

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 8/RP/2021 in
Petition No. 191/MP/2019**

Coram:

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

Date of order: 06.08.2021

In the Matter of:

Petition for review of order dated 27.1.2021 in Petition No. 191/MP/2019 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the Matter of

North East Transmission Company Ltd.,
2C, 3rd Floor, D-21,
DMRC Building, Corporate Park,
Dwarka, Sector-21, Delhi-110077

...Review Petitioner

Vs.

1. Power Grid Corporation of India Ltd.,
Saudamini, Plot No.2,
Sector-29 Gurgaon-122001 (Haryana).
2. Tripura State Electricity Corporation Ltd.,
Bidyt Bhawan, North Banamaliupr,
Agartala- 799001.
3. Assam Electricity Grid Corporation Ltd.,
Bijulee Bhawan, Paltan Bazar,
Guwahati- 781001.
4. Meghalaya State Electricity Board,
Lumjingshai, Short Round Road, Shillong -1.
5. Department of Power, Government of Nagaland,
Office at Kohima- 797001.
6. Power & Electricity Department,
Government of Mizoram, Aizwal- 796001.



7. Electricity Department, Government of Manipur, Keishampat, Imphal- 795001.
8. Department of Power, Government of Arunachal Pradesh, Itanagar- 791111.
9. ONGC Tripura Power Company Ltd., Udaipur, Karkraban Road, Palatana P.O. Distt-Gomati, Tripura – 799105.
10. North Eastern Regional Power Committee, Nongrim Hills, Shillong-793003.

....Respondents

For Review Petitioner : Shri M. G. Ramachandran, Senior Advocate, NETCL
Shri Shubham Arya, Advocate, NETCL
Shri Satyajit Ganguly, NETCL
Shri Naveen Kumar Mishra, NETCL

For Respondents : None

Order

Instant Review Petition has been filed North East Transmission Company Ltd. (NETCL) seeking review of the Commission's order dated 27.1.2021 in Petition No. 191/MP/2019 under Section 94(1)(f) of the Electricity Act, 2003 (in short, "the Act") read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 on the issue of relaxation of operation and maintenance expenditure norms specified under Regulation 29(4) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (for short, "the 2014 Tariff Regulations").

2. NETCL filed Petition No. 191/MP/2019 seeking relaxation of the Operation and Maintenance Expenses (O&M Expenses) norms specified under Regulation 29(4) of the 2014 Tariff Regulations. The Commission vide order dated 27.1.2021 disposed of Petition No. 191/MP/2019 with the observation that there was no reason



to invoke the provisions of “Power to Relax” as sought by the Review Petitioner to allow it higher O&M Expenses. It was further observed that Review Petitioner should be more prudent and restrict its O&M Expenses within the stipulated norms.

Background

3. In the first place, Review Petitioner filed Petition No. 224/MP/2017 under Section 79(1)(d) of the Act read with Regulations 54 and 55 of the 2014 Tariff Regulations seeking relaxation in O&M norms specified under Regulation 29(4) of the 2014 Tariff Regulations.

4. The Commission vide order dated 16.4.2019 disposed of Petition No. 224/MP/2017 with the observations that Review Petitioner’s transmission assets are located in North-East in difficult terrain and are critical for evacuating 1/3rd of power requirements of the North Eastern Region (NER). Further, the Review Petitioner being a single asset Company and located in NER, it needs to be considered differently from the transmission licensees having multiple assets in different locations.

5. The Commission at the stage of disposing of Petition No. 224/MP/2017 felt that there was no requirement to invoke “Power to Relax”. However, the Commission in its order dated 16.4.2019 granted liberty to the Review Petitioner to file a fresh petition containing certain details such as (a) O&M charges paid for maintenance of the assets, (b) O&M expenditure incurred by Review Petitioner on items other than the maintenance of the bays, (c) Efforts made by the Review Petitioner to optimize the expenditure, and (d) any additional expenditure incurred by the Review Petitioner on maintaining the safety and security of the transmission assets.



6. Pursuant to the liberty granted vide order dated 16.4.2019 in Petition No 224/MP/2017, the Review Petitioner filed Petition No. 191/MP/2019 before the Commission seeking relaxation in O&M norms specified under Regulation 29(4) of the 2014 Tariff Regulations.

7. The Commission vide its order dated 27.1.2021 in Petition No. 191/MP/2019 categorically observed that the issue of single project Companies and associated expenditure had been raised while finalizing norms for O&M Expenses during 2009-14 as well as 2014-19 tariff periods. However, the Commission did not agree to such suggestions for allowing higher O&M Expenses and was of the view that single project Companies need to undertake more efficient measures to contain the O&M Expenses within industry benchmarks. In the said order, the Commission further observed that there was no reason to invoke provisions of “Power to Relax” as requested by the Review Petitioner to allow it higher O&M Expenses. The Commission stated that it expects the Review Petitioner to be more prudent and restrict its O&M Expenses within the stipulated norms.

8. The Review Petitioner, in the present Review Petition has made the following prayers:

- “1. *Admit this Petition;*
2. *Allow the Review Petition and modify the Order dated 27.01.2021 passed in Petition No. 191/MP/2019 to the extent stated in the present Review Petition,*
3. *Relax the O&M norms specified under Regulation 29 (4) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 and allow additional O&M charges to the extent mentioned in the present petition;*
4. *Pass such other order(s), as this Hon’ble Commission may deem appropriate in the facts and circumstances of the present case.”*

9. The matter was heard through video conference on 13.7.2021 for admission. After hearing Shri M.G. Ramachandran, learned Senior Advocate for the Review



Petitioner at considerable length, order on admissibility of the Review Petition was reserved.

Submissions of the Review Petitioner

10. Main submissions of the Review Petitioner in the Review Petition for review of the order dated 27.1.2021 in Petition No. 191/MP/2019 are as follows:

- a) The Commission vide order dated 10.11.2017 in Petition No. L-1/225/2017/CERC invited comments/ suggestions from the stakeholders on the Draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for the tariff period from 1.4.2019 to 31.3.2024. The Review Petitioner submitted its comments and stated that O&M Expenses of the transmission assets become a challenge in difficult terrains and it requires additional financial resources to compensate for the additional cost due to hiring of more manpower and establishment of additional site offices to mitigate the difficulty in movement of men and material in comparison to transmission assets in plain areas. In addition to this, being a single project Company, the corporate office expenses need to be compensated.
- b) Normative O&M Expenses as being allowed by the Commission do not enable the Petitioner to meet its O&M Expenses in the North Eastern part of the country.
- c) Significant portion of the transmission assets of the Review Petitioner were executed in 2014-15 after finalization of the tariff norms for the control period 2014-19 and as such no meaningful data/ experience/ suggestions/ comments could be given when the Commission invited comments for finalization of tariff norms for the control period 2014-19.
- d) The Commission in its order dated 16.4.2019 in Petition No. 224/MP/2017 has categorically considered and held that single asset Company needs to be considered differently from transmission licensees having multiple number of assets/ transmission elements such as Power Grid Corporation of India Ltd. (PGCIL).



e) The Commission's order dated 27.1.2021 observed that single project Company needs to undertake more efficient measures to contain the O&M Expenses within the industry benchmark. Efficient operation can contain O&M Expenses to a minimum level and the norms of efficient performance of O&M Expenses as prescribed in the applicable regulations have already been taken into consideration. For transmission licensee having multiple assets/ elements, its O&M Expenses get shared and as such it is significantly lower as compared to a Single Project Company such as the Review Petitioner in the instant case.

f) Section 61 of the Electricity Act, 2003 contemplates recovery of cost in a reasonable manner while setting the tariff principles. This principle has also been elaborated in section 5.11(h) of the Tariff Policy, 2016 (issued by Ministry of Power) which states that initial starting point in determining the revenue requirement and improvement trajectories should be recognized at "relaxed" levels and not at the "desired" levels. In this background, it is prayed that any revenue trajectory which considers the O&M Expenses of a mature industry entity like PGCIL may not be considered as the starting point and such benchmarks may only be established over a period of time based on the inherent conditions.

g) The Discussion Paper on Terms and Conditions of Tariff, June 2003 observed the limitation of benchmark cost/km for a typical installation but it did not include the requirement of additional O&M Expenses in certain special cases and as such some allowance may need to be provided in special cases such as hilly/ difficult terrain, abnormal siltation, abnormal water charges security charges etc.

h) Paragraph No.14 of the Review Petition is comparative analysis of PGCIL's O&M Expenses data with peers which shows that O&M Expenses per ckt km in NER is much higher than O&M Expenses per ckt km in other regions. Benchmarking of O&M Expenses of NER with other regions or aggregating the expenses of NER with other regions is misplaced.



- i) Assuming that the tariff norms are derived on the basis of operational expenses data for NER, the O&M norms so obtained are significantly higher than the benchmark norms and the details of the same are shown in the tables under paragraph 15. If the norms are set on the basis of NER only, the performance of the Review Petitioner exceeds the benchmark data.
- j) Regulation 38 of the 2014 Tariff Regulations specifies that Normative Annual Transmission System Availability Factor of a Transmission System is 98%. No special dispensation has been given to the Review Petitioner as a transmission licensee of North Eastern Region. Absence of adequate trained manpower to handle the difficulties in NER forced the Review Petitioner to hire PGCIL to manage the O&M activities of its transmission assets. Even PGCIL is incurring expenses in NER above the norms for its transmission assets. For continuity and to optimize the O&M Expenses, less critical sections were outsourced to third party O&M contractors other than PGCIL due to limited technical and financial strength compared to PGCIL.
- k) Outsourcing of O&M operations was envisaged as an interim measure in the absence of required manpower at the time of commissioning. The Review Petitioner is gradually transitioning towards in-house maintenance and this necessitates the requirement of site offices as well as adequate manpower at site. Presence of an office in New Delhi is essential for preparation of bills, coordinating with CTU for recovery of transmission charges, manage regulatory filings, audit of books of accounts including CAG, HR related issues, Board meetings and audit committee meeting etc.
- l) In terms of The APTEL's judgment in the matter of NTPC Ltd. v. Madhya Pradesh State Electricity Board recorded in 2007 ELR 7, in case a regulation leads to an unjust result, the Commission has power to relax its provisions.

11. We have heard the Review Petitioner on 13.7.2021 on admissibility of the Review Petition. Shri M.G. Ramachandran, learned Senior Advocate for the Review Petitioner reiterated the submissions made in the Review Petition during the hearing.



Analysis and Decision

12. We have considered the submissions of the Review Petitioner and have gone through the material available on record.

13. Learned senior counsel for the Review Petitioner contended that the Commission's order 16.4.2019 in Petition No. 224/MP/2017 observed that single asset Company needs to be considered differently from transmission licensees having multiple number of assets/ transmission elements. He further contended that on grant of liberty by the Commission vide order dated 16.4.2019 in Petition No. 224/MP/2017, Petition No. 191/MP/2019 was filed by the Review Petitioner seeking relaxation of O&M Expenses in view of the difficult situation prevailing in the North Eastern Region. The Commission vide order dated 27.1.2021 in Petition No. 191/MP/2019 considered only one aspect and that was Single Project Company needs to undertake more efficient measures to contain O&M Expenses within the industry benchmark and did not look into other aspects of the matter. He further contended that the Commission's order dated 27.1.2021 completely ignored the fact that the Review Petitioner is operating in difficult terrain of the North Eastern Region. He contended that the Commission's order dated 27.1.2021 failed to understand the pivotal difference between a transmission licensee which by reason of having multiple assets/ elements shares its O&M Expenses and thus its O&M Expenses are significantly lower as compared to Single Project Company. He urged the Commission to invoke Regulation 54 of the 2014 Tariff Regulations and relax the O&M expenses norms specified under Regulation 29(4) of the 2014 Tariff Regulations in view of peculiar circumstances of North Eastern Region and Single Project Company.



14. Before dwelling upon the contentions of the Review Petitioner raised in the instant petition, it would be appropriate for us to refer to the Commission's order dated 16.4.2019 in Petition No. 224/MP/2017 and order dated 27.1.2021 in Petition No. 191/MP/2019.

15. Review Petitioner filed Petition No. 224/MP/2017 under Section 79(1)(d) of the Act read with Regulations 54 and 55 of the 2014 Tariff Regulations seeking relaxation in the O&M expenses norms specified under Regulation 29(4) of the 2014 Tariff Regulations. In this petition, the main pleas taken by the Review Petitioner were that the Review Petitioner through its transmission system is playing a critical role in evacuating approximate 1/3rd of power requirement of the North Eastern Region (NER); its transmission systems pass through reserve forests, hilly terrains of NER and are severely affected by insurgency; bare minimum manpower is employed to control the overheads; it needs to maintain/ make available its assets at all times and it has outsourced O&M activity to PGCIL and Pioneer Constructions.

16. The Commission vide order dated 16.4.2019 disposed of Petition No. 224/MP/2017 with the observations that the Review Petitioner being a single asset Company and being located in North-Eastern Region, its case needs to be considered differently from the transmission assets of transmission licensees having multiple assets. On this premise and subject to filing of certain information, as mentioned earlier in this order, the Review Petitioner was granted liberty to file a fresh petition.

17. Review Petitioner filed Petition No. 191/MP/2019 under Section 79(1)(d) of the Electricity Act, 2003 read with Regulations 54 and 55 of the 2014 Tariff



Regulations seeking relaxation of Operation and Maintenance norms specified under Regulation 29(4) of the 2014 Tariff Regulations.

18. On perusal of original record of Petition No. 191/MP/2019, we notice that main pleas taken by the Review Petitioner in the present Review Petition seeking relaxation in Regulation 29(4) of the 2014 Tariff Regulations keeping in mind the situation prevalent in North-Eastern Region, Single Project Company, submission of data regarding O&M Expenses while formulating the norms for 2019-24 period and comparison of O&M Expenses etc. have already been considered by us in our order dated 27.1.2021 in Petition No. 191/MP/2019. Relevant portion of the impugned order dated 27.1.2021 is as under:

“25. It is observed from the above that the issue of single project companies and associated expenditure has been raised while finalizing norms for O&M Expenses during 2009-14 as well as 2014-19 tariff periods. However, the Commission has not agreed to such suggestions of allowing higher O&M Expenses and has been of the view that single project companies need to undertake more efficient measures to contain the O&M expenses within industry benchmarks.

27. From the above, it is observed that the Petitioner has paid O&M charges to M/s Pioneer @ 0.55-0.60 lakh/km, against the norms of 0.78-0.81 lakh/km as per the 2014 Tariff Regulations. Hence, the Petitioner has been able to reduce the O&M expenditure/km due to award placed to M/s Pioneer.

29. From the above table, we observe that the Petitioner has paid O&M charges to PGCIL at a much higher rate than the normative O&M Expenses allowed as per the 2014 Tariff Regulations. The Petitioner has submitted that it has entered into an agreement with PGCIL for O&M as per norms under 2014 Tariff Regulations plus 10% consultancy charge plus service tax out of which consultancy charge was waived off in 2016 and GST became effective from 1.7.2017.

31. We observe that despite awarding contract for O&M to PGCIL and M/s Pioneer, the Petitioner has to maintain a site office to carry out various functions and, therefore, need to incur expenditure on site office. We also observe that the Petitioner has incurred significant amount in Corporate Expenses head. The Petitioner was aware of the norms of O&M Expenses under the 2014 Tariff Regulations and despite that such expenditures have been incurred. This in our view is not a prudent expenditure.

32. In the light of our observations made above, we do not find any reason to invoke provisions of power to relax as requested by the Petitioner to allow it higher O&M expenses. The Commission expects the Petitioner to be more prudent and restrict its O&M Expenses within the stipulated norms.”



19. As per Order 47 Rule 1 of Code of Civil Procedure, 1908 a review can be allowed only under the following circumstances:

“(a) On discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or

(b) On account of a mistake or error apparent on the face of the record, or

(c) For any other sufficient reasons.”

20. In the instant case, the Review Petitioner has neither shown any error apparent on record nor has placed any new evidence in support of its contentions for review of the order dated 27.1.2021. The grounds for invoking provisions of power to relax were raised by the Petitioner in Petition No. 191/MP/2019 also and the Commission vide impugned order dated 27.1.2021 did not consider it appropriate to invoke provisions of power to relax provided under Regulation 54 of the 2014 Tariff Regulations. We observe that in the impugned order, the Commission has given detailed reasons for not invoking provisions of power to relax. The Review Petitioner, under the garb of review, is trying to re-agitate the issues already decided by us in our order dated 27.1.2021. We do not find any error apparent on the face of record which requires review of the order dated 27.1.2021.

21. In view of above discussions, Review Petition No. 8/RP/2021 is rejected at the stage of admission.

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson

