

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 22/RP/2018  
in  
Petition No. 101/MP/2017 alongwith I.A. No. 47/2018**

**Coram:  
Shri P.K. Pujari, Chairperson  
Dr. M. K. Iyer, Member**

**Date of order: 10<sup>th</sup> of January, 2019**

**In the matter of**

Petition for review of Order dated 19.12.2017 in Petition No. 101/MP/2017.

DB Power Limited  
DB City Park,  
DB City, Arera Hills, Opposite MO Nagar, Zone-I  
Bhopla-462 016

**...Review Petitioner**

**Versus**

1. PTC India Limited  
NBCC Tower, 15 Bhikaji Cama Place,  
New Delhi-110 066
2. Rajasthan Urja Vikas Nigam Ltd.  
Vidyut Bhawan, Janpath, Joyti Nagar  
Jaipur-302 005
3. Jaipur Vidyut Vitran Nigam Limited  
Vidyut Bhawan, Joyti Nagar  
Near New Vidhan Sabha Bhawan,  
Jaipur-203 005
4. Ajmer Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Makarwali Road,  
Panchsheel Nagar, Ajmer  
Rajasthan-305 004
5. Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House,  
Industrial Area, Jodhpur-342 003

6. Prayas (Energy Group)  
Unit II A & B,  
Devgiri, Joshi Railway,  
Museum Lanue, Kothurd Industrial Area, Kothrud,  
Pune, Mahatrashttra-411 038

7. Tamil Nadu Generation and Distribution Corporation Limited  
6<sup>th</sup> Floor, Eastern Wing, 144, Anna Salai,  
Chennai-600 002, Tamil Nadu

.....Respondents

**Review Petition No. 23/RP/2018  
in  
Petition No. 229/MP/2017 alongwith I.A.No. 48/2018**

**In the matter of**

Petition for review of Order dated 19.12.2017 in Petition No. 229/MP/2017.

DB Power Limited  
DB City Park,  
DB City, Arera Hills, Opposite MO Nagar, Zone-I  
Bhopla-462 016

....Review Petitioner

**Versus**

1. Tamil Nadu Generation and Distribution Corporation Limited  
6<sup>th</sup> Floor, Eastern Wing, 144, Anna Salai,  
Chennai-600 002, Tamil Nadu

2. Prayas (Energy Group)  
Unit II A & B,  
Devgiri, Joshi Railway,  
Museum Lanue, Kothurd Industrial Area, Kothrud,  
Pune, Mahatrashttra-411 038

3. Rajasthan Urja Vikas Nigam Ltd.  
Vidyut Bhawan, Janpath, Joyti Nagar  
Jaipur-302 005

4. PTC India Limited  
NBCC Tower, 15 Bhikaji Cama Place,  
New Delhi-110 066

.....Respondents

**Parties Present:**

Shri Buddy Ranganathan, Advocate, D.B. Power  
Shri Deepak Khurana, Advocate, DB Power  
Shri Niteen Tayal, Advocate, D.B. Power  
Shri S. Vallinayagam, Advocate for TANGEDCO

**ORDER****Review Petition No. 22/RP/2018**

DB Power Limited (hereinafter referred to as 'the Review Petitioner'), has filed the present 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, for seeking modification of the order dated 19.12.2017 in Petition No. 101/MP/2017 to the extent it considers the station heat rate as 2250 Kcal/Kwh and direct/consider Gross Station Heat Rate of 2351 Kcal/Kwh for the purpose of computation of cost of coal.

**Review Petition No. 23/RP/2018**

2. DB Power Limited (hereinafter referred to as 'the Review Petitioner'), has filed the present Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 (the Act) read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, for seeking modification of the order dated 19.12.2017 in Petition No. 229/MP/2016 to the extent it considers the station heat rate as 2250 Kcal/Kwh and direct/consider Gross Station Heat Rate of 2351 Kcal/Kwh for the purpose of computation of cost of coal.

3. The Review Petitioner has filed both the review petitions on the following grounds:

(a) The Commission in the impugned order allowed certain claims raised by the Review Petitioner. However, while considering the claim raised for compensation on account of additional cost being incurred by the Review Petitioner for generation and supply of electricity due to reduction in supply of coal from South East Coalfields Ltd., the Commission observed that the Review Petitioner did not provide the Design Heat Rate and the Gross Station Heat Rate and in absence of the same, the Commission held that SHR of 2250 Kcal/Kwh provided by the Review Petitioner in Schedule 10 of the PPA is reasonable to be considered.

(b) The details with regard to Design Heat Rate and Gross Station Heat Rate were inadvertently left out to be furnished in Petition No. 101/MP/2017 and the issue of non-furnishing of the said details was not raised by the Commission during the course of hearing. Therefore, the Review Petitioner is craving leave to place on record the said details in the present Review Petition.

(c) In terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (Tariff Regulations), the Gross Station Heat Rate ought to be taken into consideration for computation of cost of coal and not the 'expected' Station Heat Rate as provided in Schedule 10 of the PPA i.e. 2250 Kcal/Kwh. As per Regulation 36 of Tariff Regulations, the Gross Station Heat Rate for the Review Petitioner's project works out to 2351 Kcal/ Kwh (lowest) as per the calculation. The Commission in the impugned order considers the

'expected' Station Heat Rate which is an error apparent on the face of the order and contrary to the Tariff Regulations as well.

4. The Review Petitioner has filed the Interlocutory Application (IA) Nos. 47/2018 and 48/2018 in Review Petition No. 22/RP/2018 and Review Petition No. 23/RP/2018 respectively for condonation of delay of 105 days in filing the Review Petitions.

5. During the course of the hearing, learned counsel for the Review Petitioner reiterated the submissions made in the Review Petitions. Learned counsel for TANGEDCO opposed the maintainability of the Review Petitions.

### **Analysis and Decision**

6. We have heard the learned counsels for the Petitioner and the Respondent, TANGEDCO. Under clause (f) of sub-section (1) of Section 94 of the 2003 Act, the Commission has been given the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 as regards review of its decisions, directions and orders. Regulation 103(1) of the CERC (Conduct of Business) Regulations, 2009, as amended (hereinafter referred to as "CBR"), provides as under:

#### **"Review of Decisions, Directions and orders**

**103(1)** The Commission may, on an application of any of the persons or parties concerned made within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit."

7. Further, Regulation 116 of the CBR provides as under:

**“Extension or abridgement of time prescribed**

**116.** Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission.”

As per the above provisions, a Review Petition can be filed by a party within a period of 45 days from the date of issue of the order. This period can be extended or curtailed, if the party is able to show sufficient reasons.

8. Petition Nos. 229/MP/2016 and 101/MP/2017 filed by the Review Petitioner, were disposed of by the Commission’s orders dated 19.12.2017. The said orders were also posted in the website of the Commission on 20.12.2017. It is a settled principle that the limitation would start from the date the order has been available in public domain. Accordingly, the period of 45 days would start from the date it was posted on the website of the Commission. The Review Petitions have been filed by the Review Petitioner on 23.5.2018 and thus there is a delay of 105 days.

9. The Review Petitioner has submitted that the delay of 105 days is on account of the time taken for detailed analysis of the order by its various departments i.e. regulatory, finance and legal which took considerable amount of time after which the matter was discussed with the management and in January, 2018 it was contemplated that an appeal was required to be filed before the APTEL. Subsequently, the Review Petitioner approached his counsel in Delhi and after considering all the merits and demerits, the Review Petitioner took approval of the management for filing the Appeal before the APTEL in the beginning of the March, 2018. However, while analyzing the Appeal and the Commission’s order dated 19.12.2017 in the last week of March, 2018,

it was noticed that there is an issue of Station Heat Rate. Thereafter, the matter was discussed with the counsel and then it was decided to file a Review Petition against the impugned order. Therefore, the delay of 105 days in filing the Review Petition is unintentional and due to reasons beyond the control of the Review Petitioner.

10. As per Regulation 103 (1) of the CBR, a petition for review has to be filed within 45 days of making the Commission's decision, directions and orders. According to the Review Petitioner, there were extensive discussions and evaluation of merits and demerits and thereafter the Review Petitioner's officials took approval of the management for filing the Review Petitions. It is noticed that without considering the time limit, the Review Petitioner was analyzing and discussing the impugned order for five months. Despite the knowledge of the statutory bar of 45 days for filing the review petition, the Review Petitioner did not file the review petition. Thus, we are of the view that the reasons given by the Review Petitioner for the delay in filing the instant reviews are not satisfactory.

11. The Appellate Tribunal for Electricity in its judgment dated 31.10.2014 in IA No. 380 of 2104 in DFR No. 2355 of 2014 (APL Vs CERC & ors) while examining the application to condone the delay had observed as under:

"33. We are no more concerned with the prejudice being caused to the Respondents, since the condonation of delay is a matter of discretion of the Court wherein the only criteria is the sufficiency of the cause. In the matter of condonation of delay, the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken note of. Though the Courts should not adopt an injustice oriented approach in rejecting the Application of condonation of delay, the Courts while allowing such application has to draw the distinction between delay and inordinate delay for want of bona fides of an inaction or negligence which would deprive the opposite party of the protection under the Limitation Act.

34. When the delay is not satisfactorily and convincingly explained, the Court cannot condone the delay on equitable or sympathetic grounds. The law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy.

35. In other words, the delay should not be attributable to negligence, inaction or want of bona fide on the part of the defaulting party.

36. In other words, if there is material to indicate the party's negligence in not taking necessary steps, the period cannot be extended. If the explanation offered on fanciful or concocted, the Court should be vigilant not to expose the other side unnecessarily to face such antiquation”

12. It is noticed that in the present case, the circumstances explained by the Review Petitioner leading to the delay in filing the Review Petitions were all within the control of the Review Petitioner. The Review Petitioner has not been diligent enough in filing the Review Petitions within the stipulated time. We are of the considered view that the Review Petitioner has not made out any sufficient cause for condonation of delay. Accordingly, the delay of 105 days in filing the Review Petitions has not been condoned.

13. IA No. 47/2018 and IA No. 48/2018 are accordingly disallowed and consequently, the Review Petitions stands rejected on the ground of limitation. We have not expressed any opinion on the merits of the Review Petitions.

14. The Review Petition No. 22/RP/2018 and Review Petition No. 23/RP/2018 alongwith IA No. 47/2018 and IA No. 48/2018 are disposed of in terms of the above.

**sd/-**  
**(Dr. M. K. Iyer)**  
**Member**

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