

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 6/RP/2018

in

Petition No. 208/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 : 04.07.2018

In the matter of:

Petition for review and modification of the order dated 22.11.2017 in Petition No. 208/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. Madhya Pradesh Power Management Company Ltd.,
Shakti Bhawan, Rampur,
Jabalpur-482 008.
2. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited
3/54, Press Complex, Agra-Bombay Road,
Indore-452008
3. Maharashtra State Electricity Distribution Company Limited,
Hong Kong Bank Building, 3rd Floor
M.G. Road, Fort, Mumbai- 400001
4. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara- 390007



5. Electricity Department,
Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa- 403001
6. Electricity Department,
Administration of Dadra and Diu,
Daman- 396210
7. Electricity Department,
Administration of Dadra Nagar Havelli U.T.
Silvassa- 396230
8. Chhattishgarh State Electricity Board
P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh- 492013

...Respondents

For Petitioner : Shri Sitish Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri Rakesh Prasad, PGCIL
Shri V.P. Rastogi, PGCIL

For Respondents : None

ORDER

The instant review petition has been filed by Power Grid Corporation of India Limited (“the Review Petitioner”) for review of the order dated 22.11.2017 in Petition No. 208/TT/2016 under section 94(1)(f) of the Electricity Act, 2003 (the Act) read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

Brief facts of the case

2. The Review Petitioner sought approval of COD of the following three assets as per the details given below under proviso (ii) of Regulation 4(3) of the 2014 Tariff



Regulations due to non-readiness of downstream assets being executed by MPPTCL and GETCO:-

(a) Asset 3: 400/220 kV, 500 MVA ICT at Damoh Sub-station with associated bays and 2 Nos. 220 kV line bays-COD claimed 18.11.2016

(b) Asset 5A: 400/220 kV, 500 MVA, 2 Nos. ICT at Vadodara GIS with associated bays- COD claimed 24.3.2017

(c) Asset 5B: 4 Nos. 220 kV downstream bays- COD claimed 20.5.2017

3. The Commission in the impugned order decided about the COD of these assets as under:-

“14. The petitioner has claimed the COD of Asset-3 as 18.11.2016. The petitioner vide affidavit dated 18.7.2017 has submitted that the downstream network corresponding to Asset-3 is 1 km LILO of 2nd ckt of Damoh (MPPTCL)-Sagar at Damoh (PGCIL) and it is under the scope of MPPTCL. The petitioner has submitted RLDC charging certificate in support of COD of Asset-3 dated 22.11.2016. It is observed from the charging certificate that the 500 MVA ICT and associated ICT bays (400 kV ICT bay and 220 kV ICT bay are commissioned) and the associated 2 Nos. 220 kV line bays (220 kV Damoh (MPPTCL) bay and Sagar bay) under the scope of the petitioner have not been commissioned due to non-commissioning of downstream transmission system of MPPTCL. The petitioner has submitted the correspondence carried out with MPPTCL from 6.10.2015 to 30.6.2017. It is observed from the Single line diagram (at Annexure-I), submitted by the petitioner, that the 500 MVA ICT is connected to the existing transmission system and power is flowing through existing transmission system. Therefore, the COD of 500 MVA ICT is considered as 18.11.2016. However, COD of the 2 nos. of 220 kV line bays shall be declared once associated downstream is commissioned. The cost break-up of the ICT at Damoh Sub-station and the line bays is not available. Therefore, it is not possible to work out the final tariff for ICT Damoh Sub-station based on the available capital cost. Accordingly, taking into consideration the commercial interest of the petitioner, 80% of the tariff claimed by the petitioner for Asset-3 is allowed on provisional basis as given below. The same will be reconsidered at the time of truing up on submission of the break-up of the cost of the 500 MVA ICT and the bays at Damoh Sub-station”.

“16. We have considered the submissions of the petitioner for approval of COD of the Asset-5A and Asset-5B as 24.3.2017 and 20.5.2017 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner has submitted that it has completed the work under its scope but GETCO has not completed the work under its control and as such sought approval of COD of Asset-5A and Asset5B under proviso (ii)



of Regulation 4(3) of the 2014 Tariff Regulations. The petitioner has submitted that it had made its elements ready but was prevented from regular service for reasons not attributable to it. We are of the view that the COD of the assets should match with the upstream/downstream assets for their proper utilization and the petitioner should have taken appropriate measures to ensure the same through Implementation Agreement. In the instant case, the downstream assets under the scope of GETCO have not been put into commercial operation and the petitioner has not produced any document to show that the instant assets are put to any alternative use. Since assets have not been put to regular use, we are not inclined to approved the COD of Assets-5A and 5B under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as prayed by the petitioner. As such, the tariff of Assets-5A and 5B is not allowed in the instant order. The petitioner may approach the Commission for tariff for these assets after the COD of the downstream system”.

4. In terms of the above order, COD of 2 nos. of 220 kV line bays at Damoh Sub-station, 400/220 kV 500 MVA 2 nos. of ICT at Vadodara GIS with associated bays and 4 nos. of 200 kV downstream bays was deferred till the COD of the downstream system and the Review Petitioner was directed to approach the Commission thereafter through appropriate application.

5. The Review Petitioner has submitted that the findings of the Commission with regard to COD are erroneous and contrary to proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and decisions in a catena of orders of the Commission and therefore constitutes errors apparent on the face of the record for the following reasons:-

- (a) The decision of the Commission regarding non approval of COD of Asset-3, 5A and 5B renders proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations redundant. The Review Petitioner fulfils all conditions of proviso (ii) to Regulation 4(3) i.e. (a) the said transmission assets were ready, (b) the Review Petitioner has submitted the COD certificate, CEA certificate and RLDC charging certificate on load basis for Asset-3 and on no load basis for Asset-5A and 5B and (c) these transmission assets are prevented from regular service



for reasons not attributable to the Review Petitioner but on account of the delay in COD of the downstream assets executed by MPPCL and GETCO.

- (b) Only CMD certificate was not submitted. However, Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 127 of 2015, remanded a similar matter to the Commission to enable PGCIL to file relevant documents. The Review Petitioner has sought the leave of the Commission to place the CMD certificate on record once it is ready.
- (c) The provision regarding Implementation Agreement between the licensee and the developers of upstream and downstream assets was introduced as proviso (iii) of clause 4 of Regulation 6.3A of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter "the 2010 Grid Code"). Therefore, the observation of the Commission in the impugned order that the Review Petitioner should have entered into an Implementation Agreement with the developers of downstream assets amounts to retrospective application of such regulation which is not permitted.

6. The Review Petition listed for hearing on admission on 18.5.2018. Learned Counsel appearing for the Review Petitioner submitted that despite completing the assets within the scope of the Review Petitioner and fulfilling all requirements under the proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, the COD of the assets 3, 5A and 5B were not approved and the Review Petitioner was directed to approach the Commission after the COD of the downstream assets. Learned counsel submitted that since the timelines of COD of the downstream assets are uncertain, the Review Petitioner in the absence of the approval of COD and determination of transmission



tariff of these assets will not be able to meet the debt service obligations and O&M expenses. Learned counsel requested the Commission to review the impugned order and entertain the petition for approval of deemed COD of the assets under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations.

7. We have considered the submission of the leaned counsel for the Review Petitioner and the documents on record. The Review Petitioner is primarily aggrieved that linking the issue of approval of COD of the Asset 3, 5A and 5B with the COD of the downstream assets would affect the interest of the Review Petitioner as it would not be able to recover the transmission charges from the assets till the COD of the transmission assets for which no firm timeline is available. Further, the Review Petitioner has claimed that it has fulfilled all requirements of proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations. At the same time, the Review Petitioner has sought leave to place the CMD certificate on record in terms of Regulation 6.3A 4(iv) of the Grid Code, but has submitted that entering into Implementation Agreement was not required as the said requirement under proviso (iii) of Clause 4 of Regulation 63(A) of Grid Code was inserted through an amendment on 6.4.2016, whereas the investment approval of the assets had been accorded on 19.5.2014.

8. Without going into the merit of the grounds raised by the Review Petitioner, we are of the view that the Review Petition needs to be allowed by permitting the Review Petitioner to file a fresh petition for approval of the COD not linking with the approval of COD of Assets 3, 5A and 5B with the COD or downstream assets, but under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations duly supported by all documents



including the certificate from the CMD (which was not submitted earlier). We are disposing of the review petition at the admission stage without issuing a notice to the respondents as only a procedural relief for filing a fresh petition has been granted and the respondents shall get the opportunity to submit their views with regard to the COD of the assets after a fresh the petition is filed by the Review Petitioner.

9. The Review Petition No. 6/RP/2018 is disposed of in terms of the above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(P.K. Pujari)
Chairperson

