

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 6/RP/2019 in Petition No. 278/TT/2015

Subject : Review Petition No. 6/RP/2019 seeking review of order dated 20.9.2017 in Petition No. 278/TT/2015.

Date of Hearing : 6.11.2019

Coram : Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member

Petitioner : Odisha Power Transmission Corporation Limited

Respondents : Powergrid Corporation of India Limited & Ors.

Parties present: Shri Raj Kumar Mehta, Advocate, OPTCL
Ms. Himanshi Andley, Advocate, OPTCL
Shri Aryaman Saxena, Advocate, PGCIL
Shri Karan Arora, Advocate, PGCIL
Shri Arijit Maitra, Advocate, GRIDCO
Shri R.B. Sharma, Advocate, BSP(H)CL
Ms. Sanya Sud, Advocate BSP (H)CL
Shri S.K. Maharana, Advocate, GRIDCO

Record of Proceedings

Learned counsel for the Review Petitioner, OPTCL, submitted that an Appeal was filed before the Appellate Tribunal for Electricity against the Commission's order dated 20.9.2017 in Petition No.278/TT/2015 and the same was disposed by the Tribunal with liberty to the Review Petitioner to approach the Commission. Accordingly, the instant Review Petition is filed against the observations of the Commission in paragraphs 74 and 76 of the impugned order. He submitted that the observation of the Commission in the impugned order that the transmission charges of Assets 2 and 6a from the date of COD till the COD of downstream network will be borne by OPTCL is erroneous for the reason that the Commission failed to take into consideration the reply filed by OPTCL in the original petition. Referring to the aforesaid order of Tribunal and citing the judgments in the matter of Indian Charge Chrome Limited and Anr. Vs. Union of India and Ors., reported in (2005) 4 SCC 67 and BCCI and Anr Vs. Netaji Cricket Club and Ors reported in (2005) 4 SCC 741, he submitted that the Commission can consider the present Review Petition regarding the time over-run in case of Assets 2 and 6a.



2. Referring to the stand of PGCIL, regarding the time over-run in case of Asset-2, that OPTCL did not have 400 kV supply at Duburi Sub-station due to which PGCIL could not connect their system to OPTCL's system, he submitted that 400/200 kV Duburi Sub-station of OPTCL was complete in all respects including all 400 kV bays and two ICTs since 2005, but charged at 220 kV from 220/132 kV Old Duburi Sub-station on 28.5.2005 due to non-completion of 400 kV Meramundali-Duburi incoming line. He further submitted that PGCIL constructed the said 400 kV line on behalf of OPTCL on 11.9.2015/19.10.2015 with a delay of 9.5 years. After completion of work of Asset-2, PGCIL informed OPTCL on 12.8.2015 regarding readiness for charging the LILO line and bays and the assets were charged on 19.8.2015. OPTCL after completing pre-commissioning activities applied to ERLDC on 24.8.2015 for execution of ICTs and on receipt of permission from ERLDC on 29.8.2015, actual power flow occurred on 29.8.2015 with procedural delay of only 10 days which is liable to be condoned.

3. As regards the PGCIL's contention regarding Asset 6a, that downstream assets of OPTCL were not ready that prevented it from offering service, he submitted that by June, 2015, the downstream 220 kV lines Puri-Pandiabili and Atri-Pandiabili were ready but PGCIL's Sub-station at Pandiabili and its 400 kV line were in early stage of construction. He further submitted that there was delay in commissioning of Pandiabili Sub-station by PGCIL, the 220 kV lines of OPTCL were connected to OPTCL's 400 kV Mendasal Sub-station on 14.7.2015. He submitted that on 31.7.2016, 400 kV Sub-station of PGCIL at Pandiabili was energized and is connected to OPTCL's Mendasal Sub-station by LILO arrangement. Therefore, the stand of PGCIL that they were prevented from providing service through Duburi-Pandiabili-Mendasal line is incorrect as power flow started through Mendhasal Sub-station via Pandiabili Sub-station.

4. Learned counsel for the Review Petitioner submitted that in the light of submissions and the supporting documentary evidence filed in the instant Review Petition, the direction that the transmission charges in case of Asset-2 and Asset 6a from the COD till the commissioning of downstream network will be borne by OPTCL, is required to be modified.

5. Learned counsel appearing for GRIDCO espoused the case of Review Petitioner on all counts including the documents filed in the Review Petition for the first time. He also referred to the judgments in the case of Mafatlal Engineering Industries Limited Vs. Mafatlal Engineering Industries Employees Union and Anr. reported in Review Petition Nos. 999 with 2520 of 1991 in WP No. 1476 of 1989 dated 17.7.1991 of Hon'ble High Court and Grindlays Bank Ltd. Vs. The Central Government Industrial Tribunal reported in AIR 1981 SC 606 in support of maintainability of the present Review Petition.

6. Learned counsel for PGCIL submitted that the Review Petitioner's plea for condonation of time over-run of 10 days in case of Asset-2 owing to delay in approval of ERLDC is not supported by any documents. As regards the time over-run in case of Asset 6a, he submitted that minutes of 116th OCC meeting held in December, 2015,



122nd OCC meeting dated 15.3.2016 and 123rd meeting of OCC dated 11.8.2016 and 124th meeting of OCC dated 7.9.2016 reflect the that it was OPTCL which was not ready with the downstream network. He further submitted that OPTCL has filed certain new documents at the stage of review and the same may not be considered. He submitted that PGCIL filed all the documents in the main petition qua the assets in question. He submitted that there is no error apparent on the face of record which requires review of the order dated 20.9.2017.

7. Learned counsel for BSPHCL submitted that grant of transmission charges under proviso (ii) to Regulations 4(3) of 2014 Tariff Regulations is in conflict with other provisions of 2014 Tariff Regulations. He further submitted that grant of COD in terms of proviso (ii) to Regulation 4(3) of 2014 Tariff Regulations is statutory in nature meant for penalizing the defaulter and to grant relief to the transmission licensee to some extent and that it cannot be equated with actual COD as it offends Regulation 9 (6) (a) and Regulation 5(2) of 2014 Tariff Regulations. He further submitted that in the facts and circumstances of the present case grant of IDC and IEDC for the statutory COD would meet ends of justice. He submitted that depreciation cannot be allowed in case of statutory COD in terms of Regulation 27 of 2014 Tariff Regulations.

8. In response, learned counsel for PGCIL submitted that Regulation 27 of 2014 Tariff Regulations itself provides that in case of tariff of all the units of a generating station or all elements of a transmission system including communication system for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station or the transmission system taking into consideration the depreciation of individual units or elements thereof.

9. After hearing the parties, the Commission reserved order in the matter.

By order of the Commission

Sd/-
(V. Sreenivas)
Dy. Chief (Law)

