

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 25/RP/2022
in Petition No. 88/TT/2020**

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of order: 31.08.2023

In the matter of:

Petition under section 94(1)(f) of the Electricity Act, 2003 read with Regulations 17 and 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 22.4.2022 in Petition No. 88/TT/2020.

And in the matter of:

Power Grid Corporation of India Limited,
"Saudamini", Plot No. 2,
Sector 29, Gurgaon-122001
Haryana.

....Review Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008.
2. Madhya Pradesh Power Transmission Company Limited,
Shakti Bhawan, Rampur,
Jabalpur-482008.
3. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex, Agra-Bombay Road,
Indore-452008.
4. Maharashtra State Electricity Distribution Company Limited,
Hongkong Bank Building, 3rd Floor, M.G. Road, Fort,
Mumbai-400 001.



5. Maharashtra State Electricity Transmission Company Limited,
Prakashganga, 6th Floor, Plot No. C-19, E-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai-400051.
6. Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodara-390007
7. Electricity Department,
Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel,
Goa-403001.
8. Electricity Department,
Administration of Daman & Diu,
Daman-396210.
9. DNH Power Distribution Corporation Limited,
Vidyut Bhawan, 66 kV Road,
Near Secretariat, Amla,
Silvassa-396230.
10. Chhattisgarh State Power Transmission Company Limited,
State Load Despatch Building, Dangania,
Raipur-492013.
11. Chhattisgarh State Power Distribution Company Limited,
P. O. Sunder Nagar, Dangania,
Raipur, Chhattisgarh-492013.

...Respondents

For Review Petitioner:

Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Surbhi Gupta, Advocate, PGCIL
Shri Zafrul Hasan, PGCIL
Shri Mohd. Mohsin, PGCIL
Shri Pankaj Sharma, PGCIL

For Respondents:

Shri Varun K. Chopra, Advocate, MPPMCL
Shri Mehul Sharma, Advocate, MPPMCL

ORDER

The instant Review Petition has been filed by Power Grid Corporation of India Limited (PGCIL) under section 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to



as 'the Act') read with Regulations 17 and 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the Commission's order dated 22.4.2022 in Petition No. 88/TT/2020 (hereinafter referred to as the 'impugned order') on the limited issue of restriction of the completion cost of Asset-C2 to the Revised Cost Estimate-II (RCE-II).

Background

2. The Review Petitioner/PGCIL filed Petition No. 88/TT/2020 for truing up of transmission tariff of 2014-19 period and determination of tariff of 2019-24 period in respect of the following four transmission assets under Western Region System Strengthening Scheme-V in the Western Region:

Asset A: Combined Asset for part of 400 kV Double Circuit (D/C) Vapi Navi Mumbai Transmission Line (T/L) (from Vapi Gantry till 1st M/C point at Loc. AP-18) along with bay at Vapi and 220 kV Double Circuit (D/C) Vapi Khadoli Transmission Line along with associated bays;

Asset B: 400 kV D/C Vapi-Navi Mumbai Transmission Line, WR1 portion from AP 18 to AP 38 (Part of 400 kV D/C Vapi-Navi Mumbai Transmission Line);

Asset C1: Part of 400 kV D/C Navsari-Boisar T/L from AP 18 to AP 38/0 through LILO point of 400 kV D/C Navsari-Boisar at Magarwada GIS (23 B/0) (D/C portion strung on M/C Twin-Twin portion comprising of 400 kV D/C Navsari-Boisar and 400 kV D/C Vapi-Kudus) and Part of 400 kV D/C Vapi-Kudus T/L from AP 38/0 to AP 44; and

Asset C2: Part of 400 kV D/C Vapi-Kudus T/L from 104/0 to Kudus (MSETCL) Sub-station and associated bays at Kudus (MSETCL) Sub-station.

3. The Commission in the impugned order trued up the transmission tariff of the 2014-19 tariff period in respect of the aforesaid transmission assets under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 ('2014 Tariff Regulations') and determined the tariff for the 2019-24 tariff period under the Central



Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 ('2019 Tariff Regulations').

4. The Review Petitioner is mainly aggrieved with the Commission's decision to restrict the completion cost of Asset-C2 to RCE-II observing that the Review Petitioner has not submitted any justification for increase in cost of about ₹3252 lakh in the case of Asset-C2. However, the case of the Review Petitioner is that the Commission has failed to consider the data and RCE-III placed on record by it in Petition No. 88/TT/2020, as a result of which the Commission in the impugned order disallowed the capital cost of Asset-C2 to the extent of ₹3252 lakh approximately.

5. The Review Petitioner has made the following prayers:

- "a) Admit the present Review Petition;*
- b) Review the order dated 22.04.2022 passed by this Hon'ble Commission;*
- c) Allow the estimated completion cost with respect to Asset - C2 as claimed by the Review Petitioner as per the RCE - III submitted along with Petition No. 88/TT/2020;*
- d) Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case."*

Submissions of the Review Petitioner

6. The Review Petitioner has made the following submissions:

- a) Transmission tariff with respect to Asset-C1 and Asset-C2 from their respective dates of commercial operation i.e. 1.3.2015 and 31.12.2017 to 31.3.2019 was approved by the Commission vide its order dated 6.8.2019 in Petition No. 236/TT/2018. There was time over-run of 53 months and 6 days (1618 days) and 87 months and 6 days (2654 days) in execution of Asset-C1 and C-2,



respectively and the same was condoned by the Commission vide order dated 6.8.2019 in Petition No. 236/TT/2018.

- b) The Commission vide order dated 6.8.2019 in Petition No. 236/TT/2018 approved the following capital cost and Additional Capital Expenditure (ACE) with respect to Asset-C2:

(₹ in lakh)

Apportioned approved cost as per RCE-II	Admitted capital cost up to COD	ACE					Total cost as on 31.3.2019
		2014-15	2015-16	2016-17	2017-18	2018-19	
18948.00	17565.20	0	0	0	328.59	632.66	18526.45

- c) Based on the Auditor's Certificate dated 2.8.2019, the Review Petitioner claimed the total capital cost up to COD and as on 31.3.2019 (including actual ACE during 2014-19 period) for Asset-C2 as ₹20921.07 lakh which is as follows:

(₹ in lakh)

Apportioned approved cost as per RCE-II	Admitted capital cost up to COD	ACE					Total cost as on 31.3.2019
		2014-15	2015-16	2016-17	2017-18	2018-19	
18948.00	17991.47	0	0	0	1786.77	1142.83	20921.07

- d) As regards the justification for increase of cost with respect to Asset-C2 of ₹3252 lakh, the Review Petitioner in Para 6.8 of Petition No. 88/TT/2020, made a categorical statement that RCE-III was then under preparation and would be submitted shortly with revised apportionment on approval from the Board of Directors.



- e) Additional information submitted by the Review Petitioner on 16.6.2021 in Petition No.88/TT/2020, contained RCE-III and apportioned approved cost for Asset-C2.
- f) The Review Petitioner vide affidavit dated 14.7.2021 in Petition No. 88/TT/2020, at the instance of the Commission furnished the tariff filing forms and revised IDC statement for Assets-C1 and C2 based on RCE- III.
- g) RCE-III along with revised apportioned approved cost for all transmission assets including Asset-C2 was also submitted by the Review Petitioner in Petition No.88/TT/2020.
- h) Item-wise cost variation was indicated in Form-5 for the latest estimated completion cost of ₹21703.74 lakh with respect to FR cost. Actual detailed justification for variation was given in page nos. 365 to 367 of the original petition as well as in Form-13 which show that increase in the cost of Asset-C2 and explanation for cost variation is given in page nos. 384-390 of Petition No. 88/TT/2020.
- i) Despite above justifications alongwith documentary evidence being on record of the original petition, the Commission in the impugned order restricted the completion cost of Asset–C2 to RCE–II apportioned approved cost incorrectly.
- j) As per the Works and Procurement Policy (WPP) of the Review Petitioner, the expenditure for any project is incurred as per the approved cost by the Board of Directors of the Company. However, the estimated cost needs to be revised intermittently as per the need considering the actual expenditure done and balance estimated expenditure during the course of implementation of the project.



- k) In the present Project, there was an increase in overall estimated completion cost of the project after the IA and two RCEs, namely, RCE-I and RCE-II. RCE-I and RCE-II were approved by the Board of Directors of the Review Petitioner in September, 2012 and January, 2016 respectively. RCE-II was approved before the COD of Asset-C2 wherein the apportioned approved cost of Asset-C2 was envisaged as ₹18948 lakh which was based on the then incurred actual expenditure and balance anticipated expenditure to be incurred.
- l) The estimated completion cost of Asset-C2 after its COD as indicated in Petition No. 236/TT/2018 was at ₹18912 lakh (i.e., within the apportioned approved cost of ₹18948 lakh in RCE-II). RCE-II was prepared in January, 2016 before the COD of Asset-C2 which was achieved on 31.12.2017.
- m) In view of further escalation in the overall project cost, RCE-III of the entire project was approved by the Board of Directors of the Review Petitioner at an estimated cost of ₹82734 lakh in March, 2020 based on the then actual incurred cost and balance cost to be incurred which, inter-alia, included the revised apportioned cost of Asset-C2 of ₹22200 lakh based on actual expenditure incurred till preparation of RCE-III and balance to be incurred. Detailed reasons for the time over-run which occurred in declaration of commercial operation of Asset-C2 were accepted by the Commission in its order dated 6.8.2019 in Petition No. 236/TT/2018.
- n) The last element of the Project was completed and achieved deemed COD by 13.5.2019. This resulted in requirement of multiple RCEs from time-to-time and the same were approved by the Board of Directors of the Review Petitioner.



According to the Review Petitioner, there are instances of multiple RCE approvals and in this process, some assets get executed before the approval of subsequent RCE as in the instant project.

Submissions of the Respondent, MPPMCL

7. The Respondent, MPPMCL has summarily refuted the submissions of the Review Petitioner for review of the impugned order. The gist of the submissions of MPPMCL are as follows:

- a) No ground has been made out by the Review Petitioner that would justify the review of the well-reasoned final order dated 22.4.2022 in Petition No. 88/TT/2020.
- b) The Review Petitioner has violated the provisions of section 157 of the Act.
- c) The impugned order was pronounced after taking into consideration all the facts and circumstances of the matter and, therefore, there is no error apparent on record.
- d) The Review Petitioner has given certain documents as fresh information. However, these documents were with the Review Petitioner before the passing of the impugned order. The Commission has rightly disallowed the claims of the Review Petitioner for not producing the relevant documents to back its claims.
- e) Proviso (b) to Order XLVII Rule 4(2) of the CPC, 1908 clearly describes the situations where the Court should reject the Review Application.
- f) The Commission has passed the impugned order after considering all the submissions of the parties. Merely because the Review Petitioner was unable to make the submissions in Petition No. 88/TT/2020, that were then available



to it, request to accommodate the same cannot be considered in the instant Review Petition.

8. In response, the Review Petitioner has reiterated its submissions as stated in the Review Petition. The Review Petitioner has specifically submitted that reliance placed by MPPMCL on section 157 of the Act is misplaced. The Review Petitioner has clarified that it is not making any additional submissions or is asking the Commission to re-hear the matter. The Review Petitioner has only referred to the records of the original tariff petitions to demonstrate the error apparent in paragraph no. 17 of the impugned order, and that no new facts or evidence has been given by the Review Petitioner.

9. The matter was admitted on 24.1.2023 and notice was issued to the Respondents. The Respondent, MPPMCL filed its reply to the Review Petition vide affidavit dated 24.1.2023. The matter was finally heard on 28.7.2023 and order was reserved.

Analysis and Decision

10. We have considered the submissions of the Review Petitioner and MPPMCL and have gone through the record. On perusal of our order dated 22.4.2022, which is impugned before us, we find that the Commission restricted the completion cost of Asset-C2 to RCE-II apportioned approved cost on the ground that no justification was given by the Review Petitioner. The relevant extracts of our order dated 22.4.2022, are as follows:

“17. We have considered the submissions of the Petitioner. The Petitioner has estimated the transmission project cost based on RCE-II as ₹73848 lakh including IDC of ₹15287 lakh. Based on this arrangement, the Petitioner has re-apportioned the cost of Asset-C2 as ₹18948 lakh and the Petitioner has submitted that the estimated completion cost of Asset-C2 is ₹18912.38 lakh. The Petitioner in the instant true up petition has submitted that the estimated completion cost of Asset-C2 as on 31.3.2019 is ₹20921.07 lakh and the



estimated completion cost of Asset-C2 as on 31.3.2024 is ₹21703.74 lakh. On comparison of apportioned approved cost of Asset-C2 in RCE-II as ₹18948 lakh and apportioned cost of Asset-C2 as submitted by the Petitioner in RCE-III is ₹22200.66 lakh, there is variation in cost of Asset-C2 of ₹3252.66 lakh (i.e. ₹22200.66 lakh - ₹18948 lakh = ₹3252.66 lakh). The Petitioner has not submitted any justification for increase of about ₹3252.66 lakh in case of Asset-C2. It is further observed that the RCE-III submitted by the Petitioner has been approved by its Board of Directors on 12.3.2020 which is almost three years after the COD of Asset-C2. The Petitioner is henceforward directed to ensure that in all future petitions wherever the cost of asset increases beyond the FR cost, in that event, Revised Cost Estimate shall be required to be submitted prior to COD of the asset and not after the COD of the asset. Further, after COD of the asset, the Petitioner shall invariably furnish actual cost incurred duly approved by the competent authority. In such cases, the Petitioner is directed to place on record valid justification and documentary evidence with reference to cost variation along with the petition. Further, after COD of the asset, the Petitioner shall invariably furnish actual cost incurred duly approved by the competent authority. In such cases, the Petitioner is directed to place on record valid justification and documentary evidence with reference to cost variation along with the petition.

18. As the Petitioner has not given detailed justification of cost over-run in case of Asset-C2, the completion cost of Asset-C2 is restricted to the RCE-II apportioned approved cost.”

11. On examination of our order dated 22.4.2022, we find that the Review Petitioner estimated the transmission project cost as per RCE-II as ₹73848 lakh which included IDC of ₹15287 lakh. On the basis of RCE-II, the Review Petitioner has re-apportioned the cost of Asset-C2 as ₹18948 lakh and estimated completion cost of Asset-C2 as ₹18912.38 lakh. However, in the true up petition i.e. in Petition No. 88/TT/2020, the estimated completion cost of Asset-C2 as on 31.3.2019 was mentioned as ₹20921.07 lakh and estimated completion cost of Asset-C2 as on 31.3.2024 was shown as ₹21703.74 lakh. On comparison, we note that apportioned approved cost of Asset-C2 in RCE-II is ₹18948 lakh while the apportioned approved cost of Asset-C2 as submitted by the Review Petitioner in RCE-III is ₹22200.66 lakh, hence there is variation in the cost of Asset-C2 of ₹3252.66 lakh (i.e. ₹22200.66 lakh - ₹18948 lakh = ₹3252.66 lakh) for which the Commission in its order dated 22.4.2022, observed that the Review Petitioner has not offered any justification.



12. We have perused paragraph no. 5 of Petition No. 88/TT/2020, wherein the Review Petitioner has given the capital cost of all transmission assets as per RCE-II including Asset-C2. It is observed, that the admitted capital cost of Asset-C2 as per RCE-II is ₹18948 lakh, its admitted cost upto COD is ₹17565.2 lakh, ACE for 2017-18 and 2018-19 is ₹328.59 lakh and ₹632.66 lakh and total cost of Asset-C2 as on 31.3.2019 is ₹18526.45 lakh. We further notice that the note annexed to the said paragraph no. 5 with regard to Asset-C2 states that capital cost as on COD has been reduced due to disallowance of IEDC of ₹143.18 lakh and shifting of IDC amounting to ₹275.39 lakh from COD cost to ACE for 2017-18 and 2018-19 as per cash settlement.

13. On examination of Petition No. 88/TT/2020, we note that the Review Petitioner vide affidavit dated 15.2.2021, had enclosed copy of RCE-III dated 12.3.2020. The Review Petitioner in its affidavit dated 15.2.2021, based on RCE-III, has shown the revised apportionment approved cost of Asset-C2 as ₹22200.66 lakh while the earlier approved apportioned cost of Asset-C2 as per RCE-II was ₹18948 lakh. The Review Petitioner in this affidavit further submitted that ACE incurred after the COD and upto the cut-off date is to be dealt with clause 1, sub-clause (i) of Regulation 14 of the 2014 Tariff Regulation. The Review Petitioner in this affidavit had also furnished the details of ACE party-wise. On perusal of affidavit dated 14.7.2021 in Petition No. 88/TT/2020, we find that the Review Petitioner had given revised apportionment of approved cost based on RCE-III of all transmission assets including Asset-C2 and clarified that ACE incurred after COD and upto COD is to be dealt with in accordance with clause 1, sub-clause (i) of Regulation 14 of the 2014 Tariff Regulations and certified that ACE claimed is within the cut-off date. We further note that the Review Petitioner had filed Form-5 in the original petition for all



the transmission assets including Asset-C2 which shows that the additional amount is towards ACE. We also note that the Review Petitioner had also furnished the Liability Flow Statement in respect of all the transmission assets including Asset-C2 in the original petition.

14. On conjoint reading of paragraph no.5 of the original petition, Form-5, Liability Flow Statement as well as RCE-II and RCE-III, we do not notice any change in the capital cost of Asset-C2 as on COD and that it stood at ₹17991.47 lakh.

15. We find that the Review Petitioner is not making any additional submissions or is re-arguing the matter. The Review Petitioner has only referred to the records of the original tariff petitions to demonstrate the error apparent in paragraph 17 of the impugned order, and that no new facts or evidence has been given by the Review Petitioner.

16. No concerted reasons have been given by MPPMCL as to why the present Review Petition is liable to be rejected in terms of proviso (b) to Order XLVII Rule 4 (2) of CPC, 1908 or that the Review Petitioner has violated the provisions of section 157 of the Act. On perusal of section 157 of the Act, we find that it pertains to Special Court for review of its judgment or order passed under section 154 of the Act, while the Commission exercises its power of review under section 94(1) (f) of the Act read with Regulations 17 and 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. As far as proviso (b) to Order XLVII Rule 4(2), it reads as "*no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.*" We have given a finding above that such document was on record and inadvertently could



not be noticed by the Commission, hence placing reliance on this provision has no legs to stand. Therefore, reliance placed by MPPMCL on section 157 of the Act and applicability of proviso (b) to Order XLVII Rule 4(2) of CPC, 1908 are mis-conceived. Accordingly, the same are rejected.

17. We are satisfied with the clarification given by the Review Petitioner that the difference between RCE-II and RCE-III was on account of the additional capitalization in 2017-18 and 2018-19, which was indicated in Liability Flow Statement. However, inadvertently this aspect could not be considered while issuing the impugned order. Therefore, we allow the present review petition on this count and allow the estimated completion cost of Asset-C2 as per RCE-III as furnished in Petition No. 88/TT/2020.

18. Consequent upon the findings above, the tariff of Asset-C2 shall be revised through a separate order shortly.

19. In view of above discussions and findings, the Review Petition No. 25/RP/2022 is disposed of.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

