

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 7/RP/2012 in Petition No. 136/2010

Subject : Review of order dated 11.1.2012 in Petition No. 136/2010 for tariff period 2009-14 in respect of assets commissioned on 1.8.2009/1.9.2009 under ATS of NLC-II Expansion Project in SR under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 103 of the CERC (Conduct of Business) Regulation, 1999.

Date of hearing : 22.11.2012

Coram : Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S. Verma, Member
Shri Deena Dayalan, Member

Petitioner : Power Grid Corporation of India Limited

Respondents : Tamil Nadu Generation and Distribution Company Ltd and others

Parties present : Shri M.G. Ramachandran, Advocate for PGCIL
Smt. Swapna Seshadri, Advocate for PGCIL
Shri S.S. Raju, PGCIL,
Shri M.M. Mondal, PGCIL,
Shri Prashant Sharma, PGCIL
Shri S. Balaguru, TANGEDCO
Shri Rathinasabapathy, NLC
Shri Vallinayagam, PSPCL

Record of Proceedings

The learned counsel for the petitioner submitted that:-

- (a) The review petition has been filed seeking review of the order dated 11.1.2012 in Petition No. 136/2010;
- (b) Written submissions were filed vide affidavit dated 5.11.2012. The Commission has wrongly considered the zero date as February 2009 in the impugned order. Though the Commission has referred to the modification to the Indemnification Agreement (IA) signed between

petitioner and NLC, the Commission has not considered the resultant zero date and the modification has not been given effect to;

- (c) After the modification to the IA the zero date for Assets 1 and 2 is 1.8.2009 and for Assets 3 and 4 it is 1.9.2009. The Commission considered the zero date as 1.2.2009. This is an error apparent on the face of the record and the review is sought mainly on this ground;
- (c) The Review Petitioner has acted strictly in accordance with the decisions taken by the beneficiaries in the Southern Regional Power Committee meetings held from time to time. Both, Asset 1 & 2 were ready for commissioning in February 2012. APTRANSCO's downstream system had not come, so the Review Petitioner was accordingly asked to delay the commissioning of Assets 1 & 2 till 1.9.2009 by APTRANSCO, hence the zero date was shifted;
- (d) In case of Assets 3 & 4, there was realignment of towers and it led to dispute and the matter was challenged before the Hon'ble Supreme Court. As per the directions of the Supreme Court the height of the tower was increased. The litigation and the work related to increasing the height of the tower delayed the commissioning of Assets 3 & 4. The delay in commissioning of Assets 3 & 4 is not attributable to the Review Petitioner; and
- (e) As per the directions of the Commission in the impugned order the Review Petitioner has approached NLC to compensate for the loss of ₹16.4833. The NLC has refused to pay the deducted amount of IDC & IEDC.

2. The learned counsel of TANGEDCO submitted that the Review Petitioner has filed three documents related to IA and zero date. The first document is the IA dated 29.12.2004 which does not contain any zero date. The second document relates to the modification to the IA, which was done on 26.12.07. The third document is an Annexure to the IA dated 29.12.2004 which was signed on 25.6.2009 and as per that document the zero date is 25.2.2009. He submitted that there is inconsistency in the zero date. The zero date was decided by the Review Petitioner and NLC without taking the beneficiaries into confidence. The Commission has rightly considered the zero date as February 2009. There is no error apparent on the face of record. The IA cannot burden the consumers.

3. In response to the Commission's query regarding APTRANSCO's request to delay the commissioning of Assets 1 & 2, the learned counsel of TANGEDCO clarified that APTRANSCO's request was not submitted at the time of filing the petition. He also submitted that the Hon'ble Supreme Court's order was also not brought to the notice of the Commission at the time of filing the petition. If these documents were submitted to the Commission, the Commission would have considered them at the time of passing the impugned order. The Review Petitioner should have diligently placed all these documents and information before the Commission at the time of filing the original

petition and these documents and information cannot be brought in a review petition. He also submitted that APTRANSCO's request and the indemnity bond were not served to them. The instant Review Petition is an appeal in disguise.

4. The learned counsel for the Review Petitioner clarified that the APTRANSCO's request was considered in the 7th meeting of the SRPC and its minutes were filed along with the original petition. As far as the IA, he submitted that the Review Petitioner entered into an IA with the NLC on 29.12.2004 and as per the said IA the zero date shall be worked out mutually. Accordingly it was agreed that the zero date would be 28.2.2009 as per the Annexure I to the IA, which was signed on 25.6.2008. The IA was modified on 26.12.2007 and as per the modification, if the commissioning schedule of generating units and associated transmission system is delayed beyond the zero date, the actual date of commissioning of generating units or associated transmission system whichever is commissioned after the original zero date shall be considered as the revised zero date. The learned counsel submitted that the IA entered with NLC is in order.

5. The order in the petition was reserved.

By the order of the Commission,

Sd/-
(T. Rout)
Joint Chief (Law)