

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

**Review Petition No. 1/RP/2021
in Petition No. 96/TT/2019**

Coram:

**Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member**

Date of Order : 31.07.2021

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 9.8.2020 in Petition No. 96/TT/2019.

And in the matter of:

Teesta Valley Power Transmission Ltd.
Bhikaji Cama Bhawan, 6th Floor,
604, Bhikaji Cama Place, New Delhi – 110066

.....Review Petitioner

Versus

1. PTC India Ltd.
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place, New Delhi – 110066
2. Energy and Power Department,
Government of Sikkim,
Kazi Road, Gangtok – 737101, Sikkim
3. Teesta Urja Ltd.
Bhikaji Cama Bhawan, 6th Floor,
604, Bhikaji Cama Place, New Delhi – 110066
4. Sneha Kinetic Power Projects Pvt. Ltd.
Sonam Complex, Jeevan Theng Marg Development Area,
Near Little Pixel International School,
Gangtok – 737101, Sikkim



5. Powergrid Corporation of India Ltd.
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk,
Gurgaon – 122001, Haryana
6. Punjab State Power Corporation Ltd.
The Mall, Patiala – 147001, Punjab
7. Uttar Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Plot No. C16, Sector-6,
Panchkula – 134109, Haryana
8. Dakshin Haryana Bijli Vitran Nigam Ltd.
Vidyut Sadan, Vidyut Nagar,
Hisar – 125005, Haryana
9. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula – 134109, Haryana
10. Ajmer Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road,
Ajmer– 305004, Rajasthan
11. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur - 302005, Rajasthan.
12. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House, Industrial Area,
Jodhpur – 342003, Rajasthan
13. Rajasthan Urja Vikas Nigam Ltd.
Vidyut Bhawan, Janpath,
Jyoti Nagar Jaipur – 302005, Rajasthan.
14. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001, Uttar Pradesh.

..... Respondents

For Review Petitioner : Ms. Shri Tarun Johri, Advocate, TPTL
Ms. Nehanjali Mishra, TPTL

For Respondents : None



ORDER

The Review Petitioner, Teesta Valley Power Transmission Ltd. (TPTL) has filed this Petition for review of the order dated 9.8.2020 in Petition No. 96/TT/2019, under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

Background

2. TPTL filed Petition No. 96/TT/2019 for determination of transmission tariff of Asset-1: Ckt-1(c) of 400 kV D/C Rangpo LILO point-Kishenganj D/C Section along with 1 number line bay and 1 number reactor at Kishenganj Sub-station (PGCIL) and Asset-2: Ckt-2(a) of 400 kV D/C Rangpo LILO point-Kishenganj D/C Section along with 1 number line bay and 1 number reactor at Kishenganj Sub-station (PGCIL) for the period from COD to 31.3.2019 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the "2014 Tariff Regulations"). The Commission approved the tariff of the said assets vide order dated 9.8.2020, wherein TPTL's claim of initial spares was allowed as per the norms in the 2014 Tariff Regulations and the excess initial spares claimed was disallowed. The relevant portion of the order dated 9.8.2020 in Petition No. 96/TT/2019 is as follows:

"Initial Spares

"49. This has been dealt in line with Regulation 13 of the 2014 Tariff Regulations. The Petitioner has claimed Initial Spare of ₹1024.30 lakh each for both the Asset-1 and Asset-2 and has submitted Auditor's Certificate dated 29.11.2019 in support of the same. The Petitioner has submitted that no initial spares has been claimed for substation and that the entire initial spares has been claimed for transmission line only. The Petitioner has further submitted that entire initial spares has been discharged on COD."



50. Initial Spares claimed by the Petitioner in respect of instant assets corresponding to transmission line are beyond the ceiling as prescribed by the Commission. Hence, excess Initial Spares claimed by the Petitioner in respect of Asset-1 and Asset-2 has been deducted from COD cost to arrive at the capital cost for the purpose of tariff, as follows.”

(₹ in lakh)

Asset	Total Capital Cost (Plant and machinery Cost excluding IDC, IEDC, Land cost and cost of Civil works) up to Cut-off date (31.03.2019)	Initial Spares Claimed against Capital Cost Claimed	Ceiling Limit as per Regulation, 2014	Initial Spares worked out	Excess Initial Spares disallowed
	(a)	(b)	(c)	(d)	
Asset-1 (T/L)	39896.17	1024.3	1%	392.65	631.65
Asset-2 (T/L)	39896.17	1024.3	1%	392.65	631.65

3. Aggrieved with the Commission’s decision to restrict the initial spares to the norms in 2014 Tariff Regulations in order dated 9.8.2020, TPTL has filed the instant review petition contending that the reasons for claiming initial spares more than the norms, given in affidavit dated 28.11.2019 in Petition No. 96/TT/2019, was not considered by the Commission while passing the order dated 9.8.2020.

4. The Review Petitioner has made the following prayers:

“5.1 In view of the justification submitted by the Petitioner in its affidavit dated 28.11.2019 as also reiterated above, the Petitioner prays to the Hon’ble Commission to consider the justification to allow the initial spares as claimed in the petition by invoking the provisions of Regulation 54 of the CERC Tariff Regulations (2014-19).

5.2 Pass such order as the Commission may deem fit in the interest of justice”

5. The matter was heard through video conference on 20.7.2021. After hearing the learned counsel for the Review Petitioner, the Commission reserved the order on admissibility of the review petition.



Submissions of the Review Petitioner

6. The Review Petitioner has made the following submissions in support of their prayers:

a) The Review Petitioner has been entrusted with the responsibility for construction, operation and maintenance of 400 kV D/C Teesta III-Kishanganj Transmission Line along with 2 numbers line bays and 2 numbers 63 MVAR switchable line reactors at Kishanganj Sub-station (in short, “the Project”) as part of the master plan for evacuation of power from various hydro projects in Sikkim. The Project has been executed progressively and the details of the respective tariff orders issued by the Commission is as below:

Transmission Lines

Sr. No.	Assets	COD	Tariff Orders
1.	Teesta III-Rangpo Section i.e. Circuit 2 (36 Ckt Km)	17.1.2017	Order dated 15.5.2018 in Petition No. 108/TT/2016
2.	Teesta III-Dikchu Section i.e. Circuit 1(a) (14 Ckt Km)	14.4.2017	
3.	Dikchu-Rangpo Section i.e. Circuit 1(b) (22 Ckt Km)	2.7.2018	Order dated 22.1.2020 in Petition No. 368/TT/2018
4a	Ckt-2(a) of Rangpo LILO Point-Kishanganj D/C Transmission Line (179 Km)	6.1.2019	Order dated 9.8.2020 in Petition No. 96/TT/2019
4b	Ckt-1(c) of Rangpo LILO Point-Kishanganj D/C Transmission Line (179 Km)	13.02.2019	

Sub-stations

Sr. No.	Assets	COD	Tariff Orders
1.	1 number of line bay and 1 number of 63 MVAR switchable line reactor at Kishanganj Sub- station associated with Ckt-2(a)	6.1.2019	Order dated 9.8.2020 in Petition No. 96/TT/2019
2.	1 number of line bay and 1 number of 63 MVAR switchable line reactor at Kishanganj Sub- station associated with Ckt-1(c)	13.2.2019	

b) The details of initial spares claimed by the Review Petitioner and allowed by the Commission in respect of the transmission assets covered in the Project are as follows:



	Capital cost claimed	P&M cost claimed	Initial Spares claimed	% claimed	Initial Spares allowed	Initial Spares disallowed	% allowed
	(₹ in lakh)	(₹ in lakh)	(₹ in lakh)		(₹ in lakh)	(₹ in lakh)	
Ckt 2	14763.62	9344.82	78.40	0.84	78.40	0.00	0.84
Ckt 1(a)	6416.86	4074.11	30.49	0.75	30.49	0.00	0.75
Ckt 1(b)	10154.22	6252.68	47.91	0.77	47.91	0.00	0.77
Ckt 2(a)	62552.41	39896.17	1,024.30	2.57	392.65	631.65	1.00
Ckt 1(c)	64117.56	39896.17	1,024.30	2.57	392.65	631.65	1.00

The initial spares claimed and allowed for ckts 2, 1(a) and 1(b) was less than the norm of 1% due to lower capitalisation of the initial spares on COD of these sections of the lines.

c) The Commission has inadvertently not considered the submissions made in affidavit dated 28.11.2019 or the justification given therein with respect to initial spares and consequently applied the ceiling norms specified under Regulation 13 of the 2014 Tariff Regulations.

d) The Commission should have considered the justification for claiming initial spares more than the norms and if necessary, should have invoked Regulation 54 of the 2014 Tariff Regulations which empowers the Commission to *suo moto* relax any of the provisions of the Regulations, for reasons to be recorded in writing.

e) 1% limit of initial spares is not sufficient for the Review Petitioner as it is a single asset company which does not have the advantage of sharing of spares that a multi-asset company has.

f) The transmission line of the Review Petitioner is passing through extremely difficult hilly terrain of the Himalayas at an altitude as high as 2600 meters and is evacuating large amount of power from hydro generating stations in Sikkim. It is a uniquely designed project different from all the other transmission projects in the country.

g) Thirteen types of towers are used in the transmission line against conventional project requirement of 4-5 types of towers. The design of



DBH/DCH/DDH tower is different than DB/DC/DD tower which were specially designed and type tested for the first time in country for elevation as high as 2600 meters. Thus, they are not interchangeable. Many angle towers were reinforced due to elevation difference between towers leading to the additional five types of "Reinforced Towers". It is essential to maintain spares for all 12 types of towers. However, no spares have been kept for transposition towers. Therefore, the extra capital spares were required to be procured along with standard requirement of the transmission line and the said procurement is part of cost of the Project approved by the Board of Directors.

h) In difficult terrain of Great Himalayan Range, Inner Himalayan Range and Shivalik Range coupled with transportability constraints due to difficult geographical conditions, movement of material from plains to hills is not possible for weeks together which may lead to longer duration of outage of the line. This transmission line is the lifeline for evacuation of large hydro generations in Sikkim Complex to the rest of the National Grid.

i) In paragraph 15.13 of the Statement of Objects and Reasons (SOR) of the 2014 Tariff Regulations, it is stated that in order to fix ceiling of initial spares for transmission system, the Commission had analysed a number of petitions received during the 2009-14 tariff period and observed that around 86% of the transmission lines had initial spares upto 1% of plant and machinery cost and accordingly, considered it appropriate to fix the ceiling of initial spares of transmission line as 1% of plant and machinery cost. In view of the uniqueness of the 400 kV D/C Teesta III-Kishanganj Transmission Line, the line does not fall under the 86% of the transmission line assets considered by the Commission and, therefore, it is a fit case to suo moto invoke Regulation 54 of the 2014 Tariff Regulations.

Interlocutory Application No. 4/2021

7. The Review Petitioner has also filed an Interlocutory Application No. 4/2021 for condonation of delay of 45 days in filing the instant Review Petition. During the



course of the hearing on 20.7.2021, learned counsel for the Review Petitioner submitted that the said delay is due to the Covid-19 pandemic and prayed to condone the same. Taking into consideration the prevailing situation, the Commission condoned the delay in filing the review petition. Accordingly, I.A. No.4/2021 was disposed of.

8. During the hearing on 20.7.2021, learned counsel for the Review Petitioner reiterated the submissions made in the review petition.

Analysis and Decision

9. We have considered the submissions of Review Petitioner and the material available on record. The grievance of the Review Petitioner is disallowance of higher initial spares claimed by the Review Petitioner and restriction of the same to 1% of the plant and machinery cost of the transmission line as specified in Regulation 13 of the 2014 Tariff Regulations. The Review Petitioner has submitted that the Commission has inadvertently not considered its affidavit dated 28.11.2019 wherein the justification for claiming initial spares higher than the norms specified in the Regulation 13 of the 2014 Tariff Regulation was submitted. The Review Petitioner has contended that non-consideration of the affidavit dated 28.11.2019 by the Commission is an apparent error. Further, the Review Petitioner has submitted the reasons for claiming initial spares more than the norms in the instant review petition and has prayed to allow the same by invoking Regulation 54 of the 2014 Tariff Regulations.



10. As regards the contention of the Review Petitioner regarding non-consideration of the affidavit dated 28.11.2019, it is observed on perusal of the impugned order that the Commission has considered the justification given by the Review Petitioner in the said affidavit for claiming initial spares in excess of the normative limits. This aspect was clearly mentioned at paragraph 13 of the impugned order dated 9.8.2020. The relevant portion of the impugned order is as follows:

“13. This order has been issued after considering the main petition dated 16.2.2019 and Petitioner’s affidavits dated 30.3.2019, 28.11.2019 and 17.3.2020.”

11. Therefore, the contention of the Review Petitioner that the Commission has not considered the submissions made by the Review Petitioner in affidavit dated 28.11.2019 in the impugned order dated 9.8.2020 is not correct and accordingly rejected.

12. According to the Review Petitioner, the Commission has failed to consider that the Project is located in the remote Himalayan region of the country where there are transportability constraints due to difficult geographical conditions and movement of material from plains to hills is not possible for weeks together which may lead to longer duration of outage of the line. The Review Petitioner has contended that the transmission line under the Project is the lifeline for evacuation of large hydro generations in Sikkim Complex to the rest of the National Grid and, therefore, it has justified higher initial spares compared to the ceiling specified Regulation 13 of the 2014 Tariff Regulations. The Review Petitioner has also contended that the Commission should have invoked provisions of Regulation 54 of the 2014 Tariff Regulations to relax the initial spares norms specified in Regulation 13 of the 2014 Tariff Regulations considering the reasons given by the Review Petitioner for



claiming excess initial spares. The Commission not having invoked the provisions of power to relax in the impugned order, the Review Petitioner has, in the instant review petition, prayed to consider the reasons for claiming higher initial spares submitted in the instant review petition and invoke the provisions of power to relax provided in the 2014 Tariff Regulations.

13. As stated above, the Commission having already considered the submission made by the Review Petitioner in affidavit dated 28.11.2019 in Petition No. 96/TT/2019, allowed initial spares as per norms specified in Regulation 13 of the 2014 Tariff Regulations. In our view, the Review Petitioner is trying to re-agitate the issue which has already been decided by us in order dated 9.8.2020, which is not allowed in a review petition.

14. Accepting the Review Petitioner's submissions would amount to reconsideration of the matter on merit, which is not permissible under the review jurisdiction. In this connection, reference is made to the judgment in Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224] where the Hon'ble Supreme Court held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

15. Further, in the case of Union of India Vs. Sandur Manganese and Iron Ores Limited & others {(2013) 8 SCC 337}, the Hon'ble Supreme Court held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:



“9. Under Order 47 Rule 1 of CPC, a judgement may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has limited purpose and cannot be allowed to be “an appeal in disguise.”

16. Thus, the legal position is that the power of review can be exercised for an apparent mistake and not to substitute a view. Since the Review Petitioner is in effect seeking substitution of the view earlier taken by the Commission in the impugned order dated 9.8.2020 in Petition No. 96/TT/2019 which is not an apparent mistake, this ground for review cannot be sustained.

17. As regards the exercise of Power to Relax, the Appellate Tribunal for Electricity vide its judgment dated 25.3.2011 in Appeal No. 130/2009 (RGPPL v. CERC & anr) has observed the following:

“18.1 The Regulations of the Central Commission and the decision of the Tribunal and the Supreme Court confer the judicial discretion to the Central Commission to exercise power to relax in exceptional case. However, while exercising the power to relax there should be sufficient reason to justify the relaxation and non-exercise of discretion would cause hardship and injustice to a party or lead to unjust result. It has also to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming relaxation. Further, the reasons justifying relaxation have to be recorded in writing.”

18. Thus, the provisions of power to relax are discretionary and should be used in exceptional circumstance. In the instant case, the Commission did not exercise the power to relax and in our view, it is not necessary to record why power to relax has not been invoked. It is only when the provision of power to relax is invoked, the Commission is required to record reasons justifying such invocation.



19. Apart from the contention that the Commission has not considered its affidavit dated 28.11.2019 and that the Commission has not invoked provisions of power to relax, the Review Petitioner has not pointed out any other error apparent in impugned order dated 9.8.2020 in Petition No. 96/TT/2019. Therefore, no ground of review is made out.

20. In view of the above discussion, we reject this review petition and accordingly, the Review Petition No. 1/RP/2021 is disposed of.

**sd/-
(I.S. Jha)
Member**

**sd/-
(P. K. Pujari)
Chairperson**

