

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 15/RP/2018
in Petition No. 98/TT/2016**

Coram:

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

Date of Order : 31.05.2018

In the matter of:

Petition for review and modification of the order dated 30.8.2016 in Petition No. 98/TT/2016 under section 94(1)(f) of the Electricity Act, 2003

And in the matter of:

Power Grid Corporation of India Limited
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001

... Review Petitioner

Vs

1. Karnataka Power Transmission Corporation Ltd. (KPTCL), Kaveri Bhavan, Bangalore -560 009
2. Transmission Corporation of Andhra Pradesh Ltd. (APTRANSCO), Vidyut Soudha, Hyderabad- 500082
3. Kerala State Electricity Board (KSEB) Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram- 695 004
4. Tami Nadu Generation and Distribution Corporation Ltd., NPKRR Maaligai, 800, Anna Salai, Chennai- 600 002
5. Electricity Department Government of Pondicherry, Pondicherry- 605 001



6. Eastern Power Distribution
Company of Andhra Pradesh
Limited (APEPDCL), P&T Colony,
Seethmmadhara, Vishakhapatnam
7. Southern Power Distribution
Company of Andhra Pradesh
Limited (APSPDCL), Tirupati- 517
501, Chittoor District, Andhra
Pradesh
8. Central Power Distribution
Company of Andhra Pradesh
Limited (APCPDCL), Corporate
Office, Mint Compound,
Hyderabad- 500 063
9. Northern Power Distribution
Company of Andhra Pradesh
Limited (APNPDCL), Opp. NIT
Petrol Pump, Chaitanyapuri,
Warangal- 506 004
10. Bangalore Electricity Supply Company Limited
(BESCOM) Corporate Office, K.R Circle,
Bangalore- 560 001, Karnataka
11. Gulbarga Electricity Supply Company Limited
(GESCOM) Station Road, Gulbarga, Karnataka
12. Hubli Electricity Supply Company Limited
(HESCOM) Navanagar, PB Road, Hubli,
Karnataka
13. MESCOM Corporate Office
Paradigm Plaza, AB Shetty
Circle, Mangalore- 575 001
14. Chamundeswari Electricity Supply Corporation Limited
(CESC) # 927, L J Avenue, Ground Floor,
Saraswatipuram, Mysore- 570 009
15. Electricity Department
Government of Goa, Vidyuti Bhawan,
Panaji, Goa- 403001



16. Transmission Corporation of Telangana Limited, 2 Vidhyur Sudha, Khairatabad, Hyderabad-500082.

.....Respondents

For Review Petitioner: Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Rhea Luthra, Advocate, PGCIL
Shri Aryaman Saxena, PGCIL

For respondents: None

ORDER

Power Grid Corporation of India Limited (PGCIL) has filed Petition No. 15/RP/2018 seeking review and modification of order dated 30.8.2016 in Petition No. 98/TT/2016.

Background of the case

2. The Review Petitioner filed Petition No. 165/TT/2013 for determination of tariff for LILO of Bangalore-Salem 400 kV S/C line at Hosur under System Strengthening XVIII in Southern Regional Grid (transmission asset) for 2009-14 period which was allowed vide order dated 29.1.2015 in accordance with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (2009 Tariff Regulations). In order dated 29.1.2015, the capital cost of the transmission assets was restricted to the approved apportioned cost and the additional capital expenditure was not allowed and the Review Petitioner was directed to submit the RCE at the time of truing up alongwith justification for cost over-run.

3. The Review Petitioner filed Petition No. 147/TT/2015 in respect of the subject asset for truing up of the actual capital expenditure for the period from 1.2.2014 to 31.3.2014



and determination of tariff for 2014-19 period. As the Review Petitioner failed to produce the RCE as directed in order dated 29.1.2015, the Commission in order dated 24.2.2016 restricted the completion cost to the approved apportioned cost.

4. Later, the Review Petitioner filed Petition No. 98/TT/2016 for revision of the trued up capital expenditure of the transmission asset on the basis of the RCE dated 11.3.2016. The Commission in the order dated 30.8.2016 held that the RCE was approved after disposal of the truing up petition and as such, the same cannot be re-opened on the basis of the developments subsequent to the disposal of the petition. Accordingly, the Review Petitioner's prayer for revision of the trued up petition was rejected. The Review Petitioner has made the instant review against the order dated 30.8.2016 of the Commission.

5. Prior to filing the instant Review Petition, the Review Petitioner challenged the impugned order dated 30.8.2016 of the Commission before the Hon'ble Appellate Tribunal for Electricity in Appeal No. 147 of 2017 and subsequently withdrew the said Appeal vide order dated 19.2.2018 which was allowed by the Appellate Tribunal with permission to file a Review Petition against the order in Petition No. 98/TT/2016.

Case of the Review Petitioner

6. The Review Petitioner has submitted the following in support of review of the impugned order:-

- a. The Commission while determining tariff of the subject asset in Petition No. 165/TT/2013 for the 2009-14 tariff block did not allow the additional capital expenditure despite the fact that the Review Petitioner vide affidavit dated



14.8.2014 sought tariff from COD i.e. 1.2.2014 to 31.3.2014 and also submitted the actual capital expenditure incurred by it till COD and additional capital expenditure from COD till 31.3.2014.

- b. The Commission in order dated 24.2.2016 in Petition No.147/TT/2015 failed to take into consideration the submission of the Review Petitioner made vide affidavit dated 5.2.2016 that RCE duly approved by its Board of Directors would be submitted shortly and proceeded to determine the tariff based on the apportioned approved cost without waiting for the RCE.
- c. The RCE of the subject transmission asset was approved by the Review Petitioner's Board on 11.3.2016. Accordingly, the Review Petitioner filed Petition No. 98/TT/2016 on 21.6.2016 and requested to entertain its RCE and revise the trued up tariff for 2009-14 period taking into consideration the facts enumerated in its affidavit dated 17.8.2016 due to which the RCE could not be submitted by the Review Petitioner.
- d. There is an error apparent on the face of record as the impugned order was passed in isolation and the RCE was not considered, which could not be produced at the time of passing of the order dated 24.2.2016 as the same was under approval of the Board of the Review Petitioner's company.
- e. As per Regulation 6(1) of 2009 Tariff Regulations, the capital expenditure is required to be admitted after prudence check at the time of truing up. The Commission at the time of truing up failed to consider the Auditor's certificate for



the purpose of evaluating the capital expenditure as claimed by the Review Petitioner and restricted the capital cost to the approved apportioned cost on the ground of non-production of the RCE.

- f. The Appellate Tribunal in its judgment dated 15.3.2017 in Appeal No. 127 of 2015 in the case of Power Grid Corporation of India Ltd. vs. Central Electricity Regulatory Commission & Ors. held that if the Review Petitioner has not placed on record any documents before the Commission, then the Review Petitioner must be given a chance to put up its case with complete facts and supporting documents.
- g. Non-consideration of the expenditure incurred by the Review Petitioner in implementation of the project has already caused grave injustice to it. The apportioned approved cost for the subject transmission asset is ₹1974 lakh while the total capital expenditure as on 31.3.2014 was ₹3007 lakh. This has led to a loss of tariff to the Review Petitioner.
- h. The technicalities regarding furnishing of the RCE at the time of true up should not defeat the ends of justice and it is fair and reasonable for the Commission to consider the said additional cost incurred by the Review Petitioner.
- i. The Review Petitioner withdrew Appeal No. 147 of 2017 filed against the impugned order before the Hon'ble Appellate Tribunal for Electricity in the light of Commission's common order dated 28.9.2017 in Review Petition Nos. 30/RP/2017 and 31/RP/2017, wherein it was observed that in the RCE, the



expenditure legitimately incurred is included after the payments are settled by the Review Petitioner, therefore, the same needs to be considered to recover the actual cost incurred in tariff since the beneficiaries have enjoyed the benefits of the assets.

Analysis and Decision

7. We have heard the learned counsel for the Review Petitioner and have also gone through the material placed on record by the Review Petitioner.

8. The instant review petition is being considered for admission at this stage. The Commission in order dated 29.1.2015 in Petition No. 165/TT/2013, while allowing tariff for 2009-14 tariff period restricted the capital of the instant transmission asset to the approved apportioned cost and did not allow the additional capital expenditure from COD i.e. 1.2.2014 to 31.3.2014. With regard to actual capital cost incurred, the following was observed:-

“17. We have considered the submissions made by the petitioner regarding the increase in cost. It has been observed that the cost over-run for assets in the instant petition has substantial variation as compared to the approved apportioned cost estimates. Therefore, the petitioner is required to submit the revised cost estimate (RCE) duly approved by its Board. The petitioner has not furnished the RCE for assets covered in the instant case. Accordingly, the capital cost of these assets is restricted to the apportioned approved cost. However, the capital cost in case of these assets shall be reviewed at the time of truing up, subject to the petitioner filing the RCE and justification for cost over-run. This approach has been upheld by the Appellate Tribunal for Electricity in its order dated 28.11.2013 in Appeal No. 165 of 2012, and subsequently the Commission, vide its order dated 18.2.2014 in Petition No. 216/TT/2012, has considered the apportioned approved cost of individual asset for restricting the capital expenditure due to cost over-run for the purpose of tariff determination. The same approach has been adopted in the present case and capital expenditure has been restricted to apportioned approved cost.”

Thus in the above quoted order, the Commission acknowledged that there is huge



variation in the capital cost compared to approved apportioned cost on account of cost variation. However, in the absence of RCE, the Commission restricted the capital cost to apportioned approved cost while reserving the opportunity to revisit the capital cost at the time of true up subject to the Review Petitioner filing the RCE and justification for cost over-run. The Review Petitioner filed Petition No.147/TT/2016 in respect of the subject asset for true up of actual capital expenditure for the period 1.2.2014 to 31.3.2014 and determination of tariff for 2014-19. However, the Review Petitioner did not file the RCE as the same was still under consideration of its Board. The Review Petitioner filed affidavit dated 5.2.2016 in which the Review Petitioner submitted that the RCE would be placed on record shortly after approval of its Board. The said affidavit has been considered in para 16 of the order dated 24.2.2016 in Petition No.147/TT/2015 as under:-

“16. It is observed that total completion cost of ₹2538.16 lakh as on 31.3.2014 claimed by the petitioner exceeds the approved cost of ₹1974.00 lakh. In this regard, the petitioner was directed to submit approval for RCE. In response, the petitioner vide affidavit dated 5.2.2016 submitted that the management approval for the same has already been obtained and is put upto the board for approval and will be submitted shortly. However, the petitioner has not filed the RCE. Therefore, we have restricted the completion cost to approved apportioned cost. Accordingly, the true up of the transmission tariff is being worked out to the extent of variation in floating rate of interest and MAT rate by restricting capital cost to the ₹1917.34 lakh after deducting excess initial spares of ₹43.29 lakh from actual cost as on COD.”

Thus, the Review Petitioner’s submission that the RCE had been approved by the Management and it had been put up to its Board for its approval and would be submitted shortly has been taken note of in the order dated 24.2.2016. However, the completion cost was restricted to the approved apportioned cost on the ground that the Review Petitioner had not submitted the RCE.



9. The Review Petitioner filed Petition No.98/TT/2016 for revision of tariff based on the RCE which was approved by its Board on 11.3.2016. However, the claim of the Review Petitioner was rejected vide the impugned order with the following observations:-

“12. As regards the delay in submission of the RCE, the petitioner has submitted that usually the RCE is approved only after commissioning of all assets covered in the transmission scheme or project. The petitioner has submitted that the RCE is initiated only after substantial amount of expenditure has been incurred in the project so that the RCE is based on the anticipated expenditure of the project. The petitioner has submitted that the truing up petition, Petition No.147/TT/2015, was filed before the commissioning of all the assets covered in the scheme and hence the RCE was not submitted. We have considered the submissions of the petitioner. On perusal of the RCE approved vide order dated 11.3.2016, it is observed that all the elements of the project were commissioned by 8.8.2015 and the petitioner took more than six months after commissioning of all the assets covered in the scheme for approval of the RCE. We feel that the petitioner should have started the process of approval of RCE immediately after the completion of the scheme and six months is too long a period for approval of the RCE and there was laxity on the part of the petitioner in getting the RCE approved. As the petitioner has not submitted that RCE even after commissioning all the assets covered in the scheme, the Commission took the conscious decision of not granting the liberty to the petitioner for revising the trued up tariff after approval of RCE.”

Further, the Commission in the impugned order observed that a petition cannot be reopened on the basis of the developments after disposal of the petition as under:

“17. Further, the RCE was approved after disposal of the truing up petition on 24.2.2016, we are of the view that a petition cannot be re-opened on the basis of the developments after disposal of the petition. Accordingly, the instant petition seeking revision of the trued petition is rejected and the capital cost of the instant assets is restricted to its approved apportioned cost as held by APTEL in its judgement dated in 28.11.2013 in Appeal No.165 of 2012.”

10. In the order dated 24.2.2016, the submission of the Review Petitioner in its affidavit dated 5.2.2016 was clearly recorded that the RCE was under consideration of its Board and would be submitted shortly. The Appellate Tribunal for Electricity in its judgment dated 15.3.2017 in Appeal No. 127 of 2015 (Power Grid Corporation of India



Ltd. v. Central Electricity Regulatory Commission & Ors) has observed that if the Petitioner has not placed on record any documents before the Commission, then it must be given one chance to put up its case with complete facts and supporting documents. In the present case, no time limit was fixed for the Review Petitioner to submit the RCE, even after taking note of the submission of the Review Petitioner that RCE was under consideration of its Board for its approval. It is pertinent to mention that the RCE was approved on 11.3.2016 i.e. within 17 days of the issue of the order dated 24.2.2016. The Review Petitioner submitted the RCE in Petition No.98/TT/2017. However, the petition was rejected on the ground that there was laxity on the part of the Review Petitioner to get the RCE approved and the petition cannot be reopened on the basis of subsequent developments. In our considered view, the grounds for rejection of the claims of the Review Petitioner in the impugned order have lost sight of the requirement of the fair procedure that the Review Petitioner should have been given an opportunity to submit the RCE which was under consideration of its Board for its approval as on the date of issue of the order dated 24.2.2016. Further, the observation in the impugned order that a petition cannot be reopened on the basis of the subsequent development is not the correct legal position as the tariff determination is a continuous process and pendency of the RCE before the Board of PGCIL for approval was in the knowledge of the Commission and was clearly noted in the order dated 24.2.2016 and therefore, in such cases, tariff revision is necessary to enable the Review Petitioner to recover its investment through tariff.

12. In the light of the above discussion, we are of the view that the Review Petitioner has a prima facie case for review of the impugned order and accordingly, we admit the



review petition. The Respondents are directed to submit their replies within 15 days of the issue of this order and the Review Petitioner is directed to file its rejoinder in 7 days thereafter. The Review Petition shall be listed for hearing in the first week of July 2018.

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

sd/-
(A.S. Bakshi)
Member

