

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 104 of 2011

Dated: 12th January, 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr.V J Talwar, Technical Member,**

In The Matter Of

**Power Grid Corporation of India Ltd
Saudamini, Plot No.2,
Sector 29, Gurgaon-122 001
Haryana**

... Appellant(s)

Versus

- 1. Central Electricity Regulatory Commission
3rd and 4th Floor, Chanderlok Building
36 Janpath, New Delhi-110001**
- 2. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan,
Bangalore-560 009**
- 3. Transmission Corporation of Andhra Pradesh Limited
Vidyut Soudha,
Hyderabad-500 082**
- 4. Kerala State Electricity Board,
Vidyuthi Bhavanam,
Pattom, Thiruvananthapuram-695 004**
- 5. Tamil Nadu Electricity Board
NPKRR Maaligai, 800, Anna Salai,
Chennai-600 002**

- 6. Electricity Department,
Government of Goa,
Vidyuth Bhawan, Panaji,
Goa-403 001**
- 7. Electricity Department, Government of Pondicherry
Pondicherry-605 001**
- 8. Eastern Power Distribution Company of Andhra Pradesh
Limited
APEPDCL, P&T Colony, Seethmmadhara,
Vishakhapatnam-530 013
Andhra Pradesh**
- 9. Southern Power Distribution Company of Andhra Pradesh
Limited
Srinivasa Lakyana Mandapam Backside,
Triuchanoor Road,
Kesavayana Gunta,
Tripuati-517 501, Andhra Pradesh,**
- 10. Central Power Distribution Company of Andhra Pradesh
Limited
Corporate Office, Mint Compound,
Hyderabad-500 063, Andhra Pradesh**
- 11. Northern Power Distribution Company of AP Ltd
Opp NIT Petrol Pump,
Chaitanyapuri, Kazipet,
Warangal-506 004, Andhra Pradesh**
- 12. Bangalore Electricity Supply Company Limited
Corporate Office, K.R. Circle,
Bangalore-560 001**
- 13. Gulbarga Electricity Supply Company Limited**

**Station Main Road,
Gulbarga-585 102**

**14. Hubli Electricity Supply Company Limited
Navanagar, PB Road,
Hubli-580 025, Karnataka**

**15. MESCOM Corporate Office,
Paradigm Plaza,
AB Shetty Circle,
Mangalore-575 001**

**16. Chamundeswari Electricity Supply Corporation Limited
#927, L.J Avenue, Ground Floor,
New Kantharaj Urs Road,
Sarasawatipuram,
Mysore-570 009**

....Respondent(s)

Counsel for Appellant(s): Mr. M.G Ramachandran
Ms. Sneha Venktaramani
Ms. Swapna Seshadri

Counsel for Respondent(s): Mr. S Vallinayagam for TNEB

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. The question raised in this Appeal is as follows: "Whether the period of completion of the Project namely 36 months should be calculated from the date of Investment Approval or from the date of Letter of Award for the purpose of calculating Interest During Construction?"

2. In this case, the Central Electricity Regulatory Commission (Central Commission R-1) rejected the claim of the Power Grid Corporation of India (Appellant) over the Interest During Construction and Incidental Expenditure During Construction for a period of 14 months by reckoning the period of 36 months from the date of Investment Approval instead of the date of first Letter of Award as claimed by the Appellant through the impugned order dated 1.6.2011. Aggrieved over the same, the Appellant has presented this Appeal.
3. Let us see the relevant facts leading to the filing of this Appeal:
 - (a) Power Grid Corporation of India, the Appellant herein is a Government Company discharging the functions of the Central Transmission Utility under Section 38 of the Electricity Act 2003. The Appellant was entrusted with the implementation of the System Strengthening Scheme VII of Southern Regional Grid (Transmission Project) in Southern Region.
 - (b) On 31.5.2005, the Board of Directors of the Appellant accorded the Administrative Approval and Expenditure Sanction to the said Transmission Project and approved an investment of Rs.279.30 Crores including the Interest During Construction of Rs.17.30 Crores for the same. The Implementation Schedule of the project as approved by the

- Board of Directors was 36 months from the date of first letter of award.
- (c) On 23.8.2006, the Appellant issued the First Letter of Award for the Project. Accordingly, the scheduled date of completion of the project worked out as 22.8.2009. There upon, the commercial operation was commenced on 1.8.2009. In the meantime, on 19.1.2009 and 3.2.2009, the Central Commission notified the Tariff Regulations 2009 and issued the Statements of Objects and Reasons relating to the said Regulations respectively.
 - (d) The Appellant on 9.3.2010, filed a Petition No.72 of 2010 before the Central Commission for the approval of the final Transmission Tariff taking into account the capital expenditure including Interest during Construction and Incidental Expenditure during Construction incurred upto date of commercial operation and the estimated Additional Capitalisation projected to be incurred from the date of commercial operation to 31.3.2012.
 - (e) The Central Commission by its order dated 1.6.2011 while approving the tariff for the project, rejected the claim of the Appellant of Interest During Construction(IDC) and Incidental Expenditure During Construction(IEDC) up to the date of Commercial Operation and disallowed these components for a period of 14 months holding that the

project was not completed within stipulated time of 36 months to be reckoned from the date of Investment Approval i.e. 31.5.2005 and not from the date of Letter of Award namely 23.8.2006 as contended by the Appellant. The Central Commission held that since there was a delay in the commissioning of the transmission system by 14 months, IDC and IEDC for this period would not be allowed in the Capital cost of the project. Feeling aggrieved, the Appellant has filed the present Appeal.

4. According to the Appellant, the Central Commission has wrongly reckoned the period of execution of the project from 31.5.2005, the date of the approval of the project instead of 23.8.2006, the date of 1st Letter of Award for considering the scheduled commissioning for a period of 36 months after ignoring the relevant Regulation-7 of the Tariff Regulations 2009.
5. On the other hand, the Learned Counsel for TNEB, the 5th Respondent submits in justification of the impugned order that the Para 13.12.1 of the Objects and Reasons to Regulation 15 provides for the Return on equity and the Objects and Reasons of the said Regulations prescribe that the completion time schedule shall be reckoned from the date of Investment Approval from the Board and not from the date of the Letter of Award.

6. In the light of the rival contentions of both the parties, the following question would arise for consideration:

“Whether the Central Commission was correct in interpreting that the Statements of Objects and Reasons to the Tariff Regulation 2009 provided for the period of execution to be reckoned from the date of Investment Approval or from the date of the Letter of Award for the purpose of deciding on the capital cost and elements of Interest During Construction and Incidental Expenditure During Construction?”

7. In the present case, the Central Commission has reckoned the period of execution of the project from 31.5.2005 namely the date of the Investment Approval instead of the date of First Letter of Award for computing the period of 36 months on the reason that the period of execution has to be reckoned only from the date of the Investment Approval of the project as provided under Para 13.12.1 of the Statement of Objects and Reasons of the Tariff Regulations, 2009.
8. Let us see the relevant portion of the findings rendered by the State Commission in the impugned order while rejecting the claim of the Appellant:

“14. We have examined the submission of the Petitioner. It is noted that the petitioner has reckoned the period of execution of the project with reference to the issue of Letter of Award i.e. from 23.8.2006. However, in Para 13.12.1 of the Statement of Reasons to the 2009 regulations provides

that completion time schedule shall be reckoned from the date of Investment Approval of the project by the Board of Directors. In view of the above, the contention of the Petitioner is not tenable and the completion time schedule has been reckoned from the date of the approval i.e. 31.5.2005.

15. We are of the view that the Petitioner is responsible for time overrun of the project by 14 months. Accordingly, we direct that the Petitioner shall not be entitled for computation of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) for the said period. The Petitioner has furnished a certificate from the Chartered Accountant which has indicated the IDC and IEDC in two spells i.e. upto 31.3.2009 and from 1.4.2009 till the date of commercial operation i.e. 31.7.2009. Accordingly, details of IDC and IEDC, which have not been allowed are as under:

Asset-I**(Rs.in Lakh)**

Detail of IDC and IEDC as per Chartered Accountant Certificate dated 9.12.2009		
	IEDC	IDC
<i>From Date of Investment Approval to 31.03.2009</i>	326.49	432.01
<i>From 1.4.2009 to 31.7.2009</i>	175.09	143.20
Total IDC and IEDC Claimed	501.58	575.21

Detail of IDC and IEDC disallowed from May, 2008 to July, 2009		
<i>From May, 2008 to March, 2009 (for 10 months)</i>	70.98	93.92
<i>From April 2009 to July 2009 (for 4 months)</i>	175.09	143.20
Total Disallowed IDC and IEDC (for 14 months)	246.07	237.12

Asset-II**(Rs. In Lakh)**

Detail of IDC and IEDC as per Chartered Accountant Certificate dated 9.12.2009		
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	IEDC	IDC
<i>From Date of Investment Approval to 31.03.2009</i>	173.07	229.00
<i>From 1.4.2009 to 31.7.2009</i>	108.16	93.51
Total IDC and IEDC Claimed	281.23	322.51

Detail of IDC and IEDC disallowed from May, 2008 to July, 2009		
<i>From May, 2008 to March, 2009 (for 10 months)</i>	37.62	49.78
<i>From April 2009 to July 2009 (for 4 months)</i>	108.16	93.51
Total Disallowed IDC and IEDC (for 14 months)	145.78	143.29

9. Assailing this finding, it is contended by the Appellant that the Statement of Reasons and Regulations as contained in the 2009 Regulations under Para 13.12.1 to 15 of the Regulations deal with additional Return on Equity only and do not deal with the basic Return on Equity from the capital cost to be calculated. It is further contended that the provisions of the Regulations 15 dealing with the incentives for earlier completion cannot be applied to the calculation of the capital expenditure and Interest during Construction and as such the Interest during Construction has to be allowed as per Regulation 07 of Regulation 2009.
10. In view of the above contention, it is appropriate to refer to Regulation 7 of the Tariff Regulations 2009 which provides for the capital cost for the project. Regulation 7(1) is as follows:

“7. Capital Cost. (1) Capital cost for a project shall include:

The expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan- (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, – up to the date of commercial operation of the project, as admitted by the Commission, after prudence check:

.....”

11. The perusal of the above Regulation would indicate that the capital cost of the project would mean the expenditure incurred including Interest during Construction up to the date of commercial operation. While the above Regulation specifies the outer limit for such determination of Interest during Construction, it does not specify the time frame when the period has to start. However, the approval of Board of Directors specifically mentioned the completion schedule of the project as 36 months from the date of first letter of award.
12. Now let us see the Regulation 15 of 2009 Regulations and Appendix II to the Tariff Regulations, 2009 and Para 13.12.1 of Statement of Reasons for 2009 Regulations which has been relied upon by the Central Commission. These are reproduced below:

(a) Regulation 15 of 2009 Tariff Regulations

“15. Return on Equity. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II.**”

(b) Appendix II of 2009 Tariff Regulations

“Timeline for Completion of Projects

(Refer to Regulation 15)

1. The completion time schedule shall be reckoned from the date of Investment Approval by the Board (of the generating company or the transmission licensee), or the CCEA clearance as the case may be, up to the date of commercial operation of the units or block or element of transmission project as applicable.

2. The time schedule has been indicated in months in the following paragraphs and table:

S.No.	Transmission Work	Plain Area (months)	Hilly Terrain (months)	Snowbound area @ very difficult Terrain (months)
A	765 Kv S/C Transmission Line	30	36	40
B	+/-500 KV HVDC Transmission Line	24	30	34
C	400 KV D/C Quad Transmission Line	32	38	42
D	400 KV D/C Triple	30	36	40

	<i>Transmission Line</i>			
<i>E</i>	<i>400 KV D/C Twin Transmission Line</i>	<i>28</i>	<i>34</i>	<i>38</i>
<i>F</i>	<i>400 KV S/C Twin Transmission Line</i>	<i>24</i>	<i>30</i>	<i>34</i>
<i>G</i>	<i>220 KV D/C Twin Transmission Line</i>	<i>28</i>	<i>34</i>	<i>38</i>
<i>H</i>	<i>220 KV D/C Transmission Line</i>	<i>24</i>	<i>30</i>	<i>34</i>
<i>I</i>	<i>220 KV S/C Transmission Line</i>	<i>20</i>	<i>26</i>	<i>30</i>
<i>J</i>	<i>New 220 KV AC Sub Station</i>	<i>18</i>	<i>21</i>	<i>24</i>
<i>K</i>	<i>New 400 KV AC Sub-Station</i>	<i>24</i>	<i>27</i>	<i>30</i>
<i>L</i>	<i>New 765 kV AC Sub Station</i>	<i>30</i>	<i>34</i>	<i>s</i>
<i>M</i>	<i>HVDC bi-pole terminal</i>	<i>36</i>	<i>38</i>	<i>--</i>
<i>N</i>	<i>HVDC back-to-back</i>	<i>26</i>	<i>28</i>	<i>--</i>
<i>@ e.g. Leh Ladakh</i>				
<i>s No.765 KV Sub-Station has been planned in difficult terrain</i>				

(c) Para 13 of Statement of Reasons of 2009 Tariff Regulations

13 Rate of Return on Equity (Regulation 15)

13.1...

13.12 In case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the following timeline decided in consultation with CEA:

1. The completion time schedule shall be reckoned from the date of investment approval by the Board (of the generating company or the transmission licensee), or the CCEA clearance as the case may be, up to the date of commercial operation of the units or block or element of transmission project as applicable.

13. Perusal of Regulation 15 along with Appendix II and Para 13.12.1 of SoR would amply reveal that these deal with Return on Equity and completion time frame provided therein refers only to additional Return on Equity of 0.5%. It does to limit the time frame for calculation of IDC.
14. The period of 36 months is the actual construction period allowed. Regulation 7 (1) does not provide for the construction period to commence from the date of the Investment Approval. In fact, such construction period cannot be construed to be commenced immediately from the date of Investment Approval. After the Investment Approval is given, the Appellant has to initiate the process of awarding the contract, select the contractor and then issue the Letter of Award. Thus, the construction can start only after the award of contract and not before.
15. In the present case, the Appellant has not claimed any Interest During Construction from the date of Investment Approval till the date of the Letter of Award and even thereafter till the capital expenditure is incurred. The Interest During Construction cannot be calculated on any notional basis from the date of the Investment Approval. On the other hand, it has to be calculated on the basis of the capital expenditure during construction. Accordingly, the period from the date of Investment Approval till the date of award of the contractor was not subject to any capital

expenditure. Therefore, it has not contributed to any Interest During Construction being allowed to the Appellant as during that period, construction has not started.

16. The Central Commission while arriving at a conclusion rejecting the claim of the Appellant has proceeded on the basis of the statement of reasons contained in the Regulations 15 of the Tariff Regulations 2009. As correctly pointed out by the Learned Counsel for the Appellant, these Regulation only deal with the additional Return on Equity and they do not deal with the capital cost to be calculated. The provisions of Regulation 15 which deal with the incentives for early completion cannot be applied to the calculation of the capital expenditure. The appropriate Regulation would be Regulation 7 of the Tariff Regulations 2009 which has to be applied in the present case for calculation of the capital expenditure and Interest During Construction. So, the decision of the Central Commission in the present case, in our view, is contrary to the clause 7 of the Tariff Regulation 2009.
17. It is to be reiterated that no Interest During Construction has been claimed by the Appellant for the period from the date of the Investment Approval till the award of the contract.
18. In view of the above, the question of putting the additional burden on the beneficiaries does not arise as such we have to conclude that there is an obvious mistake in the approach adopted by the Central Commission and consequently

impugned order of the Central Commission in the present case is liable to be set aside.

19. Summary of Our Findings

(a) Regulation 07 of the Tariff Regulations 2009 provides for the capital cost for the project to include the Interest During Construction and also the incidental Expenditure During Construction. Therefore, Regulation 7 would apply to the present case.

(b) Para 13.12 of the Statement of Objects and Reasons to the Tariff Regulations 2009 would not apply to the present case as it deals with additional burden on equity to be allowed as 0.5% and it did not deal with the basic Return on Equity or the capital cost to be calculated. Therefore, the period of execution of the project i.e. 36 months should be calculated only from the date of Letter of Award for the purpose of calculating Interest During Construction and incidental Expenditure During Construction and not from the date of the Investment Approval.

20. In view of our findings, we find that the impugned order suffers from the infirmity and therefore, the same is set-aside. The Central Commission is directed to pass the consequential orders

in terms of the findings rendered by this Tribunal as referred to above as expeditiously as possible.

21. Thus, the Appeal is allowed. However, there is no order to cost.

(V J Talwar)
Technical Member

Dated: 12th January, 2012

(Justice M. Karpaga Vinayagam)
Chairperson

REPOTABLE/NOT REPORTABLE