

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 37/RP/2017

alongwith IA No.66/IA/2017

Coram:

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

Date of Order : 27.03.2018

In the matter of:

Petition for review and modification of the order dated 29.2.2016 in Petition No. 225/TT/2015 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

...Petitioner

Vs

1. Madhya Pradesh Power Trading Company Limited
Shakti Bhawan, Rampur
Jabalpur- 482008
2. Maharashtra State Electricity Distribution Company Limited
Prakahgad, 4th Floor
Andheri (East), Mumbai- 400052
3. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course Road
Vadodara- 390007
4. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa- 403001



5. Electricity Department,
Administration of Daman & Diu,
Daman- 396210
6. Electricity Department,
Administration of Dadra Nagar
Haveli U.T., Silvassa- 396230
7. Chhattisgarh State Electricity Board,
P.O. Sunder nagar, Dangania,
Raipur Chhatisgaarh- 492013
8. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited
3/54. Press Complex,
Agra-Bombay Road,
Indore- 452008

.....Respondents

For petitioner: Shri Sitish Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri S.K. Venkatesh, PGCIL
Shri Vivek Kumar Singh, PGCIL
Shri Aryaman Saxena, PGCIL
Shri Rakesh Prasad, PGCIL
Shri B. Dash, PGCIL
Shri A. Choudhary, PGCIL

For respondents: None

ORDER

Power Grid Corporation of India (PGCIL) has filed Petition No.37/RP/2017 seeking review and modification of order dated 29.2.2016 in Petition No. 225/TT/2015 wherein tariff for 2009-14 period was trued up and tariff for 2014-19 period was allowed for Asset I (Combined assets) : Asset 1: 765 kV S/C Bina-Gwalior transmission line, Asset 2: 315 MVA, 400/220/33 KV ICT-I along with associated bays at Gwalior sub-station, Asset 3: LILO of 400 kV S/C Korba-Raipur transmission line at Bhatapara Sub-station along with associated bays, Asset 4: 400 kV Khandwa Rajgarh ckt-II along with



associated bays and 765/400 kV ICT-III at Seoni sub-station, Asset 5: 400 kV Khandwa-Rajgarh Ckt-I along with associated bays, 63 MVAR Bus Reactor at Bina sub-station, Asset II (Single asset) : 400 kV ICT-II at Gwalior Sub-station and Asset III: 400/220 kV ICT-II at Bhatapara under Sipat-II Transmission system in Western Region (hereinafter collectively referred to as "the transmission assets").

Brief background

2. The transmission tariff for the period 2009-14 for Asset I (Combined Assets) and Asset-II was allowed vide orders dated 19.4.2011 in Petition No. 291/2010, and for Asset III vide order dated 18.10.2012 in Petition No. 130/TT/2012 and order dated 5.1.2015 in Petition No. 242/2009. The tariff allowed for the 2009-14 period for the instant assets was trued up and tariff for 2014-19 period was approved in the impugned order dated 29.2.2016.

3. In the impugned order dated 29.2.2016, the capital cost of Asset-II was restricted to ₹1408.56 lakh given in the RCE-I against the Review Petitioner's claim of ₹1486.36 lakh. The Review Petitioner has submitted that after the issue of order dated 29.2.2016, its Board of Directors approved the RCE II on 12.4.2016, according to which the completion cost of Asset-II was revised to ₹1625.15 lakh. The Review Petitioner has submitted that the actual capital cost of Asset II is within the capital cost approved in the RCE-II and has sought modification of the capital cost of Asset-II allowed in order dated 29.2.2016 taking into consideration the RCE II.

Grounds for review

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



29.2.2016:-

(a) The approval of the RCE II by Board of Directors post the Commission's order dated 29.2.2016 i.e on 12.4.2016 amounts 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) The non-submission of RCE II within the timeline provided by the Commission was for reasons beyond the control of the Review Petitioner. The preparation and approval of the RCE-II involved a large number of steps, through examination, scrutiny by various sub-committees to ensure compliance of aforesaid procedure.

(d) The disallowance of revised capital cost will bring to a standstill the entire regulatory mechanism which has been evolved and put in place in order to supply safe, reliable and quality power to the consumers and will act as a dampener to the investment in the transmission sector.

5. The Review Petitioner has also filed an Interlocutory Application No.66/IA/2017 for condoning the delay of 508 days in filing the instant review petition. The Review Petitioner has submitted that the RCE II was approved by its board of directors only on



12.4.2017. 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 unintentional and not 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 the delay of 508 days is on account of the time taken for approval of RCE-II. The impugned order was issued on 29.2.2016 and was posted on the Commission's website on 1.3.2016. 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 1.3.2016. The review petition was filed on 6.9.2017. Thus, there is delay of 554 days in filing of the instant review petition and not 508 as contended by the Review Petitioner. As regards the reasons for delay, the Review Petitioner has submitted that it was decided by the Review Petitioner to file the instant review petition after the Commission's order dated 17.2.2017 in the Review Petition No. 53/RP/2016 filed by NTPC and judgment dated 15.3.2017 of the Hon'ble Appellate Tribunal for Electricity in Appeal No.127 of 2015. Without going into the details, it is observed that the Commission's order and the APTEL's judgement were issued after the issue of the impugned order dated 18.3.2016. We are of the view that developments subsequent to



the issue of the impugned order cannot be a ground for filing of the review petition. Further, no satisfactory reasons have been furnished by the Review Petitioner for the delay in filing the instant review. In view of this, we are not inclined to condone the delay of 554 days in filing the Review Petition. IA No. 66 of 2017 is disallowed and accordingly, the Review Petition is rejected as it has not been filed within the statutory period of 45 days from the date of issue of the order.

7. As the review petition is disallowed on the ground of non-compliance with the statutory time limit for filing the review petition, 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

