



**ORDER
OF THE
WEST BENGAL ELECTRICITY REGULATORY COMMISSION
IN CASE NO. TP (R) – 45/ 22 - 23**

IN REGARD TO THE PETITION UNDER SECTION 94 (1) (F) OF THE
ELECTRICITY ACT, 2003 READ WITH REGULATION 3.3 OF THE WEST
BENGAL ELECTRICITY REGULATORY COMMISSION (CONDUCT OF
BUSINESS) REGULATIONS, 2013 READ WITH ORDER 47 RULE 1 OF THE
CODE OF CIVIL PROCEDURE, 1908 FOR REVIEW OF THE TARIFF ORDER OF
HALDIA ENERGY LIMITED FOR THE YEAR 2018 – 19 AND 2019 – 20 IN CASE
NO TP-76/18-19 DATED 15.06.2022

PRESENT:

**SRI MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 20.12.2022



Facts in brief:

- 1.0 Haldia Energy Limited (HEL) has submitted a petition in terms of section 94(1)(f) of the Electricity Act, 2003 read with regulation 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 read with Order 47 rule 1 of the Code of Civil Procedure, 1908 seeking review of the order dated 15.06.2022 in Case No. TP – 76/18 – 19 (hereinafter referred as 'Tariff Order') passed by the West Bengal Electricity Regulatory Commission in regard to the Multi Year Tariff Application of HEL for dedicated 400 KV Double Circuit Line for the years 2018 – 19 and 2019 – 20.
- 2.0 In their review petition, HEL has submitted that there are inadvertent errors and oversight by the Commission and accordingly they are filing the review petition with a prayer to admit the petition and review the Tariff order to the extent indicated in the petition. HEL in their petition inter-alia has put forward the following issues for review:
 - A. Disallowance of O&M expenses.
 - B. Disallowance of Insurance and Rates & Taxes.
 - C. Review of methodology for deriving rates at which Transmission Charges are to be recovered.

HEL has submitted that in view of all the above proposed changes, the figures of the interest on working capital, Transmission Charge etc. may also be revised accordingly.

Observations of the Commission:

- 3.0 Now, the Commission proceeds to find whether any case for review has been made out by the Review Petitioner in terms of section 114 read with Order 47 Rule 1 of CPC, according to which a person aggrieved by order of a Court can file review on the following grounds, if no appeal against the said order has been filed:
 - (a) Discovery of new and important matter of evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him when the decree was passed or order made.
 - (b) On account of some mistake or error apparent on the face of record; and
 - (c) For any other sufficient reason.



In this connection, reference could be made to the following judgements:

- (a) In **Lily Thomas & Ors. vs. Union of India & Ors. [(2000) 6 SCC 224]** Judgment, the Hon'ble Supreme Court has held as under:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

- (b) In **Union of India vs. Sandur Manganese and Iron Ores Limited & others {(2013) 8 SCC 337}**, the Hon'ble Supreme Court has held as under:

"23. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi & Others Vs. Sumitri Devi & Others, this Court held as under:

"9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

- (c) In **M/S Goel Ganga Developers India Pvt. Ltd. vs. Union of India 2018 SCC Online SC 930**, the Hon'ble Supreme Court has held as under:

"In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon"

2. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra-court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency"

4.0 The review sought by HEL on the items mentioned in paragraph 2.0 above have been discussed below:

A. Review on Operation & Maintenance (O&M) Expenses:

Submission of HEL:

In the review petition HEL stated that the Commission has determined the O&M expenses for the years 2018 – 19 and 2019 – 20 by applying inflation impact over the



admitted value for 2017 – 18, whereas HEL made their claim based on actual O&M expenses incurred during the year. HEL has stated that the Commission has admitted Rs. 292.68 lakh and Rs. 304.45 lakh as O&M Expenses for the years 2018 – 19 and 2019 – 20 respectively in place of the claimed amount of Rs. 1289.70 lakh and Rs. 1432.80 lakh for the respective years. HEL has further submitted that, the Commission has erred by not considering the actual O&M expenditure incurred in the respective years despite having the detailed information, as the years were already over. HEL in the instant review petition has also prayed to allow certain contingency expenses incurred during the years 2018 – 19 and 2019 – 20.

In this respect, HEL has also referred to their review petition against the Tariff Order for 2017 – 18, where the basis of computation of O&M expenses during 2017 – 18 based on a benchmark cost was challenged.

Observation of the Commission:

O&M expenses comprising of Repair & Maintenance expenses and Administrative & General Expenses, is controllable in nature in terms of the WBERC Tariff Regulations. Unlike uncontrollable items, actual expenditure for controllable items is not a pass through in tariff.

Hence, the Commission determined the admissible O&M expenses for 2018 – 19 and 2019 – 20 by applying inflation rate over the admitted O&M expenses for 2017 – 18. The matter is deliberated under paragraph 3.4.4 of the Tariff Order.

HEL has prayed to review the decision taken by the Commission in the Tariff Order. This does not come under the scope of review under section 94(1)(f) of the Electricity Act 2003 read with Order 47 Rule 1 of CPC.

Regarding the contingency expenses incurred during the years 2018 – 19 and 2019 – 20, as submitted by the petitioner, the Commission will analyze them suitably during Annual Performance Review (APR) of the concerned years.

It is also pertinent to mention that the Commission has already disposed of the review petition for Tariff Order for 2017 – 18 in Case no TP(R) – 42/22 – 23 dated 27.09.2022 maintaining the decisions already taken in the Tariff Order for 2017 – 18.



B. Review on Insurance and Rates & Taxes:

Submission of HEL:

HEL has submitted that the Commission has admitted Rs. 34.65 lakhs and Rs. 36.04 lakhs as Insurance cost and Rs. 3.16 lakhs and Rs. 3.29 lakhs as Rates and Taxes for the years 2018 – 19 and 2019 – 20 respectively in place of actual expenditures of Rs. 109.90 lakhs and Rs. 123.60 lakhs for Insurance cost and Rs. 7.50 lakhs and Rs. 6.10 lakhs for rates and taxes for the respective years.

In this regard, HEL submitted that Insurance costs and Rates & Taxes are uncontrollable in nature and prayed before the Commission to allow the same on actual basis.

Observation of the Commission:

In paragraph 3.4.6 of the Tariff Order, it has been clearly mentioned that as insurance and rates & taxes are uncontrollable elements and are subject to truing up at the time of APR following the provisions of WBERC Tariff Regulations as amended from time to time.

Hence, no further review on the matter is required instead the issue shall be taken into consideration during truing up.

C. Computation of Transmission Charge:

Submission of HEL:

HEL submitted that, while determining the transmission charge the Commission has considered the contracted capacity of the transmission line equal to the installed capacity of HEL plant (600 MW). As per PPA between HEL and CESC the delivery point of HEL power is at 400 KV bus-bar of PGCIL Subhasgram sub-station. As per HEL, in view of the PPA, contracted capacity of 400 KV HEL transmission line shall be 546 MW after taking into consideration 9% auxiliary consumption and applicable line loss.



In this regard, HEL has prayed for re-computation of transmission charges considering contracted capacity of transmission line as 546 MW.

Observation of the Commission:

The HEL 400 KV dedicated transmission line is for evacuating the generation from 2 X 300 MW HEL power plant. The transmission line emanates from the switchyard of the generating station. Therefore, it is found logical to consider the ex-bus capacity of HEL power plant as the contracted capacity of transmission line for determining the transmission charges of 400 KV dedicated Transmission Line of HEL.

Thus, the Commission finds it suitable to review the determination of unit rate for recovery of transmission charges for 400 kV dedicated line of HEL considering ex-bus capacity of 546 MW (with 9% normative auxiliary consumption) in place of installed capacity of 600 MW without any change in the admitted ARR value.

5.0 Thus, the review sought for on the issue raised in point 'A' above is prayer to review ratio of prudence adopted by the Commission and has no substance for review and the Commission keeping in mind that it is estopped from encroaching into the jurisdiction of the Hon'ble Appellate Authority does not propose to entertain the above prayers for review. Further, the review sought for on the issue in point 'B' is to be dealt with during the truing up stage as per the APR petition of HEL for the concerned years. The prayer of review in point 'C' is found allowable to the extent mentioned above.

Order:

6.0 In view of the above, the Commission re-determines the unit rate of recovery of transmission charges in Rs. /MW/Month from the beneficiary (ies) for the years 2018 – 19 and 2019 – 20 as below:-

Transmission Charges for 2018 – 19		
i)	Recoverable ARR	Rs. 8197.80 lakh
ii)	Total contracted capacity	546 MW
iii)	Rate in Rs. /MW/month	Rs. 8197.80 lakh * 10 ⁵ / (546 MW x 12) = Rs. 125119/ MW/ month subject to adjustment as per regulation 6.16.5 of the Tariff Regulations.
Transmission Charges for 2019 – 20		
i)	Recoverable ARR	Rs. 7854.90 lakh



Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 3.3 of the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of the Tariff Order of Haldia Energy Limited for the year 2018 – 19 and 2019 – 20 in Case No TP-76/18-19 dated 15.06.2022



ii)	Total contracted capacity	546 MW
iii)	Rate in Rs. /MW/month	Rs. 7854.90 lakh * 10 ⁵ / (546 MW x 12) = Rs. 119886/ MW/ month subject to adjustment as per regulation 6.16.5 of the Tariff Regulations.

7.0 The additional transmission charge receivable by the petitioner, if any, based on the admitted amount in this review order vis-à-vis the Tariff Order, shall be recovered from the beneficiary in six monthly installments from the date of issuance of this order.

8.0 The review petition is thus disposed off.

9.0 A copy of the order shall be posted in the website of the Commission.

10.0 HEL shall download the copy of the order from the website of the Commission and act on it. Certified copy of the order, if applied for, be given to the parties on completion of formalities laid down in the West Bengal Electricity Regulatory Commission (Conduct of Business) Regulations, 2013, as amended and on submission of necessary fees.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(MALLELA VENKATESWARA RAO)
CHAIRPERSON

Dated: 20.12.2022

Sd/-
SECRETARY