion of project as envisaged under Petition No. 195/MP/2017.

7. UPPCL, Respondent No. 5, filed its reply vide affidavit dated 28.2.2018 wherein UPPCL has agreed with the Review Petitioner for clubbing the instant review petition with Petition No. 195/MP/2017. UPPCL has further submitted that its reply in Petition No. 195/MP/2017 should also be taken into consideration while determining the issue of time over-run.

8. During the hearing on 18.5.2018, learned senior counsel for the Review Petitioner submitted that the instant Review Petition should be heard along with Petition No. 195/MP/2017, wherein reasons for time over-run in completion of the project have been stated. Learned senior counsel submitted that IDC and IEDC should not have been imposed on the Review Petitioner without adjudicating and giving any finding on the reasons for the time over-run. He further submitted that time over-run in completion of the transmission system is on account of occurrence of force majeure events which were beyond the control of the Review Petitioner.

Analysis and Decision

9. We have considered the submissions of the review petitioner and UPPCL and have perused the material on record. The Review Petitioner has contended that it is not a beneficiary of the instant assets and it should not have been impleaded as a



respondent to the proceedings in Petition No. 60/TT/2017. Even though the Review Petitioner is not a beneficiary of the assets covered in the impugned order, it is the developer of the 400 kV Amritsar-Malerkotla TBCB line and 400 kV D/C Kurukshetra-Malerkotla line under TBCB route which are associated with the assets covered in the impugned order. The assets covered in the impugned order cannot be put into use without the COD of the transmission lines under the scope of the Review Petitioner. PGCIL completed the bays at Amritsar and Malerkotla but was not able to declare the COD of these assets as the transmission lines under the scope of the Review Petitioner were not ready. Accordingly, PGCIL sought approval of the CoD under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. As CoD of the bays under the scope of PGCIL cannot be approved without the COD of the transmission lines under the scope of the Review Petitioner, PGCIL impleaded the Review Petitioner as a respondent in Petition No.60/TT/2017. We do not find any error in impleading the Review Petitioner as a respondent in Petition 60/TT/2017 as the Review Petitioner was a necessary party for deciding the CoD of the bays.

10. The Review Petitioner has contended that it is not liable to bear the IDC and IEDC charges. The Commission in order dated 19.9.2017 in Petition No.233/TT/2016 observed that the bays under the scope of PGCIL were not put into use because the downstream assets under the scope of BSPTCL were not ready and hence held that the IDC and IEDC for the two bays will be borne by BSPTCL from the deemed COD to the date when they were actually put into use. We are of the consistent view that if the assets of a transmission service provider are not put to use due to delay in COD of the



upstream or downstream assets, the IDC and IEDC for the period of delay has to be borne by the party executing the upstream or downstream assets. In the instant case PGCIL was not able to declare the COD of the bays at Amritsar and Malerkotla as the transmission lines under the scope of the Review Petitioner were not ready and hence the Review Petitioner was made liable for the IDC and IEDC for the period of delay. This decision of the Commission is in line with the decisions in other similar cases. Since the Review Petitioner is responsible for the delay in the COD of the bays under the scope of PGCIL on account of the delay in COD of the transmission lines under the scope of the Review Petitioner, the Review Petitioner has the liability to bear the IDC and IEDC from the date when the bays of PGCIL were ready till the bays were put into commercial operation matching with the commercial operation of the transmission lines of the Review Petitioner. We do not find any error in the impugned order on this ground.

11. The Review Petitioner has contended that the source of power to 400 kV D/C Kurukshetra-Malerkotla-Amritsar transmission line is from +800 kV Champa-Kurukshetra HVDC link and the Review Petitioner has successfully commissioned all the elements of project in tandem with the upstream system of 800 kV Champa-Kurukshetra bi-pole. The Review Petitioner has submitted that the delay in COD of the transmission lines by the Review Petitioner did not affect the power flow and hence the liability of IDC and IEDC should not have been imposed on the Review Petitioner. We have considered the submissions of the Review Petitioner. The issue in the instant case is that PGCIL was ready with the bays at Amritsar and Malerkotla on 1.10.2016 but they could not be put into use as the associated transmission lines under the scope of



Review Petitioner were not ready as on 1.10.2016 and hence it was held in the impugned order that the Review Petitioner would bear the IDC and IEDC charges from 1.10.2016 till the transmission lines under the scope of the Review Petitioner were put into commercial operation.

12. The Review Petitioner has also contended that delay in COD of the transmission lines of the Review Petitioner was on account of various force majeure events such as delay in forest clearance, order of NGT and other events beyond the control of the Review Petitioner. Since the Review Petitioner has filed Petition No. 195/MP/2017 for condonation of the time over-run, the Review Petitioner has submitted that Petition No.60/TT/2017 should have been heard alongwith Petition No.195/MP/2017. In our view, the scope of Petition No.195/MP/2017 seeking extension of SCOD on account of force majeure events and IDC for the period of time over-run is completely different from the scope of Petition No. 60/TT/2017 filed by PGCIL seeking determination of tariff of the bays. Therefore, there was no justification for linking the Petition No.60/TT/2017 with Petition No.195/MP/2017. Therefore, we do not find any error for not considering both the petitions together while passing the impugned order.

13. In view of the above discussion, the instant review petition is devoid of any merit and therefore it is rejected at the admission stage.

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

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(P. K. Pujari)
Chairperson

