

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 41/RP/2017
in Petition No.213/TT/2016**

Coram:

**Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 06.07.2018

In the matter of: Petition for review and modification of the order dated 7.9.2017 in
Petition No.213/TT/2016.

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 Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005.
2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor) Ajmer Road,
Heerapura, Jaipur-302 024.
3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor) Ajmer Road,
Heerapura, Jaipur-302 024.



4. Jodhpur Vidyut Vitran Nigam Limited
400 kV GSS Building (Ground Floor) Ajmer Road,
Heerapura, Jaipur-302 024.
5. Himachal Pradesh State Electricity Board
Vidyut Bhawan Kumar House Complex Building II
Shimla-171 004.
6. Punjab State Electricity Board
Thermal Shed TIA
Near 22 Phatak Patiala-147 001.
7. Haryana Power Purchase Centre
Shakti Bhawan, Sector-6
Panchkula (Haryana)-134 109.
8. Power Development
Department Government of Jammu & Kashmir
Mini Secretariat, Jammu-180 001.
9. Uttar Pradesh Power Corporation Limited
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14,
Ashok Marg Lucknow-226 001.
10. Delhi Transco Limited
Shakti Sadan,
Kotla Road, New Delhi-110 002.
11. BSES Yamuna Power Limited
BSES Bhawan, Nehru Place
New Delhi-110019.
12. BSES Rajdhani Power Limited
BSES Bhawan,
Nehru Place New Delhi-110 019.
13. North Delhi Power Limited



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-160 009.

15. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun-248 001.

16. North Central Railway,
Subedarganj
Allahabad-211 015.

17. New Delhi Municipal Council Palika Kendra,
Sansad Marg,
New Delhi-110 002.

.....Respondents

For Petitioner: Shri Sitesh Mukherjee, Advocate, PGCIL
Shri S.S. Rao, PGCIL
Shri Deep Rao, PGCIL

For Respondents: None

ORDER

This review petition is filed by Power Grid Corporation of India Limited (“the Review Petitioner”) seeking review of the order dated 7.9.2017 in Petition No.213/TT/2016, wherein the transmission tariff for 765 kV S/C Jaipur (RVPN)-Bhiwani transmission line 2nd circuit with 240 MVAR (Non-switchable) line reactor and associated bays at Bhiwani end and 240 MVAR (Non-switchable) line reactor and associated bays at Jaipur (RVPNL) end (“transmission assets”) under “Northern Region



System Strengthening Scheme XXV” (“transmission system”) was allowed for the period from COD to 31.3.2019 under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) regulations, 2014 (2014 Tariff Regulations) vide order dated 7.9.2017. The Commission restricted the capital cost of the 765 kV S/C transmission line to the indicative cost of 1.56 cr/km submitted by the CTU for the computation of POC charges. Further, the Additional Capital Expenditure of Rs. 8039.90 lakh claimed by the Review Petitioner was also disallowed as it was in excess of the considered indicative capital cost of Rs. 1.56 Cr/km.

2. The Review Petitioner has sought review of the impugned order for restricting the capital cost of the 765 kV S/C transmission line to Rs.1.56 Cr/km of the indicative cost submitted by the CTU and disallowance of IDC amounting to Rs.642.89 lakh to be discharged after COD.

3. The Review Petitioner has sought review of the impugned order on the following grounds:-

a) In the absence of adequate reference data in respect of 765 kV S/C transmission line, the Commission should have conducted prudence check of the capital cost claimed by the Review Petitioner as provided under Regulation 10(1) of the 2014 Tariff Regulations instead of pegging the capital cost to the indicative cost submitted by the CTU.

b) The reasons for the cost variation between the Feasibility Report (“FR”) estimate and the completion cost were furnished vide its rejoinder dated



28.4.2017 to the reply filed by BYPL. However, the Commission in para 18 of the impugned order directed the Review Petitioner to submit, inter alia, detailed justifications for change in the configuration of towers and insulators, details of cost estimates along with the Board agenda note and relevant calculation of capital cost at the time of true-up. The Commission should have given an opportunity to the Review Petitioner to furnish the said information at the time of adjudication of Petition No. 213/TT/2016 and the absence of the same amounts to prejudice.

- b) As per Regulation 7(4) of 2014 Tariff Regulations, the petition for determination of tariff can be filed based on capital expenditure incurred or projected to be incurred upto the COD and additional capital expenditure incurred, which is duly certified by Auditor. Auditor's certificate dated 7.3.2017 is based on accrued IDC. The IDC to be discharged during 2016-17 and 2017-18 amounting to Rs. 642.89 lakh was taken out of COD cost and claimed as additional capital expenditure when it is discharged. Restricting the capital cost and disallowance of IDC of Rs.642.89 lakh to be discharged after COD is prejudicial to the interest of the Review Petitioner and it has impacted the cash flows of the Review Petitioner. Restricting the capital cost of the instant assets without giving an opportunity to furnish relevant information has summarily prejudiced the Review Petitioner's rights which are contrary to law and is sufficient reason for review.



4. The petitioner has prayed for modifications of the order under review by allowing the capital cost of Rs.55312.46 lakh claimed by the Review Petitioner and requested to appropriately revise the amount allowed in respect of the tariff parameters related to capital cost and to allow the projected IDC of Rs. 642.89 lakh to be discharged after DOCO.

5. BSES Rajdhani Power Limited (BRPL), Respondent No. 12 has submitted its reply vide affidavit dated 5.4.2018. BRPL has submitted that the review petition is questioning the correctness of the order dated 7.9.2017 passed in Petition No. 213/TT/2016 by the Commission. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of review jurisdiction. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Thus, none of the ground for the review of the order dated 07.09.2017 is justified.

Submission of the Review Petitioner

6. The Commission in the impugned order has approved the COD of the transmission assets as 7.10.2016, however has restricted the capital cost of the 765 kV S/C transmission line to Rs. 1.56 cr./km. The Review Petitioner has submitted that this cost of Rs.1.56 cr./km is neither a benchmark provided under the provisions of the 2014 Tariff Regulations nor is the figure indicated by the Commission in any other regulation. Rather, it is the indicative capital cost submitted by the Central Transmission Utility



“CTU”) for the purposes of computation of PoC Charges under the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. The Commission appears to have made this indicative cost as the benchmark, leading to a severe restriction in the capital cost of the 765 kV S/C transmission line in the instant transmission project to Rs. 47019.26 lakh against the claimed capital cost of Rs. 55312.46 lakh.

7. The Review Petitioner sought review of the decision of the capital cost on the ground that the 2014 Tariff Regulations do not envisage linkage of transmission tariff with indicative costs made available to the Commission under different regulations for an entirely unconnected purpose. That the basis of the PoC Charges estimated under the Sharing Regulations is fundamentally different and asymmetric with the transmission tariff to be determined in accordance with the 2014 Tariff Regulations.

8. The Review Petitioner has further submitted that the figure of Rs.1.56 Cr./km relied on by the Commission for computing the capital cost of the transmission assets, purportedly based on the indicative capital cost submitted by the CTU for the purposes of computation of PoC Charges, does not take into account myriad elements that are essential to the determination of transmission tariff and mandated by the 2014 Tariff Regulations, including: (a) Interest During Construction (“IDC”); (b) Incidental Expenditure During Construction (“IEDC”); (c) costs associated with RoW issues; (d) tree and crop compensation; (e) land acquisition etc., and a variety of other factors that are inextricably linked with the capital cost incurred in establishing transmission assets.



It is submitted that the determination of transmission tariff de hors the aforesaid essential elements by relying on the PoC Charges is gravely prejudicial to the Review Petitioner and contrary to the 2014 Tariff Regulations.

9. The Review Petitioner has submitted that in the absence of any reference data or benchmarking norms for 765 kV S/C transmission lines, the Commission ought to have followed the principles enshrined in Regulation 10(1) of the 2014 Tariff Regulations for prudence check of capital cost instead of pegging the capital cost of the transmission assets to the PoC Charges.

Analysis and Decision

10. We have considered the submissions made by the Review Petitioner, BRPL and the documents on record. The main contention of the Review Petitioner is to allow the capital cost claimed by the Review Petitioner in Petition No. 213/TT/2016 and appropriately revise the amounts allowed in respect of the tariff parameters related to capital cost. The Commission in order dated 7.9.2017 has made the following observations:-

“18. It is further observed that the petitioner has considered horizontal tower configuration for ease of installation and long rod insulators for timely completion of the project. The petitioner should have adopted prudent implementation practices to reduce the cost of execution of the project. However, in the instant case, it is observed that the petitioner has adopted techniques which have increased the cost of execution. It is further observed that petitioner has not obtained the consent of the beneficiaries while changing the configuration. We are of the view that the petitioner should have obtained RPC approval after carrying out cost benefit analysis. The petitioner is directed to submit the following detailed justification at the time of true up:-

a) The reason for considering the glass insulators in place of long rod insulators. The cost-benefit analysis versus the saving in cost due to early completion.



b) The justification for considering horizontal configuration in place of delta configuration and also explain why there is no cost reduction for considering horizontal configuration for tower. The reason for not obtaining consent on revision on scope in the RPC forum.

c) The details of cost estimates along with Board Agenda note and relevant calculation of capital cost. Basis of considering rate estimates as per standard order rate (latest order rate) and based on steel/land usage may be furnished.”

11. On the issue of admissibility of capital cost, the Commission will review the same on the submission of the above justification by the petitioner at the time of true up. As a interim measure, the tariff was allowed based on the indicative cost as under:-

“19. As the population of the 765 kV S/C transmission lines is less. We do not have any reference data for the purpose of comparison. In absence of the required reference data, we have considered the indicative cost submitted by the CTU for the purpose of computation of POC charges. While computing the POC charges for the second quarter of 2017-18, CTU has submitted the indicative cost of 765 kV S/C transmission line as Rs. 1.56 cr/km. Accordingly, the capital cost of the instant line is restricted to Rs. 1.56 cr/km on provisional basis and it will be reviewed at the time of truing-up on the basis of the information submitted by the petitioner. Accordingly, the capital cost is worked out as under:-

Capital cost claimed Less : Rs. 55312.46 lakh

Diff (Rs. 1.86cr/km – Rs. 1.56 cr/km): Rs. 8293.20 lakh (for 276.44 km)

Capital cost allowed: Rs. 47019.26 lakh”

“30. The following capital cost as on COD, after taking into account the allowable IDC and IEDC is considered for the computation of tariff for the instant assets as per Regulation 9(2) of the 2014 Tariff Regulations:-

Capital Cost as on COD	Less: IDC Disallowed as on COD	Less: IEDC Disallowed as on COD	Excess Initial Spares Disallowed as on COD	Capital Cost as on COD considered for tariff
47019.26	642.89	0.00	0.00	46376.37



12. The Commission, vide order dated 7.9.2017 in Petition No. 213/TT/2016, has determined the tariff based on indicative cost as interim measure pending the justification of the petitioner in respect of cost variation and estimated cost. Since the final view on admissibility of capital cost is yet to be decided by the Commission, the review of the same at this stage may not be appropriate. The petitioner, in its review petition, has also submitted the justification as directed by the Commission vide impugned order.

13. With regard to consideration of indicative cost as reference data or benchmarking norms for 765 kV S/C transmission lines, the Review Petitioner has submitted that the Commission ought to have followed the principles enshrined in Regulation 10(1) of the 2014 Tariff Regulations for prudence check of capital cost instead of pegging the capital cost of the transmission assets to the PoC Charges. We are of the view that the consideration of indicative cost for the prudence check purpose is due to absence of the reference data. The Commission considered the indicative cost of PGCIL, where the benchmark capital cost or reference capital cost was not available, in order dated 18.3.2016 in Petition No.184/TT/2013. The relevant portion of the order is extracted hereunder:-

“36. Based on the information placed on record by the petitioner, the capital cost of the petitioner’s assets has been verified and determined by using benchmark capital cost model of the Commission. The petitioner in the Asset-I has claimed construction of 400 kV Bays at existing Bhiwani substation of Powergrid and similarly in Asset-II, the petitioner has claimed construction of 400 kV Bays at existing Dehgam substation of Powergrid. In view of this, wherever the petitioner has constructed the 400 kV bays at existing substation of Powergrid, we have considered indicative costs of Powergrid transmission system for prudence check.”



14. The Hon'ble Appellate Tribunal for Electricity has upheld the Commission's approach of considering the indicative cost wherever the estimated cost is in dispute or not available in judgement dated 14.11.2017 in Appeal No.226 of 2016. The relevant portion of the judgement is reproduced hereunder:-

“16. After having a careful examination of all the arguments and submissions of the rival parties on various issues raised in the present Appeal, our observations are as follows:-

xxx

xxx

From the above, it is clear that the Appellant before the Central Commission has not provided the FR cost estimates related to the transmission assets in question. We are of the view that it is not possible having a project FR without separate estimates for the transmission assets even though the project is planned to be a combined generating and transmission project. The Central Commission in absence of such estimates was forced to apply prudence check based on the circumstances of the case and the nature of the assets for which the capital cost can be compared to either benchmark norms or indicative costs of similar projects as per the Tariff Regulations, 2009. The Central Commission has used benchmark norms where indicative costs were not available and that too based on the submissions made by the Appellant. In case where model was wrongly used by the Appellant, the Central Commission applied correction to that for arriving at a fair cost of the assets. Wherever the indicative costs were available for comparison, the Central Commission has used them with appropriate escalations as required. The counsel for the Central Commission has submitted that the Appellant has submitted the benchmark norms model for some assets considering that it is beneficial to it, landed with submitting it with wrong assumptions. We agree to this argument of the Central Commission.”

15. In view of above, there is no error in respect of the consideration of indicative cost for the purpose of prudence check and admissibility of capital cost wherever the estimated cost or benchmark cost is not available.

16. In the present case, while considering the indicative cost, the Commission has considered the indicative cost submitted by the CTU for the purpose of computation of PoC charges. The CTU in the computation of PoC Charges does not take into account



several elements that are essential for determination of transmission tariff as mandated by the 2014 Tariff Regulations, such as: (a) Interest During Construction (“IDC”); (b) Incidental Expenditure During Construction (“IEDC”); (c) costs associated with RoW issues; (d) tree and crop compensation; (e) land acquisition etc. and a number of other factors that are inextricably linked with the capital cost incurred in establishing transmission assets. Since the capital cost of transmission line comprises of such costs, the capital cost of this asset is required to be revised to the extent of inclusion of these costs.

17. We are of the view that review of the order needs to be allowed limited to the extent of inclusion of additional elements in the capital cost which was not considered while determining the tariff as the same was based on the indicative cost provided by CTU for computation of PoC charges. The Commission has sought certain information/documents in para 18 of the impugned order. Therefore, we direct the Review Petitioner to file a fresh petition including all relevant information for determination of tariff of the instant assets in terms of the directions in this order.

18. Accordingly, the Review Petition No. 41/RP/2017 is disposed of.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(P.K. Pujari)
Chairperson

