

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No: 14/RP/2018
in Petition No. 114/MP/2017**

Coram:

Shri P.K. Pujari, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of order: 18th of July, 2018

In the matter of

Petition under Section 94 of the Electricity Act, 2003 and Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, for Review of order dated 22.6.2017 in Petition No.114/MP/2017.

And

In the matter of

Gati Infrastructure Private Limited
14/19/2 Old Delhi Gurgaon Road,
Opposite Hira Public School, Samalkha,
New Delhi- 110037

.....Petitioner

Vs

1. The Chairman and Managing Director
Power System Operation Corporation Limited
B-9, 1st Floor,
Qutub Institutional Area
Katwaria Sarai
New Delhi- 110016
2. The Chairman and Managing Director
Eastern Regional Load Dispatch Centre,
14 Golf Club Road
Tollyganj
Kolkata- 700033
3. The Member Secretary
Eastern Regional Power Committee
14 Golf Club Road
Tollyganj
Kolkata- 700033



4. The Managing Director
The Chairman and Managing Director
Powergrid Corporation of India Limited
9, Qutub Institutional Area, Katwaria Sarai,
New Delhi- 110016
5. The Managing Director
Teesta Urja Limited
2nd Floor, Vijaya Building,
17, Barakhamba Road
New Delhi
6. The Chairman and Managing Director
PTC India Limited
2nd Floor, NBCC Road
15 Bhikaji Cama Place,
New Delhi-110066
7. The Managing Director
DANS Energy Private Limited
5th Floor, DLF Building No. 8, Tower C,
DLF Cyber City Phase –II,
Gurgaon-122002,
Haryana
8. The Managing Director,
Shiga Energy private Limited,
5th Floor, DLF Building No. 8, Tower C,
DLF Cyber City Phase –II,
Gurgaon-122002,
Haryana

....Respondents

Parties present:

Shri Sanjay Sen, Senior Advocate, GATI
Shri Nishant Kumar, Advocate, GATI
Ms. Jyotsna khatri, Advocate, GATI
Shri Ambuj Dixit, Advocate, GATI
Shri Rajesh Sharma, GATI
Shri R. G. Yadav, GATI
Shri Gautam Kumar, Advocate, PTC India
Shri Ravi Kishore, Advocate, PTC India
Shri Swapnil Verma, PGCIL
Shri Jaideep Lakhtakia, TUL



ORDER

The Review Petitioner, Gati Infrastructure Private Limited (hereinafter referred to as “the Review Petitioner”) has filed the present Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 22.6.2017 in Petition No. 114/MP/2017 (hereinafter referred to as the “impugned order”) on the ground that the Commission in the impugned order had recorded installed capacity of its hydro-electric plant as 99 MW whereas its actual installed capacity is 110 MW. The Review Petitioner has made the following prayers:

“(a) Condone the delay of 172 days in filing the present review petition;

(b) Review/modify the order dated 22.6.2017 so as to consider the enhanced capacity of 110 MW for the Chuzachen HEP plant of the Review Petitioner, instead of 99 MW.”

2. The Review Petitioner has submitted as under:-

(a) The Review Petitioner has established a 99 MW Hydro Electric Plant (hereinafter referred to as ‘Chuzachen Plant’) in the State of Sikkim. The Energy and Power Department, Government of Sikkim vide its letter dated 21.5.2015 informed the Review Petitioner that it has no objection with regard to enhancement of capacity of plant from 99 MW to 110 MW.

(b) The Review Petitioner alongwith other generators filed the Petition No. 114/MP/2017 seeking directions to the Respondents to follow the decision taken by the Eastern Regional Power Committee in the meetings held on 14.10.2016, 30.11.2016 and 29.4.2017.



- (c) The Commission in the impugned order dated 22.6.2017 recorded the ERPC minutes of meeting dated 21.6.2017 in which capacity of the Review Petitioner`s plant was mentioned as 99 MW.
- (d) After issue of the impugned order, the Review Petitioner approached ERPC, POSOCO, Central Electricity Authority and PGCIL for revision of installed capacity of Chuzachen Plant from 99 MW to 110 MW. The issue regarding enhancement of installed capacity was discussed in the 135th OCC meeting of the Eastern Regional Power Committee held on 24.7.2017. In the said meeting, OCC viewed that CEA consent letter is required to consider the revised capacity of 110 MW and advised the Review Petitioner to pursue with CEA.
- (e) CEA vide letter dated 4.12.2017 informed the Review Petitioner that the capacity of Chuzachen Plant is being changed from 99 MW to 110 MW in the data base of “All India Installed Capacity” maintained by CEA with effect from 28.9.2017.
- (f) ERPC vide its letter dated 11.12.2017 directed the Review Petitioner to approach the Commission for revised installed capacity of the plant with respect to 110 MW instead of earlier recorded capacity of 99 MW.
- (g) The Review Petitioner has filed the present review petition in order to correct the installed capacity as 110 MW by modifying/reviewing the impugned order.

3. The Review Petitioner has filed Interlocutory Application No. 14/IA/2018 for condonation of delay of 172 days in filing the Review Petition. The Review Petitioner



has submitted that due to continuous and on-going process of acquiring the required approvals from various State and Central Agencies with respect to the revision and recording of the complete installed capacity, it could not file the Review Petition within specified time.

4. Reply to the Review Petition has been filed by the Tessta Urja Limited and the Review Petitioner has filed its rejoinder.

5. Tessta Urja Limited (TUL) in its reply dated 12.6.2018 has submitted that the Review Petitioner had not made any prayer in the main Petition for enhancement of its capacity despite of being aware of it, even prior to September, 2013. Therefore, any new prayer cannot be allowed under the garb of the Review Petition. TUL has further submitted that the Review Petitioner has failed to demonstrate any error apparent on the face of record or misrepresentation of facts or other sufficient grounds or discovery of new and important matter warranting exercise of power of review. The Review Petitioner has sought the review for placing on record fresh/ additional documents which could not be produced earlier, which is not maintainable as the Review Petitioner has submitted in its pleadings that the Government of Sikkim had accepted the revised capacity much before the impugned interim order passed by the Commission. According to TUL, enhancing of capacity of Chuzachen Plant from 99 MW to 110 MW will cause irreparable injury to TUL due to apparent reduction in the evacuation of 1200 MW Teesta III HEP from current 782 MW to 771 MW only. TUL has submitted that as per the decision in the Standing Committee on Power System Planning in ER located on 14.9.2009 as well as the interim arrangement, all the projects are at par while utilizing 400 kV D/C Teesta V-Siliguri Line.



6. The Review Petitioner in its rejoinder has submitted that the petition was not filed for seeking a declaration qua capacity and therefore, there was no requirement to make a prayer to that effect in the main petition which was filed for seeking directions for evacuation of power. The Review Petitioner has submitted that at the time of passing of the impugned order, there was no certification by the CEA as regards the increased capacity of the Review Petitioner's HEP, but the Review Petitioner had maintained the stand in the petition that it had a capacity of 110 MW.

Analysis and Decision

7. We have heard the learned senior counsel for the Review Petitioner and the learned counsel for TUL, PTC India and PGCIL. Learned senior counsel urged that revision of the installed capacity has been sought in the review in order to avoid spillage of water and consequent loss of generation of electricity from the project of the Review Petitioner. Learned senior counsel submitted that Haryana Electricity Regulatory Commission on the application of Haryana Power Purchase Centre has approved the procurement of power from Chuzachen HEP vide its order dated 13.11.2017. Learned senior counsel also submitted that the Review petitioner is in process of formalising the PPA with Haryana Discoms. Therefore, if the order dated 22.6.2017 is not reviewed by the Commission, the Review petitioner would not be able to fulfil its obligation under the PPA to be entered with Haryana Discoms. The Learned counsel for TUL opposed the review petition on the ground that any revision of installed capacity of the project of the Review Petitioner would directly affect TUL, as its LTA capacity for evacuation would be reduced.



8. The present Review Petition has been filed for seeking review/modification of the order dated 22.6.2017 and to consider the enhanced capacity of 110 MW for the Chuzachen HEP Plant of the Review Petitioner in place of 99 MW considered in the impugned order in the light of the approval of CEA vide letter dated 4.12.2017.

9. Petition No. 114/MP/2017 was filed by DANS Energy Private Limited, Shiga Energy Private Limited and Gati Infrastructure Private Limited seeking a direction to the Respondents therein to follow the decisions taken by the Eastern Regional Power Committee in the meetings held on 14.10.2016, 30.11.2016 and 29.3.2017 without any change with regard to their entitlement to evacuate the power generated at their hydro power stations to the extent of 96 MW, 97 MW and 99 MW respectively through the 400 kV DC Teesta Valley-Siliguri Line till completion of 400 kV DC Teesta-III-Kishanganj Transmission Line by Teesta Valley Power Transmission Limited. The Commission after considering the minutes of ERPC meeting held on 21.6.2017 held has under:

“8. We have considered the submission of the parties. ERPC carried out SPS test on 19.6.2017 and shared the results of the said test with all concerned in the meeting held on 21.6.2017. After detailed discussion, the following decisions were taken in the meeting:

“(1) The power flow through the 400 kV Rangpo-Siliguri DC line will be enhanced to 1700 MW till further reviewing on commissioning of 400 kV Teesta-III-Dikchu-Rangpo line.

(2) The allowable evacuation of generation of Sikkim HEPs will be allocated as give below:

IPPs	Evacuation Capacity before COD of Tashiding HPS (MW)	Evacuation Capacity after COD of Tashiding HPS (MW)
Teesta-V HPS	530	530
Dikchu HPS	96	96



Jorethang HPS	96	96
Chuzachen HPS	99	99
Teesta-III HPS	879 (1700-530-96-96-99)	782 (1700-530-96-96-99-97)
Tashideng HPS	0	97

(3) Teesta-III evacuation quantum could be enhanced if there is margin available in transmission corridor due to less generation/back down/shutdown by any of the other generators.

(4) Threshold limit for existing SPS at Rangpo will be revised to 850 MW.

(5) Powergrid would implement the revised setting (threshold limit) of existing SPS at Rangpo after the decision of the Commission.

(6) While commissioning of full-fledged SPS in coordination with ERLDC, Powergrid would implement the agreed modification in the existing SPS as suggested by ERLDC for increasing the effectiveness of the SPS in case the Rango-Siliguri line is tripped from Siliguri end only.

(7) All the respective generators will submit the healthiness certificate for the SPS at their end on monthly basis in OCC meetings.”

10. It is noticed that the decision regarding evacuation capacity of five generators in the region including that of the Review Petitioner was taken in the ERPC meeting dated 21.6.2017 after detailed deliberation and discussion. In the said meeting, the Review Petitioner was a participant and therefore, the Review Petitioner was a party to the said decision. The Commission recorded the minutes of the meeting in para 8 of the impugned order which states that the evacuation capacity of Chuzachen HPS is 99 MW. While passing order in Petition No. 114/MP/2017, the Commission has not deliberated nor taken any view as regards installed capacity of the Review Petitioner. The Commission has accepted the figures of installed capacity as per ERPC deliberation. Further, the Review Petitioner has admittedly stated that the Review Petitioner started the work on revision of the installed capacity from 99 MW to 110 MW after issue of the impugned order by approaching ERPC, POSOCO, CEA and PGCIL. The request of the



Review Petitioner was discussed in the 135th OCC Meeting of ERPC held on 24.7.2017 wherein it was opined that CEA certificate would be required to consider the revised capacity of 110 MW and accordingly, the Review Petitioner was advised to approach CEA. The Review Petitioner took up the matter with CEA vide its letter dated 28.9.2017 and CEA in its letter dated 4.12.2017 considered the capacity of Chuzachen plant as 110 MW with effect from 28.9.2017. Relevant extract of CEA letter is extracted as under:-

“This is with reference to your above referred letter regarding change in installed capacity of Chuzachen HEP from 99 MW (2X49.5MW) to 110 MW (2X55MW).

It is seen that the capacity of the project has been enhanced from 99 MW to 110 MW. The details furnished by M/s. Gati Infrastructure Power Private Limited have been seen by the Central Electricity Authority. It is also seen that all the required approvals and clearances for the enhancement of the installed capacity from 99 MW to 110 MW of Chuzachen HEP has been obtained by M/s. Gati Infrastructure Power Private Limited from Government of Sikkim and Ministry of Environment, Forest & Climate Change, Government of India. It is also seen from the ERLDC, POSOCO Daily Operation Report that the plant is operating at a peak capacity of over 110 MW.

Based on the information furnished by M/s. Gati Infrastructure Power Private Limited, after considering all necessary approvals & clearances, the capacity of Chuzachen HEP is being changed from 99 MW (2X49.5MW) to 110 MW (2X55MW) in the data base of All India Installed Capacity with effect from 28.9.2017.”

It is clear from the above that CEA has considered the revised installed capacity of the project of the Review Petitioner with effect from 28.9.2017, which is after the date of issue of the impugned order. In other words, installed capacity of the project of the Review Petitioner was 99 MW, and not 110 MW, as per the record of CEA as on the date of issue of the impugned order. Since the impugned order was issued based on the facts and material on record, there is no error apparent on the face of the impugned order. Hence, the Review Petition is dismissed.



11. The Review Petitioner has filed an IA for condonation of delay in filing the Review Petition. Since, we have rejected the review petition, we have not taken any view on the IA for condonation of delay.

12. Review Petition No. 14/RP/2018 along with IA14/2018 is disposed of.

sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(P.K. Pujari)
Chairperson

