

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 30/RP/2023

in

Petition No. 18/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 07.12.2023

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, for review of the order dated 18.7.2023 in Petition No. 18/MP/2023.

And in the matter of:

Teestavalley Power Transmission Limited,
B2/1A, Safdarjung Enclave,
Africa Avenue, New Delhi-110029.

... Review Petitioner

Vs

1. PTC India Limited,
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place, New Delhi-110066.
2. Energy and Power Department,
Government of Sikkim,
Kazi Road, Gangtok-737101, Sikkim.
3. Teesta Urja Limited (now Sikkim Urja Limited),
B2/1A, Safdarjung Enclave,
Africa Avenue, New Delhi-110029.



4. Sneha Kinetic Power Projects Private Limited,
Sonam Complex, Jeevan Theng Marg Development Area,
Near Little Pixel International School,
Gangtok-737101, Sikkim.
5. Powergrid Corporation of India Limited,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk, Gurgaon-122001, Haryana.
6. Punjab State Power Corporation Limited,
The Mall, Patiala-147001, Punjab.
7. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C16, Sector-6,
Panchkula-134109, Haryana.
8. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Vidyut Nagar,
Hisar-125005, Haryana.
9. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula-134109, Haryana.
10. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer-305004, Rajasthan.
11. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath,
Jaipur-302005, Rajasthan.
12. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area,
Jodhpur-342003, Rajasthan.
13. Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpath,
Jyoti Nagar Jaipur-302005, Rajasthan.
14. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001, Uttar Pradesh.

...Respondents



For Petitioner : Shri Anand K. Ganesan, Advocate, TPTL
Shri Harsha V. Rao, Advocate, TPTL
Shri Jaideep Lakhtakia, TPTL

For Respondents : None

ORDER

The Review Petitioner, Teestavalley Power Transmission Limited (TPTL), has filed the present Review 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 Commission's order dated 18.7.2023 in Petition No. 18/MP/2023.

Background

2. The Review Petitioner in Petition No.18/MP/2023, sought relaxation of operation and maintenance norms (O&M norms) specified under clause 3 of Regulation 35 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as 'the 2019 Tariff Regulations') and made prayer to allow additional O&M Expenses based on the actual expenses incurred/to be incurred during the control period 2019-24. The Commission in its order dated 18.7.2023 in Petition No. 18/MP/2023, rejected the plea of the Review Petitioner as it did not find any valid reason to relax the O&M norms as sought by the Review Petitioner by exercising 'Power to Relax' as contemplated under Regulation 76 of the 2019 Tariff Regulations.

3. The Review Petitioner has made the following prayers in the instant Review Petition:

"a) Review the Order dated 18.07.2023 passed in Petition No. 18/MP/2023;



- b) Relax the O&M norms specified under Regulation 35(3) of the CERC (Terms and Conditions of Tariff) Regulations, 2019 and allow additional O&M expenditure based on actual expenses incurred during the control period 2019-23;*
- c) Pass such other order(s) as this Hon'ble Commission may deem just in the facts of the present case."*

4. We have heard the Review Petitioner on 8.11.2023 and reserved the order on admissibility of the Review Petition. We have perused the impugned order dated 18.7.2023 in Petition No.18/MP/2023 and have also perused the documents on record.

5. The main submissions of the Review Petitioner necessary for the disposal of the issue of admissibility of the present Review Petition are as follows:

- a) The power to relax is a discretionary power of the Commission and is to be exercised in a judicious manner. However, the reasoning given by the Commission in the impugned order in declining the prayer for relaxation of O&M norms is an error apparent as the first element of the Review Petitioner's project was executed on 17.1.2017, and the last element of the project was executed on 13.2.2019. As such, the Review Petitioner was not in a position to furnish the actual performance/operational data and O&M Expenses as sought by the Commission for the period from 2012-13 to 2016-17.
- b) The project of the Review Petitioner cannot be compared with other projects, including that of North East Transmission Company Limited (NETCL) as the last element of the Review Petitioner's project was executed on 13.2.2019 while the transmission assets of NETCL were executed between 1.9.2012-16.1.2015. Therefore, the reasoning given by the Commission in the impugned



order based on the reliance placed in the case of NETCL v. PGCIL in Petition No. 191/MP/2019 has no application to the case of the Review Petitioner and the same is an error apparent on the record.

- c) The Commission in the impugned order did not consider correctly the reliance placed by the Review Petitioner on the order dated 29.9.2014 in Petition No. 164/MP/2014 wherein the Commission had considered the abnormal cost of security, which formed a part of O&M Expenses and relaxed the O&M provisions. The claim of the Review Petitioner does not relate to security expenses. However, the Review Petitioner relied on the said order dated 29.9.2014, to demonstrate the fact that the Commission considered the exceptional circumstances prevailing in the North Eastern Region, including the geo-political landscape of the North Eastern Region and exercised the power to relax.
- d) The Commission did not take into account the fact that the transmission lines of the Review Petitioner fall in the most difficult hilly terrain of Sikkim and Darjeeling falling in the Great Himalayan and inner Himalayan and Shivalik Range. The terrain is prone to natural calamities, and hence, the Review Petitioner has to maintain the transmission line with a minimum breakdown of the components, so that the highest reliability and availability of the asset could be achieved. The Review Petitioner is operating its assets under exceptional circumstances, and the Commission has failed to appreciate the same.



e) While notifying the O & M Expenses for the transmission lines, the Commission has taken into consideration the O&M Expenses of PGCIL, which has over 1.7 lakh circuit km of transmission lines, a large portion of which fall in the plain area. Therefore, the normative O&M Expenses allowed by the Commission balance the expenditure of a multi-asset and multi-line transmission utility like PGCIL. The Review Petitioner, on the other hand, has only a 430-circuit km of transmission lines, a major portion of which fall in extremely difficult hilly terrain. Hence, the O&M Expenses notified by the Commission account for only 25% of the actual expenses incurred by the Review Petitioner.

6. In a nutshell, the case of the Review Petitioner is that the Commission, in its order dated 22.3.2022 in Petition No. 35/TT/2021, tried up the transmission tariff for the 2014-19 period and determined the tariff for the 2019-24 period in respect of the assets of the Review Petitioner. In its aforesaid order dated 22.3.2022 the Commission inter alia approved the O&M Expenses in respect of the Combined Asset of the Review Petitioner for 2019-20, 2020-21 and 2021-22, respectively. Since the O&M Expenses of the Combined Asset incurred by the Review Petitioner were in excess of what was allowed by the Commission in Petition No. 35/TT/2021, the Review Petitioner made a statement in Petition No. 35/TT/2021 to file a separate petition for additional O&M Expenses based on actuals. Accordingly, Petition No. 18/MP/2023, was filed by the Review Petitioner for relaxation of O&M norms as specified under Regulation 35(3) of the 2019 Tariff Regulations to allow the additional O&M Expenses based on the actual expenses incurred/to be incurred during the 2019-24 tariff period. The Commission, in its order



dated 18.7.2023 in Petition No. 18/MP/2023, rejected the plea of the Review Petitioner to allow the additional O&M Expenses based on actual expenses by exercising 'Power to Relax' as contemplated under Regulation 76 of the 2019 Tariff Regulations.

7. The Review Petitioner has sought a review of the impugned order mainly on three counts; firstly the reasoning given in the impugned order that in response to the Commission's order dated 10.11.2017 in Petition No. L-1/225/2017/CERC, the Review Petitioner had failed to submit the actual performance/operational data and O&M Expenses for the period from 2012-13 to 2016-17 by 15.12.2017 for formulation of norms for determination of tariff for 2019-24 period; secondly that the Commission in the impugned order did not consider correctly the spirit of reliance placed by the Review Petitioner in the order dated 29.9.2014 in Petition No. 164/MP/2014, wherein the Commission had considered the abnormal cost of security which formed a part of O&M Expenses and relaxed the O&M norms on considering exceptional circumstances prevailing in the North Eastern Region by exercising its power to relax; thirdly, the Review Petitioner's project cannot be compared with other projects including that of North Eastern Company Limited (NETCL) and, as such, the reasoning given in the impugned order based on reliance placed in the case of NETCL v. PGCIL in Petition No. 191/MP/2019 has no application to the case of Review Petitioner and the same is an error apparent on record.

8. On perusal of the order dated 18.7.2023 in Petition No.18/MP/2023, we note that the Commission, after detailed discussions of the APTEL's judgment dated 25.3.2011 in



Appeal No. 130 of 2009 in the matter of *Ratnagiri Gas and Power Private Limited v. Central Electricity Regulatory Commission* on the issue of 'Power to Relax', in paragraph nos. 19 and 20 observed as follows:

“19. On examination of the contentions of the Petitioner for relaxation of the O&M norm, we find that the facts and circumstances are distinguishable in the present case and in Appeal No. 130 of 2009 in the case of Ratnagiri Gas and Power Private Limited v. Central Electricity Regulatory Commission & Anr. It was a case that fell in exception to the general rule, and it was proved beyond a shadow of doubt by the Appellant that the circumstances in which it landed were not created by any omission or commission attributable to it in claiming the relaxation.

20. Coming to the facts of the present case, we note that the Commission, vide order dated 10.11.2017, in Petition No. L-1/225/2017/CERC, while formulating norms for the determination of tariff for the 2019-24 period, solicited information from the generating companies and transmission licensees, including the Petitioner, to submit actual performance/operational data and O&M Expenses for the period from 2012-13 to 2016-17 by 15.12.2017. However, no operational data or actual O&M expenditure data was submitted by the Petitioner. Thus, the principle evolved by the APTEL in Appeal No. 130 of 2009 to the effect that the circumstances are not created due to an act of omission or commission attributable to the party claiming the relaxation is satisfied by the Petitioner in the present case as the Petitioner did not file any information on an actual basis pursuant to the Commission's order dated 10.11.2017 in Petition No. L-1/225/2017/CERC. Accordingly, we are of the view that the reliance placed by the Petitioner on the judgments of APTEL in 2007 ELR APTEL 7 in the case of NTPC Limited v. Madhya Pradesh State Electricity Board and Appeal No. 130 of 2009 in the matter of Ratnagiri Gas and Power Private Limited and Central Electricity Regulatory Commission and Anr. to contend that the application of the regulation in question is causing hardship and leading to an unjust result and, therefore, the power to relax should be exercised is mis-conceived and misplaced. Accordingly, the same are rejected.”

9. It is observed that the first element of the Review Petitioner's project, i.e. Circuit 2, i.e. Section of 400 kV D/C Teesta-III HEP-Kishanganj Transmission Line from Teesta III HEP to LILO Point at Rangpo was executed on 17.1.2017 and the last element of the project Circuit 1(c), i.e. Section of 400 kV D/C Teesta-III HEP-Kishanganj Transmission Line from Rangpo LILO point to Kishanganj alongwith 1 number line bay and 1 number of 63 MVAR switchable line reactor along with associated bay at Kishanganj Sub-station was executed on 13.2.2019. Therefore, the Review Petitioner should have furnished the



details of the actual O&M Expenses of Circuit 2 from its COD on 17.1.2017 to 31.3.2017 by 15.12.2017 as sought by the Commission vide order dated 10.11.2017, in Petition No. L-1/225/2017/CERC for formulating the norms for the determination of tariffs for the 2019-24 period. However, the Review Petitioner did not submit the details. It is in this context that the Commission, in its order dated 18.7.2023, observed that the *'principle evolved by the APTEL in Appeal No. 130 of 2009 to the effect that the circumstances are not created due to an act of omission or commission attributable to the party claiming the relaxation is satisfied by the Petitioner in the present case as the Petitioner did not file any information on actual basis pursuant to the Commission's order dated 10.11.2017 in Petition No. L-1/225/2017/CERC'*. Therefore, there is no error in our finding that the Review Petitioner did not submit the actual performance/operational data and O&M Expenses as sought by the Commission.

10. The second contention of the Review Petitioner is that the Commission, in its order dated 29.9.2014 in Petition No. 164/MP/2014, had considered the abnormal cost of security, which formed a part of O&M Expenses and relaxed the O&M norms, and that the Review Petitioner relied on the said case to emphasize the fact that exceptional circumstances prevailing in the NER were considered and the Commission exercised the power to relax in the said case.

11. We have perused the order dated 29.9.2014 in Petition No. 164/MP/2014, wherein the Commission observed that while laying down norms for O&M Expenses in the 2009 Tariff Regulations, abnormal security expenses were excluded on the understanding that



such expenses could be considered on a case-to-case basis. Perusal of the aforesaid order further shows that taking cognizance of the general law and order situation prevailing in the North-Eastern Region, the Commission was satisfied that the Petitioner was required to make special arrangements and take preventive measures to ensure the safety and security of its personnel and property, facilitating the maintenance of a continuous supply of electricity in the region.

12. From the order dated 29.9.2014, it is clear that after the exclusion of the abnormal security expenses from the O&M Expenses of the 2009 Tariff Regulations, the same was to be considered by the Commission on a case-to-case basis, and that the O&M norms were relaxed based on the prevailing law and order situation in the North Eastern Region due to which the Petitioner was required to make safety and security of its personnel and property, facilitating maintenance of continuous supply of electricity in the region. Thus, the basis of relaxation granted for abnormal security expenses (towards deployment of CISF personnel) in O&M Expenses in Petition No.164/MP/2014 was owing to prevailing law and order situation, special arrangements and preventive measures to ensure safety and security of personnel and property etc. while the relaxation sought by the Review Petitioner in O&M Expenses in Petition No. 18/MP/2023, was due to the route of the transmission line in difficult hilly terrain of Sikkim, Darjeeling hills, inner Himalaya Range and Shivalik Range, requirement of multiple site offices, frequent patrolling and preventive maintenance activities resulting more manpower deployment etc. It is in this context that the Commission, in its order dated 18.7.2023 in Petition No.18/MP/2023, observed that the present petition does not relate to security expenses (as was the case in Petition No.



164/MP/2014) and accordingly rejected the contention of the Review Petitioner. We do not find any error apparent in our aforesaid reasoning, and the same being misconceived is hereby rejected.

13. The third contention of the Review Petitioner is that its project cannot be compared with other projects, including that of North Eastern Company Limited (NETCL). As such, the reasoning given in the impugned order based on reliance placed in the case of NETCL v. PGCIL in Petition No. 191/MP/2019, has no application to the case of the Review Petitioner. This is an error apparent on the record according to the Review Petitioner.

14. We have perused the order dated 27.1.2021 in Petition No. 191/MP/2019 in the matter of NETCL v. PGCIL, wherein NETCL sought relaxation in the norms of O&M under the 2014 Tariff Regulations. The Commission, in its aforesaid order dated 27.1.2021, rejected NETCL's prayer for relaxation of the O&M norms under the 2014 Tariff Regulations with the observation that it did not agree with the Petitioner, NETCL and that it was incorrect on the part of NETCL to suggest that the norms were finalized based on data from PGCIL only. The Commission, in the said order dated 27.1.2021, did not compare NETCL's case with that of the Review Petitioner. The Commission had referred to the abovementioned order in Petition No. 191/MP/2019, to emphasize the fact that the norms are not finalized based on the data from PGCIL only. We do not find any error apparent in our aforesaid reasoning in order dated 27.1.2021 in Petition No. 191/MP/2019. In view of the above, we reject the plea of the Review Petitioner for



relaxing the O&M Norms by exercising the power to relax. There is no substance in the contention of the Review Petitioner, and the same being misconceived is hereby rejected.

15. For the reasons mentioned above in detail, we do not find any ground to admit the present Review Petition, and the same is, therefore, rejected at the stage of admission.

The Review Petition No. 30/RP/2023 is accordingly disposed of.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

