

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 37/RP/2018

In

Petition No. 1/TT/2018

Coram:

Shri P. K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Date of Order: 19.3.2019

In the matter of

Review Petition under Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Section 94 (1)(f) of the Electricity Act, 2003 for Review of the Order dated 23.7.2018 passed by the Hon'ble Commission in Petition No.1/TT/2018.

And in the matter of:

Power Grid Corporation of India Limited
"Saudamini", Plot No. 2,
Sector-29, Gurgaon -122 001

...Review Petitioner

Vs

1. Assam Electricity Grid Corporation Limited,
(Formerly Assam State Electricity Board),
Bijulee Bhavan, Paltan Bazar,
Guwahati-781 001, Assam
2. Meghalaya Energy Corporation Limited,
(Formerly Meghalaya State Electricity Board),
Short Round Road,
"Lumjingshai", Shillong-793 001,
Meghalaya
3. Government of Arunachal Pradesh,
Itanagar, Arunachal Pradesh



4. Power and Electricity Department,
Government of Mizoram, Aizwal,
Mizoram
5. Manipur State Electricity Distribution Company Limited,
(Formerly Electricity Department, Government of Manipur),
Keishampat,
Imphal
6. Department of Power,
Government of Nagaland, Kohima,
Nagaland
7. Tripura State Electricity Corporation Limited,
Vidyut Bhawan,
North Banamalipur, Agartala,
Tripura (W)-799 001 ,
8. OTPC
(ONGC Tripura Power Corporation Limited),
A Wing, IFCI Towers,
New Delhi – 110003
9. NTPC, NTPC Bhawan,
Scope Complex, Institutional Area,
Lodi road, New Delhi –
110003

... Respondents

Parties present: -

Shri Sitiesh Mukherjee, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri Divyanshu Bhatt, PGCIL
Shri S.K. Venketesan, PGCIL
Shri Zafrul Hasan, PGCIL
Shri S.S. Raju, PGCIL

ORDER

Power Grid Corporation of India Limited (PGCIL) has filed this Petition seeking review of Order dated 23.7.2018 (“Order”) in Petition No. 1/TT/2018 (“original Petition”) wherein, the Commission has determined the transmission charges for Asset-I: (i) 132 kV S/C (on D/C Tower) Pasighat– Roing Transmission Line alongwith associated bays at



Pasighat and Roing Substation, (ii) 3x5 MVA (132/33kV), 1-ph, ICT-I alongwith associated bays at Roing, (iii) 4x5 MVA (132/33 kV), 1-ph, ICT-II alongwith associated bays at Roing, (iv) 4x6.67 MVAR, 1-Ph, 132 kV Bus Reactor along with associated bay at Roing, Asset-II: (i) 132 kV S/C (on D/C Tower) Roing–Tezu Transmission Line alongwith associated bays at Roing and Tezu Sub-station, (ii) 4x6.67 MVAR, 1-Ph, 132 kV Bus Reactor along with associated bay at Tezu under “Transmission system associated with Pallatana GBPP and Bongaigaon TPS” for the 2014-19 tariff block based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (“2014 Tariff Regulations”).

2. Aggrieved by the said Order dated 23.7.2018, the Review Petitioner in the present Review Petition has submitted that restricting of IEDC to 5% of Hard Cost is an error apparent on the face of the record and has sought review of the same.

3. The case was last heard on 18.12.2018. None of the respondents have filed reply to the Review Petition. Based on the submissions of the Review Petitioner and the documents available on record, we proceed to examine the issue raised by the Review Petitioner as detailed in the subsequent paragraphs.

4. The Review Petitioner has submitted that while determining the transmission tariff for the instant transmission assets, the Commission has condoned the entire time over-run of approximately 54 months in case of both the assets and permitted capitalization of IDC and IEDC for the period. However, the Commission has limited the IEDC of the subject transmission assets to 5% of the Hard Cost of the Abstract Cost Estimate and thereby disallowing ₹759.95 lakh for Asset-I and ₹363.36 lakh for Asset-II.

5. The Review Petitioner has further submitted that there is no provision in the 2014 Tariff Regulations for considering the IEDC on percentage terms of the Hard Cost, neither element wise nor project wise. The IEDC is actual expenditure incurred by the Review



Petitioner which should not be denied merely because it exceeds the estimate made by the Review Petitioner at the initial stage. The Abstract Cost Estimates are prepared as an estimate for the Review Petitioner and are not normative figures which cannot be exceeded. The test for allowing capitalization of expenditure should be the reasonableness or prudence of the actual expenditure and not merely that it has exceeded the estimates made by the Review Petitioner.

6. The Review Petitioner has submitted that the Commission has not considered the fact that the percentage of Hard Costs in the Abstract Cost Estimate did not account for the delay in construction of the project which has been held in the Order dated 23.7.2018 to be beyond the control of the Petitioner. The IEDC as a percentage of Hard Cost was an estimate based on timely completion of the project. The uncontrollable delays in completion of the project led to increase in IEDC. Therefore, the percentage of IEDC approved in the Abstract Cost Estimate may attract several factors which were unforeseeable at the time of preparation of the Investment Approval (IA).

7. The Review Petitioner has further submitted that the Commission while restricting the cost of IEDC based on the estimate of the Abstract Cost Estimates of the Petitioner failed to consider that the IA itself has varied IEDC component in the Abstract Cost Estimates. The Review Petitioner, in various other projects, has also considered IEDC upto 10.75% in IAs considering the scope, completion schedule and cost of the projects. This is because the relationship between IEDC and Hard Cost is not linear. If the elements of the project are large, the amount of IEDC booked as a percentage of the Abstract Cost Estimate/ Revised Cost Estimate is low but if the elements of the project are small (as in the present case), the amount of IEDC booked as a percentage of the Abstract Cost Estimate/ Revised Cost Estimate is higher. Therefore, the estimates on the IEDC at the time of IA are based on



different parameters which does not account for IEDC on account of delay in completion of the project. The IEDC kept in the Abstract Cost Estimate has an underlying assumption that the said project will be put into commercial operation in the projected timeframe. Hence, when a transmission project is delayed, the actual IEDC overshoots its projections. Therefore, the Petitioner submitted a revised cost estimate duly approved by the Board of the Petitioner Company, stipulating the actual expenditure which was overlooked by the Commission while determining tariff for the instant assets.

8. The Review Petitioner has further contended that the restriction imposed in the impugned Order is unreasonable as the factor of delay in completion of the instant transmission assets was never considered while the project estimates were made. Moreover, an enormous delay of 54 months (which passed the prudence test of the Commission and was condoned in its entirety in the impugned Order) would attract IEDC was impossible for the Review Petitioner to project at the time of IA. This increase in IEDC, due to delay in completion of the project, should be considered separately and if the delay is condoned the consequential increase in IEDC should also be capitalized.

9. The Review Petitioner has also submitted that the Commission while restricting the IEDC in the impugned Order lost sight of provisions under 2014 Tariff Regulations wherein Regulation 11(B)(2) makes provision for additional cost on account of IEDC due to delay in achieving SCOD. The relevant clause is reproduced below:

- “11. Interest during construction (IDC), Incidental Expenditure during Construction (IEDC)
 - (A) Interest during Construction (IDC):
 - (B) Incidental Expenditure during Construction (IEDC):
 - (1)
 - (2) In case of additional costs on account of IEDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required

to furnish detailed justification with supporting documents for such delay including the details of incidental expenditure during the period of delay and liquidated damages recovered or recoverable corresponding to the delay:

Provided that if the delay is not attributable to the generating company or the transmission licensee, as the case may be, and is due to uncontrollable factors as specified in regulation 12, IEDC may be allowed after due prudence check:

Provided further that where the delay is attributable to an agency or contractor or supplier engaged by the generating company or the transmission licensee, the liquidated damages recovered from such agency or contractor or supplier shall be taken into account for computation of capital cost.

(3)

10. Further, in the Statement of Reasons to the 2014 Tariff Regulations, the Commission has explained that as per the provisions of the Regulation 11, if some additional cost is borne by a transmission licensee under the head of IDC and IEDC due to delay in achieving COD, a transmission licensee shall be required to furnish detailed justification with supporting documents for such delay and if the reasons for such delay are found to be uncontrollable after prudence check of the Commission, such additional IEDC accrued due to these inadvertent delays may be capitalized. Thus, the IDC and IEDC is not only limited up to scheduled COD but also actual IDC and IEDC beyond SCOD and up to actual COD may be allowed subject to prudence check. The relevant part of SOR to 2014 Tariff Regulations is reproduced below:

“13.12 The Commission would like to clarify that as per the provisions of the Regulations, in case of additional costs on account of IDC and IEDC due to delay in achieving COD, the generating company or transmission licensee shall be required to furnish detailed justification with supporting documents and the Commission will take an appropriate view after due prudence check. The Commission is of the view that it may not be practical to limit the IDC and IEDC only till SCOD as suggested by some of the beneficiaries and it shall be appropriate to carry out the prudence check for assessing the reasons for delay in achieving COD. Thus, the IDC and IEDC is not only limited up to scheduled COD but actual IDC and IEDC beyond SCOD and up to actual COD may be allowed subject to prudence check.”

11. The Review Petitioner has further stated that the instant case falls under the provision of Regulation 11(B)(2) as in the instant case, the increase in IEDC is due to delay in



completion of the project by 54 months. The Commission while condoning entire time over-run disallowed the proportionate increase in IEDC accrued due to the said delay. Whereas, the test provided by the Commission under the instant regulation read along with clause 13.12 of SOR to 2014 Tariff Regulations for allowing additional IEDC from the projected IEDC is condonation of time delay on account of such uncontrollable factors after due prudence check by the Commission.

12. Therefore, in the facts and circumstances outlined above, it is submitted that the present Petition is a fit case for review since the Commission overlooked an express provision under 2014 Tariff regulations and restricted IEDC to 5% of the Abstract Cost Estimate which had considered the time period of deployment of funds as 34 months, as opposed to actual time taken for completion of project of 88 months. Since the Commission has found the reasons for delay to be justified and uncontrollable, the consequent IEDC should also be capitalized in accordance with Regulation 11(B)(2).

Analysis and Decision

13. We have considered the submissions made by the Review Petitioner and perused the documents on record. The Review Petitioner has contended that IEDC is actual expenditure incurred by it and may not be denied such expenditure merely because it exceeds the estimate in percentage of Hard Cost made in the IA. The Review Petitioner had claimed IEDC of ₹1348.90 lakh for Asset-I and ₹716.41 lakh for Asset-II. The Commission has been consistently considering the percentage of IEDC as indicated by PGCIL in the Abstract Cost Estimate for allowing the IEDC. Accordingly, the IEDC in the instant case was restricted to ₹588.95 lakh for Asset-I and ₹353.05 lakh for Asset-II based on the 5% Hard Cost considered in the Abstract Cost Estimate and excess IEDC amount of ₹759.95 lakh in case of Asset-I and that of ₹363.36 lakh in case of Asset-II was disallowed.



14. PGCIL has contended that the 2014 Tariff Regulations do not provide for restricting the IEDC on the basis of percentage of the Hard Cost. In this regard, it is observed that the Commission has been restricting the capital cost of the individual assets to the approved apportioned cost given in the Investment Approval as a part of prudence check. This view of the Commission has been upheld by the Appellate Tribunal for Electricity in its judgment dated 28.11.2013 in Appeal No.165 of 2012. Since then, the Commission has been restricting the cost of the individual assets to its approved apportioned cost submitted by PGCIL. On similar lines, the IEDC is also being restricted to the percentage of the Hard Cost given by PGCIL in the Abstract Cost Estimate of the Investment Approval as a part of prudence check. Further, PGCIL has submitted that the IEDC booking varies as per the size and scope of the elements in the project, which the Commission has already taken care by limiting the IEDC to the percentage given in the Abstract Cost Estimate or determining the allowable IEDC as part of prudence check. It is pertinent to mention that the 5% limit is not fixed by the Commission but is decided by PGCIL itself in accordance with the nature of the project. The Commission has adopted the percentage fixed by PGCIL and has applied the same on actual cost incurred by it. The Commission in the impugned Order has determined the tariff based on actual cost as on COD and estimated additional expenditure, which will be subject to true up. At para 35 of the Impugned Order dated 23.07.2018 in Petition No. 01/TT/2018, the Commission held as follows:

“35. Usually, while granting transmission tariff, the IEDC limit mentioned in the “Abstract Cost Estimate” is considered for allowing the IEDC. In the instant case, the IEDC as per the “Abstract Cost Estimate” is 5% of the Hard Cost excluding compensation towards forest. As such, the allowable IEDC has been determined by considering the Hard Cost component of the completion cost which includes Hard Cost as on COD and add-cap on projected basis till cut-off date and excludes excess initial spares disallowed. From the Hard Cost thus arrived at, the forest compensation as per form 5 amounting to ₹2439.29 lakh and ₹1311.26 lakh is deducted. Allowable IEDC at 5% of such Hard Cost excluding forest compensation has been worked out as ₹588.95 lakh for Asset-I and ₹353.05 lakh for Asset-II. Accordingly, the excess IEDC amount of ₹759.95 lakh in case of Asset-I and of ₹363.36 lakh in case of Asset-



It has been deducted from the allowable capital cost. The IEDC allowed shall be reviewed at the time of truing up of the completion cost.”

15. We also observe that after filing Petition No. 1/TT/2018, PGCIL made additional submissions vide affidavits on its own or on the directions of the Commission on 25.4.2018 and 18.5.2018. It is noticed that PGCIL chose not to make submission regarding the variation in the IEDC. While granting interim tariff in Petition No. 1/TT/2018 vide Order dated 22.3.2018, the Commission had directed the Review Petitioner to submit the reasons for the time over-run in detail and chronology of the time over-run along with documentary evidence. Vide reply dated 25.4.2018, the Review Petitioner submitted the said information vide Form 5 and Form 12, as was also submitted in the original Petition. However, the Review Petitioner did not provide any explanation for variation in the IEDC amount as per the IA and as per the actual expenditure.

16. The Review Petitioner had earlier filed Petition No. 2/RP/2017 in Petition No. 46/TT/2014 on the same premise of restriction of IEDC based on IA cost estimate. The said Petition was disposed of by the Commission vide Order dated 5.10.2017 observing as below:

PGCIL has contended that IEDC is actual expenditure incurred by it and PGCIL may not be denied such expenditure merely because it exceeds the estimate made in the initial stage. The Review Petitioner had claimed IEDC of ₹543.64 lakh discharged upto COD. Usually, the Commission has been considering the % of IEDC considered by PGCIL in the Abstract Cost Estimate for allowing the IEDC. Accordingly, the IEDC in the instant case was restricted to ₹283.33 lakh based on the 5% Hard Cost considered in the Abstract Cost Estimate...

In the instant case, the original Investment Approval indicates 5% of Hard Cost towards the maintenance during construction, Engineering and Administration cost and losses of stock. The same was considered as the basis for allowing the IEDC on actual Hard Cost in the impugned Order. Thus, there is no apparent error in the impugned Order as contended by PGCIL.

17. In the instant case, the original Investment Approval indicates IEDC as 5% of Hard Cost. The same was considered as the basis for allowing the IEDC in the impugned Order. This has been the consistent view of the Commission while determining the tariff of

transmission assets. Thus, in our view, the prayer of the PGCIL is devoid of merit and there is no apparent error in the impugned Order.

18. Petition No. 37/RP/2018 is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(P. K. Pujari)
Chairperson

