

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 20/RP/2022
in 283/GT/2020
along with IA No. 45/IA/2022**

Coram:

**Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 30th August, 2022

In the matter of

Petition for the review of the Commission's order dated 23.2.2022 in the matter of truing up of tariff for the tariff period 2014-19 and determination of tariff for the period 2019-24 in respect of Chutak Power Station (44 MW).

And

In the matter of

NHPC Limited,
NHPC Office Complex, Sector 33,
Faridabad, Haryana – 121 003

.... Review Petitioner

Vs

1. The Principal Secretary,
Power Development Department,
New Secretariat,
Jammu – 180 001

... Respondent

Parties present:

Shri Rajiv Shankar Dvivedi, Advocate, NHPC
Shri Ajay Shrivastava, NHPC
Shri Mohd. Faruque, NHPC
Shri Piyush Kumar, NHPC



ORDER

Petition No. 283/GT/2020 was filed by the Review Petitioner, NHPC Limited for truing-up of tariff for the 2014-19 tariff period in terms of the 2014 Tariff Regulations and for determination of tariff for the 2019-24 tariff period in terms of 2019 Tariff Regulations in respect of Chutak Power Station (44 MW) (hereinafter to be referred as 'generating station') and the Commission disposed of the same vide order dated 23.2.2022 ('the impugned order'). Aggrieved by the impugned order, the Review Petitioner has filed this Review Petition seeking review on the grounds that there are errors apparent on the face of record, limited to the following issues:

- A. *Error in disallowing impact of Goods & Services Taxes (GST) on Security charges;*
- B. *Error in calculation of unit wise Operation & Maintenance (O&M) Expenses (i.e., from COD of first unit to COD of the station);*

2. The Review Petitioner has also filed an Interlocutory Application (I.A.No. 45/2022) for condonation of delay of 67 days in filing the Review Petition. As regards the reasons for the delay in filing the Review Petition, the Review Petitioner has submitted that after issuance of the impugned order, two errors were observed. It has submitted that the first error related to the impact of GST on security services, which was referred to tax expert for advice/opinion. Thereafter, the same was processed for appraisal of the management. The Review Petitioner has also submitted that during the process of approval, a new fact was noticed from the Commission's vide order dated 25.5.2022 in Petition No. 22/RP/2021 (in Petition No. 29/GT/2020), wherein the O&M



expenses for the first year (i.e., 2014-15) for the individual units (before COD of station) had been calculated, based on the apportionment of capital cost for the respective units, on the capital cost of the project, as on the cut-off date and considering this fact, the review petition was then re-drafted and was processed for the approval of the management. The Review Petitioner has stated that due to the aforesaid reasons, there has been a delay of 67 days in filing the Review Petition. The Review Petitioner has prayed that it has a strong prima facie case in its favour, and there are good chances to succeed and hence the present application is bonafide and in the interest of justice. Accordingly, it has submitted that the Commission may condone the delay of 67 days in filing the Review Petition.

Hearing on 12.8.2022

3. The Review Petition was heard on 'admission' through 'video conferencing' on 12.8.2022. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in the matter and prayed that the Review Petition may be allowed on the issues raised in paragraph 1 above. As regards condonation of delay, the learned counsel for the Review Petitioner submitted that though the delay in filing the Review Petition is 67 days, considering the order of the Hon'ble Supreme Court extending the period of limitation till 28.2.2022, the period of delay may be lesser. He, therefore submitted that the Commission, may, condone the delay in filing the Review Petition and admit the same, in the interest of justice.



Condonation of delay

4. We have examined the matter. Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, provides that a petition for review must be filed within 45 days from the date of issuance of the order by the Commission. The Petitioner has, however, submitted there is delay of 67 days in filing the Review Petition mainly due to re-drafting of the Review Petition upon discovery of new error in the impugned order (based on another order) and the delay in approval of the same from its management.

5. The period of limitation for making an application for review is 45 days from the date of receipt of the order. However, the period could be extended or abridged by the Commission for 'sufficient reasons'. The Commission, under Regulation 116 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 is authorized to condone delay in appropriate cases, on the Review Petitioner showing 'sufficient reason'. The expression "sufficient reason" needs to be interpreted in the same manner as the expression "sufficient cause" under Section 5 of the Limitation Act, 1963. In the present case, the impugned order was passed on 23.2.2022 and therefore Review Petition, against the same, was required to be filed by 9.4.2022 (i.e within 45 days), in terms of the said Conduct of Business Regulations. However, keeping in view the extension of the limitation period by the Hon'ble Supreme Court till 28.2.2022, the period of 45 days for filing review in the present case, commenced from 1.3.2022 and expired on 14.4.2022. Admittedly, the Review Petitioner has filed the Review Petition only on 15.6.2022. Thus, there has been a delay of 62 days for which reasons has been furnished by the Review Petitioner, as stated above. Though the reasons



furnished by the Review Petitioner, in justification for the delay, may not be convincing prima-facie , we notice that the issues raised in the Review Petition are also pending for consideration in some of the tariff petitions filed by the Review Petitioner, for its other generating stations. We therefore, in the interest of justice and to address the issue, we hereby condone the said delay in filing the Review Petition. IA No.45/2022 is disposed of in terms of the above.

6. Considering the submissions of the learned counsel for the Review Petitioner, the Review Petition is 'admitted' on the issues raised in paragraph 1 above. Notice is ordered to be issued on the Respondents.

7. The Review Petitioner is directed to serve the copy of the Review Petition, along with this order, to the Respondent by **2.9.2022**. The Respondent shall file their replies, on the issues raised in paragraph 1 above, on or before **19.9.2022**, after serving a copy to the Review Petitioner, who may file its rejoinder, if any, by **29.9.2022**. The parties shall ensure the completion of the pleadings within the due date and no extension of time shall be granted for any reason.

8. Review Petition shall be listed for hearing on **11.10.2022**.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

