

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.33/RP/2017 alongwith I.A.60 of 2017**

**in  
Petition No.5/TT/2015**

**Coram:**

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

**Date of Order : 20.03.2018**

**In the matter of:**

Review petition under Section 94 (1)(f) of the Electricity Act, 2003 for review and modification of the final order dated 29.3.2016 in Petition No. 5/TT/2015.

**And in the matter of:**

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

**....Review Petitioner**

**Vs**

1. Rajasthan Rajya Vidyut Prasan Nigam Limited  
Vidyut Bhawan, Vidyut Marg,  
Jaipur - 302005
2. Ajmer Vidyut Vitran Nigam Limited  
400 kV GSS Building (Ground Floor),  
Ajmer Road, Heerapura, Jaipur
3. Jaipur Vidyut Vitran Nigam Limited  
400 kV GSS Building (Ground Floor),  
Ajmer Road, Heerapura, Jaipur.
4. Jodhpur Vidyut Vitran Nigam Limited  
400 kV GSS Building (Ground Floor),  
Ajmer Road, Heerapura, Jaipur
5. Himachal Pradesh State Electricity Board  
Vidyut Bhawan  
Kumar House Complex Building II  
Shimla-171004



6. Punjab State Electricity Board  
Thermal Shed TIA,  
Near 22 Phatak, Patiala-147001
7. Haryana Power Purchase Centre  
Shakti Bhawan, Sector-6  
Panchkula (Haryana) 134 109
8. Power Development Department  
Government of Jammu & Kashmir  
Mini Secretariat, Jammu
9. Uttar Pradesh Power Corporation Limited  
(Formerly Uttar Pradesh State Electricity Board)  
Shakti Bhawan, 14, Ashok Marg  
Lucknow - 226 001
10. Delhi Transco Ltd.  
Shakti Sadan, Kotla Road,  
New Delhi-110002
11. BSES Yamuna Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi.
12. BSES Rajdhani Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi
13. North Delhi Power Ltd.  
Power Trading and Load Dispatch Group  
Cennet Building, Adjacent to 66/11 kV Pitampura-3  
Grid Building, Near PP Jewellers  
Pitampura, New Delhi-110 034.
14. Chandigarh Administration  
Sector -9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.  
UrjaBhawan, Kanwali Road,  
Dehradun.
16. North Central Railway,  
Allahabad.
17. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi-110002.

.....Respondents



For Petitioner : Shri Sitish Mukherjee, Advocate, PGCIL  
Shri Deep Rao, Advocate, PGCIL  
Shri S.S. Raju, PGCIL  
Shri Vivek Kumar Singh, PGCIL  
Shri S.K. Venkatesan, PGCIL  
Shri Aryaman Saxena, PGCIL  
Shri Rakesh Prasad, PGCIL  
Shri B. Dash, PGCIL

For Respondents : None

### **ORDER**

Power Grid Corporation of India (PGCIL) has filed Petition No.33/RP/2017 seeking review and modification of order dated 29.3.2016 in Petition No. 5/TT/2015, wherein the tariff for 2009-14 was trued up and tariff for the 2014-19 period was allowed for **Asset-I:** 500 MVA 400/220 kV ICT-III along with associated bay at Maharaniabagh Sub-station, **Asset-II:** 500 MVA 400/220 kV ICT-IV along with associated bay at Maharaniabagh Sub-station, **Asset-III:** 500 MVA 400/220 kV ICT-II along with associated bays at Lucknow Sub-station and **Asset-IV:** 500 MVA 400/220 kV ICT along with associated bays at Bahadurgarh Sub-station under the “Northern Region System Strengthening Scheme-XXIII” under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to “transmission assets”). PGCIL has also filed an Interlocutory Application No.60/IA/2017 seeking condonation of delay of 395 days in filing the review Petition.

#### **Brief background**

2. The transmission tariff for the instant assets for the period 2009-14 was allowed vide orders dated 16.5.2012 in Petition No. 3/TT/2011, 9.7.2012 in



Petition No. 146/TT/2011 and 8.2.2013 in Petition No. 189/TT/2011. The tariff allowed for the 2009-14 period was trued up vide the impugned order dated 29.3.2016.

3. In the impugned order, the capital cost of Asset-I and II was restricted to ₹3124.59 lakh and ₹3052.62 lakh respectively in accordance with the approved apportioned cost as the Review Petitioner did not file the Revised Cost Estimates (RCE) despite being given the opportunity. The Board of Directors of the Review Petitioner approved the RCE on 1.6.2016. Based on the RCE dated 1.6.2016, the Review Petitioner has sought the revision of capital cost Assets-I and II to ₹3321.14 lakh and ₹3332.95 lakh respectively by filing the review petition.

#### **Grounds for review**

4. The Review Petitioner has submitted the following grounds for review of order dated 29.3.2016:-

(a) The approval of the RCE by Board of Directors post the Commission's order dated 29.3.2016 i.e on 1.6.2016 would amount to discovery of new evidence.

(b) The tariff order is not covered by the principle of *res-judicata* as every tariff petition gives rise to fresh cause of action. The Review Petitioner has relied on Appellate Tribunal for Electricity judgment dated 13.1.2009 in Appeal No. 133 of 2007 which was followed by the Commission in order dated 17.2.2017 (in NTPC Limited V Uttar Pradesh Power Corporation Limited) in Petition No. 53/RP/2016, wherein it was held that principle of *res*



*judicata* is not applicable as every tariff order gives rise to a fresh cause of action.

(c) As per Regulation 6(1) of the 2009 Tariff Regulations, the Commission is required to admit the capital expenditure after prudence check at the time of truing up. However, the Commission failed to consider the Auditor's certificate for evaluation of capital expenditure on the ground of non-production of the RCE. Non-consideration of facts and materials placed on record amount to an error apparent on the face of the record.

(d) APTEL in judgement dated 15.3.2017 in Appeal No.127 of 2015 held that PGCIL must be given a chance to place complete facts and supporting documents in support of its claim for passing appropriate order after prudence check and remanded the matter to the Commission for reconsideration.

(e) The non-submission of RCE within the timeline provided by the Commission was for reasons beyond the control of the Review Petitioner. The preparation and approval of the RCE involved a large number of steps, through examination, scrutiny by various sub-committees to ensure compliance of aforesaid procedure.

(f) The disallowance of revised capital cost has caused the Review Petitioner severe financial hardship and injury towards debt serving to the Review Petitioner.

5. The Review Petitioner has also filed an Interlocutory Application No.60/IA/2017 for condoning the delay of 395 days in filing the instant review



petition. The Review Petitioner has submitted that the RCE was approved by its board of directors only on 1.6.2016 and it wanted to file the review petition on 3.7.2016. However, there was unintentional delay in filing the review petition. The Review Petitioner has submitted that after the Commission's order dated 21.2.2017 in Review Petition No.53/RP/2016 and APTEL's judgement dated 15.3.2017 in Appeal No.127 of 2015, the possibility of filing a review petition was discussed and the final approval was granted on 14.7.2017 to a file a review and accordingly a review was filed. The Review Petitioner has submitted that the delay in filing the review is neither unintentional nor deliberate and requested to condone the delay as the Review Petitioner would otherwise suffer irreparably.

6. We have considered the submission of the Review Petitioner. The Review Petitioner has submitted that there is delay of 395 days. The impugned order was issued on 29.3.2016 and was posted on the Commission's website on 31.3.2016. As per Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (CBR), a petition for review has to be filed within 45 days of making the Commission's decision, directions and orders. Accordingly, the period of 45 days would start from the date it was posted on the website, which was 31.3.2016. Thus, there is delay of 464 days in filing of the instant review petition and not 395 as contended by the Review Petitioner. The Review Petitioner has contended that it could file a review petition only after the approval of RCE on 1.6.2016 but there was unintentional delay in filing the review and it decided to file a review petition after the Commission's order dated 21.2.2017 and APTEL's judgement dated 15.3.2017 in Appeal No.127 of 2015. We are of the view that developments subsequent to the issue of the impugned



order dated 29.3.2016 cannot be a ground for filing a review petition. Further, the Review Petitioner was aware that a review petition should be filed within the mandatory period of 45 days. We are of the view that the reasons given by the Review Petitioner for the delay in filing the instant review are not satisfactory. Hence, we are not inclined to condone the delay of 464 days in filing the Review Petition. IA No. 60 of 2017 is disallowed and accordingly, the Review Petition is not maintainable for not being filed within the statutory period of 45 days from the date of issue of the order.

8. The review petition is disallowed on the ground of non-compliance with the statutory time limit for filing the review petition and we are not expressing any opinion on the merit of the review petition. The Review Petitioner may submit the RCE dated 1.6.2016 for consideration of the Commission at the time of truing up of the 2014-19 tariff which will be dealt with in accordance with law.

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

sd/-  
**(A.S. Bakshi)**  
**Member**

