

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 02/RP/2017

In

Petition No. 46/TT/2014

Coram:

Shri Gireesh B. Pradhan; Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 05.10.2017

In the matter of

Petition for review of the order dated 29.7.2016 in Petition No. 46/TT/2014 under Section 94 of the Electricity Act, 2003.

In the matter of

Determination of transmission tariff of Assets (05 nos.) under Common Scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common Scheme for Network for WR and Import by WR from ER and from NER/SR/WR via ER under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions for Tariff) Regulations, 2009 in Western Region for tariff block 2009-14 period.

And in the matter of:

Power Grid Corporation of India Ltd.,
'SAUDAMINI', Plot No. 2, Sector 29,
Gurugram – 122001

...Review Petitioner

Versus

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur
Jabalpur-482008



2. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th floor, Andheri (East),
Mumbai-400 052
3. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara-390 007
4. Electricity Department,
Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel,
Goa-403 001
5. Electricity Department,
Administration of Daman and Diu,
Daman-396 210
6. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T., Silvassa-396 230
7. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh-492 013
8. Madhya Pradesh Audyogik Kendra
Vikas Nigam (Indore) Limited,
3/54, Press Complex,
Agra-Bombay Road,
Indore-452 008

...Respondents

For Review Petitioner : Shri M.G. Ramachandran, Advocate, PGCIL
Shri Rakesh Prasad, PGCIL
Shri Jasbir Singh, PGCIL
Shri S.K. Venkatesan, PGCIL
Shri S.S. Raju, PGCIL
Shri B. Dash, PGCIL

For Respondents : None



ORDER

The Review Petition has been filed by Power Grid Corporation of India Limited (PGCIL) under Section 94(1)(f) of the Electricity Act, 2003 (the Act) read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of the order dated 29.7.2016 in Petition No. 46/TT/2014, wherein the Commission determined the transmission tariff for Asset I: LILO point (at Dharmajaygarh near Korba WR SS)-Ranchi portion of 765 kV S/C Ranchi-WR Pooling Station alongwith bays at Ranchi 765 kV Sub-station; Asset II: 765 kV MVAR Bus Reactor I alongwith bays at Ranchi 765 kV Sub-station; Asset III: 765 kV MVAR Bus Reactor II alongwith bays at Ranchi 765 kV Sub-station: Asset IV: 400 kV 125 MVAR Bus Reactor I alongwith bays at Ranchi 765 kV Sub-station; and Asset V: 400 kV 125 MVAR Bus Reactor II alongwith bays at Ranchi 765 kV Sub-station under “Common Scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common Scheme for Network for WR and Import by WR from ER and from NER/SR/WR via ER for tariff block 2009-14 in Western Region”.

2. The Commission in order dated 29.7.2016 in Petition No. 46/TT/2014 limited the Incidental Expenditure During Construction (IEDC) of the subject elements to 5% of the ‘Hard Cost’ based on the Abstract Cost Estimate. Aggrieved by the said order, PGCIL has filed the instant petition seeking modification of the order dated 29.7.2016 by allowing the actual IEDC incurred by PGCIL. The relevant portion of the order is extracted hereunder:-

“22. The petitioner has claimed Incidental Expenditure during Construction (IEDC) of Rs. 543.64 lakh. Further, petitioner vide affidavit dated 16.6.2016 has submitted that IEDC discharged up to COD is Rs. 543.64 lakh. The percentage on Hard Cost as



indicated in the Abstract Cost Estimate has been considered as the allowable limit to the IEDC. In the current petition, 5% of the Hard Cost (i.e. Rs. 283.33 lakh) is the maximum limit for allowing IEDC. The IEDC claim of Rs. 543.64 lakh exceeds the abstract cost estimate, i.e. 5 % of the hard cost, as on COD. Hence, Rs. 260.31 lakh (i.e. Rs. 543.64- Rs. 283.33 lakh) has been disallowed from the capital cost as on COD.”

Brief Facts:

3. PGCIL filed Petition No. 46/TT/2014 for determination of tariff for above mentioned assets under Common Scheme for 765 kV Pooling Stations and Network for NR, Import by NR from ER and from NER/SR/WR via ER and Common scheme for network for WR and Import by WR from ER and from NER/SR/WR via ER in Western Region for tariff block 2009-14 period in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter "the 2009 Tariff Regulations").

4. Asset-I was commissioned on 1.4.2014, Asset-II was anticipated to be commissioned by 1.6.2014 and Assets III, IV and V were commissioned on 1.2.2014. As Assets I and II were commissioned during the 2014-19 tariff period, PGCIL was directed by the Commission to file a separate petition covering Assets I and II as per the provisions of the 2014 Tariff Regulations. Accordingly, PGCIL filed Petition No. 27/TT/2016 claiming tariff for Assets I and II as per 2014 Tariff Regulations. As such, tariff was granted to Assets III, IV and V, commissioned during 2009-14 tariff period, as per the 2009 Tariff Regulations in the impugned order.

Submissions of PGCIL

5. PGCIL has submitted that in order dated 29.7.2016 in Petition No. 46/TT/2014, the Commission condoned the time over-run of 17 months and allowed capitalization of IDC and IEDC for the period. However, the IEDC of the subject elements was



limited to 5% of the 'Hard Cost' i.e. 5666.60 lakh based on the Abstract Cost Estimate and thereby allowed ₹283.33 lakh of IEDC and disallowed ₹260.31 lakh of IEDC. This is an error apparent on the face of the record which requires to be rectified.

6. PGCIL has submitted that there is no provision in the 2009 Tariff Regulations for considering the IEDC on percentage terms of the 'Hard Cost' (neither element wise nor project wise). The IEDC is actual expenditure incurred by PGCIL and PGCIL may not be denied such expenditure merely because it exceeds the estimate made at the initial stage. The Abstract Cost Estimates are prepared as an estimate and are not normative figures which cannot be exceeded by PGCIL. The test for allowing capitalization of expenditure as adopted by the Commission has been the reasonableness or prudence of the actual expenditure and not merely that it has exceeded the estimate. The Commission did not come to the conclusion that the actual expenditure incurred by PGCIL was unreasonable or imprudent. The IEDC as a percentage of 'Hard Cost' was an estimate based on timely completion of the project. The uncontrollable delays in completion of the project lead to increase IEDC without a proportionate increase in the 'Hard Cost'. Therefore, the percentage in the Abstract Cost Estimate is not appropriate estimate for IEDC due to delays in completion. PGCIL has further submitted that it was not given any opportunity for explaining the difference between the actual IEDC incurred vis-a-vis FR estimated IEDC.



7. The delay in filing the review petition was condoned and the review petition was admitted on 30.3.2017. Notice was given to the respondents with a direction to file reply to the review petition.

8. In response, Madhya Pradesh Power Management Company Limited (MPPMCL), Respondent No.1, has submitted reply vide affidavit dated 4.3.2017. MPPMCL has submitted that the IEDC of the subject elements was rightly limited to a percentage of the 'Hard Cost' based on the Abstract Cost Estimate and thereby disallowing ₹260.31 lakh of IEDC by holding that 5% is the maximum limit for allowing IEDC and has disallowed ₹260.31 lakh from the capital cost as on COD. MPPMCL has further submitted that the Commission has rightly deducted the cost and therefore there is no error apparent on the face of record. MPPMCL has also submitted that since the delay has been condoned, there was no need to review the order of the Commission.

9. During the hearing on 21.3.2017, learned counsel for PGCIL submitted that the Commission has erred while computing the 'Hard Cost' since the 'contingency' 3% was not considered which was otherwise approved in the Investment Approval. As 'contingency' cannot be part of the "Hard Cost", PGCIL was directed to justify the applicability of 'contingency' of 3% as part of IEDC. In response, PGCIL has submitted that time and the cost over-run are independent of the 'contingency' estimated and 'contingency' pertains to the estimated project cost and cannot be used to control the actual capital expenditure. PGCIL has also submitted that the 'contingency' has no relevance to the final capital cost which includes the increase or decreases in capital expenditures (including IEDC) as compared to the estimated



cost. The PGCIL's reply is as under:-

"Normally at the time of preparation of DPR/FR, provision of contingencies (calculated @ 3% of equipment cost) is kept to take care of expenditure expected to arise in future while executing of project or which may have not been specifically considered and included at the time of preparation of DPR cost estimate. Such provision for contingencies is the normal feature. The determination of the project cost is to be based on actual cost incurred subjected to prudence check. Accordingly, the time and the cost over-run are considered to be independent of the contingency estimated. As such contingency is only for the estimated project cost and cannot be used to control the actual capital expenditure to be computed based on prudence check. In any event, 3% of the estimated project cost initially considered as contingency has no relevance to the final capital cost which include the increase or decreases in capital expenditures (including IEDC) as compared to the estimated cost. In cost plus regime, the expenditure is to be tested on the scale of legitimacy and genuineness and therefore is not further subject to capping especially in the absence of any benchmark specified in Regulation. Accordingly, the contingency estimated gets subsumed in such capital cost determined."

10. It was observed that IEDC including 'contingency' for the project as whole was shown in Revised Cost Estimate as ₹13959 lakh which is 2.44% of the Revised Hard Cost of ₹571240 lakh, but the claimed IEDC was 9.59% of the Hard Cost. The petitioner was directed to give the reasons for claiming 9.59% of Hard Cost as IEDC against the 2.44% (including 'contingency') considered in the RCE. In response, PGCIL has submitted that IEDC depends upon the size and scope of the project and it does not have a linear relationship with the Hard Cost. The PGCIL's reply is as under:-

"This linear analogy of proportionate IEDC booking w.r.t hard cost or estimated completion cost of the project is not applicable and instead varies as per the size/scope of the elements(s) within the project. It is relevant to submit that if the project size/scope is high, then the amount of IEDC booked as percentage (%) of total estimates cost is lower whereas in the case where the element scope is relatively smaller, then the corresponding IEDC booked amount to be has higher percentage of the total estimated cost of the element. The same can be exemplified with the figures in the instant case and hence, the higher percentage of IEDC."



Analysis and Decision:

10. We have considered the submissions made by PGCIL and MPPMCL and perused the documents on record. PGCIL has contended that IEDC is actual expenditure incurred by it and PGCIL may not be denied such expenditure merely because it exceeds the estimate made in the initial stage. The petitioner had claimed IEDC of ₹543.64 lakh discharged upto COD. Usually, the Commission has been considering the % of IEDC considered by PGCIL in the Abstract Cost Estimate for allowing the IEDC. Accordingly, the IEDC in the instant case was restricted to ₹283.33 lakh based on the 5% Hard Cost considered in the Abstract Cost Estimate and ₹260.31 lakh was disallowed.

11. The main contention of PGCIL is that the 2009 Tariff Regulations do not provide for restricting the IEDC on percentage terms of the 'Hard Cost'. The Commission has been restricting the capital cost of the individual assets to the approved apportioned cost given in the Investment Approval or the Revised Cost Estimates as a part of prudence check, though the 2009 Tariff Regulations do not provide for the same. This view of the Commission has been upheld by the Hon'ble Appellate Tribunal for Electricity in its judgement dated 28.11.2013 in Appeal No.165 of 2012. Since then the Commission has been restricting the cost of the individual assets to its approved apportioned cost submitted by PGCIL. On similar lines, the IEDC is also being restricted to the percentage of the hard cost given by PGCIL in the Abstract Cost Estimate of the Investment Approval or the RCE as a part of prudence check.

12. PGCIL has contended that 3% 'contingency' should be considered in addition



to the 5% IEDC given in the Abstract Cost Estimate. PGCIL has itself submitted that time and the cost over-run are independent of the 'contingency' estimated and it cannot be used to control the actual capital expenditure. PGCIL has submitted that the 'contingency' have no relevance to the final capital cost which includes the increase or decreases in capital expenditure (including IEDC) as compared to the estimated cost. The provision of 'contingencies' provided for in the project are not against any specific head of expenditure but are for expenditure which may occur in the project as a whole. Therefore, prayer of the PGCIL for considering the entire 'contingencies' as part of IEDC alone for the limiting purpose is devoid of merit. Further, PGCIL has submitted that the IEDC booking varies as per the size and scope of the elements in the project, which the Commission has already taken care by limiting the IEDC to the percentage given in the Abstract Cost Estimate or determining the allowable IEDC as part of prudence check. It is pertinent to mention that the 5% limit is not fixed by the Commission. The same is decided by the PGCIL itself in accordance with the nature of the project. The Commission has adopted the percentage fixed by PGCIL and had applied the same on actual cost incurred by it. In the instant case, the petitioner had initially submitted the Investment Approval dated 6.8.2008 and subsequently Revised Cost Estimate (RCE) dated 11.3.2016 (which is after 2 years of the commissioning of the instant assets) and fixed the IEDC including contingency as 2.44% of Hard Cost as against the original estimate of 5%. On the contrary, the petitioner has claimed the actual IEDC amount to the extent 9.59% of actual Hard Cost for the instant assets, which does not reflect the reduction in IEDC as considered by its Board of Directors in its RCE. Instead, the actual IEDC as a percentage of actual Hard Cost has substantially increased i.e. 9.59% as against the earlier 2.44%. Therefore, the prayer of the PGCIL is devoid of merit. The



Commission in the impugned order has determined the tariff based on actual cost as on COD and estimated additional expenditure, which will be subject to true up. Further, the IEDC shall be revisited at the time of true up on the basis of the completion cost actually incurred.

13. As regards PGCIL's contention that it was not given opportunity to explain the variation between the actual IEDC incurred and FR estimated IEDC, it is observed that after filing Petition No. 46/TT/2014, PGCIL made additional submissions vide affidavits on its own or on the directions of the Commission on 2.6.2014, 2.7.2014, 31.3.2016, 4.4.2016 and 16.6.2016. But, PGCIL choose not to make submission regarding the variation in the IEDC. Further, PGCIL neither approached the Commission for giving reasons for variation in the IEDC nor such opportunity was denied to PGCIL. Hence, PGCIL's contention that it was not given an opportunity to give the reasons for variation in IEDC does not hold good.

14. In the instant case, the original Investment approval indicates 5% of 'Hard Cost' towards the maintenance during construction, Engineering and Administration cost and losses of stock. The same was considered as the basis for allowing the IEDC on actual 'Hard Cost' in the impugned order. Thus, there is no apparent error in the impugned order as contended by PGCIL.

15. Accordingly, the Review Petition No. 2/RP/2017 is disposed of.

sd/-	sd/-	sd/-	sd/
(Dr. M.K. Iyer) Member	(A. S. Bakshi) Member	(A. K. Singhal) Member	(Gireesh B. Pradhan) Chairperson

