

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 15/RP/2015
in
Petition No. 146/MP/2014**

**Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member**

Date of Order: 12th October, 2017

In the matter of

Petition under Section 94 (1) (f) of the Electricity Act, 2003 for review of the order dated 28.5.2015 in Petition No. 146/MP/2014.

**And
In the matter of**

Western Region Transmission (Maharashtra) Private Limited
12th Floor, Building No.10 B,
DLF Cyber City,
Guargaon-122 002

....Review Petitioner

Vs

1. Power Grid Corporation of India
B-9, Qutab Institutional Area
Katwaria Sarai
New Delhi-110 016

2. MP Power Trading Company Ltd.
Shakti Bhawan
Rampur
Jabalpur-482008

3. Gujarat Urja Vikas Nigam Ltd. (GUVNL)
Race Course Road
Vadodara-390007

4. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL),
Prakashgad



Bandra (East),
Mumbai-400051

5. Chhattisgarh State Power Distribution Company Ltd. (CSPDCL),
Vidyut Seva Bhavan
P.O. Sundernagar
Danganiya
Raipur-492013

6. Government of Goa, Electricity Department
Vidyut Bhavan,
Panaji
Goa-403001

7. Electricity Department, Administration of Daman & Diu
Secretariat, Fort Area
Moti Daman
Daman-396220

8. Electricity Department
Govt. of UT of Dadra & Nagar Haveli,
Silvassa-396230

9. M.P.Audyogik Kendra Vikas Nigam Ltd.
3/54, Press Complex
Agra Mumbai Road
Indore-452 008

10. Jindal Power Limited
2nd Floor, DCM Building,
Plot No. 94
Sector-32,
Near Exist 9
Gurgaon-122 001

11. Power Trading Corporation of India Limited
NBCC Tower, 15
Bhikaji Cama Place
New Delhi-110 066

12. Heavy Water Project
Department of Atomic Energy
Heavy Water Board
Vikram Sarabhai Bhawan
Anushakti Nagar
Mumbai-400 094



13. Sugen Mega Power Project Torrent Power Limited
Off. National Highway No.8
Taluka-Kamrej
District-Surat-394 155

14. Adani Power Limited
8-A, Sambhav Building
Judges Bungalow Road
Bodak Dev, Ahmedabad-380 015

.....Respondents

The following were present:

Shri Buddy A. Ranganadhan, Advocate, WRTMPL
Shri Malvika Prasad, Advocate WRTMPL
Shri Devesh Khattar, WRTMPL
Shri Rupin Rawat, WRTMPL
Shri Aman Trivedi, WRTMPL
Shri Anil Rawal, WRTMPL

ORDER

The Review Petitioner, Western Region Transmission (Maharashtra) Private Limited (WRTMPL), has filed this Review Petition seeking review of the Commission`s order dated 28.5.2015 in Petition No. 146/MP/2014.

2. The Review Petitioner has sought review of the impugned order on the following grounds:

(a) The Commission`s first finding is that `the Petitioner cannot claim that it was not aware of the cross over work by MSETCL till the morning of 30.11.2013. Moreover, since one end of the line is to be connected to the sub-station of MSETCL, it was the obligation of WRTMPL to keep MSETCL about the progress of the works and the schedule of commissioning of its transmission line`. The Review Petitioner has submitted that this finding is not correct since despite



notice having been issued to all the parties in the petition, none of the parties has filed any reply rebutting the contents of the petition. Therefore, all the contents of the petition have to, in law, be deemed to have been admitted by the doctrine of non-traverse. At no point of time neither MSETCL nor PGCIL informed the petitioner about the proposed crossover. WRTMPL having informed PGCIL by its email on 12.1.2013 that it would be ready to commission the transmission line by the end of November 2013, no possible fault could be laid at the doorstep of WRTMPL for not coordinating with PGCIL.

(b) The Commission has observed that 'Even if for the sake of argument, it is accepted that WRTMPL could have handed over the line on 30.11.2013 to PGCIL, the real time operation and the grid constraint on account of outage of Chandrapur-Padge HVDC bi-pole line SLDC Maharashtra would not have allowed the transmission line to be synchronized and declared under commercial operation on 30.11.2013 as claimed by the Petitioner. These problems could have been avoided through proper coordination with PGCIL and MSETCL'. The Review Petitioner having informed PGCIL by email on 12.11.2013 that it would be ready to commission the line by the end of the November 2013, no possible fault could be laid at the doorstep of the Review Petitioner for not coordinating with PGCIL.

(c) With regard to the Commission`s finding that WRTMPL has failed to give the required notice in terms of clause 6.2.2 of the Implementation Agreement, the Review Petitioner has clarified that WRTMPL vide email dated 12.11.2012



informed PGCIL about the proposed commissioning which completely satisfied the requirement of clause 6.2.2 of the Implementation Agreement. Since the said issue was not raised during the course of hearing, WRTMPL had no opportunity to place the same before the Commission.

(d) The reliance placed by the Commission on the judgment of Appellate Tribunal for Electricity dated 2.7.2012 in Appeal No. 123 of 2011 is misplaced. The factual ground in the said judgment is completely different from the facts of the present case.

3. During the course of hearing, learned counsel for the Review Petitioner reiterated the submission made in the review petition. Learned counsel further submitted that Regulation 3 (12) (c) of the 2009 Tariff Regulations provides that an element of the transmission system shall be declared under commercial operation if it is in regular service after successful charging and trial operation while second proviso says that in case an element is prevented from providing such service for reasons not attributable to the transmission licensee or its supplier, or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service. Learned counsel submitted that both the provisions need to be read harmoniously and 'ready for regular service' should be considered in the context that the transmission line is ready in all respects but due to reasons beyond control of the transmission licensee, it cannot carry out successful charging and trial operation for putting the element in to regular service. Seen in this context, the transmission line of the Review Petitioner was ready for charging and trial operation, but was prevented for



the same on account of the cross over work of MSETCL. Therefore, the case of the Review Petitioner is covered under Regulation 3 (12) (c) and the judgment of the Hon`ble Appellate Tribunal for Electricity cannot be applied in the case of the petitioner.

Analysis and Decision

4. In the present petition, the Review Petitioner has sought review of the order of the Commission dated 28.5.2015 on the ground that the findings in the impugned order is not based on documents on record and are factually wrong.

5. As regards the first ground of review, the Review Petitioner is aggrieved by the following observations in para 13 of the impugned order:

“13.....The Petitioner cannot claim that it was not aware of the crossover work by MSETCL till the morning of 30.11.2013. Moreover since one end of the line is to be connected to the sub-station of MSETCL, it was the obligation of WRTMPL to keep MSETCL about the progress of the works and the schedule of commissioning of its transmission line.”

The Review Petitioner has submitted that the above observation of the Commission is factually wrong since the statement of the Review Petitioner that it came to know about the crossover by MSETCL only on 30.11.2014 remained un-rebutted. The Review Petitioner has further submitted that at no point of time neither MSETCL nor PGCIL informed WRTMPL about the proposed crossover. We have examined the submission of the Review Petitioner. The Commission has clearly noted in Para 13 of the impugned order regarding the intimation by MSETCL to WRTMPL that the crossover work was intimated verbally to the site engineer of WRTMPL which fact has not been denied by representative of WRTMPL. Therefore, the Petitioner cannot claim



that it was not aware of the crossover work by MSETCL till the morning of 30.11.2013. Further, the Commission has observed that one end of the line was connected to sub-station of MSETCL, thus it was the obligation of WRTMPL to keep MSETCL informed about the progress of the work and the schedule of commissioning of its transmission line. We therefore, do not find merit to review our finding in the impugned order and review on this aspect is disallowed.

6. The second ground of review is the following observations of the Commission in the impugned order:

“Even if for the sake of argument, it is accepted that WRTMPL could have handed over the line on 30.11.2013 to PGCIL, the real time operation and the grid constraint on account of outage of Chandrapur-Padge HVDC bi-pole line SLDC Maharashtra would not have allowed the transmission line to be synchronized and declared under commercial operation on 30.11.2013 as claimed by the petitioner. These problems could have been avoided through proper coordination with PGCIL and MSETCL”

7. The Review Petitioner has submitted that it informed PGCIL by email on 12.11.2013 that it would be ready to commissioning the line by the end of the November 2013 and therefore, no possible fault could be laid at the door step of the Review Petitioner for not coordinating with PGCIL. The Review Petitioner has further submitted that as long as the Review Petitioner was ready with its transmission line, it cannot be made to suffer on someone else account if it is prevented from commissioning of the transmission line due to the circumstances beyond its control.

8. We noticed that the Review Petitioner seems to hint that it is the responsibility of the PGCIL to carry out all coordination work with MSETCL for commissioning of the



transmission line after the Review Petitioner has intimated about its readiness for commissioning. The Review Petitioner has relied on the e-mail dated 12.11.2013 which is enclosed as Annexure RP-2. The said e-mail is extracted as under:

“Construction work of 400 kV DC Pune-Aurangabad transmission line is in final stage and efforts are being made to complete the said line by 25th /26th November 2012 & shall commission by Nov 2013.

You are requested to arrange readiness of bays alongwith MSETCL.

This is for information & necessary action at your end please.”

The Review Petitioner has admitted that the above e-mail was not inadvertently filed in the Main Petition since this had never been doubted or questioned at any stage. In our view, the Review Petitioner should have disclosed all information including the e-mail which is a crucial document to decide whether MSEDCL was on notice or not. However, we are not inclined to accept that merely by writing an e-mail to PGCIL, the Review Petitioner is absolved of its responsibilities to coordinate with PGCIL and MSETCL with regard to the commissioning of its transmission line. Moreover, the observations of the Commission as quoted above needs to be appreciated in the contest of the factual position that the representative of MSETCL submitted before SE(O) of WRPC that in view of the ongoing outage of Chandrapur-Padge HVDC bi-pole line on 30.11.2013 and 1.12.2013, SLDC would have denied permission to take any major activity like charging of new line and outage of any line in the relevant corridors. It is in this context that the Commission observed in the impugned order that the problem could have been avoided through prior notice and proper coordination on the



part of the Review Petitioner regarding the commissioning with PGCIL and MSETCL. Therefore, we do not find any merit on this ground for review.

9. The third ground of review is the following observation of the Commission in Para 14 of the impugned order which is extracted as under:-

“14.....Therefore, the petitioner has not given a written notice of not less than 10 days as required under clause 6.2.2 of the Implementation Agreement. This is a lapse on the part of the petitioner, particularly when viewed in the context of the fact that the petitioner vide its letter dated 17.12.2013 had requested PGCIL to issue commissioning certificate in terms of clauses 6.2 and 6.3 of the Implementation Agreement. In other words, the petitioner is relying on the provisions of the implementation Agreement on selective basis. In our view, the petitioner has failed to give the required notice in terms of clause 6.2.2 of the Implementation Agreement. The period of 10 days has been prescribed in order to enable PGCIL not only to arrange for testing and trial operation but also for carrying out the planning and coordination work as entrusted under section 38 of the Act. As per the recital of the Implementation Agreement, the petitioner has acknowledged the provisions of section 38 of the Act and has agreed to abide by the same. Therefore, the petitioner cannot be allowed to take advantage of its own lapse under the Implementation Agreement.”

10. The Review Petitioner has submitted that it has intimated PGCIL vide its e-mail dated 12.11.2013 about the proposed commissioning for the transmission line in the end of November, 2013, in compliance of Clause 6.2.2 of the Implementation Agreement. The said document was not on record since nobody had raised that the requirement of Clause 6.2.2 of the Implementation Agreement was not fulfilled. Since, the Review Petitioner has now placed the e-mail dated 12.11.2013 on record, the finding of the Commission as quoted above is contrary to the undisputed facts.

11. We have considered the submission of the Review Petitioner. The Commission in Para 14 of the Impugned order has analyzed the various clauses of the Implementation



Agreement dated 23.11.2007 between PGCIL and WRTMPL and has specifically noted the responsibility of the Review Petitioner to give notice to PGCIL and Independent Engineer. The Petitioner now claims that the e-mail dated 12.11.2013 was noticed under the Implementation Agreement. This e-mail does not refer to any of the provisions of the Implementation Agreement and does not even contain the details regarding the firm schedule of the commissioning test. The observations of the Commission are based on the non-compliance of the provisions of the Implementation Agreement by the Review Petitioner. Therefore, we do not find any infirmity in the Impugned order.

12. The fourth ground of review is regarding the observation of the Commission in Paras 16 and 17 of the Impugned order regarding compliance of Regulation 3 (12) (c) of the 2009 Tariff Regulations. The Review Petitioner has submitted that the reliance of the Commission on the judgment of the Appellate Tribunal for Electricity dated 2.7.2012 in Appeal No. 123 of 2011 is misplaced as the factual background of the said judgment from the facts of the present case are different. The Review Petitioner submitted that the said judgment covers a case where it was held that the transmission line was not ready for commissioning till the three requirements under Regulation 3 (12) (c) of the 2009 Tariff Regulations, namely, the transmission line has been charged successfully, its trial operation has been successfully carried out and it is in regular service, are fulfilled. The Review Petitioner has submitted that in the present case, the entire line was completely ready but commissioning of the same was delayed on account of reasons entirely beyond the control of the Review Petitioner. Learned Counsel for the Review Petitioner argued during the hearing that the provision “ready for regular



service” in Regulation 3 (12) (c) of the 2009 Tariff Regulations should be harmoniously read in the context that the transmission line is ready in all respect, but due to reasons beyond control, it cannot carry out successful charging and trial operation for putting in the element into a regular service. In such cases, the COD should be declared from the date the transmission line is ready for regular service but for the trial operation and charging on account of reasons beyond the control of the transmission licensee.

13. Member Secretary, WRPC had suggested the Petitioner to approach the Commission under second proviso to Regulation 3 (12) (c) of the 2009 Tariff Regulations for declaration of deemed COD w.e.f. 30.11.2013. Accordingly, the Petitioner had filed the Petition No. 146/MP/2014 for declaration of COD of the transmission line w.e.f. 30.11.2013. The Commission accordingly analyzed the provision of the Regulation 3 (12) (c) of the 2009 Tariff Regulations and the decision of the Appellate Tribunal for Electricity on interpretation of the said Regulation in its judgment dated 2.7.2012 in Appeal No. 123 of 2011 and came to the conclusion that since both circuits of the transmission line were charged on 4.12.2013 and 5.12.2013 after trial operation, both these lines could not be set to be in regular service prior to the said dates and accordingly, the claim of the Petitioner that it was prevented from carrying out the trial operation or charging for the purpose of commissioning on 30.11.2013 was not made out. It is pertinent to note that WRTMPL handed over the line on 1.12.2013 and PLCC works were taken up thereafter. The wiring problem and problem in sending DT signal of TBC breaker from Aurangabad to Pune sub-station were rectified by the Review Petitioner at the night of 3.12.2013 and after clearances



from SLDC/WRLDC, second circuit of the transmission line was charge synchronized on 4.12.2013 at 18.14 hrs and first circuit on 5.12.2013 at 1950 hrs after trial operation.

14. It is however noticed that this transmission line was implemented under tariff based competitive bidding. In terms of Para 6.3.1 of the Implementation Agreement between PGCIL and WRTMPL, commercial operation of a transmission element shall be as under:

“6.3.1 An element of the Project shall be declared Commissioned and the Commercial Operation Date shall be achieved on the earlier of the date that POWERGRID is satisfied with the test report or the date the Independent Engineer has issued a Final Test Certificate stating that the Commissioning Tests have been carried out in accordance with this Agreement and satisfy the criteria of the Commissioning of such element of the Project.”

15. According to the above provision, the commercial operation shall take place when the PGCIL is satisfied with the test report or when the Independent Engineer issues a final test certificate with regard to the commissioning test carried out in accordance with the agreement whichever is earlier. The test certificate from the Independent Engineer is not on record. However, the Circuit II and Circuit I of the lines were charged on 4.12.2013 and 5.12.2013 respectively and PGCIL declared the COD of both circuits w.e.f. 1.1.2014 in terms of first proviso to Regulation 3 (12) (c) of the 2009 Tariff Regulations which says that “the date shall be the first day of the calendar month and the transmission charge for element shall be payable and its availability shall be accounted for from that date”. Since this is a competitive bidding project, first proviso to Regulation 3 (12) (c) shall not be applicable in this case and the COD of the transmission line shall be regulated in terms of Clause 6.3.1 of the Implementation



Agreement. Accordingly, in modification of our decision in the impugned order, we direct that the Circuit I and Circuit II of the transmission line of the Review Petitioner shall be declared to have achieved commercial operation on 5.12.2013 and 4.12.2013 respectively.

16. Accordingly, the review petition is disposed of in terms of the above.

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

