

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 39/RP/2018
in Petition No. 64/TT/2018**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member**

Date of order: 16.04.2019

In the matter of:

Petition for review and modification of the order dated 20.7.2018 in Petition No. 64/TT/2018 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 – 122001 (Haryana)

.....Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Vidyut Bhawan, Vidyut Marg, Jaipur - 302 005
2. Ajmer Vidyut Vitran Nigam Ltd
400 KV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.
3. Jaipur Vidyut Vitran Nigam Ltd
400 KV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur
4. Jodhpur Vidyut Vitran Nigam Ltd
400 KV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.
5. Himachal Pradesh State Electricity Board
Vidyut Bhawan
Kumar House Complex Building,
Shimla-171 004
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 Ltd.
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan, 14, Ashok Marg, Lucknow - 226 001
10. Delhi Transco Ltd
Shakti Sadan, Kotla Road,
New Delhi-110 002
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 & Load Dispatch Group
Cennet Building, Adjacent To 66/11 kV Pitampura-3
Grid Building, Near PP Jewellers
Pitampura, New Delhi – 110034
14. Chandigarh Administration
Sector -9, Chandigarh.
15. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road
Dehradun
16. North Central Railway
Allahabad.
17. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi-110002

... Respondents



For Review Petitioner : Shri Sitiesh Mukerjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri Divanshu Bhatt, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri S.K Venkatesan, PGCIL
Shri S.K Niranjana, PGCIL

For Respondents : Shri R.B Sharma, Advocate BRPL
Shri, Mohit Mugdhal, Advocate, BRPL
Shri Naveen Chandra, Advocate, BRPL

ORDER

The instant review petition has been filed by Power Grid Corporation of India Limited (PGCIL) for review and modification of the order dated 20.7.2018 in Petition No. 64/TT/2018. In Petition No. 64/TT/2018, the Commission tried up the fee and charges of 2009-14 tariff period and determined the tariff of 2014-19 period of Asset-A: 400 KV Agra-Sikar (D/C QUAD) Line with associated Bays at Agra; Asset-B: 2 nos. 400 kV line bays for 400 kV D/C Agra-Sikar line including 2 nos. 50 MVAR Line Reactors under Bus Reactor operation mode at 400/220 kV Sikar Sub-station of the “Transmission System Associated with System Strengthening in NR for Sasan and Mundra UMPP” (hereinafter referred to as “assets”) in Northern Region in terms of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “2009 Tariff Regulations”) and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”) respectively.

Background

2. The tariff for the transmission assets was allowed from their COD to 31.3.2014 under the 2009 Tariff Regulations vide order dated 13.8.2015 in Petition No.300/TT/2013. The Review Petitioner did not submit the details required for computation and verification of the IDC. IDC was allowed based on the information submitted in Petition No.300/TT/2013 and the Review Petitioner was directed to submit the details required for verification of the



Review Petitioner's claim at the time of truing up. The relevant portion of the order dated 13.8.2015 is extracted hereunder:-

"31. The petitioner has not submitted complete information regarding IDC computation in support of its claim as such it is not possible to ascertain the claim of IDC. Accordingly, IDC has been verified with the loan deployed in the instant petition. As per available data, IDC has been considered as on COD on cash basis with a presumption that interest has been paid on time without any default. It has been noted from the Form-13 submitted in respect of the instant assets that the petitioner has deployed foreign as well as domestic loans. No information has been submitted regarding the interest payment date and interest rate for foreign loans, as such the same have not been considered while determining the admissible IDC. In the case of Asset-A, total IDC on cash basis works out to ₹54.01 lakh out of which IDC discharged as on COD is ₹51.51 lakh. However, in the case of Asset-B, IDC claim of ₹75.24 lakh is in order and accordingly the same has been considered. IDC on cash basis has been added to the element cost as on COD on pro-rata basis in the respective element of the asset. In the absence of required information un-discharged liability of IDC would be considered once it is discharged subject to prudence check and submission of adequate information at the time of truing up."

3. The Commission vide order dated 20.9.2018, trued up the fee and charges of 2009-14 tariff period and determined the tariff of 2014-19 period of Assets-A and B. IDC amounting to ₹3881.97 lakh for Asset-A and ₹90.00 lakh for Asset-B respectively was disallowed in the impugned order as the Review Petitioner failed to furnish the relevant information required for the computation of IDC as directed by the Commission vide its order dated 13.8.2015 in Petition No. 300/TT/2013. The relevant portion of the impugned order is extracted hereunder:-

"10. In Petition No. 300/TT/2013, the petitioner did not file the information required for computation and verification of the petitioner's claim of IDC. As such, based on the available information, the Commission vide order dated 13.8.2015, had allowed ₹40.18 lakh and ₹61.26 lakh towards IDC for Asset-A and Asset-B, respectively. The Commission had further directed the petitioner to submit at the time of truing up of the tariff, detailed working of loan deployed, date of disbursement, supporting documents for exchange rates and interest rates for each interest payment dates till the date of commercial operation and revised loan agreement, if applicable and actual cash expenditure in Form 14A in respect of IDC.

11. However, we observe that in the instant truing up petition, the petitioner has not submitted the above said details as directed vide order dated 13.8.2015. The petitioner has submitted "statement showing IDC discharged upto COD" along with the petition. Further, vide affidavit dated 17.5.2018, the petitioner has submitted a "statement of details regarding interest undischarged as on COD". However, the details as per both the statements are not sufficient in terms of dates of drawl, rate of interest, amounts etc. for each loan. As such, it is not possible to compute and to verify the IDC claimed by the petitioner vide Auditor's certificates dated 12.1.2018. Accordingly, it is not possible to verify the claimed IDC and hence the same cannot be considered."

Submissions

4. In the instant Review Petition, the Petitioner has submitted that affidavit dated 6.7.2018 filed in the main petition was not considered and the IDC amounting to ₹3881.97 lakh for Asset-A and ₹90.00 lakh for Asset-B was disallowed inadvertently by the Commission in the order dated 20.7.2018. Non-consideration of the said affidavit and disallowance of the same is an error apparent on the face of the record and has sought review of the same. The Review Petitioner has made the following prayers:-

- a) Review and modify the impugned order dated 20.7.2018 in Petition No. 64/TT/2018 in terms of the submissions set out in the present petition.
- b) Consider the affidavit dated 6.7.2018 and allow the disallowed IDC for ₹3881.97 lakh for Asset-A and ₹90 lakh for Asset-B respectively.

5. The Review Petitioner has submitted that the Commission inadvertently failed to consider the affidavit dated 6.7.2018 in Petition No.64/TT/2018, wherein details in accordance with the directions of the Commission in Petition No. 300/TT/2015 were submitted. The said affidavit was placed on the record before the final order was passed. However, the Commission erroneously overlooked the affidavit. The Review Petitioner has submitted that non-consideration of the affidavit dated 6.7.2018 and disallowance of the IDC in case of Assets-A and B in the impugned order is an error apparent on record which needs to be reviewed and modified.

6. The Review Petition was admitted on 7.2.2019 and notices were issued to the Respondents. BRPL, Respondent No. 12, in its reply, vide affidavit dated 27.2.2019 has submitted that the Review Petitioner had procured erroneous certificate for the accrued IDC in support of the IDC claimed. The Review Petitioner is claiming the accrued IDC for which there is no provision either in the 2009 Tariff Regulations or 2014 Tariff Regulations.



During the hearing on 7.3.2019, the learned counsel for the Review Petitioner while reiterating the submissions made in the Review Petition submitted that the affidavit dated 6.7.2018 was not considered by the Commission inadvertently and as a result an amount of ₹3881.97 lakh and ₹90 lakh in case of Assets-A and B was disallowed and the same is causing grave prejudice to the Review Petitioner. Refuting the contentions of the Review Petitioner, the learned counsel for BRPL submitted that the IDC was allowed to the extent which is discharged upto the date of commercial operation as provided under the 2009 Tariff Regulations and the 2014 Tariff Regulations and further submitted that if a relief is not expressly granted by the Commission, it is deemed to have been refused as per the Commission order dated 27.8.2007 in Review Petition No. 70 of 2007. Learned counsel for the Review Petitioner further submitted that the order dated 27.8.2007 is applicable in case of prayer and not on evidences. The Commission after hearing the parties reserved its order on the Review Petition.

Analysis and Decision

7. We have considered the submissions of the Review Petitioner and BRPL. The basic contention of the Review Petitioner is that non-consideration of its affidavit of 6.7.2018, filed in Petition No.64/TT/2018 led to disallowance of ₹3881.97 lakh and ₹90.00 lakh in case of Assets-A and B respectively. It is observed that while issuing the impugned order dated 20.7.2018, the Review Petitioner's affidavit dated 6.7.2018, wherein the Review Petitioner has submitted certain information, demonstrating Review Petitioner's inability to comply with the direction of the Commission in order dated 13.8.2015 to furnish the details of loan had not been taken into consideration inadvertently. This non-consideration of the affidavit of 6.7.2018 filed by the Review Petitioner resulted in disallowance of ₹3881.97 lakh and ₹90.00 lakh in case of Assets-A and Asset-B respectively. The said affidavit was placed on record before the impugned order was passed and the same was inadvertently



overlooked by the Commission. We are of the view that non-consideration of the affidavit dated 6.7.2018 is an apparent error on the face of record. Accordingly, we allow the Review Petition.

8. In view of the above, the claim of the Review Petitioner for IDC in respect of Assets-A and B shall be considered separately.

9. The Review Petition No.39/RP/2018 is disposed of in above terms.

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

sd/-
(P.K. Pujari)
Chairperson

