

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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

Coram:

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

Date of Order : 31.12.2019

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 20.9.2017 in Petition No. 278/TT/2015.

And in the matter of:

Odisha Power Transmission Corporation Ltd.
Janpath, Bhubaneswar Odisha – 751022

.....Review Petitioner

Vs

1. Power Grid Corporation of India Limited (PGCIL),
“Saudamini”, Plot No. 2,
Sector-29, Gurgaon-122 001
2. Bihar State Power (Holding) Company Ltd.
(Formerly Bihar State Electricity Board-BSEB)
Vidyut Bhavan, Bailey Road,
Patna-8000012.
3. West Bengal State Electricity Distribution Company
Bidyut Bhawan, Bidhan Nagar
Block DJ, Sector-II, Salt Lake City
Calcutta - 7000913.
4. Grid Corporation of Orissa Ltd.
Shahid Nagar, Bhubaneswar - 751 0074.
5. Damodar Valley Corporation DVC Tower,
Maniktala Civic Centre,
VIP Road, Calcutta - 700 054
6. Power Department Government of Sikkim,
Gangtok - 737 101



7. Jharkhand State Electricity Board,
In front of Main Secretariat,
Doranda, Ranchi – 843 002
8. Jharkhand Urja Sancharan Nigam Limited,
Engineering Building, HEC,
Dhurwa, Ranchi–843 004

...Respondents

For Review Petitioner : Shri Raj Kumar Mehta, Advocate, OPTCL
Ms. Himanshi Andley, Advocate, OPTCL

For Respondents : 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, GRIDCO

ORDER

The instant Review Petition is filed by Odisha Power Transmission Corporation Limited (“the Review Petitioner”) seeking review of the order dated 20.9.2017 in Petition No. 278/TT/2015 pursuant to the liberty granted by the Appellate Tribunal for Electricity vide order dated 31.1.2019 in Appeal No. 33 of 2018.

Background

2. PGCIL filed Petition No. 278/TT/2015 for determination of transmission tariff for 11 Assets under Eastern Region Strengthening Scheme-III (ERSS-III) in Eastern Region for 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (“the 2014 Tariff Regulations”). Later, vide affidavit dated 27.5.2016, the petitioner combined the Assets 6 to 11 into one asset. The details of the assets covered in the said petition are (a) Asset 1: 01 no. 80 MVAR Bus Reactor at Duburi Sub-station, (b) Asset 2: LILO of Circuit I of 400 kV D/C Baripada-Mendhasal Transmission Line at Duburi Sub-station along with associated bays, (C) Asset 3: 315 MVA ICT-1 at Chaibasa Sub-station, (d) Asset 4:



LILO of 2nd Ckt. of 400 kV D/C Jamshedpur-Rourkela Transmission line alongwith associated bays at Chaibasa Sub-station, (e) Asset 5: 02 nos 220 kV line bays at Chaibasa Sub-station and (f) Asset 6: LILO of 400 kV D/C Baripada-Mendhasal line and associated bays at Pandiabilli GIS, 2 nos. 500 MVA, 3 phase 400/220 kV, Transformer and associated bays, 1 No.80 MVAR, 400 kV bus reactor and associated bays, 2 nos. 63 MVAR, 400 kV switchable line reactor both shifted from Mendhasal (as fixed Line Reactor) and associated bays along with 06 nos. 220 kV line bays at Pandiabilli GIS. PGCIL has further bifurcated Asset 6 into two assets, namely (i) Asset 6a: LILO of 400 kV D/C Baripada-Mendhasal Transmission Line and associated bays at Pandiabilli GIS, one 500 MVA, 3 Phase 400/220 kV, transformer and associated bays, one 80 MVAR, 400 kV bus reactor and associated bays, 2 nos. 63 MVAR, 400 kV switchable line reactor both shifted from Mendhasal (as fixed Line Reactor) and associated bays alongwith 6 nos. 220 kV line bays at Pandiabilli GIS and (ii) Asset 6b: one 500 MVA ICT (2nd), 3 Phase 400/220 kV transformer and associated bays at Pandiabilli GIS. The Commission vide order dated 20.9.2017 approved the transmission tariff for the said transmission assets.

3. As per the Investment Approval dated 7.7.2010, the scheduled COD of the instant transmission assets was 1.12.2012. The COD of Asset-2 and 6a was approved as 19.8.2015 and 31.7.2016 respectively. There was a time over-run of 991 days and 1338 days in respect of Assets 2 and 6a respectively and the same was condoned by the Commission. The Commission observed that the associated downstream assets of Assets 2 and 6a under the scope of OPTCL were not ready on the COD of the instant transmission assets and therefore held that the transmission charges in case of Assets 2 and 6a from their date of commercial operation to the COD of the downstream assets of OPTCL shall be borne by



OPTCL. Aggrieved by the order dated 20.9.2017, OPTCL filed Appeal No. 33 of 2018 before Appellate Tribunal for Electricity and the same was disposed by the Tribunal on 31.1.2019 with the liberty to OPTCL to file a review petition before the Commission. Accordingly, OPTCL has filed the instant Review Petition.

4. The Review Petitioner has submitted that the findings of the Commission in the impugned order that the transmission charges of Assets 2 and 6a from their date of COD till the COD of downstream network will be borne by OPTCL is erroneous as it failed to take into consideration the submissions made by OPTCL in its reply dated 26.12.2015 in Petition No. 278/TT/2015.

Submissions of the Review Petitioner

5. The Review Petitioner, OPTCL, has made the following submissions in support of its plea for review of order dated 26.12.2015.

a) In case of Asset 2, the downstream 220 kV network at Duburi Sub-station of OPTCL was in use for long and the absence of OPTCL 400 kV network in Duburi did not hamper the commissioning of 400 kV PGCIL LILO line and bay. There was mismatch only in case of 400/220 kV ICT of OPTCL. Asset 2 achieved COD on 19.8.2015 after clearance from ERLDC and OPTCL's ICTs achieved COD on 29.8.2015 after clearance from ERLDC, which was after 10 days from the declared COD of Asset 2. As the time over-run of 14.5 months in case of Asset 2 of PGCIL was condoned, the time over-run of 10 days in case of OPTCL should be condoned. The power has been flowing through the OPTCL's ICT from 29.8.2015 and before that in the 400 kV network as it is a LILO line with connectivity with OPTCL's 400 kV Duburi Sub-station.



b) The mismatch of 10 days occurred because permission to charge ICTs was received from ERLDC (Eastern Region Load Despatch Centre) on 29.8.2015. This mismatch of 10 days was due to procedural delay and should have been condoned as the time over-run of 14 months in case PGCIL was condoned. From 29.8.2015 the transmission charges of Asset 2 are payable to PGCIL by the beneficiaries through POC mechanism as per the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as “2010 Sharing Regulations”).

c) The COD of Asset 6a was approved by the Commission as 31.7.2016. The downstream 220 kV Lines of OPTCL, i.e. Puri-Pandiabilli and Atri-Pandiabilli were ready in June, 2015 when PGCIL’s Pandiabilli Sub-station and 400 kV line were in early stages of construction. As there was delay in COD of Pandiabilli Sub-station of PGCIL, the above said 220 kV lines of OPTCL were connected to OPTCL’s 400 kV Mendasal Sub-station on 14.7.2015. On 31.7.2016, the 400 kV Pandiabilli Sub-station of PGCIL was energized which is connected to OPTCL’s Mendasal Sub-station by loop in loop out (LILO) arrangement. Thus, the power flow started through Pandiabilli Sub-station of PGCIL to Mendasal Sub-station of OPTCL. The submission of PGCIL that they were prevented from providing service through Duburi-Pandiabilli-Mendasal Line is not correct as power flow started through Mendasal Sub-station via Pandiabilli Sub-station. Since power has started flowing from COD i.e. 31.7.2016, PGCIL should recover the transmission charges of Asset 6a from that date through POC mechanism.



d) One year prior to the COD of Pandiabili Sub-station of PGCIL, OPTCL's two numbers of double circuit lines were ready except 3 towers near Pandiabili Sub-station. As Pandiabili Sub-station was not completed, both the lines were connected to OPTCL's own 400/220 kV Mendasal Sub-station. Thus, there was delay in COD of PGCIL assets and not OPTCL assets. Therefore, the finding that due to non-completion of downstream assets by OPTCL, assets of PGCIL could not be put to regular use is not correct.

e) PGCIL during the Review Meeting on 27.11.2014 informed that their sub-station design is of two-tier gantry and requested OPTCL to use 220 kV Multi-circuit Tower for termination of all 220 kV Lines to their gantry. Due to this OPTCL had to go for new Tower design. Change in the Tower design and the ROW issues near the Pandiabili Sub-station delayed the construction of balance 3 towers and the lines could be connected to Pandiabili Sub-station on 19th and 20th May, 2017.

f) OPTCL engaged the contractor for diversion of the existing 132 kV Line from the Pandiabili Sub-station but the contractor was sent back by PGCIL.

g) The reply filed by OPTCL in the main petition was not taken into account by the Commission while passing the order dated 20.9.2017 and as a result the above relevant aspects were not considered in the said order.

6. The Review Petitioner has made the following prayers:-

- a. Allow the Review Petition for review of the order dated 20.09.2017 in Petition No. 278/TT/2015;
- b. Recall the order dated 20.09.2017 in Petition No. 278 /TT/2015;
- c. Pass a fresh order in Petition No. 278/TT/2015 after hearing the parties;
- d. Pass such other orders as may be just and proper in the facts and circumstances of the Court."



7. The Review Petition was admitted on 9.5.2019 and notice was issued to the respondents. PGCIL (Respondent No.1), Bihar State Power (Holding) Company Limited (BSP(H)CL) (Respondent No.2) and GRIDCO (Respondent No.3) have filed reply vide affidavit dated 12.6.2019, 2.7.2019 and 8.7.2019 respectively. In response, OPTCL has filed its rejoinder to the reply of PGCIL vide affidavit dated 16.8.2019. Besides this, BSPHCL (Respondent No.2) and OPTCL have filed their Written Submissions on 13.8.2019 and 6.11.2019 respectively.

Reply of the Respondents

8. The major issues raised by PGCIL in its reply, submitted vide affidavit dated 12.6.2019, are as follows:

a) As per Order 47 Rule 1 of the Code of Civil Procedure, the grounds for review are limited and restricted. There should have either been a discovery of new and important evidence which was not within the knowledge of the party seeking a review of the order despite exercising due diligence, or there is a mistake or error apparent on the face of record. In the instant case, neither any such evidence has been placed on record, nor is there any error or mistake on the face of record that has been pointed out by OPTCL.

b) OPTCL was party to the proceedings in main petition and filed its reply. None of the facts submitted in the instant Review Petition were provided in its reply. If OPTCL was genuinely suffering, OPTCL should have brought them to the attention of the Commission through its reply. The instant Review Petition is basically an afterthought as new facts are being placed in the garb of a review petition.



c) OPTCL is seeking to restart these proceedings for re-appreciation of the facts and circumstances, which were never placed on record by OPTCL. Such re-examination and re-appreciation of facts is not permissible in a review proceeding. Thus, the instant Review Petition is not maintainable and should be dismissed.

d) OPTCL has contended that the delay of 10 days in case of the downstream assets, i.e. 400/220 kV ICTs at Duburi, under the scope of OPTCL was only due to the delay in getting the ERLDC approval and it is a procedural delay. The Duburi Sub-station was the connecting point for the Asset 2 with the downstream network of OPTCL. The time over-run in case of Asset 2 was due to the delay in COD of the ICTs at Duburi Sub-station by OPTCL which are required to connect two separate elements charged at different voltages. The Asset 2, which was ready since 1.4.2014, was charged at 400 kV while OPTCL's network was charged at 220 kV. So OPTCL was to commission the ICTs to facilitate the connection of Asset 2 with OPTCL's downstream network. The ICTs were loaded only on 29.8.2015 and there was delay on the part of OPTCL in completing all the work under its scope which led to a delay in completion of the line. OPTCL's contention that its downstream network was ready but was charged on a later date due to a procedural delay is inconsequential. OPTCL has not placed any document on record to suggest that it tried to expedite the obtaining of clearance from ERLDC. In the absence of any evidence, such a claim is wrong and misconceived.

e) OPTCL has contended that the downstream elements of Asset 6a, within the scope of OPTCL, were ready even before the COD of the Pandiabili Sub-station. However, OPTCL has admitted on its own that the downstream network



was not complete as 3 towers were yet to be erected and connected to its network. Such a contradictory stand on part of OPTCL clearly exhibits that the assets within its scope were actually not complete.

f) After the completion of Pandiabili Sub-station and CEA inspection on 7.4.2016, PGCIL on 8.4.2016 intimated OPTCL of the energization plan of Pandiabili Sub-station. It also expressed its concerns regarding non-readiness of LILO of one circuit of Atri-Puri Samagara 220 kV D/C line at Pandiabili Sub-station, which was essential for evacuation of power through the downstream network. As such, OPTCL was requested to complete the construction at the earliest to facilitate evacuation of power. As a measure of abundant caution and to emphasize the importance of completion of the 220 kV downstream lines by OPTCL to facilitate evacuation of power from Pandiabili Sub-station, another communication was issued to OPTCL on 9.5.2016. As no progress was visible, PGCIL informed ERLDC about the non-erection of towers at the Gantry end for evacuation of power from Pandiabili Sub-station, vide e-mail dated 1.8.2016. Further, in the 122nd Meeting of the OCC dated 15.3.2016, 123rd Meeting of the OCC dated 11.8.2016, and 124th Meeting of the OCC dated 7.9.2016, OPTCL continued to revise the completion schedule of inter-connecting downstream network at Pandiabili Sub-station.

g) It has been recorded in the Minutes of the 144th OCC Meeting held on 2.5.2018 at Eastern Region Power Committee, Kolkata, that while the 220 kV D/C Atri-Puri transmission line at Pandiabili was declared to be operational on 19.5.2017/20.5.2017, the Pratapsasan (OPTCL)-Pandiabili (PG) 220 kV D/C transmission line at Pandiabili Sub-station was pending and the anticipated COD was July 2019 as recorded in minutes of 157th OCC Meeting held on



20.5.2019. This position has already been admitted by OPTCL in the instant Review Petition. Even though Pandiabili Sub-station and all its assets achieved COD on 31.7.2016, the same could not be put to use due to non-commissioning of 220 kV downstream network of OPTCL. One of the downstream lines i.e. 220 kV D/C Atri-Puri Transmission Line was commissioned after a long gap of 10 months from the COD of Pandiabili Sub-station. OPTCL has claimed that their 220 kV lines are ready for terminating at Pandiabili Sub-station one year prior to its readiness. However, OPTCL failed to terminate the same even after 292 days of charging of Pandiabili Sub-station. Hence, OPTCL's contention regarding the readiness of its downstream network is misconceived.

h) OPTCL made a passing reference to certain alleged ROW issues that delayed the construction of the 3 towers under its scope. However, neither any details or material particulars of any such ROW issues have been provided by OPTCL nor is there any evidence for examining the same. In the absence of any details or evidence, the issues raised by OPTCL ought to be rejected and the instant Review Petition ought to be dismissed. OPTCL has alleged that PGCIL did not allow the entry of contractor engaged by OPTCL for diversion of existing 132 kV Line from the Pandiabili Sub-station. The instant 132 kV line of OPTCL crossing through Pandiabili Sub-station has no bearing on downstream assets that were in the scope of OPTCL and OPTCL is trying to mislead the Commission.

i) PGCIL has placed on record the RLDC trial run certificates of Assets 2, 3, 5 and 6a to show that they were ready to be put to regular use. Accordingly, PGCIL is entitled to recover the transmission charges.



j)OPTCL has neither brought the reasons for the time over-run in case of the downstream network to the knowledge of the Commission nor has made any prayer for the condonation of the time over-run in its reply dated 28.12.2015 in the main petition. OPTCL's attempt to bring such facts at this stage is merely an after-thought. The present Review Petition may be dismissed with costs for being infructuous and devoid of merit.

9. OPTCL in its rejoinder, submitted vide affidavit dated 15.8.2019, has given the following clarification to the issues raised by PGCIL in its reply:

a) The Commission directed OPTCL to bear the transmission charges of Assets-2 and 6a from the date of their COD to the date of commissioning of downstream network, without considering the reply and the stand of OPTCL. This is an error apparent on the face of the record. Accordingly, the order dated 20.9.2017 is liable to be reviewed. OPTCL had clearly explained that there was no delay on the part of OPTCL.

b) In its reply dated 26.12.2015 in the main petition, OPTCL had clearly explained that there was no delay on the part of OPTCL. Moreover, all the facts which have been pleaded in the Review Petition were in the knowledge of PGCIL. The plea of PGCIL that the said facts were not pleaded is misconceived and untenable. Since the said facts were not brought to the notice of the Commission by PGCIL, the same have been brought out in the Review Petition.

c) The Duburi Sub-station of OPTCL was complete in all respect including all 400 kV bays and two ICTs since 2005 but charged at 220 kV from 220/132 kV Old Duburi Sub-station on 28.8.2005 due to non-completion of 400 kV Meramundali-Duburi Transmission Line. Copy of the letters dated



28/31.8.2005, 14.9.2005 and 30.4.2013 relating to charging of Duburi 400/200 kV Sub-station at 220 kV and back charging of ICT are submitted. PGCIL was constructing the said line on behalf of OPTCL which achieved COD on 11.9.2015/19.10.2015 after a time over-run of 9.5 years. Copy of the letter dated 9.5.2017 relating to charging of 400 kV Meramundali-Duburi Line is also filed. Since then the Duburi Sub-station was supplying power in 220 KV to various industries namely Jindal, Visa, Maithan and Paradeep Sub-station of OPTCL. The PGCIL officials working within Duburi Sub-station for construction of 400 KV bays and line are testimony to this. After completion of PGCIL portion of work relating to Asset 2, the same was inspected by CEA and a formal communication was issued by PGCIL on 12.8.2015 to OPTCL regarding their readiness for charging of the LILO Line and Bays. OPTCL gave the permission on 14.8.2015 and the Assets were charged on 19.8.2015. Within this time OPTCL completed its pre-commissioning checking works and applied to ERLDC on 24.8.2015 for a formal permission to commission the ICTs. After obtaining permission on 29.08.2015, both the ICTs were put into commercial operation on the same day and loaded. Thus, there is material evidence that there is only a 10 days gap between COD of PGCIL's Asset 2 and ICT of OPTCL. All other downstream assets were existing since 2005. Moreover, there was no technical or physical impediment for PGCIL's charging of their assets.

d) CEA approved the energisation of the 400 kV LILO line vide letter dated 13.7.2015 which was communicated to OPTCL by PGCIL vide letter dated 12.8.2015. Permission was accorded to PGCIL by OPTCL for energisation of 400 kV bays and LILO line at Duburi Sub-station vide letter dated 14.8.2015.



Hence, the contention of PGCIL that their Asset 2 was ready since 1.4.2014 is factually incorrect and misconceived. The letters of Regional Inspectorial Organisation (RIO), CEA Kolkata dated 27.1.2014 and 13.7.2015 further corroborate the said fact. In letter dated 27.1.2014 only 400 kV bays were cleared for energisation and vide letter dated 13.7.2015 LILO line was cleared for energisation. Copy of Letters dated 27.1.2014 and 13.7.2015 of RIO, 12.8.2015 of PGCIL and 14.8.2015 of OPTCL are filed. Unless LILO line is energised, bay charging does not amount to flow of power and part charging does not solve any purpose except certain milestones. After clearance, the LILO line and 400 kV bays of PGCIL were charged on 19.8.2015.

e) For commissioning of ICTs, permission from ERLDC was received on 28.8.2015 and accordingly the ICTs I and II were charged on 28.8.2015 and 29.8.2015 respectively, which is only a procedural delay of ten days.

f) The 220 kV portion of Duburi Sub-station of OPTCL was functional since 2005 with power flowing in all 220 kV outgoing feeders. All 400 kV bays and ICTs I and II were in place but not charged due to non-availability of 400 kV incoming supply. The moment PGCIL completed the 400 kV LILO Line and Bays, the 400 kV portion of OPTCL's Duburi Sub-station was charged. PGCIL's work was delayed by fourteen and half months which was condoned by the Commission.

g) The original 400 kV incoming line of 400/220 kV Duburi Sub-station was also being constructed by PGCIL on behalf of OPTCL. There was a time over-run of 9.5 years and the line was eventually put into commercial operation on 19.10.2015. So, the contention of PGCIL that 400 kV supply was not available



in Duburi Sub-station by the time the LILO line and bays were made ready by PGCIL is misconceived since the said delay is also attributable to PGCIL.

h) OPTCL's downstream 220 kV lines namely 220 kV Pandiabili-Samagara and 220 kV Pandiabili-Atri lines were completed by July, 2015 except 3 towers of LILO portion whereas PGCIL's 400/220 kV Pandiabili Sub-station and 400 kV LILO line were nowhere near completion, which is clear from the minutes of meeting dated 12.8.2014 and 27.11.2014 with PGCIL. Therefore, both the above mentioned 220 kV lines instead of being connected to Pandiabili Sub-Station were made through and connected to OPTCL's 400/220 kV Mendhasala Sub-station for feeding power to OPTCL Samagarn Sub-station at Puri. This arrangement was done on 14.7.2015 whereas PGCIL's 400 kV Sub-Station and LILO line was charged on 31.7.2016 which was after one year.

i) The 220 kV Atri-Pandiabili and 220 kV Pandiabili-Puri (Samagara) Lines were completed and charged on 25.6.2015 and 10.7.2015 respectively. But these two Lines could not be connected to PGCIL's Pandiabili Sub-Station because the sub-station was not ready. The LILO arrangement of OPTCL's 220 kV lines with PGCIL's 400 kV Pandiabili Sub-station was delayed primarily due to the delay in 220 kV gantry arrangement by PGCIL end. PGCIL delayed the finalisation of 220 kV Gantry arrangement at Pandiabili Sub-station. PGCIL took time to state that their sub-station design is of two tier gantry. This required multi-circuit towers for which OPTCL had to go for fresh design, testing and manufacturing and it took time. The Ckt-1 and 2 of LILO Line was eventually charged on 19.5.2017 and 19.12.2017. So this delay is on account of PGCIL and should be condoned. Further, there were severe ROW issues in construction of 220 kV LILO line by OPTCL not only at Pandiabili but the entire



stretch of the said line similar to the problems encountered by PGCIL. The delay in LILO arrangement of 220 kV lines by OPTCL at Pandiabilli has in no way affected power flow through Pandiabilli Sub-station as this is situated in the upstream of OPTCL's Mendhasala Sub-station. The 220 kV downstream feeders of OPTCL instead of availing power from Pandiabilli availed power from Mendhasala Sub-station and hence PGCIL's interest was in no way hampered. As regards the Pratapsasan-Pandiabili 220 kV Transmission Line, apart from serious ROW issues, due to certain defaults on the part of the contractor, the contract was terminated vide order dated 16.8.2018 and three new contractors were appointed vide order dated 26.12.2018 and the ROW issues are still persisting. As regards diversion of 132 kV lines, it is submitted that the issue that the delay in diversion of the line delayed construction of Pandiabilli Sub-Station was raised by PGCIL in their original petition. It is reiterated that the diversion of line was stopped by PGCIL due to change of their layout.

10. BSP(H)CL has filed its reply vide affidavit dated 2.7.2019 and has also filed the Written Submissions on 13.8.2019 and they are considered together to avoid repetition. BSP(H)CL has submitted that it has no stake in the present Review Petition and it is only a proforma respondent. BSP(H)CL has raised issues like the requirements for declaration of COD, the distinction between the actual COD and the deemed COD, the contradiction in the 2014 Tariff Regulations the need for agencies to represent the consumer interest before Commission, exclusion of non-usable assets for determination of tariff, the need for coordination by CTU under Section 38(2) of the Electricity Act, 2003, etc. We are of the view that the issues raised by BSP(H)CL are not related to the issue of liability of OPTCL to bear the transmission



charges from the COD of the PGCIL's assets to the COD of the OPTCL's assets and thus they are extraneous to the present Review Petition before us.

11. GRIDCO has made the following submissions in its reply vide affidavit dated 8.7.2019:

a) The impugned order is liable to be reviewed as the reply filed by OPTCL was not considered and the submissions made were not dealt with in the impugned order. If the facts stated in the aforesaid reply were considered by the Commission, OPTCL would not have been held liable to bear the transmission charges from the COD of PGCIL's assets to the COD of OPTCL's assets.

b) PGCIL itself delayed in starting of the work related to Asset I for want of a formal permission letter from OPTCL for commencing the work in the vacant space in Duburi Sub-station adjacent to PGCIL's switchyard. Once permission was issued verbally and the land was handed over to PGCIL, PGCIL should have not waited for a formal approval letter to execute electrical and civil works. PGCIL is trying to shift the onus of delay on its part to OPTCL. PGCIL failed to arrange for supply of construction power from the concerned distribution licensees and on the other hand pursued the matter with the OPTCL which had nothing to do with supply of construction power as the OPTCL is a transmission licensee which is not licensed to supply construction power. However, OPTCL in order to facilitate the execution of the works by PGCIL, extended power supply from its own station transformer for construction purposes. Further, the claim of PGCIL charging the 80 MVAR Bus Reactor at Duburi Sub-station on 1.4.2014 is not correct. In fact, 400 kV power source was not available at Duburi Sub-station on that date.



c) Approval of CEA for energisation of the Bus Reactor at Duburi Sub-station was issued vide Letter No.677 dated 27.1.2014. The LILO of 400 kV Baripada-Mendhasal Ckt.II at Duburi Sub-station was approved for energisation by CEA vide Letter No.181 dated 13.7.2015. Subsequently, PGCIL requested OPTCL for clearance regarding energisation of the 80 MVAR Bus Reactor and associated Bay Extension at Duburi Sub-station vide their Letter No.2357 dated 12.8.2015, OPTCL accorded permission for the same vide Letter No.1382 dated 14.8.2015.

d) Delay in execution of Asset 2 was attributed to OPTCL. However, OPTCL constructed the downstream assets under its scope much before COD of PGCIL assets, but were charged at 220 kV Voltage level since PGCIL could not extend 400 kV Power supply in time. Land identification for the sub-station is the sole responsibility of PGCIL. But OPTCL was involved to facilitate arranging land at Pandiabilli. The delay in finalization of land cannot be attributed to OPTCL. Subsequently, PGCIL submitted a profile for diversion of existing 132 kV Khurda-Puri line from Pandiabilli Sub-station during December, 2014. Accordingly, estimate was sanctioned by OPTCL in January 2015. After deposit of the estimated amount by PGCIL during March, 2015, procurement action was taken for tower materials by OPTCL. During first week of August, 2015, PGCIL disallowed the contractor engaged by OPTCL to execute the work as they are going to modify the route alignment submitted earlier. Though the work is in progress, delay is caused due to RoW problem and the responsibility of solving RoW issues lies with PGCIL. However, diversion of above 132 kV line does not hamper the construction activities of PGCIL at Pandiabili Sub-station in any manner.



12. During the hearing on 6.11.2019, learned counsel for the Review Petitioner reiterated the submissions made in the Review Petition. 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 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. As regards the PGCIL's contention regarding Asset 6a, that downstream assets of OPTCL were not ready which 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 submitted that as there was delay in COD 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, Pandiabili Sub-station of PGCIL was energized and was 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. He further 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 Assets-2 and 6a from their COD till the COD of the downstream assets of OPTCL will be borne by OPTCL should be modified.

13. Learned counsel appearing for GRIDCO supported the submissions made by the Review Petitioner. He also referred to the judgments in the case of Mafatlal Engineering Industries Limited Vs. Mafatlal Engineering Industries Employees Union and Anr. reported in (1991) Mh.LJ 1359 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.

14. 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.

15. 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.

16. 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.

Analysis and Decision

17. We have considered the submissions of OPTCL and the Respondents and perused the documents on record. The Commission in order dated 20.9.2017 approved the COD of Assets 2 and 6a as 19.8.2015 and 31.7.2016 respectively and condoned the time over-run of 991 days and 1338 days in case of Assets 2 and 6a respectively. It was further held that OPTCL would bear the transmission charges from the COD of Assets 2 and 6a till the date of commercial operation of the associated downstream assets under the scope of OPTCL.



18. One of the grounds of review urged by OPTCL is that the reply filed by OPTCL vide affidavit dated 26.12.2015 in the Petition No. 278/TT/2015 was not considered by the Commission and non-consideration of the said reply led to wrong findings in the order dated 20.9.2017. OPTCL has submitted that non-consideration of the reply filed by OPTCL was an apparent error on the face of record warranting rectification in review. On perusal of the documents on record in Petition No. 278/TT/2015 and the impugned order dated 20.9.2017, we notice that the reply filed by OPTCL was taken into consideration by the Commission in para 5 of the order dated 20.9.2017 and the submissions made by the learned counsel for OPTCL during the hearing on 29.4.2016 was also considered by the Commission while passing the impugned order dated 20.9.2017. Therefore, the contention of OPTCL that the reply filed by OPTCL was not considered in the impugned order dated 20.9.2017 is incorrect and accordingly, it is rejected. It is further noticed that OPTCL has submitted additional facts in the instant Review Petition, which were not submitted in the main petition. Additional documents cannot be submitted at the stage of review, except where such documents were not in the knowledge of the person seeking review after exercise of due diligence or could not be produced at the time of issue of the impugned order. Since, OPTCL has neither made any submissions nor produced any documents in support of its contention, review of the impugned order on this ground is not made out.

19. Another ground of review urged by OPTCL is that the associated downstream system was in use for long and the absence of OPTCL 400 kV network at Duburi Sub-station did not delay the COD of Asset 2. OPTCL has further submitted that the mismatch between the COD of Asset 2 of PGCIL and the OPTCL's assets was only 10 days on account of delay in getting clearance from the ERLDC. OPTCL has



prayed for consideration of delay of 10 days in the light of the decision of the Commission to condone the delay of 14.5 months in case of Asset 2 of PGCIL. In response, PGCIL has submitted that OPTCL has not placed any document on record to show that it took steps to expedite the clearance from ERLDC and hence, the delay should not be condoned. We have considered the submissions of the parties. We do not agree with the contention of OPTCL to condone the delay of 10 days only because delay of 14.5 months in case of Asset 2 has been condoned. Time over-run is condoned by the Commission in appropriate cases based on the relevant documents on record and after due procedure check. OPTCL has not placed on record any document to prove that it had diligently followed the matter with ERLDC for clearance and delay was beyond its control. Therefore, there is no error apparent in the impugned order in this regard.

20. OPTCL has submitted that the downstream Assets 6a i.e. Puri-Pandiabilli and Atri-Pandiabilli 220 kV transmission lines of OPTCL were ready in June, 2015 when the PGCIL's Pandiabilli Sub-station and the 400 kV line were being constructed. As Pandiabilli Sub-station was delayed, the 220 kV lines of OPTCL were connected to Mendasal Sub-station of OPTCL on 14.7.2015. On energisation of Pandiabilli Sub-station on 31.7.2016, which is connected to Mendasal Sub-station by LILO, the power flow started through Pandiabilli Sub-station to Mendasal Sub-station. Therefore, the PGCIL's contention that PGCIL was prevented from providing service through Duburi-Pandiabilli-Mendasal Transmission Line is not correct as the power flow started to Mendasal Sub-station through Pandiabilli Sub-station. As the power had started flowing to Pandiabilli from 31.7.2016, PGCIL should claim the transmission charges of Asset 6a through PoC mechanism.



21. We have considered the submissions of OPTCL. It is observed that OPTCL has itself submitted that its two double circuit transmission lines were ready one year prior to the COD of the Pandiabilli Sub-station, except for 3 towers near Pandiabilli Sub-station. The relevant portion of the OPTCL's Review Petition is quoted under.

“X. Because the Pandiabilli sub-station of PGCIL was declared deemed to be commissioned on 31.7.2016. At least one year prior to that, OPTCL's two numbers of double circuit lines were ready except 3 towers near PGCIL's Pandiabilli sub-station.....”

22. OPTCL has attributed the delay in construction of the towers to change in the sub-station design by PGCIL, RoW and other issues. As OPTCL has itself submitted that the three towers under its scope near Pandiabilli Sub-station were not complete, the findings in the impugned order that the non-readiness of downstream assets under the scope of OPTCL prevented PGCIL from commissioning Asset 6a on scheduled COD does not suffer from any error apparent. Therefore, the prayer for review on this ground is also rejected.

23. Review Petition No. 6/RP/2019 is disposed of in terms of the above.

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

sd/-
(P.K. Pujari)
Chairperson

