

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 7/RP/2017

in

Petition No. 33/TT/2015

Coram:

**Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 16.06.2017

In the matter of:

Review petition under Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 25.5.2016 in Petition No. 33/TT/2015.

And in the matter of:

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

.....**Petitioner**

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited
VidyutBhawan, Janpath, Jaipur - 302 005
Rajasthan, INDIA.
2. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer- 305004 Jaipur
3. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur - 302 005
Rajasthan, INDIA.



4. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area
Jodhpur-342003
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan Shimla
Himachal Pradesh (India)-171004
6. Punjab State Electricity Board,
1st Floor, Patiala - 147001,
Opposite Kali Mata Mandir
Shakti Sadan
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector -6
Panchkula-134109
8. Power Development Department,
Exhibition Ground, PDD Building,
Jahangir Chowk - 190001, Srinagar;
9. Power Purchase Agreement Directorate
Uttar Pradesh Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001, UP, India.
10. Delhi Transco Limited,
Shakti Sadan, Kotla Marg,
New Delhi-110002
11. BSES Yamuna Power Limited, New Delhi
C-7, Yamuna Vihar, New Delhi - 110053
12. BSES Rajdhani Power limited,
33 KV Grid, BSES Bhawan,
Adchini, New Delhi -110017
13. North Delhi Power Limited,
Shakti Deep Building,
District Office Building,
Rohini Sector 3 New Delhi– 110085
14. Chandigarh Administration,
Union Territory
5th Floor, Secretariat Deluxe Building,
Sector - 9 - D Chandigarh– 160017



15. Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeyta Gabar Singh Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun-248001, Uttarakhand
16. North Central Railway,
Subedarganj, Doomanganj, Allahabad
Uttar Pradesh - 211011
17. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi-110001
18. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg
Lucknow-226001

.....Respondents

For petitioner : Shri Sanjay Sen, Advocate, PGCIL
Shri S.S Raju, PGCIL
Shri Rakesh Prasad, PGCIL

For respondent : None

ORDER

This review petition is filed by Power Grid Corporation of India Limited (PGCIL) under Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 25.5.2016 in Petition No.33/TT/2015, wherein the transmission tariff was allowed for Asset-A: LILO of Ckt-II of 400 kV D/C Lucknow-Bareilly transmission line at Shahjahanpur, Asset-B: 315 MVA 400/220 kV ICT-I with 3 Nos. of 220 kV Line Bays at Shahjahanpur, Asset-C: 315 MVA 400/220 kV ICT-II with 3 Nos. of 220 kV Line Bays at Shahjahanpur, Asset-D: Extension of 400/220 kV GIS Gurgaon, Asset-E: 2x50 MVAR Bus Reactor at 400/220 kV Bareilly Sub-station along with associated bays (existing Line Reactors retained and used as



Bus Reactor), Asset-F: 125 MVAR Bus Reactor at Shahjahanpur under “Northern Regional Transmission Strengthening Scheme” in Northern Region (hereinafter referred to as the “instant assets”) for 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (referred as "2014 Tariff Regulations").

Brief facts of the case

2. As per the Investment Approval (IA) dated 17.3.2010 accorded by Board of Directors of the Review Petitioner, the instant assets were scheduled to be commissioned within 32 months from the date of I.A., i.e. by 1.12.2012. Assets A, B, C, D, E and F were commissioned on 13.6.2014, 15.6.2014, 29.9.2014, 16.1.2015, 1.4.2014 and 1.4.2015 respectively. Thus, there was a time over-run of 18 months to 28 months in commissioning of the assets. Time over-run of 2 months in commissioning of Assets A and B, 6 months and 12 months in case of Assets C and Asset F respectively was disallowed by the Commission in the impugned order. In case of Asset E, entire time over-run of 16 months was disallowed. Accordingly, IDC and IEDC were disallowed for the period of time over-run in commissioning of instant assets.

3. The Review Petitioner has sought approval of COD of Assets D and E as 16.1.2015 and 1.4.2014 respectively under proviso (ii) of Regulation 4(3) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 as the downstream assets of Assets D and E, constructed by HVPNL and UPPCL respectively were not ready. The Commission provisionally approved the COD of Assets D and E as the Review Petitioner did not submit the RLDC certificate on no load



condition and directed the Review Petitioner to submit the same at the time of truing up. The Commission further held that the transmission charges of Assets D and E will be borne by HVPNL and UPPCL respectively from the provisional date of commercial operation till the commissioning of downstream assets by HVPNL and UPPCL. The transmission charges are to be included in the PoC charges from the date of commissioning of the downstream assets by HVPNL and UPPCL. The relevant para of the impugned order is as under:-

“71. The transmission charges for the Asset D and Asset E shall be borne by the beneficiaries or the long term transmission customers / DICs, as the case may be till the commissioning of the downstream system. Once the downstream system is commissioned the billing, collection and disbursement of the transmission charges approved shall be governed by the provisions of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time as provided in Regulation 43 of the 2014 Tariff Regulations.”

4. The Review Petitioner has made the following prayers:-

- a) Condone the time over-run of 2 months in commissioning of Assets A and B, 6 months, 16 months and 12 months in commissioning of Assets C, E and F respectively.
- b) Consequently allow the IDC and IEDC of ₹124 lakh in case of Assets A, B, C and F and ₹30.60 lakh in case of Asset E.
- c) Allow recovery of transmission charges of Asset D and E from the beneficiaries under the PoC mechanism from their respective dates of commercial operation.

5. The review petition was admitted on 19.4.2017 and the respondents were directed to file reply to the review petition. However, none of the respondents have filed any reply.



Grounds for Review

6. The Review Petitioner has submitted that certain material facts and documents that were brought on record vide affidavit 19.4.2016 were not considered by the Commission and it is an error apparent on the face of record. The Review Petitioner has made the following submissions in support of the instant review petition:-

- a) Land at the proposed project site was made available to the Review Petitioner progressively on 17.2.2011 and 1.2.2012. There were intermittent ROW issues from August, 2011 to June, 2013. There was also demand for higher compensation from the land owners despite payment of adequate compensation to the affected land owners at Shahjahanpur. ROW issues led to criminal intimidation, assault, verbal spat, extortion, etc. of its employees and the environment was not conducive for its workforce to continue with the work leading to demobilization. These issues impaired the Review Petitioner and its contractors and sub-contractors to ensure timely execution of work thereby leading to delay in commissioning of instant assets. The reasons for time over-run are beyond the control of the Review Petitioner and are of the nature of force majeure events and hence the time over-run should be condoned.

- b) The Review Petitioner took up the ROW issues with the District Collector, Land Acquisition Officer and the police authorities through various letters. Some of the correspondences made with the authorities to resolve the ROW issues were filed alongwith the affidavit dated 19.4.2016 which effectively demonstrate that the time over-run was not on account of any fault or negligence on the part of the Review Petitioner. However, the same were not adequately considered by the



Commission while passing the impugned order. Letters, dated 18.8.2011, 9.9.2011, 18.10.2011, 4.11.2011 and 29.11.2011 written to various authorities were not produced at the time of adjudication of Petition No.33/TT/2015 as the contract entered into with the contractors had expired and the contract file was sent to the store. The same was not traceable and the documents were not filed during the consideration of the main petition. The documents are now produced in support of the averments and in the interest of the justice and proper adjudication of instant petition.

- c) Even after acquiring the possession of the land, hindrance was caused and work could not be done on a continuous basis due to the flood and aforesaid ROW issues in Shahjahanpur. After minimizing the RoW issues, suitable arrangements were made by engaging complete Water Dewatering System Private Limited on 14.9.2013, for dewatering work at the project site, for a period of two months. There was no delay on account of award of contract and contract could not have been awarded in the absence of a conducive platform for engaging a contractor. Due to law and order issues in the region and persistent ROW issues, it was not feasible to undertake soil investigation and conduct the geographical mapping of the construction site. A detailed geo-technical investigation for 400/200 kV Shahjahanpur Sub-station was carried by Esscon Engineering Services and it submitted its report only post minimization of RoW issues in June, 2013.
- d) As per the scope of work identified in the Investment Approval, Asset E was required to be utilized along with Asset A. Time over-run of 16 months in



commissioning of Asset E is on account of non-availability of encumbrance free land for Asset A. Further, the line reactors of Asset A were required to be retained and used as Bus Reactor at Bareilly. Same was a policy measure and not a deviation from the scope of work as identified in the Investment Approval and Feasibility Report prepared. The issue was duly brought to the notice of the Commission vide affidavit dated 19.4.2016, but the same was not considered by the Commission leading to passing of impugned order in its present form.

- e) Linking the recovery of the transmission charges of Assets D and E in a manner other than the PoC mechanism till the availability of the downstream assets is not envisaged either in the 2014 Tariff Regulations or Sharing Regulations. There is no contractual liability under which the State Transmission Utility or Discoms can be compelled to pay the transmission charges till the commissioning of the downstream system. Such a mode of recovery has not been envisaged in the Regulations. The Commission having enacted Sharing Regulations for transmission charges cannot pass an order ignoring the said regulations. The PoC is in itself a self-contained code for recovery of transmission charges. It cannot be that part of the cost of the transmission assets is recovered through non-PoC mechanism and the other part through PoC mechanism. As such, there is no such formula for part recovery through PoC mechanism. This in the present case is an error apparent and needs to be reviewed in the present review petition.



6. During the hearing on 23.5.2017, the learned senior learned counsel submitted that time over-run in commissioning of assets A, B, C and F was on account of RoW issues at Shahjahanpur. The reasons for time over-run were placed on record vide affidavit dated 19.4.2016, however the same were not adequately considered while passing the impugned order dated 25.5.2016. He submitted that non-consideration of this information is an error apparent on the face of record which requires to be corrected. He further submitted that certain other documents like correspondence dated 18.8.2011, 9.9.2011, 18.10.2011 were not produced at the time of issue of the impugned order, as the same could not be traced, and the said documents are now being produced in support of the averments for justification of the delay in commissioning of the instant transmission assets and the same may be considered.

7. Learned senior counsel for the Review Petitioner further submitted that linking the recovery of the transmission charges of Assets D and E in a manner other than the PoC mechanism, till the availability of the downstream, is not envisaged either in the 2014 Tariff Regulations or Central Electricity Regulatory Commission (Sharing of inter-state Transmission Charges and Losses) Regulations, 2010 (2010 Sharing Regulations). Further, the Review Petitioner has not executed any Indemnification Agreement with Discoms for sharing of downstream network charges and as such, there is no contractual liability under which the State Transmission Utility or Discoms can be compelled to pay the transmission charges till the commissioning of the downstream system. As such, the tariff allowed for Assets D and E in the impugned order should be included in the PoC charges from the date of commercial operation of the instant assets.



Analysis and Decision

8. We have considered the submissions of the Review Petitioner. The Review Petitioner has filed the instant review petition seeking condonation of the time over-run disallowed in case of Assets A, B, C, E and F, consequently allow the IDC and IEDC disallowed and allow recovery of the transmission charges of Assets D and E through PoC mechanism. As regards time over-run, the Review Petitioner has contended that the reasons for time over-run submitted vide affidavit dated 19.4.2016 was not adequately considered by the Commission in the impugned order. In affidavit dated 19.4.2016, filed in the main petition, the Review Petitioner submitted that reasons for time over-run in case of Assets A, B, C and F were due to delay in land acquisition at Shahjahanpur, delay due to floods and ROW problems at Shahjahanpur and the time over-run in case of Asset E was due to non-commissioning of Bus Reactor at Bareilly Sub-station. These reasons for time over-run were considered by the Commission in the impugned order and part of time over-run due to the above said reasons was condoned. Hence, we are not able to agree with the contention of the Review Petitioner that its affidavit dated 19.4.2016 was not considered.

9. The Review Petitioner has submitted that certain documents in support of its contention that the time over-run is not attributable at this stage in the review petition stating that these documents were not available at its disposal at the time of filing the main petition and requested to consider the same in the interest of justice and condone the time over-run. Order 47, Rule 1, of Code of Civil Procedure allows review on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by the Review Petitioner at the time when the



impugned order was passed. This is not the case in the instant review petition. These supporting documents which are claimed to be important evidence were available with the Review Petitioner at the time of filing of main petition. The argument that the contract entered with the contractor had expired and the record was consigned to the store and hence could not be produced at the time of filing or during the course of arguments of the main petition does not meet the requirement of Order 47 Rule I which provides that after exercise of due diligence, the document was not within the knowledge or could not be produced when the order was passed. Had the Review Petitioner carried out due diligence to file all relevant documents, it could have traced these documents from the store and filed them alongwith the main petition. In our view, there is no error apparent on the face of record and accordingly review on this count is not allowed.

10. In view of the above, the Review Petitioner's prayer for allowing IDC and IEDC with respect to Assets A, B, C, E and F is also not allowed.

11. The other ground for review is that the transmission charges of Assets D and E could be only recovered only through the PoC mechanism as provided under the 2014 Tariff Regulations and 2010 Sharing Regulations and that there is no other methodology to recover the transmission charges and hence there is an error in the impugned order. The Review Petitioner sought approval of COD of Assets D and E under proviso (ii) of the 2014 Tariff Regulations as the downstream assets to be executed by HVPNL and UPPCL were not commissioned. As per the 2014 Tariff Regulations, the Commission in appropriate case may permit declaration of COD if it is found that the transmission asset is ready but is prevented from being put to useful service on account of reasons not



attributable to the transmission licensee. In the present case, the downstream assets to which the Assets D and E were to be connected are executed by HVPNL and UPPCL and these assets were not ready when the Assets D and E were ready for commissioning. However, the Review Petitioner was required to submit the documentary evidence that the assets were ready for being put into service. The Review Petitioner did not submit the RLDC “no load condition” certificate in this regard. The COD of Assets D and E was provisionally considered as 16.1.2015 and 1.4.2014 respectively as prayed by the Review Petitioner who was directed to submit the RLDC certificate at the time of truing up. The Commission further held that the transmission charges for Asset D and E would be borne by the DICs from the date of provisional COD till the date of commissioning of the downstream assets by the concerned DICs. The Commission is of the view that the beneficiaries should not be burdened with the transmission charges of the assets which do not render any service to the beneficiaries. This has been the consistent view of the Commission. In the instant case, the Assets D and E were not put to use because of the non-readiness of the downstream assets executed by HVPNL and UPPCL and hence it was held in the impugned order that the transmission charges of Assets D and E would be borne by HVPNL and UPPCL till the commissioning of the downstream assets. Similar view has been taken by the Commission in similarly placed petitions. As regards recovery of transmission charges of Assets D and E, the Commission in order dated 4.1.2017 in Petition No.155/MP/2016 has devised a procedure for recovery of transmission charges of assets which could not be put to use because of non-readiness of upstream/downstream assets. The relevant portion of order dated 4.1.2017 in Petition No.155/MP/2016 is extracted hereunder:-



“17. The petitioner is directed to provide YTC details of its assets to NLDC and CTU. NLDC shall provide the same to RPC for inclusion in RTAs. The assets shall be billed along with bill 1 under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time. ISTS licensees shall forward the details of YTC to be recovered as per formats provided under the Sharing Regulations to NLDC. ISTS licensees shall forward the details of entity along with YTC details from whom it needs to be recovered as per applicable order`s of the Commission to NLDC (only in cases of bilateral billing due to non-availability of upstream/downstream system). Based on the input received from respective licensees and the Commission`s order, NLDC shall provide details of billing pertaining to non-availability of upstream/downstream system to respective RPCs for incorporation in RTAs for all cases of bilateral billing. On this basis, CTU shall issue the bills. The process given in this para shall be applicable to all cases of similar nature and all concerned shall duly comply with the same.”

As per the procedure specified above, the petitioner is directed to provide the details of transmission charges of Assets D and E to the NLDC and CTU. NLDC will provide the same to the RPC concerned for inclusion in the RTAs as detailed above. Accordingly, the transmission charges of the said assets would be recovered as specified in order dated 4.1.2017. As such, we do not see any difficulty in recovery in the transmission charges of Assets D and E. Accordingly, the Review Petitioner`s prayer for review on this count is also disallowed.

12. Accordingly, Review Petition No.7/RP/2017 is disposed.

sd/-
(M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

