CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 188/MP/2016

Subject	:	Petition under Section 79 (1) (f) read with Sections 79 (1) (c) and 79 (1) (b) and Section 60 of the Electricity Act, 2003, inter alia, seeking adjudication of disputes as regards the term of payment/compensation for operation and maintenance of the petitioner's 02 Nos. of 400 kV Line bays including 2 tie bays at 765/400 kV switchyard at Power Grid, Bharari, sub-station, Bilaspur, Chhatisgarh.
Date of hearing	:	9.5.2017
Coram	:	Shri Gireesh B. Pradhan, Chairperson Shri A.K. Singhal, Member Shri A.S. Bakshi, Member Dr. M.K. Iyer, Member
Petitioner	:	Lanco Amarkantak Power Limited.
Respondents	:	1. Power Grid Corporation of India Limited. 2. Western Regional Load Despatch Centre
Parties present	:	Shri Deepak Khurana, Advocate, LAPL Shri Buddy Ranganadhan, Advocate, LAPL Shri M.G. Ramachandran, Advocate, PGCIL Ms. Anushree Bardhan, Advocate, PGCIL Shri R.P. Padhi, PGCIL Shri Abhishek Garg, PGCIL Shri B.P. Kundu, PGCIL Ms. Pragya Singh, WRLDC Shri S.S. Barpanda, WRLDC

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that as per the Commission's directions dated 19.1.2017, the petitioner has paid an amount of Rs. 1,24,46,000 to PGCIL on 7.2.2017 towards 50% of O&M expenses for the period from 6.9.2014 to September, 2016 and has also further paid an amount of Rs. 39,39,000 on 15.3.2017 in terms of the consolidated provisional invoice raised by PGCIL for 50% O&M expenses for the period from 6.9.2014 till December 2016. Learned counsel further submitted as under:

a). The petitioner entered into an agreement with PGCIL on 20.10.2009 for construction of 400 kV line bays at Western Region Pooling Point for connectivity of 400 kV D/C Pathadi Thermal Power Station ('TPS')- WR Pooling Point. The said Agreement was amended vide Supplementary Agreement dated 8.3.2010. In terms of Clause 2.1 (ix) of the amended Agreement, after completion of the works, O &M of the said bays was required to be done by PGCIL on behalf of the petitioner. In this regard, the petitioner and PGCIL had to enter into a separate agreement for O &M of the bays. Post commissioning of the said line bays, PGCIL vide its email dated 11.10.2014 sent a draft MOU for O & M of the line bays to the petitioner.

b). Clause 4.1 of the MOU provided for payment for O & M as per 2014-19 Tariff Norms for O &M Bays i.e.Rs. 60.30 lakhs/per year/bay with yearly escalation @ 3.32% of the O&M charges fixed for the previous year. This is as per Regulation 29(3) of the 2014 Tariff Regulations. However, Clause 3.1 of the draft MOU provides that major spares and consumables shall be procured by the petitioner. Further, as per clause 6 of the draft MOU, the petitioner is required to take insurance cover of equipment at its own costs. The said provisions in the MOU are ex-facie contrary to Regulation 3(42) of the 2014 Tariff Regulations, which clearly provides that O &M expenses include the expenditure of manpower, repairs, maintenance spares, consumables, insurance and overheads but excludes fuel expenses and water charges.

c). PGCIL has correctly provided in the draft MOU that the petitioner was to pay the O&M charges as per the 2014 Tariff Regulations. However, the provisions in the MOU for excluding major spares and consumable and charges for insurance cover from the said amount of Rs. 60.30 lakhs/year/bay are contrary to the very same Regulations.

d). PGCIL's stand is contrary to the Regulations and is arbitrary and unjustified. Despite the admitted position that the O&M charges have to be as per the provisions of 2014 Tariff Regulations, PGCIL is deviating from the said Regulations by excluding the cost of the major spares and consumables as well as insurance cover for equipments from the O&M charges. The further stand of PGCIL in charging separately for tie bays is also contrary to the Regulations. There is no justification or warrant for the same.

e). PGCIL is obligated under the Grid Code to provide the SEM data/information to WRLDC. However, the data pertaining to SEMs of the petitioner has still not been furnished by PGCIL to WRLDC. PGCIL is now taking the defence of non-availability of data for the period from 18.7.2016 to 30.8.2016 for some vague reasons. The said stand by PGCIL is inconsistent with the stands taken by it earlier in relation to SEM data and is thus an afterthought. PGCIL cannot simply be excused from its obligations under the Grid Code on the pretext of corruption of data.

f). PGCIL has not produced even a single document to establish the said data corruption as claimed. Due to the negligence of PGCIL, the petitioner had to pay Rs. 1.5 crore extra in the form of DSM charges to WRLDC during the period from 18.7.2016 till 4.9.2016 as in the absence of downloaded SEM data, WRLDC has considered flat 2% transmission loss in its calculations of energy accounting as compared to approx. 0.65% actual transmission loss incurred by the petitioner while transmitting power from its power station switchyard to the pooling station of PGCIL.

g). Learned counsel requested the Commission to direct PGCIL to provide the metering data for the period from 18.7.2016 till 4.9.2016 to the petitioner.

2. In it's rebuttal, learned counsel for PGCIL submitted as under:

a). The present dispute is not related to inter-state transmission of electricity. PGCIL is undertaking operation and maintenance as a contractor despite the non-payment by the petitioner. Therefore, there is no abuse of dominant position and the present petition is not maintainable qua PGCIL.

b). The 2014 Tariff Regulations gives the O&M Cost on a normative basis for Powergrid transmission system. The O&M expenses allowed is across the sub-stations and transmission assets of PGCIL. PGCIL is in a position to maintain major spares common to many of the substations. PGCIL also gets all the tariff elements associated with the capital cost of the bays and assets where PGCIL owns the same. These include interest on loan, return on equity, depreciation, etc. These are not available in the case of O&M undertaken by PGCIL on bays of others. Therefore, the reliance placed on the 2014 Tariff Regulations by the petitioner is misplaced.

c). The O&M is being undertaken by PGCIL under an independent contract with the petitioner and not as a part of the functions of PGCIL as the CTU or otherwise as a transmission licensee undertaking the transmission services to others. Accordingly, the Tariff Regulations, which applies to tariff determination in regard to assets of PGCIL, cannot *ipso facto* be applied to the charges payable by the petitioner. It is not open to the petitioner to separate the operation and maintenance expenses and apply the same to PGCIL as a contractor.

d). The draft MOU sent by PGCIL is consistent with the agreements executed by PGCIL with similarly situated persons. The petitioner was fully aware of the same at the time of entering into the Agreements dated 20.10.2009 and 8.3.2010. It is not open to the petitioner at this stage to seek any variation or modification. The O&M of testing of bays cannot be allowed to be undertaken by the petitioner.

e). The petitioner having agreed to execute such agreement at the time of signing of the "Consultancy Agreement", there is no occasion for the petitioner not to execute the Agreement upon completion of work and further not to pay O&M expenses as specified in the Draft MOU. The petitioner, now, cannot be allowed to take the benefit of such operation and maintenance free of cost on the ground of its own refusal to sign the MOU. The principle of quantum merit will apply as well as the well settled principle that a person cannot take advantage of its own wrong.

f). PGCIL could not have charged a different amount to the petitioner as compared to similarly situated persons and therefore, the payment terms sought by the petitioner are not in line with the standard norms.

g). PGCIL has revised the O&M charges and instead of Rs. 64.37 lakh per bay restricted to the main bay, the charges have been revised to Rs. 24.46 lakh per bay per annum but applicable to each of the Main Bay and Tie Bay. Such amount of Rs. 24.46 lakh cannot include both one main bay and one tie bay. Further, the aggregate amount has been reduced to Rs. 97.84 lakh per year for the four bays as against Rs.120.60 lakhs for two bays earlier. The benefit of the reduction in the above charges from Rs. 120.60 to Rs. 97.84 lakh is to the account of the petitioner.

h). Every Monday, the data of energy meters installed in premises are downloaded and sent to WRLDC for metering purpose. The energy meter reading of all lines was taken and sent to WRLDC. However, for the period from 19.7.2016 to 30.8.2016, the data could not be retrieved for the petitioner's bays although the data for the period pertaining to other bays were communicated to WRLDC. Based on the available material for other bays the power flow, etc. on the petitioner's bays for the period from 19.7.2016 to 30.8.2016 can be established by WRLDC. In any event, these have nothing to do with the O&M charges to be paid by the petitioner to PGCIL.

i). For the period between 19.7.2016 to 30.8.2016, the energy accounting has been duly done through an alternative methodology and the same has been furnished to the petitioner. The petitioner is blowing out of proportion the non-availability of data which got corrupted for the said period. Such technical defaults do occur and the same has been sorted out by alternative method of accounting.

3. The representatives of WRLDC submitted as under:

a). The dedicated line constructed by the petitioner is neither a part of the ISTS network nor it is considered in calculations of Point of Connection (POC) transmission charges. The dedicated line is a part of the generation tariff of the station, and as far as the regional DSM counting is concerned, the inter- connection of the petitioner with the ISTS point is considered at Bilaspur 400 kV sub-station of PGCIL.

b). The petitioner's line is not a part of the POC charges/losses. Dedicated line losses cannot be pooled and shared by all other regional entities since these lines are constructed by the generators for bringing their generation upto the ISTS inter-connection point. The same has also been discussed and decided in the Standing Committee meetings on several occasions.

c). The DSM accounting involves a large number of transmission lines, a common methodology of application of transmission losses to the standby meters is adopted, in case the main meter data is not available.

d). For the period between 19.7.2016 to 30.8.2016, the energy accounting has been duly done through an alternative methodology and the metering data has been provided to WRLDC by PGCIL.

4. After hearing the learned counsels and representatives for the parties, the Commission directed PGCIL to provide the petitioner, metering data for the period from 19.7.2016 to 30.8.2016 as shared with WRLDC.

5. The Commission directed the parties to file their written submissions on or before 31.5.2017, with an advance copy to each other, failing which the order shall be passed on the documents available on record.

6. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

Sd/-
(T. Rout)
Chief (Legal)