

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 5/RP/2019

in

Petition No. 214/TT/2017

Coram:

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

Date of Order: 26.12.2019

In the matter of:

Petition for review and modification of the order dated 9.10.2018 in Petition No. 214/TT/2017.

And in the matter of:

Powergrid Corporation of India Limited,
Saudamani, Plot No 2. Sector 29,
Gurgaon 122001,
Haryana.

... Review Petitioner

Vs

1. North-Eastern Electric Power Corporation Limited,
(NEEPCO Limited),
15, NBCC Tower, Bhikaji Cama Place,
New Delhi.
2. National Hydro Power Corporation Limited,
NHPC Office Complex, Lodhi Road,
New Delhi.
3. Assam State Electricity Board,
Bijulee Bhawan, Paltan Bazar,
Guwahati-781 001, Assam.
4. Meghalaya Energy Corporation Limited,
(Formerly Meghalaya State Electricity Board),



Short Round Road,
Shillong-793.

5. Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh-403 001.
6. Power & Electricity Department,
Government of Mizoram,
Mizoram, Aizwal.
7. Electricity Department,
Government of Manipur,
Keishampat, Imphal.
8. Department of Power,
Government of Nagaland,
Kohima, Nagaland.
9. Tripura State Electricity Corporation Limited,
Bidyut Bhawan, North Banamalipur,
Agartala, Tripura-700 001.
10. DONER Advisor (Power),
Government of India,
North Eastern Council Secretariat,
Shillong, Meghalaya.

....Respondents

For Review Petitioner: Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Ritu Apurva, Advocate, PGCIL
Shri Ashwin Ramnathan, Advocate, PGCIL
Shri S. K. Venkatesan, PGCIL
Shri S. S. Raju, PGCIL
Shri Zafrul Hasan, PGCIL

For Respondents: None

ORDER

This is a Review Petition filed by Power Grid Corporation of India Ltd. (PGCIL) against the Commission's order dated 9.10.2018 in Petition No. 214/TT/2017.



Background

2. The Commission in order dated 9.10.2018 in Petition No. 214/TT/2017 trued-up the fees and charges for 2009-14 tariff block and determined fees and charges for the period 2014-19 tariff block for Fibre Optic Communication System in lieu of existing Unified Load Despatch and Communication (ULDC) Microwave Links in North Eastern Region. In order dated 9.10.2018, the Commission observed that Asset-I: OPGW links under Central Sector (37.874 km) and Asset-II: OPGW links under State Sector (79.298 km) both were put into commercial operation on 1.4.2013. The additional capital expenditure for Assets-I and II after their cut-off date i.e. 31.3.2015 was disallowed in the impugned order on the ground that there is no specific provision in the 2014 Tariff Regulations relating to ULDC and Communication System. The Commission further held that the fee and charges of the instant assets shall be shared by the users as per Regulation 26 of the Central Electricity Regulatory Commission (Fees and charges of Regional Load Despatch Centre and other related matters) Regulations, 2015. PGCIL has filed the instant Review Petition being aggrieved with the above two findings of the Commission in order dated 9.10.2018 in Petition No.214/TT/2017.

3. PGCIL also filed Interlocutory Application No. 34/IA/2019 seeking condonation of delay of 67 days in filing the Review Petition. The delay of 67 days in filing the Review Petition was condoned and the IA was disposed vide order dated 9.5.2019.

4. PGCIL has made the following prayers:-

“a) Admit the Review Petition,



- b) Allow the present Review Petition on the aspects limited to existence of additional capital expenditure beyond cut-off date in both the Tariff Regulations, 2009 and the Tariff Regulations, 2014,
- c) Clarify that for period 2014-19, the transmission charges will be recovered under the POC regime, and
- d) Pass such further order(s) or direction(s) as the Commission may deem fit and proper in the facts and circumstances of the case.”

Submissions of PGCIL

5. The Review Petitioner has made the following submissions in support of the instant Review Petition.

- a) The details of the said additional capitalization were submitted in the main petition by way of Auditor's Certificate dated 20.7.2017 containing audited statement of accounts for the period ending 31.3.2017, for expenditure incurred up to 31.3.2017 and expenditure projected to be incurred up to 31.3.2019. The additional capital expenditure incurred after the cut-off date amounting to ₹80.94 lakh and ₹91.78 lakh for Central and State Portions during the 2014-19 tariff period was disallowed in order dated 9.10.2018 as there are no specific regulations in respect of the communication systems. However, in terms of Regulation 9(2)(v) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “2009 Tariff Regulations”), any expenditure after the cut-off date that has become necessary for the successful and efficient operation can be capitalized. Similarly, Regulation 14(3)(v) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”) confers power on the Commission to allow additional capital expenditure after the cut-off date. Thus, the finding in Para 39 of the impugned order is an error apparent on the face of the



record, as it disallows additional capital expenditure after the cut-off date disregarding the said regulations.

b) The finding that the fees and charges for the instant assets would be shared by the users as per Regulation 26 of the Central Electricity Regulatory Commission (Fees and charges of Regional Load Despatch Centre and other related matters) Regulations, 2015 is not correct. The fees and charges allowed for the communication network for the 2014-19 tariff period has to be shared under the PoC regime as provided under Regulation 43 of the 2014 Tariff Regulations. Accordingly, clarify that the billing, collection and disbursement of transmission charges shall be governed by provisions of Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as “2010 Sharing Regulations”).

6. The Review Petition was admitted on 9.5.2019 and notices were issued to the Respondents. None of the Respondents have appeared or filed any reply in the matter. During the hearing on 3.12.2019, learned counsel for the Review Petitioner while reiterating the submissions made in the Review Petition submitted that the additional capitalization after the cut-off date in the instant case ought to have been allowed under the said provisions.

Analysis and Decision

7. We have considered the submissions of the Review Petitioner and the material available on record. In order dated 9.10.2018, additional capitalization beyond the cut-off date was not allowed as there were no specific regulations with respect to the ULDC



and Communication System allowing additional capitalization beyond the cut-off date. The Review Petitioner has contended that the decision to disallow the additional capitalization on the ground that there are no specific provisions in respect of the Communication System in the regulations is an error apparent on the face of record as there are detailed provisions dealing with the additional capitalization after cut-off in 2009 Tariff Regulations and the 2014 Tariff Regulations. It is observed that PGCIL has incurred the additional capital expenditure after the cut-off date of the instant assets. Disallowance of the same would deprive PGCIL of its legitimate rights and cause financial loss to PGCIL. Therefore, on reconsideration, we are of the view that additional capitalisation incurred and projected to be incurred during 2016-17 to 2018-19 is required to be allowed. Accordingly, additional capitalization of ₹80.94 lakh and ₹91.78 lakh for Central and State Portions respectively during 2016-17, 2017-18 and 2018-19 period are allowed and order dated 9.10.2018 is modified to that extent.

8. PGCIL has submitted that the Commission's finding regarding the sharing of the fees and charges in para 54 of the order dated 9.10.2018 for the 2009-14 period is in order whereas the fees and charges allowed for the instant transmission assets for the 2014-19 tariff period should be recovered under the 2010 Sharing Regulations as provided under Regulation 43 of the 2014 Tariff Regulations. As regards sharing of charges of the communication system, Regulation 43(2) of the 2014 Tariff Regulations provides as follows.

“(1) xxx

(2) The charges determined in this regulation in relation to communication system forming part of transmission system shall be shared by the beneficiaries or long term transmission customers in accordance with the Sharing Regulations:



Provided that charges determined in this regulation in relation to communication system other than central transmission system shall be shared by the beneficiaries in proportion to the capital cost belonging to respective beneficiaries. “

9. We are of the view that the fees and charges allowed for the instant assets for the 2014-19 tariff period should be recovered as provided in Regulation 43(2) of the 2014 Tariff Regulations and governed under the 2010 Sharing Regulations. However, this aspect was not recorded in our order dated 9.10.2018 inadvertently, which is an error. Accordingly, it is clarified that the fees and charges allowed for the instant assets for the 2014-19 tariff period shall be recovered under the 2010 Sharing Regulations as provided in Regulation 43(2) of the 2014 Tariff Regulations.
10. Accordingly, the order dated 9.10.2018 is modified to the extent indicated at para 7 and 9 above. All other terms of the said order shall remain unchanged.
11. The fees and charges allowed for the instant assets in order dated 9.10.2018 shall be revised, on account of allowing the additional capital expenditure during the 2014-19 period in this order, at the time of truing-up of the fees and charges of the 2014-19 period.
12. Review Petition No. 5/RP/2019 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson

