

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 45/RP/2018
in Petition No. 213/TT/2017**

Coram:

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

Date of Order : 02.04.2019

In the matter of:

Petition for review and modification of the order dated 20.9.2018 in Petition No. 213/TT/2017 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. NTPC Limited,
NTPC Bhawan, Core-7,
Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110003.
2. National Hydro Power Corporation Limited,
NHPC Office Complex,
Institutional Area, Lodhi Road,
New Delhi – 110003.
3. Orissa Hydro Power Corporation Limited,
Burla Power House,
Dist. Sambalpur, Burla – 768017.
4. Mejia Thermal Power Station,



ROP in Petition No. 45/RP/2018

DVC, P.O MTPS,
Dist. Bankura – 722183.

5. West Bengal State Electricity Distribution Co. Ltd.,
Bidyut Bhawan, 8th Floor (A Block)
Block DJ, Salt Lake,
Kolkata – 700091.

6. Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,
Patna – 800001.

7. Grid Corporation of Orissa Limited
Vidyut Bhawan, Janpath,
Bhubaneswar – 751007

8. Power Department,
Government of Sikkim,
Gangtok – 727102

9. Jharkhand State Electricity Board
Engineering Building, HEC Township,
Dhurwa, Ranchi – 834004.

10. Damodar Valley Corporation
DVC Tower, VIP Road,
Kolkata – 700054.

11. Powerlinks Transmission Limited,
Vidyut Nagar, P.O Satellite Township,
Siliguri–734015.

.....**Respondents**

For Review Petitioner: Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Parichita Chodhury, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri S.S. Venkatesan, PGCIL

For Respondents: None



ORDER

The instant review petition has been filed by Power Grid Corporation of India Limited (PGCIL) for review and modification of the order dated 20.9.2018 in Petition No. 213/TT/2017. In Petition No. 213/TT/2017, the Commission trued up the fee and charges of 2009-14 tariff period and determined the tariff of 2014-19 period of Asset-I: 2 Nos. OPGW links under Central Sector (127 km) and Asset-II: 3 Nos. OPGW links under Central Sector (170.234 km) under “Fibre Optic Communication System under Expansion of Wide band Communication Network” in Eastern 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 Review Petitioner had filed the Petition No. 213/TT/2017 for determination of transmission tariff for the OPGW scheme executed by the Review Petitioner in the Eastern Region. The Commission vide its 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-I and II. However, the additional capital expenditure for Assets-I and II after their cut-off dates i.e. 31.3.2016 and 31.3.2017 respectively was disallowed in the impugned order on the ground that there was no specific provision in the 2014 Tariff Regulations



relating to ULDC and Communication System. The relevant portion of the impugned order is extracted hereunder:-

“In absence of the specific regulation in respect of the then ULDC and the consequent Communication System petitions, we have considered the add cap up to cut off date only, as per Tariff Regulation 2009. The COD of Asset-I and Asset-II is 01.11.2013 and 01.03.2014 respectively. Accordingly, cut-off date for Asset-I and Asset-II shall be 2015-16 and 2016-17 respectively. Hence, the add cap up to 31.03.2016 and 31.03.2017 for Asset-I and Asset-II respectively have been considered.”

3. Aggrieved by the said order dated 20.9.2018, the Review Petitioner has filed the instant review petition and has made the following prayers:-

- a) Review and modify the impugned order dated 20.9.2018 in Petition No. 213/TT/2017 in terms of the submissions set out in the present petition.
- b) Allow additional capitalization in terms of the provisions dealing with additional capitalization in the 2009 Tariff Regulations and the 2014 Tariff Regulations.

4. The Review Petitioner has submitted that there are detailed provisions dealing with additional capitalization in the 2009 Tariff Regulations and the 2014 Tariff Regulations. Regulation 9(2)(v) of 2009 Tariff Regulations provides that any expenditure after the cut-off date that has become necessary for the successful and efficient operation can be capitalized. Similarly, Regulation 4(3)(v) of 2014 Tariff Regulations confers power on the Commission to allow additional capital expenditure after the cut-off date. The Review Petitioner has submitted that vide affidavit dated 7.8.2018 in Petition No. 213/TT/2017, the Review Petitioner had claimed ₹51.83 lakh of additional capitalization during 2016-17 in case of Asset-I and ₹25.25 lakh during 2017-18 in case of Asset-II relating to balance



and retention payment for the works executed after the cut-off dates of the said assets. The additional capitalization after the cut-off dates in the instant case should have been allowed in terms of the said Regulations. Non-consideration of the additional capitalization in case of Assets-I and II in the impugned order is an error apparent on record.

5. The Review Petition was admitted on 4.2.2019 and notices were issued to the Respondents. None of the Respondents have filed any reply in the matter. During the hearing on 7.3.2019, learned counsel for the Review Petitioner while reiterating the submissions made in the Review Petition submitted that the additional capitalization after the cut-off date in the instant case ought to have been allowed under the said provisions.

Analysis and Decision

6. We have considered the submissions of the Review Petitioner. Assets-I and II were put into commercial operation on 1.11.2013 and 1.3.2014 respectively. The cut-off dates of Assets-I and II were 31.3.2016 and 31.3.2017. Additional capitalisation upto the cut-off date was only allowed in the impugned order on the ground that there are no specific regulations with respect to the ULDC and Communication System. Accordingly, the additional capitalisation of ₹51.83 lakh during 2016-17 in case of Asset-I and ₹25.25 lakh during 2017-18 in case of Asset-II was disallowed. The Review Petitioner has contended that the decision to disallow the additional capitalisation of ₹51.83 lakh and ₹25.25 lakh in case of Assets-I and II respectively on the ground that there are no



specific provisions in respect of the Communication System in the regulations is an error apparent on the face of record as there are detailed provisions dealing with the additional capitalisation in 2009 Tariff Regulations and the 2014 Tariff Regulations.

7. The Regulation 9(2)(v) of the 2009 Tariff Regulations and Regulation 14(3)(v) of the 2014 Tariff Regulations provide for allowing additional capitalisation after the cut-off dates as under:-

“9. Additional Capitalisation.

(2) The capital expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:

(i) Xxxx

(v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:

Provided that in respect sub-clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009.”

“14. Additional Capitalisation and De-capitalisation:

(3) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

(i) Xxxxx



(v) Any liability for works executed prior to the cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;"

8. It is observed that Assets-I and II were put into commercial operation during the 2009-14 tariff period. However, the cut-off dates of the instant assets were 31.3.2016 and 31.3.2017, i.e. during the 2014-19 tariff period. Accordingly, the additional capitalisation in case of Assets-I and II during the 2016-17 and 2017-18 respectively have to be considered under the 2014 Tariff Regulations. The Regulation 14(3) of the 2014 Tariff Regulations specifically provide for allowing additional capitalisation after the cut-off date in case of the transmission system including the communication system after prudence check. Therefore, disallowance of additional capitalisation after the cut-off date in case of the instant assets is an error apparent on the face of the record and requires to be modified. However, it is observed that the Review Petitioner did not submit the details of the additional capitalisation during 2016-17 and 2017-18 in case of Assets-I and II respectively. Therefore, the Review Petitioner is directed to submit the details of the same at the time of truing up, which will be considered as per Regulation 14(3) of the 2014 Tariff Regulations.

9. The Review Petition No.45/RP/2018 is disposed of, in terms of above.

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

sd/-
(P.K. Pujari)
Chairperson

