

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A. No.83/IA/2017

in

Petition No. 46/RP/2017

Coram:

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

Date of Order : 10.05.2018

In the matter of:

I.A. No.83/IA/2017 for staying the operation of the order dated 20.9.2017 and staying the operation of bills raised by PGCIL during the pendency of the review petition.

And in the matter of:

Petition for review and modification of order dated 20.9.2017 in Petition No.227/RP/2017

And in the matter of:

Bhopal Dhule Transmission Company Limited
F-1, "The Mira Corporate Suites"
1 & 2 Ishwar Narag, Mathura Road,
New Delhi-110 065

..... Review Petitioner

vs

1. Power Grid Corporation of India Limited
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
2. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur
Jabalpur-482 008
3. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building, 3rd Floor, Prakashgad,
M. G. Road, Fort, Mumbai-400 001.
4. Gujarat Urja Vikas Nigam Limited,



Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara-390 007.

5. Electricity Department,
Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa-403 001
6. Electricity Department,
Administration of Daman and Diu,
Daman-396 210
7. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T., Silvassa-396 230
8. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh-492 013
9. Madhya Pradesh Audyogik Kendra
Vikas Nigam (Indore) Ltd.
3/54, Press Complex, Agra-Bombay Road,
Indore-452 008.

....Respondents

For Review Petitioner : Shri Jafar Alam, Advocate, BDTCL
Shri Divyanshi Bhatt, Advocate, BDTCL
Ms. Anisha Chopra, BDTCL

For Respondents : Ms. Suparna Srivastav, Advocate, PGCIL
Ms. Sanjna Dua, Advocate, PGCIL
Shri Aryaman Saxena, PGCIL
Shri S. S. Raju, PGCIL

ORDER

Bhopal Dhule Transmission Company Limited (BDTCL) has filed the instant review petition seeking review and modification of the order dated 20.9.2017 in Petition No. 227/TT/2014, wherein the transmission tariff was granted to Power Grid Corporation India Limited (PGCIL) for Asset 1: 765 KV Line bays & 3X80 MVAR Switchable line reactor at 765 kV Jabalpur Pooling Sub-station (for 765 kV S/C Jabalpur-Bhopal line); Asset 2: 765 kV Line bays & 3X80 MVAR line reactor at 765



kV Indore Sub-station (for 765 kV S/C Bhopal-Indore line); Asset-3: Extension of 765 kV Aurangabad Sub-station for 765 kV S/C line bay under Line bays and reactor provision at PGCIL Sub-station (hereinafter referred to as “transmission assets”) associated with system strengthening for WR for 2014-19 tariff period under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”).

2. The Review Petitioner has submitted that CODs of Assets-I, II and III of PGCIL were approved by the Commission as 20.10.2014, 5.10.2014 and 29.5.2014 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations vide the impugned order, even though the transmission assets were not put to regular service and consequently, the Review Petitioner was directed to pay the transmission charges for these assets of PGCIL from the dates of their approved COD till the actual CODs of the downstream assets being executed by the Review Petitioner. The Review Petitioner has contended that the impugned order is contrary to the earlier orders of the Commission and is not in consonance with the Hon'ble Supreme Court's judgement in Punjab State Power Corporation Limited & Ors. [(2016) 4 SCC 797]. The Review Petitioner has also submitted that Petition No. 216/MP/2016 has been filed by the Review Petitioner claiming reliefs under force majeure and change in law provisions of the Transmission Service Agreement which is pending consideration of the Commission. In the circumstances, the Review Petitioner has prayed for a declaration that Asset Nos. I, II and III achieved commercial operation after they were put into regular service after commissioning of the respective transmission elements of the project of the Review Petitioner and the Review Petitioner is only liable to pay PGCIL the interest during construction and



incidental expenditure during construction for these elements for the period these transmission assets were ready for commercial operation upto the date on which such transmission elements were put into regular service.

3. The Review Petitioner has filed I.A. No. 83/IA/2017 praying for stay of the operation of the impugned order dated 20.9.2017 and the operation of PGCIL's bill dated 13.10.2017 amounting to Rs. 60024116/- during the pendency of the review petition. The Review Petitioner has submitted that it was faced with numerous force majeure and change in law events during the construction of its transmission project which have been raised in Petition No. 216/MP/2016. As a result of the force majeure and change in law events, the Review Petitioner was required to incur significant additional financial expenditure to commission its transmission project and such expenditure remain unrecovered as on date. In the circumstances, implementation of the impugned order will cause severe prejudice to the Review Petitioner in servicing its debt service obligation, regular operation and maintenance expenses of the transmission project and payment of interest on working capital etc. The Review Petitioner has submitted that it has a good prima facie case on merit necessitating review of the impugned order as the review petition is squarely covered by the ratio of the judgment of the Hon'ble Supreme Court in the case of PSPCL supra and other recent orders of the Commission in materially similar facts and question of law. The Review Petitioner has further submitted that the balance of convenience is also in its favor as no prejudice would be caused to PGCIL if the implementation of the impugned order qua the review petitioner is stayed during the pendency of the review petition. The Review Petitioner has submitted that PGCIL has been receiving provisional tariff since 2014 in accordance with the order dated



19.6.2014 in Petition No. 227/TT/2014 and will now receive the transmission charges in accordance with the impugned order and the Sharing Regulations from the date on which the transmission access are put into regular service. As PGCIL is receiving steady revenue from the PoC pool and no irretrievable prejudice would be caused to PGCIL if the impugned order qua the Review Petitioner is kept in abeyance till the final disposal of the review petition. The Review Petitioner has submitted that in the alternative, it would be in the interest of justice if the implementation of the impugned order qua the Review Petitioner is kept in abeyance till the issue of final order in Petition No. 216/MP/2016.

4. The Petition was listed for admission on 25.4.2018. Learned counsel for the Review Petitioner submitted that consequent to the filing of the review petition, a further development has taken place as CTU has withheld the payment of the transmission charges due to the Review Petitioner from March, 2018 onwards without assigning any reasons. Learned Counsel further submitted that CTU has acted at the behest of PGCIL which it is not permitted to do in its capacity as CTU. The representative of PGCIL sought time to ascertain the reasons for non-release of the payments to the Review Petitioner and sought time to make submission. The review petition was further listed on 26.4.2018. Learned counsel for PGCIL submitted that since the review petitioner did not make the payment of the transmission charges from the date of approved COD till the assets were actual put into regular service to PGCIL, CTU was approached by PGCIL for recovery of the said charges. Since there was no stay on the impugned order, CTU has withheld an amount of Rs. 60024116/-. Learned Counsel for the Review Petitioner reiterated its submissions that CTU has misused its position by withholding the amount from the



transmission charges which were due to be paid to the Review Petitioner for the transmission services rendered by it. Learned counsel for the review petition further submitted that PGCIL was informed about the filing of the review petition alongwith an application for stay and was requested not to take any coercive action. Learned Counsel for CTU suggested that since the Review Petitioner has accepted his liability to pay the IDC and IEDC for the relevant period subject to the decision in the review petition, and in the absence of the exact amount of IDC and IEDC, the Commission may as an interim measure allow release of 50% of the withheld amount to the Review Petitioner. However, learned counsel for the review petitioner did not agree to the suggestion of the learned counsel for CTU.

5. In this order, we are considering the IA. The Commission in the impugned order dated 20.9.2017 held that the Review Petitioner is liable to pay the transmission charges of Assets I, II and III from the date of approved COD till these assets were put to regular service after the COD of the downstream transmission assets executed by the Review Petitioner. The impugned order was posted on website on 23.9.2017 and the review petition was filed on 7.11.2017 which is within the statutory period for filing the review. The Review Petitioner has also filed an interim application for stay of the impugned order. The copy of the review petition has also been served on PGCIL by the Review Petitioner as well as through the e-filing portal of the Commission. Pending the decision on the review petition as well as IA, the Review Petitioner was under obligation to comply with the directions in the impugned order. It is pertinent to mention that as per the impugned order, the review petitioner was required to pay the transmission charges from the date of approved COD till the assets were put into regular service and thereafter the transmission



charges were to be recovered through the POC mechanism. The Commission in its order dated 4.1.2017 in Petition No.155/MP/2016 had directed that in cases of bilateral settlement of transmission charges, the CTU shall raise a supplementary bill alongwith the PoC bill. Therefore, CTU has been authorized for raising the bills and collecting and disbursing the transmission charges in cases of bilateral settlement like the present case. Since the Review Petitioner has not paid the transmission charges, CTU has withheld the transmission charges which were due to be paid to the Review Petitioner in terms of the directions in the impugned order. Learned counsel for the Review Petitioner strongly urged during the hearing that CTU has no mandate to withhold the transmission charges and therefore, CTU be directed to release the withheld transmission charges to the Review Petitioner.

6. The Review Petitioner has submitted that it was affected by various change in law and force majeure events in the course of execution of the project under its scope and has filed Petition No. 216/MP/2016 for compensation for such events. Since, the said petition has not yet been decided, withholding of the transmission charges for an amount of Rs. 60024116/- has aggravated the financial constraints of the Review Petitioner. In our view, the claims of the Review Petitioner made in Petition No. 216/MP/2016 are different and pendency of the said petition cannot be a ground for non-payment of the transmission charges in terms of the impugned order. The Review Petitioner has submitted that it has a prima facie case on merit in the light of the judgment of the Hon'ble Supreme Court in PSPCL supra and the orders of the Commission and therefore, the Review Petitioner ought not to have been directed to pay the transmission charges to PGCIL from the date of approved COD till the transmission assets were put into regular service. In our view, this is an issue



on merit which has to be decided based on the pleadings and after hearing the parties in the review petition and granting interim relief on the ground that the Review Petitioner has a case on merit would amount deciding the case at the interim stage. The Review Petitioner has further submitted that the balance of convenience is in its favour as no prejudice would be caused to PGCIL if the implementation of the impugned order is not stayed since PGCIL is getting a steady revenue stream from the POC pool. We do not find any merit in the submission of the Review Petitioner on this ground. PGCIL is getting its transmission charges through the POC pool for its transmission network based on the tariff determined by this Commission. It is not the case of the Review Petitioner that PGCIL is claiming the transmission charges for the relevant period without the decision/direction of the Commission. Simply because PGCIL has a steady revenue stream through POC cannot be a ground for stay of the impugned order qua the Review Petitioner. In our view, no case has been made by the Review Petitioner for grant of the interim relief as prayed in the IA. Accordingly, the IA is rejected.

7. During the course of the hearing, it was brought to our notice that CTU has withheld Rs. 60024116/- from the transmission charges payable to the Review Petitioner. In our view, in case of bilateral settlement of claims, the CTU has been authorized as the agency to raise the bill, collect and disburse the transmission charges. In case of failure on the part of the Review Petitioner, it should have intimated PGCIL to take necessary action in accordance with law for recovery of the transmission charges. CTU on its own should not have withheld the transmission charges due to the Review Petitioner pending the decision on review petition. The Review Petitioner is agreeable to pay the IDC and IEDC. If the review petition is



decided in favor of the Review Petitioner, the Review Petitioner shall be liable to pay the IDC and IEDC and if the review petition is decided against the Review Petitioner, it shall be liable to pay the transmission charges. In other words, the Review Petitioner in any case will be liable to pay the IDC and IEDC. We direct that pending decision in the review petition, CTU shall release the withheld amount less the IDC and IEDC for the period from the date of approved COD till the assets were put into regular service. PGCIL is directed to work out the IDC and IEDC for the said period within one week to CTU who shall release the balance amount over and above the IDC and IEDC to the Review Petitioner within a period of 2 days thereafter.

8. Parties were directed during the last date of hearing to complete the pleadings by 8.5.2018 and the review petition was listed for final hearing on 11.5.2018.

9. The review petition shall be heard as scheduled.

sd/-

(Dr. M.K. Iyer)
Member

sd/-

(A.S. Bakshi)
Member

