

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 28/RP/2018
in Petition No. 183/TT/2016
alongwith I.A. No. 61/2018 and IA No. 62/2018**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order : 19.03.2019

In the matter of:

Review petition under Section 94(1)(f) 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 14.11.2017 in Petition No. 183/TT/2016.

And in the matter of:

DANS Energy Private Limited
5th Floor, DLF Building No. 8, Tower C,
DLF Cyber City Phase – II
Gurgaon, Haryana – 122 022

.... Review Petitioner

Vs

1. Power Grid Corporation of India Ltd,
SAUDAMINI, Plot No. 2, Sector-29,
Gurgaon - 122001 (Haryana)
2. Gati Infrastructure Chuzachen Limited
1-7-293, MG Road, 268, Udyog Vihar,
Phase-IV, Secunderabad, Andhra Pradesh-500 003
3. Gati Infrastructure Bhasmay Power Limited
1-7-293, MG Road, 268, Udyog Vihar,
Phase-IV, Secunderabad, Andhra Pradesh-500 003
4. PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place, New Delhi
5. Lanco Energy Private Limited
Plot No. 397, 2nd Floor, Udyog Vihar,
Phase-III, Gurgaon, Haryana-120 016



6. Jal Power Corporation Limited
405-406, Raja House, 30-31, Nehru Place,
New Delhi-110 019
7. Madhya Bharat Power Corporation Limited
NH-31-A, Golitar, Singtam,
Gangtok-737 134, Sikkim
8. Bihar State Power (Holding) Company Limited
(Formerly Bihar State Electricity Board-BSEB)
Vidyut Bhawan, Bailey Road,
Patna-800 001
9. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan, Bidhan Nagar, Block DJ,
Sector-II, Salt Lake City, Kolkata-700 091
10. Grid Corporation of Orissa Limited,
Shahid Nagar, Bhubaneswar-751 007
11. Damodar Valley Corporation,
DVC Tower, Maniktala Civil Centre, VIP Road,
Kolkata-700 054
12. Power Department,
Govt. of Sikkim, Gangtok-737 101
13. Jharkhand State Electricity Board,
In Front of Main Secretariat, Doranda,
Ranchi-834 002

...Respondents

For review petitioner : Shri M. G. Ramachandran, Advocate, DEPL
Ms. Swapna Seshadri, Advocate, DEPL
Ms. Neha Garg, Advocate, DEPL

For respondents : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Shri K. K. Jain, PGCIL
Ms. Jyoti Prasad, PGCIL
Shri V. Srinivas, PGCIL
Shri Ashok Pal, PGCIL
Ms. Anita A. Srivastava, PGCIL

ORDER

This is a review petition filed by DANS Energy Private Limited (hereinafter referred to as "DEPL" or Review Petitioner) against the Commission's order dated



14.11.2017 in Petition No. 183/TT/2016 wherein the transmission tariff for **Asset-I:** 220 kV D/C Rangpo-New Melli Line and associated bays at Rangpo and New Melli alongwith one no. 220 kV Bus Coupler Bay each at Rangpo and New Melli, **Asset-II:** 1 no. 31.5 MVAR Bus Reactor (1st) at New Melli and associated bay and **Asset-III:** 1 no. 31.5 MVAR Bus Reactor (2nd) at New Melli and associated bay was granted for the 2014-19 period as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "2014 Tariff Regulations")

2. The Review Petitioner has filed IA No.61/IA/2018 seeking condonation of 128 days of delay in filing the review petition. Review Petitioner has stated that it was not served with the copy of the petition or the pleadings and it was not aware of the proceedings before the Commission. The Review Petitioner came to know of the impugned order only when PGCIL raised a bill for transmission charges on 9.4.2018.

3. The Review Petitioner has also filed IA No.62/IA/2018 for interim order staying the operation of the impugned order and the bill dated 9.4.2018 raised by PGCIL. The Commission vide RoPs dated 16.10.2018 and 18.12.2018 had directed PGCIL not to take any coercive action till the next date of hearing.

Background

4. The Review Petitioner has claimed that the date of commercial operation (COD) of Asset-I was 21.5.2015 in a tariff petition filed by Respondent No. 1 i.e. PGCIL. The Review Petitioner has also stated that the COD of the Asset-I was not granted under the second proviso of Regulation 4(3) of the 2014 Tariff Regulations as the Asset-I of PGCIL was ready on 21.5.2015 but was prevented from putting the Asset-I into use as the Jorethang generating station of the



Review Petitioner was not ready. The Review Petitioner has stated that in support of its claim, PGCIL had also submitted the RLDC certificate dated 10.11.2015 certifying the completion of trial operation of Asset-I on 20.5.2015. But the Commission did not approve the COD of Asset-I as 21.5.2015 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. However, taking into consideration the RLDC certificate, the Commission held that the IDC and IEDC of Asset-I from 21.5.2015 to 21.9.2015, i.e. upto commissioning of the generating station of the Review Petitioner, will be borne by the Review Petitioner and another project i.e. Rangit-IV in the ratio of LTAs and the IDC and IEDC for the said period shall be excluded from the capital cost. The relevant portion of the order dated 14.11.2017 is extracted hereunder:-

“16. We have considered the submissions of the petitioner. The petitioner has prayed for approval of COD of Asset-I as on 21.5.2015 under the second proviso of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner, vide RLDC certificate dated 10.11.2015, has submitted certificate of completion of trial operation of transmission element on 20.5.2015. The Jorethang generating station was commissioned in the month of September, 2015 and the associated dedicated line was commissioned in November, 2016. Jorethang (Dans Energy Limited) has requested the petitioner that the completed part section of dedicated line (from tower location 14) may be connected to the petitioners' line (Tower location No 87) as an interim arrangement to evacuate its power from September, 2015. The interim arrangement has been approved in 17th SCM of ER held on 25.5.2015 at NRPC, New Delhi. This interim arrangement was commissioned in September, 2015 (SLD is given in Annexure-I and I (A)]. Hence, the 220 kV D/C Rangpo-New Melli line was put to use in September, 2015 on COD of Jorethang generating station and commissioning of interim arrangement as against the claimed COD on 21.5.2015. The other generating station Rangit-IV and its dedicated line are yet to be commissioned. It is noticed that although RLDC certificate of trial operation is available but the line cannot be considered as put to regular service as specified under the 2014 Tariff Regulations. Hence, we are not inclined to grant COD of Asset-I under the second proviso of Regulation 4(3) of the 2014 Tariff Regulations. There are instances of early commissioning of lines for startup power on request but the petitioner has not made any such plea in the instant case and there is no record to prove that the line was in operation prior to 22.9.2015. Therefore, we are not inclined to allow COD of Asset-I as 21.5.2015. The COD of the 220 kV D/C Rangpo-New Melli Line and associated bays at Rangpo and New Melli alongwith one no. 220 kV Bus Coupler Bay each at Rangpo and New Melli shall be reckoned as 22.9.2015 matching with COD of Jorethang generating station. However, the IDC and IEDC in respect of Asset-I from 21.5.2015 to 21.9.2015 shall be borne by the



developers of both the generating companies in the ratio of their LTAs and the IDC and IEDC for the said period shall be excluded from capital cost.

5. The Commission approved the COD of Assets-II and III as 31.1.2016 and 21.3.2016 respectively. The Commission further held that the transmission charges of Assets-I, II and III will be borne by the Review Petitioner and Rangit-IV from their respective CODs till the operationalisation of the LTA in the ratio of the LTA granted to them. The relevant portion of the order dated 14.11.2017 is extracted hereunder:-

“84. We have considered the submissions of the petitioner. As per the BPTA, the assets covered in the instant petition are constructed for evacuation of power from the two generating companies i.e. Jorethang and Rangit-IV. It is observed that LTA in case of the generators has not been operationalised. As such, the transmission charges shall be shared by the generating companies (i.e. Jorethang and Rangit-IV) in the ratio of the LTA granted. After operationalisation of the LTA granted to these generators, the transmission charges allowed in this order shall be included in PoC charges as shall be shared as provided under Regulation 43 of the 2014 Tariff Regulations and recovered as provided in the 2010 Sharing Regulations. Further, in case of part operationalisation of LTA, the corresponding charges shall be included in PoC.”

6. The Review Petitioner has filed the instant Review Petition against the said two directions in order dated 14.11.2017. As regards the first issue of imposition of IDC and IEDC charges from 21.5.2015 to 29.1.2015 on Review Petitioner and Rangit-IV, the Review Petitioner has submitted that Commission has not approved the COD of the 220 kV D/C Rango-New Melli Line and associated elements as 21.5.2015, claimed by PGCIL. Hence, IDC and IEDC from 21.5.2015 to 21.9.2015 cannot be imposed on the Review Petitioner.

7. As regards the second issue of imposition of transmission charges from 21.9.2015 to operationalisation of LTA, Review Petitioner has submitted that Review Petitioner was ready on 21.9.2015 and PGCIL was not ready with the envisaged transmission system and hence it is not liable to pay the transmission charges. Review Petitioner has achieved the COD of Unit I and II on 25.9.2015 and 30.9.2015



respectively and it is evacuating power through short term. As per the Regulations 8(5) and (6) of the 2010 Sharing Regulations, a generating station has to bear the transmission charges only when its generation is delayed. In the instant case, LTA is not operationalised for no fault of the generating company and hence the Review Petitioner is not liable to bear the transmission charges.

8. During the hearing on 7.3.2019, learned counsel for PGCIL submitted that the instant Review Petition is filed seeking review of the Commission's directions regarding sharing of transmission charges wherein it was held that the instant assets were constructed for evacuation of power from Jorethang and Rangit-IV and hence the transmission charges would be borne by the said two generators in the ratio of the LTA granted. Learned counsel submitted that one more generator from Phase-II of the transmission system, i.e. Shiga Energy Pvt. Ltd. has commissioned its generating station and is also using the transmission system and hence the transmission charges will have to be borne by Shiga Energy Pvt. Ltd. In view of the above, the liability of sharing of transmission charges would change and accordingly the impugned order may have to be revised. It is observed that Shiga Energy Pvt. Ltd. has not been impleaded as a respondent in the present Review Petition. Shiga Energy Pvt. Ltd. is a necessary party to the present proceedings and so should be impleaded as a respondent in the matter.

9. Learned counsel also submitted that to avoid multiplicity of proceedings, the present Review Petition may be disposed of and the main petition may be reopened and PGCIL may be given the liberty to amend the main petition by impleading Shiga Energy Pvt. Ltd.



10. Learned counsel for the Review Petitioner has submitted that the Review Petitioner is evacuating through short term open access and it is liable to bear the transmission charges only for STOA. The Commission through the impugned order directed the Review Petitioner to bear the transmission charges till the operationalisation of the LTA. However, it is not liable to pay the same as the LTA is not operationalised by PGCIL. Learned counsel for the Review Petitioner further submitted that there are other generators for whom the instant transmission system was envisaged and, therefore, they should also share the transmission charges. Learned counsel for PGCIL submitted that as Shiga Energy Pvt. Ltd. is also using the transmission system, it should be made a party before the issue of sharing of transmission charges is decided.

Analysis and decision

11. The Review Petitioner has filed I.A No.61/IA/2018 seeking condonation of delay in filing the present Review Petition. Taking into consideration the complexities of the issues involved, we condone the delay in filing the instant Review Petition and admit the same.

12. We have considered the submissions of the Review Petitioner and PGCIL. The instant Review Petition has been filed for review of the Commission's order dated 14.11.2017 wherein it was held that the IDC and IEDC of Asset-I, i.e. 220 kV D/C Rangpo-New Melli Line and associated bays at Rangpo and New Melli alongwith one no. 220 kV Bus Coupler Bay each at Rangpo and New Melli from 21.5.2015 to 21.9.2015 would be borne by the Review Petitioner and Rangit-IV (JAL Power Limited) in the ratio of LTA allotted to them and thereafter transmission charges shall be borne by them in the said ratio. PGCIL has submitted that one more generator,



Shiga Energy Pvt. Ltd. has commissioned its generating station and its power is pooled at New Melli Sub-station through the transmission system of Government of Sikkim for onward transmission to the ISTS. Accordingly, the IDC and IEDC charges pertaining to Asset-I for the period 21.5.2015 to 21.9.2015 may have to be shared by Shiga Energy Pvt. Ltd. as well besides Jorethang and Rangit IV. This aspect was not brought to the notice of the Commission in Petition No.183/TT/2016 as PGCIL in its affidavit dated 25.4.2017 in the Main Petition had submitted that Asset-I was envisaged for Jorethang and Rangit IV. It is observed that Asset-I was constructed for DANS Energy Pvt. Ltd., JAL Power Corp. Ltd., Shiga Energy Pvt. Ltd. and Rangit II. Therefore, the issue of sharing of the charges needs to be decided after hearing all the necessary parties. The Review Petitioner has also raised the issue of sharing of transmission charges for Asset-I, II and III up to operationalisation of LTA. Accordingly, we allow the review to the limited extent of reconsideration of the sharing of transmission charges for the three assets and set down the main petition for hearing on the aspect of sharing. PGCIL is directed to file an amended “Memo of Parties” in Petition No.183/TT/2016 making Shiga Energy Pvt. Ltd. and Rangit II and any other generator for whom the instant transmission assets are envisaged and serve a copy of the petition on them within 15 days of issue of this order.

13. The Review Petitioner has also filed I.A. No.62/IA/2018 for “Stay” of the operation of impugned order and the bill dated 9.4.2018 raised by PGCIL. PGCIL has operationalised the LTA on 13.2.2019. Since we have decided to look afresh the sharing of the IDC and IEDC and transmission charges till the date of operationalisation of the LTA, we direct PGCIL not to take any coercive measures to recover the charges for the period prior to operationalisation of the LTA till further orders. I.A. No.62/IA/2018 is accordingly disposed of.



14. PGCIL is directed to submit the details of the Teesta III to Rangpo (GIS) transmission line and Rangpo (GIS) to Kishanganj transmission line, including their mode of execution (whether under TBCB or cost plus), the details of the generators for whom the said lines are constructed, the LTA granted to the generators, whether all the generators for whom the said lines were constructed have commissioned their generating stations and their associated transmission lines, if any.

15. In terms of the above, the instant Review Petition No.28/RP/2018 and IA Nos. 61/IA/2018 and 62/IA/2018 stand disposed of. Petition No.183/TT/2016 is to be listed in April, 2019.

sd/-

(Dr. M.K. Iyer)
Member

sd/-

(P.K. Pujari)
Chairperson

