CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 12/RP/2013
in
Petition No.2/TT/2011 & 57/TT/2011

Coram:

Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member

Date of Hearing: 15.10.2013
Date of order : 14.11.2013

In the matter of

Review of order dated 9.5.2013 in Petition No. 2/TT/2013 & 57/TT/2011 in the matter of approval of transmission tariff for Koldam-Nalagarh 400 kV D/C (Quad) line along with bays at Nalagarh Sub-station and bays at Ludhiana under Transmission System associated with Koldam-Hydro Electric Project for tariff block 2009-14.

And in the matter of

Power Grid Corporation of India Ltd.,
Saudamini, Plot No.2,
Sector 29,Gurgaon-122 001 **…Petitioner**

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005.

2. Ajmer Vidyut Vitran Nigam Ltd.,
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.

3. Jaipur Vidyut Vitran Nigam Ltd.,
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.

4. Jodhpur Vidyut Vitran Nigam Ltd.,

400 KV GSS Building (Ground Floor), Ajmer Road,
Heerapura, Jaipur.

5. Himachal Pradesh State Electricity Board, Vidyut Bhawan,
Kumar House Complex Building-II,
Shimla-171 004.

6. Punjab State Electricity Board,
The Mall, Patiala-147 001.

7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana) 134 109.

8. Power Development Department,
Govt. of Jammu & Kashmir,
Mini Secretariat, Jammu

9. Uttar Pradesh Power Corporation Limited,
(Formally Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001.

10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110 002.

11. BSES Yamuna Power Limited,
BSES Bhawan, Nehru Place, New Delhi.

12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place, New Delhi

13. North Delhi Power Limited, Power Trading & Load Dispatch Group,
CENNET Building, Adjacent to 66/11 kV Pitampura-3,
GRID Building, Near PP Jewelers,
Pitampura, New Delhi-110 034.

14. Chandigarh Administration,
Sector-9, Chandigarh.

15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kasnwali Road, Dehradun.

16. North Central Railway, Allahabad.

17. New Delhi Municipal Council, Palika Kendra,
Sansad Marg, New Delhi-110 001.

18. NTPC Ltd., NTPC Bhawan
Core-7, SCOPE Complex, New Delhi – 110 003 …**Respondents**

Counsel/representatives of the petitioner : Shri M G Ramachandran, Advocate
Shri S.S. Raju, PGCIL
Mrs. Sangeeta Edwards, PGCIL
Shri M.M. Mondal, PGCIL

Representatives of the respondent : Shri Padamjit Singh, Respondent No.6
Shri Ajay Dua, Respondent No.18
Shri Abhay Srivastava, Respondent No.18
Shri Amit Arora, Respondent No.18
Shri K.K. Narang, Respondent No.18
Ms. Megha Bajpeyi, Respondent No.12

ORDER

The present review petition has been filed by Power Grid Corporation India Limited seeking review of the order dated 9.5.2013 in Petition No. 2/TT/2011 and 57/TT/2011, whereby the Commission has determined the tariff for Koldam-Nalagarh 400 kV D/C (Quad) line along with bays at Nalagarh Sub-station and bays at Ludhiana under Transmission System associated with Koldam-Hydro Electric Project (hereinafter referred to as "transmission assets") for the period 2009-14. The Review Petitioner has made the following prayers:-

(a) Allow the partial review of order dated 9.5.2013 and allow the restricted IEDC of 6 months as the reasons for delay are not within the control of the petitioner and the agreement with NTPC does not cover the IEDC and

(b) Allow the last date of filing subject petitioner as 12.8.2013 (45 days from communication from NTPC denying 6 months IEDC payment) in line with the spirit underlying Regulation 103 of the Conduct of Business Regulations, 1999.

2. The second prayer of the Review Petitioner has already been dealt with and disposed of by interim order dated 17.9.2013. In the instant order, we are dealing with the first prayer of the Review Petitioner.

3. As per the Investment Approval dated 7.9.2005 for the Transmission System of Koldam Hydro Electric Project, Koldam-Nalagarh 400 kV D/C (Quad) Line along with bays at Nalagarh Sub-station (Asset-I) and 400 kV line bays at Ludhiana Sub-station (Asset-II) were to be commissioned by 1.10.2008. However, Asset I and Asset II were commissioned on 1.4.2010 and 1.4.2011 resulting in time overrun of 18 months and 30 months respectively. The Commission in the impugned order dated 9.5.2013 condoned the time over-run of 12 months in case of Asset-I and 30 months in case of Asset-II. However, the delay of 6 months in case of Asset-I was not condoned and the Review Petitioner was directed to claim the IDC and IEDC for 6 months from NTPC in terms of the Implementation Agreement.

4. The Review Petitioner has submitted that it claimed both IDC and IEDC disallowed for 6 months in case of Asset-I from NTPC as per the directions in the

impugned order. However, NTPC refused to pay IEDC for 6 months as it is not covered in the Implementation Agreement between PGCIL and NTPC. The Review Petitioner has submitted that since the delay in commissioning of the assets was not within the control of the petitioner and as per the provisions of the Implementation Agreement, NTPC has to bear only IDC for a period of 6 months from the date of scheduled commissioning of the transmission assets, if the generation project of NTPC is not commissioned within the scheduled date, disallowance of IEDC is an error apparent on the face of record. The Review Petitioner has prayed for review of the impugned order to allow IEDC for a period of 6 months.

5. The respondents have opposed the prayer of the Review Petitioner for grant of IEDC as under:

(a) Uttar Pradesh Power Corporation Limited (UPPCL), Respondent No.9, has submitted vide its affidavit dated 26.9.2013, that a provision has been made for IEDC @ 10.46% of the capital cost in the Investment Approval of the project, whereas the actual IEDC is only 1% to 2% of the capital cost. UPPCL has further submitted that the time over-run is primarily on account of the delay in generation by NTPC and hence, NTPC must be made to bear the IEDC also. Further, action must be taken against NTPC under section 142 of the Electricity Act, 2003 for not paying the IEDC for 6 months to the Review Petitioner as directed by the Commission in the impugned order. UPPCL has also submitted that NTPC should pay the IEDC for 6 months to the Review

Petitioner and NTPC should not be allowed to capitalize the IDC and IEDC in its Koldam Generation Project.

(b) BRPL, Respondent No.12, in its affidavit dated 11.10.2013, has submitted that the Review Petitioner by not including the IEDC in the IA has indemnified itself only against IDC and the risk arising out of IEDC has been assumed by the parties to the IA and it cannot be now shifted on to the beneficiaries by the Review Petitioner. Therefore, there is no error apparent in the impugned order and the instant review petition is an appeal in disguise and hence it should be rejected.

(c) PSPCL, Respondent No.6, vide its affidavit dated 11.10.2013, has submitted that the IDC paid by NTPC to the Review Petitioner should not be capitalised in the capital cost of Koldam Project. PSPCL has further submitted that the time over-run in the instant case is four years whereas delay of only 6 months is covered in the IA and hence NTPC and the Review Petitioner should renegotiate the IA and extend the period of indemnification and that both IDC and IEDC should be covered in the IA. PSPCL has also submitted that the NTPC is responsible for the delay and hence it should bear the IDC and IEDC for the complete period of delay.

(d) NTPC, Respondent No.18, has filed two replies, vide affidavits dated 10.9.2013 and 3.10.2013, stating that as per the IA entered into between NTPC and the Review Petitioner, NTPC has to bear only IDC for a period of 6 months and not IEDC. It is an error apparent on the face of the record and hence the impugned order may be modified accordingly.

6. The Review Petitioner has not filed any rejoinder to the replies filed by the respondents.

7. During the hearing on 15.10.2013, the Review Petitioner and the respondents have reiterated their submissions made in the petition and the reply affidavits respectively. Further during the hearing, learned counsel for the Review Petitioner submitted that the requirement of payment of IDC for a period of six months for the delay in completion of the generation project has been included in the Implementation Agreement (IA) as per the Ministry of Power letter dated 29.2.2000. Accordingly, NTPC is liable to pay only full IDC to the Review Petitioner upto a period of 6 months from the scheduled date of commissioning in the event of delay in commissioning of generation project. Since IEDC has not been included in the IA, it should be allowed to be capitalized as the transmission project has been delayed on account of the delay in the execution of the generation project.

8. We have considered the submissions of the Review Petitioner as well as the respondents. The basic contention of the Review Petitioner is that indemnification of IEDC is not covered under the IA and NTPC has refused to pay the disallowed IEDC and hence, the Commission should allow the IEDC to be capitalized as delay in

commissioning of the project has been occasioned on account of delay in execution of the generation project. The Commission while disallowing IDC and IEDC for 6 months in case of Asset-I in the impugned order has held as under:-

> "30. The petitioner vide affidavit dated 15.4.2011 in Petition No. 2/TT/2011 and affidavit dated 28.7.2011 in Petition No. 57/TT/2011 has submitted reason for delay. It has also submitted copy of the Indemnification Agreement (IA) signed with NTPC, wherein the zero date initially signed with the generating company was 1.7.2009. This indemnification agreement was for 400kV Koldam-Nalagarh D/C line. No Indemnification Agreement has been submitted for bays at Ludhiana. As per the indemnification agreement that the petitioner signed with NTPC for the 400 kV Koldam-Nalagarh D/C line, NTPC has to bear IDC for 6 months from the scheduled date of commissioning.
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> 31. In view of schedules given in investment approval by Government of India vide letter No. 12/19/2003-PG dated 7.9.2005 and the Indemnification Agreement with NTPC, the petitioner had rightly taken steps to complete the line in 2008-09. The supply and erection packages were awarded within the period from October, 2006 to December, 2006 with schedule completion of work within the period from June, 2007 to October, 2008. When the generating station was getting delayed, the petitioner slowed down the work of transmission line. The petitioner submitted that the delay in transmission system was not possible beyond a certain point and the asset was constructed, before the generation. We find the plea of the petitioner to be reasonable as delay in execution of awards may not be feasible beyond a certain point. The petitioner entered into Indemnification Agreement with NTPC according to which NTPC had to bear IDC for up to 6 months from the scheduled date of commissioning. In the instant case the schedule for the purpose of Indemnification was 30.9.2008. Therefore, IDC and IEDC for 6 months from 1.10.2008 to 31.3.2009 is not being allowed as it was to be recovered by the petitioner from NTPC. We find however that the delay in the construction of the 400 kV bays at Ludhiana is reasonable and hence the delay is condoned."

9. The Commission after consideration of the submission of the Review Petitioner and the respondents came to a conclusion that the plea of the petitioner for condonation of delay was reasonable as the delay in execution of the awards might not be feasible beyond a certain point. The Commission approved the date of commercial operation of Asset I and Asset II as 1.4.2010 and 1.4.2011 respectively in exercise of its power

under Regulation 3(1)(c) of the 2009 Tariff Regulations. As the scheduled date of commissioning as per the Implementation Agreement was 30.9.2008, there was a delay of 12 months in the commercial operation of Asset I and 30 months in the commercial operation of Asset II. The Commission condoned the time overrun of the assets; however, the Commission disallowed the cost overrun to the extent covered in the Implementation Agreement between NTPC and PGCIL. We are of the view that it is the responsibility of the petitioner to safeguard its interest in the matter of IDC and IEDC in the IA. The Review Petitioner has failed to protect its interest and cannot be allowed to now shift the responsibility of his own omission to the beneficiaries. The Review Petitioner has only indemnified itself against IDC and not against IEDC. The risk arising out of IEDC was assumed by the Review Petitioner and the same cannot now be shifted to the beneficiaries. Accordingly, the Review Petitioner's prayer to allow the 6 months IEDC, disallowed in the impugned order, is rejected.

10. UPPCL, BRPL and PSPCL have primarily argued about the terms and conditions of the Implementation Agreement and have even suggested for directions towards re-negotiation of the terms of the Agreement to provide for indemnification of the IDC and IEDC for the entire period of time and cost over-run. UPPCL has even suggested that action under section 142 of the Act should be taken against NTPC for refusing to pay IEDC. Though we appreciate the concern of the beneficiaries that the IDC and IEDC should not be loaded to them as the delay in commissioning of the project is not attributable to them, it is clarified that the prayers of the respondents are beyond the

scope of the review petition which is confined to whether there was an error on the face of the record. Moreover, none of the respondents had questioned the terms of Implementation Agreement in their replies to the main petition which had a direct impact on the IDC and IEDC to be capitalized in the capital cost which would be serviced through tariff.

11. However, we are of the view that proper guidelines need to be laid down for IDC and IEDC to be considered for capitalization. This Commission is required under section 61(d) of the Act to ensure reasonable return to the project developer while protecting the interest of the consumers. Reasonable return to the project developer presupposes that the project developer should take reasonable and prudent care in its investment including adherence to the timeline. Where adherence to the timeline is likely to be delayed on account of the delay in execution of the associated project or delay due to the equipment supplier or contractor, the same should be securely indemnified to the fullest extent through appropriate Implementation Agreement. Failure on the part of the project developer to indemnify the full impact of the cost and time overrun cannot be loaded to the beneficiaries and the project developer would be fully responsible for it subject to the exception in case of force majeure events. We direct the staff to frame appropriate guidelines for this purpose and submit for consideration and approval of the Commission.

12. As regards the submission of PSPCL that disallowed IDC which has been recovered from NTPC should not be allowed to be capitalized by NTPC in the capital cost of the generation project, we are of the view that such a direction cannot be issued in the present petition whose scope is very limited. However, we direct NTPC to deal with this aspect in its petition for generation tariff of the project. PSPCL is at liberty to raise this point in response to the tariff petition for the generating station for the project. The Commission will take an informed decision after considering the pleadings of the parties in the relevant petition.

13. This order disposes of Petition No.12/RP/2013.

sd/-	**sd/-**
(M. Deena Dayalan)	**(V.S. Verma)**
Member	**Member**