

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 20/RP/2022
in
Petition No. 283/GT/2020

Coram:

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

Date of Order: 3rd December, 2022

In the matter of

Review of Commission's order dated 23.2.2022 in Petition No.283/GT/2020 pertaining to truing up of tariff for the 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

Power Development Department,
New Secretariat,
Jammu – 180 001

... Respondent

Parties present:

Shri Rajiv Shankar Dvivedi, Advocate, NHPC
Shri Piyush Kumar, NHPC
Shri S. K. Meena, NHPC
Shri Jitender Kumar, NHPC
Shri R D Shende, NHPC



ORDER

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

(a) Error in disallowing the impact of GST on Security charges;

(b) Error in the calculation of unit-wise O&M Expenses (i.e. from COD of first unit to COD of the generating station);

Hearing dated 12.8.2022

2. The Review Petition was heard on admission on 12.8.2022 and the Commission, after condoning the delay of 62 days (in IA 45/2022), admitted the review petition on the issues raised above, vide interim order dated 30.8.2022. The Commission also directed issuance of notice to the Respondents and for completion of pleadings by parties. None of the Respondents have filed reply in the matter.

Hearing dated 2.11.2022

3. Thereafter, the Review Petition was heard on 2.11.2022. The Commission, after hearing the learned counsel for the Review Petitioner, reserved its order in the



matter. None appeared on behalf of the Respondents, despite notice. Based on the submissions of the Review Petitioner and the documents available on record, we proceed to examine the issues raised by the Review Petitioner in the subsequent paragraphs.

A. Error in disallowing the impact of GST on Security charges

4. The Commission in paragraphs 74 and 75 of the impugned order dated 23.2.2022 had disallowed the impact on GST on Security charges of Rs. 84.42 lakh for the 2014-19 tariff period as under:

“74. The matter has been considered. It is observed that the Commission while specifying the O&M expense norms for the 2014-19 tariff period had considered taxes to form part of the O&M expense calculations and, accordingly, had factored the same in the said norms. This is evident from paragraph 49.6 of the SOR (Statement of Objects and Reasons) to the 2014 Tariff Regulations, which is extracted hereunder:

“49.6 With regards to suggestion received on other taxes to be allowed, the Commission while approving the norms of O&M expenses has considered the taxes as part of O&M expenses while working out the norms and therefore the same has already been factored in...”

75. Further, the escalation rates considered in the O&M expense norms under the 2014 Tariff Regulations is only after accounting for the variations during the past five years of the 2014-19 tariff period, which in our view, takes care of any variation in taxes also. It is pertinent to mention that in case of reduction of taxes or duties, no reimbursement is ordered. In this background, we find no reason to allow the prayer for grant of additional O&M expenses towards payment of GST.”

Submission of the Review Petitioner

5. The Review Petitioner has submitted that, the Government of India (GoI) has implemented GST Act, 2017 with effect from 1.7.2017, all over India except in the State of Jammu and Kashmir (J&K), which was implemented from 8.7.2017. The Review Petitioner has further submitted that the Commission while disallowing the impact of GST on Security services, in the impugned order, has erred on the



following counts:

- (i) Taxes on security expenses are not included in normative O&M expenses for the tariff period; and
- (ii) GST on security services in the instant generating station is a 'change in law' and escalation rates does not take care the 'change in law' i.e., imposition of GST on security services in the state of J&K

6. In support of the above, the Review Petitioner has submitted the following:

- (a) Service Tax was first introduced in the year 1994 through Finance Act, 1994. As per Section 64 (1) of Finance Act, 1994, Service Tax was applicable to the whole of India except the State of Jammu and Kashmir. In view of this provision, any services rendered within the State of J&K, either by a person residing within the State or outside the State, was not leviable to Service Tax. Accordingly, Service Tax was not leviable/payable in Pre-GST Regime on Security services received by the units of the Petitioner, located in the State of J&K.
- (b) Further, as per the provisions of J&K General Sales Tax Act, 1962 and Rules framed thereunder, Security services were not falling in the definition of goods or services as defined in Section 2(h) of the said Act. Therefore, Security services were not eligible to any tax i.e. WCT under J&K General Sales Tax Act, 1962 or Service Tax in the State of J&K in pre-GST regime.
- (c) With the introduction of GST w.e.f. 8.7.2017 in the State of J&K, Security services are being subjected to GST @18%.

7. The Petitioner has stated that Section 9 (3) of CGST Act, 2017 read with Entry No. 5 of N/N 13/2017 – CGST (Rate) further provides that GST shall be paid by recipient of service, under reverse charge, on all services supplied by the Central Government, State Government, Union territory or local authority, which also includes Security services. Accordingly, the Review Petitioner has submitted that its units located in the State of J&K, where the Security services are being obtained from the State Police Department/CISF, which are covered under the definition of the Government, are discharging GST under reverse charge. The Review Petitioner



submitted has added that there was no tax on security services in the past and thus, the imposition of GST in Security services is a 'change in law' and therefore, the impact of GST on Security services was not factored under the normative O&M expenses notified for this generating station for the period 2014-19. Accordingly, the impact of GST on Security services (out of total impact of GST) summarized by the Petitioner is as under:

	Additional Impact of GST on O&M expenses (Rs.in lakh)		
	2017-18	2018-19	Total
Total Impact of GST	66.36	107.96	174.32
Impact of GST on Security Services – CISF	29.26	55.16	84.42

8. In view of the above, the Petitioner has prayed that the impugned order may be reviewed and impact of GST on Security services for Rs. 84.42 lakh may be allowed.

Analysis and Decision

9. We have examined the matter. It is evident from the submissions of the Review petitioner and the documents on record that in terms of the provisions of J&K General Sales Tax Act, 1962 and the Rules framed thereunder, Security Services were not falling in the definition of goods or services, as defined in Section 2(h) of the said Act and therefore, the same were not eligible to any tax i.e. WCT under J&K General Sales Tax Act, 1962 or Service Tax in the State of J&K in pre-GST Regime. However, with the introduction of GST w.e.f. 8.7.2017 in J&K, Security services are being subjected to GST @18%. Thus, no service tax was applicable on the Security services prior to 8.7.2017 in the State of J&K



and accordingly, the same cannot be said to have been factored in, while framing the O&M expense norms for this generating station of the Petitioner, located in the State of J&K. It can, therefore be concluded that due to the implementation of GST on Security services, the Petitioner has been obligated to pay GST on Security services for this generating station. These aspects could not be considered while determining the tariff of the generating station vide impugned order dated 23.2.2022. We are of view that it is an error apparent on the face of record, and the impugned order requires review and modification.

B. Error in calculation of unit-wise Operation and Maintenance (O&M) Expenses (i.e. from COD of first unit to COD of the station)

10. In paragraph 70 of the impugned order dated 23.2.2022, the O&M expenses for the period from 29.11.2012 to 31.1.2013 was determined, by considering the capital cost of Rs. 59574.72 lakh, for 3 Units as on COD i.e., 29.11.2012, in terms of Regulation 29(3)(c) of the 2014 Tariff Regulations.

Submission of the Review Petitioner

11. The summary of the O&M expenses allowed by the Commission vide its order dated 23.2.2022 in Petition No. 283/GT/2020 is as under:

	<i>(Rs. In lakh)</i>	
	29.11.2012 to 31.1.2013 (3 Units)	1.2.2013 to 31.3.2013 (4 Units)
Allowed Project Cost	59721.34	71992.54
Less: R&R Expenses	146.63	180.52
Capital Cost considered for the purpose of O&M Expenses	59574.72	71812.01
Annualized O&M expenses @2% of above	1191.49	1436.24
Number of days	64	59
Net Claim	208.92	292.67



12. The Review Petitioner has submitted that the Commission while determining the O&M expenses for the period from 29.11.2012 to 31.1.2013, has, instead of considering the apportioned capital cost of Rs. 68044.35 lakh upto the 'cut-off date', had considered the Unit-wise capital cost for the 3 Units as Rs. 59572.72 lakh. It has also submitted that the O&M expenses allowed as above, is not in accordance with Regulation 3(11), Regulation 3(29) read with Regulation 19(f)(v) of the 2009 Tariff Regulations. The Review Petitioner has stated that the Commission, while allowing the O&M expenses for the Units till COD of the generating station, has considered the capital cost of the individual units, in place of the apportioned capital cost up to cut-off date of the generating station. It has pointed out that as per Regulation 19(f)(v) of the 2009 Tariff Regulations, the O&M expenses is required to be fixed at 2% of the original project cost (excluding rehabilitation and resettlement works) and subjected to an annual escalation of 5.72% p.a. for the subsequent years. Accordingly, the capital cost upto the cut-off date, which ought to have been considered by the Commission is detailed as under:

COD of the generating station	1.2.2013
Cut-off date of Station	31.3.2016
Less: R&R Expenses	146.63
Admitted Capital Cost as on COD	Rs. 81401.35 lakh
Admitted capital expenditure 2012-13 (1.2.2013 to 31.3.2013)	Rs. 2846.28 lakh
Admitted capital expenditure 2013-14	Rs. 2617.83 lakh
Admitted capital expenditure 2014-15	Rs. 2228.10 lakh
Proposed Capital expenditure 2015-16	Rs. 1632.25 lakh
Capital Cost as on Cut-off Date (i.e. 31.3.2016)	Rs. 90725.80 lakh
Capital Cost apportioned for 3 units as on COD (i.e., 29.11.2012)	Rs. 68044.35 lakh



13. Based on the above, the Review Petitioner has submitted that the Commission has erred while calculating the O&M expenses of the units in 2012-13. It has also placed reliance of the order dated 25.5.2022 in Petition No. 22/RP/2021 (in Petition No. 29/GT/2020) pertaining to Rampur Hydroelectric generating station of SJVNL and stated that in the said case, the O&M expenses for individual units (before the COD of the station) was calculated, based on the apportioned capital cost for the respective units, on the basis of capital cost of project as on cut-off date. Accordingly, the Petitioner has submitted that the O&M expenses for the period 29.11.2012 to 31.3.2013 may be revised as under:

	<i>(Rs. In lakh)</i>	
	29.11.2012 to 31.1.2013 (3 Units)	1.2.2013 to 31.3.2013 (4 Units)
Capital Cost as on cut-off date allowed	68044.35	90725.80
Less: R&R Expenses	146.63	195.50
Capital Cost considered for the purpose of O&M Expenses	67897.72	90530.30
Annualized O&M expenses @2% of above	1357.95	1810.61
Number of days	64	59
Net Claim	238.11	292.67

Analysis and Decision

14. We have examined the matter and the documents on record. It is noticed from records that the original project cost (i.e. capital expenditure as on the cut-off date) was available for the generating station, on actual basis. However, while truing-up the tariff of the generating station for the period from the COD of the first three (3) units i.e. 29.11.2012 to 31.1.2013 vide impugned order dated 23.2.2022, the Commission had computed and allowed the O&M expenses by



inadvertently considering the capital cost as on the COD of the units, instead of the original project cost (i.e. the capital expenditure incurred by the generating company or the transmission licensee, as the case may be, within the original scope of the project up to the cut-off date as admitted by the Commission). This according to us, is an error apparent on the face of the record and the same is required to be rectified. The review on this ground is therefore maintainable. Similar methodology was adopted by the Commission in terms of the regulations, while determining the O&M expenses in order dated 26.6.2019 in Petition No. 315/GT/2018. Accordingly, in line with the methodology adopted in order dated 26.2.2019, the O&M expenses as allowed in paragraph 70 of the impugned order dated 23.2.2022 stands rectified, based on the capital cost, as on the cut-off date (excluding the R&R expenses allowed in the order dated 23.2.2022) of the generating station, as under:

(Rs. in lakh)

	29.11.2012 to 31.1.2013 (64 days)		
	Allowed in Petition No. 283/GT/2020 (A)	Revised (B)	Difference (C= B-A)
Project Cost	59721.34*	68044.35**	8323.01
Less: R&R cost (Pro-rata)	146.63	146.63	0.00
Capital cost for O&M purposes.	59574.71	67897.72	8323.01
Annualized O&M expenses @ 2% of the capital cost	1191.49	1357.95	166.46
O&M expenses (Pro-rata for number of days)	208.92	238.11	29.19

***Rs. 68044.35 lakh is the cost derived by apportioning the allowed total Capital Cost of Rs. 90725.80 lakh (Rs. 90725.80 lakh x ¾) in the order dated 23.2.2022 in Petition no. 283/GT/2020*

Issues A and B raised by the Review Petitioner are disposed of accordingly.

15. Accordingly, the additional O&M expenses towards impact of GST on



Security Services is allowed as claimed by the Review Petitioner and the total O&M expenses allowed for the period 2014-19 is revised as under:

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Normative O&M Expenses allowed in 283/GT/2020	1989.14	2121.22	2262.07	2412.27	2572.45
Additional impact of GST on Security Services allowed	-	-	-	29.26	55.16
Total O&M Expenses	1989.14	2121.22	2262.07	2441.53	2627.61

Annual Fixed Charges for the 2014-19 tariff period

16. Consequent upon the above, the annual fixed charges allowed for the generating station vide paragraph 84 of the impugned order dated 23.2.2022 stands rectified as under:

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	4413.66	4510.06	4578.15	4611.87	4627.62
Interest on Loan	1936.44	1789.18	1645.67	1254.42	1105.75
Return on Equity	5228.89	5356.55	5392.20	5467.56	5511.73
Interest on Working Capital	376.41	385.47	392.34	394.14	400.95
O&M Expenses	1989.14	2121.22	2262.07	2441.53	2627.61
Total	13944.54	14162.49	14270.43	14169.53	14273.66

17. Review Petition No. 20/RP/2022 in Petition No. 283/GT/2020 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

