

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 40/RP/2017

alongwith I.A. No.71/IA/2017

Coram:

**Shri Gireesh B Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 23.10.2017

In the matter of:

Petition for review and modification of the order dated 19.9.2017 in Petition No.235/TT/2016.

And in the matter of:

Power Grid Corporation of India Limited
"Soudamini", Plot No. 2, Sector 29
Gurgaon -122001

.... Review Petitioner

Vs

1. Karnataka Power Transmission Corporation Limited,
(KPTCL),Kaveri Bhawan,
Bangalore-560 009
2. Transmission Corporation of Andhra Pradesh Limited,
(APTRANSCO),Vidyut Soudha,
Hyderabad-500 082
3. Kerala State Electricity Board (KSEB),
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004
4. Tamil Nadu Electricity Board,
NPKRR Maaligai, 800, Anna Salai,
Chennai-600 002



5. Electricity Department,
Government of Goa,
Vidyuti Bhawan, Panaji, Goa-403001
6. Electricity Department,
Government of Pondicherry,
Pondicherry-605 001
7. Eastern Power Distribution Company of Andhra Pradesh Limited,
(APEPDCL), APEPDCL, P&T Colony,
Seethmmadhara, Vishakhapatnam, Andhra Pradesh
8. Southern Power Distribution Company of Andhra Pradesh Limited,
(APSPDCL), Srinivasasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesavayana Gunta,
Tirupati-517 501, Chittoor District, Andhra Pradesh
9. Central Power Distribution Company of Andhra Pradesh Limited,
(APCPDCL), Corporate Office, Mint Compound,
Hyderabad-500 063, Andhra Pradesh
10. Northern Power Distribution Company of Andhra Pradesh Limited,
(APNPDCL), Opp. NIT Petrol Pump,
Chaitanyapuri, Kazipet,
Warangal-506 004, Andhra Pradesh
11. Bangalore Electricity Supply Company Limited,
(BESCOM), Corporate Office, K. R. Circle,
Bangalore-560 001, Karnataka
12. Gulbarga Electricity Supply Company Limited,
(GESCOM), Station Main Road,
Gulbarga, Karnataka
13. Hubli Electricity Supply Company Limited,
(HESCOM), Navanagar, PB Road,
Hubli, Karnataka
14. MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle,
Mangalore-575 001, Karnataka
15. Chamundeswari Electricity Supply Corporation Limited,
(CESC), # 927, L J Avenue, Ground Floor,
New Kantharaj Urs Road,



Saraswatipuram, Mysore-570009, Karnataka

16. Coastal Energen Private Limited,
5th Floor, Buhari Towers, No. 4, Moores Road,
Chennai-600 006, Tamil Nadu
17. Ind-Bharath Power (Madras) Limited,
Plot No. 30-A, Road No. 1,
Film Nagar, Jubilee Hills,
Hyderabad-500 033, Andhra Pradesh
18. Transmission Corporation of Telangana Limited,
Vidhyut Sudha, Khairatabad,
Hyderabad-500 082

.....Respondents

ORDER

This is a review petition by Power Grid Corporation of India Limited (“the Review Petitioner”) seeking review of the order dated 19.9.2017 in Petition No.235/TT/2016 wherein transmission charges for “Tuticorin Pooling Station-Salem Pooling Station 765 kV D/C line (initially charged at 400 kV) alongwith Bay extensions at Salem Pooling Station and Tuticorin Pooling Station and 80 MVAR Line Reactors at each end of both circuits of Tuticorin Pooling Station-Salem Pooling Station 765 kV D/C line (initially charged at 400 kV) (hereinafter referred to as “transmission assets”) under “Transmission System associated with Common System Associated with Coastal Energen Private Limited and Ind-Bharat Power (Madras) Limited LTOA Generation Projects in Tuticorin Area-Part-B” in Southern Region was approved from the date of commercial operation to 31.3.2019 based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014(hereinafter referred to as “the 2014Tariff Regulations”).



2. The Review Petitioner has also filed Interlocutory Application No.71/IA/2017 praying for stay of the operation of order dated 19.9.2017, permit the Review Petitioner to levy and receive transmission charges as per the Commission's order dated 27.12.2016 in Petition No.235/TT/2016 and pass an ad interim ex-parte order to the said effect.

3. The Commission in order dated 19.9.2017 restricted the capital cost of the 765 kV D/C transmission assets to ₹64027 lakh against the petitioner's claim of ₹174765 lakh as the 765 kV line was charged at 400 kV level and observed that the capital cost allowed will be reviewed at the time of truing-up. The relevant portion of the order is extracted hereunder:-

“26. It is further observed that the 765 kV Tuticorin Pooling Station-Salem Pooling Station 765kV D/C line is charged at the 400 kV level. Therefore, the utilization of the 765 kV transmission system is being restricted to the level of 400 kV level. The respondents have objected to the recovery of entire transmission charges by charging the 765 kV line at 400 kV level. We are of the view that it would be unreasonable to recover the entire cost with sub-optimal utilization of the instant transmission asset. Therefore, till the 765 kV D/C Tuticorin Pooling Station-Salem Pooling Station 765kV D/C line is charged at 400 kV voltage level, its utilization and benefit received by the beneficiaries is to the tune of 400 kV level and therefore, the capital cost is restricted to the extent of 400 kV level so that tariff charged is commensurate with its usage. Therefore, at present, we restrict the capital cost of the transmission lines to the extent of ₹172 lakh/km on provisional basis as submitted by Central Transmission Utility for the purpose of POC tariff. However, the capital cost allowed is subject to review at the time of truing-up.....”

4. The Review Petitioner has submitted the following grounds for review of order dated 19.9.2017:-

a. The instant transmission assets were planned for not only evacuation of power of Coastal Energen Pvt. Ltd. and Ind-Bharath Power (Madras) Limited (IBPML), but also other existing and under construction generation projects like Tuticorin,



Tuticorin JV, Kudankulam APP, expansion at Kudankulam APP and potential wind generation.

b. The computation of tariff was linked erroneously to the indicative cost submitted by the CTU for the purpose of computation of PoC charges contrary to the intent of the 2014 Tariff Regulations. The 2014 Tariff Regulations do not envisage linking of the indicative cost of the CTU for determination of the transmission tariff.

c. The transmission tariff for the instant assets was reduced to the 400 kV voltage level instead of 765 kV as the line was charged at 400 kV level in accordance with the approval of the Scheme in the Standing Committee. The Commission in order dated 31.5.2010 in Petition No.233/2009 approved phased charging of the instant assets. However, this fact was not considered while issuing the impugned order and it is an apparent error which needs to be rectified.

d. Capital cost of ₹68867.03 lakh was approved in the impugned order instead of ₹174765.03 lakh and it has resulted in under recovery of tariff. The restriction of capital cost has led to reduction of capital cost by ₹110700 lakh which is almost 60% of the estimated completion cost of the instant assets.

e. Postponing of the review of the capital cost to the end of tariff period of truing up would involve carrying cost which be against the consumer interest. Financial unviability and huge carrying cost can be avoided by an appropriate review of the order dated 19.9.2017.



f. The capital cost of ₹172 lakh/km considered for computing the capital cost does not take into account the IDDC, IEDC, RoW cost, tree and crop compensation, land acquisition, etc, which are inextricably linked to the capital cost of the assets. Determination of tariff without these elements by relying on the indicative cost has gravely prejudiced the Review Petitioner and it contrary to the 2014 Tariff Regulations.

g. The Review Petitioner was not granted an opportunity to submit the explanation for the cost variation between the FR cost and the estimated completion cost. Though the estimated completion cost is more than the FR, it is within the revised apportioned cost given in the RCE dated 7.3.2017. It appears that the Commission was not satisfied with the explanation furnished by the Review Petitioner for the cost variation and hence the capital cost claimed by the Review Petitioner was not allowed and the Review Petitioner was directed to submit the basis of arriving at the cost estimates and the efforts made for achieving cost efficiencies. The Review Petitioner should have been given the opportunity to furnish information pertaining to the cost variation and summarily rejecting the Review Petitioner's claim has prejudiced its rights.

h. The estimates are prepared following robust and time tested system of preparing cost estimates before obtaining the Investment Approval and it follows the best industry practices and due diligence including justification of bid prices before placing the awards cost. However, due to technical reasons and unavoidable situations the cost goes up. The detailed reasons for cost variation is presented to the Board of Directors and recorded in the RCE.



i. As the RCE of the project was varying by more than 20% of the approved cost, the RCE was examined by the Committee of Executive Directors. After detailed deliberation of various aspects of cost and time over-run, the Committed concluded that the increase was mainly due to increase in the land and compensation, price variation, variation in quantities of approved, increase in IDC, etc. The Committee observed that the time over-run and increase in cost re beyond the control of the Review Petitioner and recommended the cost of ₹269272 lakh including an IDC of ₹36927 lakh for further consideration of the ColP and Board of Directors. The ColP after the head wise variation in the cost of the project approved the cost of ₹270265 lakh including IDC of ₹37891 lakh in its meeting held on 9.2.2017. After deliberations, the Board approved the above proposal.

j. Prudent and time tested methods were adopted to ensure cost estimates in fair and equitable manner in accordance with the best available practice in the industry. Concerted efforts were made to ensure timely completion of the project and minimize the time over-run thereby reducing the overall cost of the project. However, in certain cases, despite best efforts there is variation in cost and time over-run and it is beyond the Review Petitioner.

5. The Review Petitioner has made the following submissions in I.A. No.71/IA/2017:-

a. The Commission has disallowed approximately 60% of the capital cost and it has led to huge under recovery of tariff which is causing irretrievable injustice to the Review Petitioner. It is not able to service its debt payment obligations,



regular operation and maintenance expenses, payment of interest on working capital, loan and income tax including dividends. Further, denial of full tariff is affecting its generation of internal resources, which in turn restricts its investment in ongoing projects.

b. Implementation of the impugned order would lead to irretrievable injustice and prayed that during the pendency of the instant review petition, the Review Petitioner may be continued to recover the transmission charges as per the Commission's order dated 27.12.2016.

c. Balance of convenience is in favour of the Review Petitioner as the beneficiaries have been paying transmission charges in accordance with the Commission's order dated 27.12.2016 since the COD of 13.11.2016. No irretrievable harm would be caused to the beneficiaries as they have been paying the charges since 13.11.2016, during the pendency of the review petition. On the other hand, grave prejudice and irreparable harm will be caused to the Review Petitioner if the impugned order is implemented due to under recovery of tariff leading to financial unviability of the instant assets.

d. The Review Petitioner has prayed for stay of the order dated 19.9.2017 during the pendency of the instant review petition and permit to levy and receive transmission charges as per order dated 27.12.2016 during the pendency of the review petition. The Review Petitioner has also prayed for an ad interim ex parte order to the above said effect.

6. We have considered the submissions of the Review Petitioner. The basic contention of the Review Petitioner is that linking the capital cost to the indicative cost



considered for the computation of PoC charges and granting tariff for 765 kV line at the 400 kV line has resulted in under-recovery of tariff as a result of which it is not able to service its debt obligations. The Review Petitioner has submitted that 765 kV line has been charged at 400 kV in line with the approval in the Standing Committee. Further, the Review Petitioner has submitted that the Commission has given liberty to the Review Petitioner to submit the justifications regarding variation between the FR cost and estimated completion cost which means that the same will be considered at the end of the control period and will have an adverse impact on cash flow of the Review Petitioner. In our view, there is merit in the submission of the Review Petitioner and there is prima facie case for review of the impugned order. Accordingly, we have considered the review petition by circulation. We admit the review petition and issue notice thereon to the Respondents.

7. We have also considered the IA. The Review Petitioner is charging the tariff as per our order dated 27.12.2016. If the Review Petitioner is allowed to charge tariff at that rate till the disposal of the review petition, it will not adversely affect the interest of the beneficiaries as the beneficiaries are entitled for interest on the excess amount recovered. On the other hand, if the tariff as per the impugned order is implemented and on the basis of the review, it is concluded that the Review Petitioner is entitled to more tariff than what is allowed in the impugned order, then the beneficiaries would be required to return with interest. In our view, balance of convenience is in favour of continuation of charging tariff as per the order dated 27.12.2016. Accordingly, we direct that the impugned order shall not be given effect to and the Review Petitioner shall be



entitled to charge tariff as per the order dated 27.12.2016 till further order. Accordingly, I.A. No.71/IA/2017 is disposed of.

8. The parties are directed to complete their pleadings by 15.12.2017. The review petition shall be listed for final hearing on 21.12.2017.

sd/-
(M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B Pradhan)
Chairperson

