

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A. No. 235 of 2012 in
DFR No. 1061 of 2012

Dated: 20th September, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member
In the matter of:

Tamil Nadu Generation and Distribution Corpn. Ltd.,
Rep. by its Chief Engineer/Planning & Resource Centre,
No. 144, Anna Salai, Chennai-600 002. **....Applicant**

Vs.

- 1. Central Electricity Regulatory Commission,**
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001
- 2. Power Grid Corporation of India Limited,**
Represented by its Chairman and Managing Director,
Corporate Office,
Saudamini, Plot No. 2, Sector-29,
Gurgaon-122 001, Haryana
- 3. Karnataka Power Transmission Corporation Ltd.,**
Kaveri Bhavan,
Bangalore-560 001
Represented by its Chairman
- 4. Transmission Corporatuion of Andhra Pradesh Ltd.,**
Vidyut Soudha, Hyderabad-500 049
Represented by its Chairman
- 5. Kerala State Electricity Board (KSEB)**
Vaidyuthi Bhavanam, Pattom,
Thiruvanathapuram-695 004,
Represented by its Chairman
- 6. Electricity Department,**
Government of Pondicherry,
Pondicherry 605 001
Represented by its Chief Secretary **... Respondents**

Counsel for the Applicant(s) : Mr. S. Vallinayagam

ORDER

This Application for condonation of delay has been filed by Tamil Nadu Generation and Distribution Corporation Limited in the Appeal against the Tariff Order dated 30.04.2009 passed by the Central Electricity Regulatory Commission regarding tariff of Powergrid, the Respondent no. 2 herein.

2. The brief facts of the case are as under:

i) The Central Commission passed a tariff order on the petition of the Respondent no. 2 regarding determination of final transmission tariff including tariff for additional capital expenditure for upgradation of transfer capacity of Talcher-Kolar HVDC Bi—pole from 1.8.2007 to 31.3.2009.

ii) Aggrieved by capitalisation of the computed loss of revenue and incentive to Powrgrid for the period of shut down of the transmission system for the purpose of upgradation instead of reimbursement by the beneficiaries in instalments, the Applicant filed a Review Petition before the Central Commission on 11.05.2009 within the specified time limit.

iii) The Central Commission passed an order on 30.01.2012 after a lapse of 2 years and 8 months dismissing the Review Petition as it did not find any error apparent on the face of the record. Thereafter, the Applicant/Appellant filed an Appeal on 4.06.2012 challenging the original order dated 30.04.2009 alongwith application for condonation of delay for 1065 days.

3. On 25.07.2012 when the matter came up for the first time before this Tribunal, it was observed that there was no proper explanation in regard to the delay of 1065 days. Though it was stated that for some period the Review was pending before the Central Commission yet there was no proper explanation for the delay after passing of the Review Order.

4. The Tribunal also sought the explanation from the Central Commission for the inordinate delay in disposing the Review Petition. Accordingly, the Central Commission filed an affidavit on 12.9.2012 explaining the delay with assurance for devising a timeline for disposal of petitions including the Review petitions. The explanation is accepted by the Tribunal.

5. The Applicant/Appellant also filed additional affidavit on 28.08.2012 explaining the delay by giving additional reasons.

6. We have heard the learned counsel for the Applicant/Appellant.

7. The Applicant has given the following reasons for delay in filing the Appeal:

i) Against the impugned order dated 30.04.2009, the Applicant filed Review Petition before the Central Commission within the specified time limit.

ii) The Review Petition was dismissed by the Central Commission by its order dated 30.01.2012. However, a copy of the order was received by the Applicant/Appellant on 13.02.2012.

iii) Thereafter, time was taken in obtaining the approval of the Management, preparation of the Appeal, consultation and approval by the Legal Department, etc. has been given and finally the Appeal was filed on 4.6.2012.

8. In this way the delay of about 120 days has been explained from the date of Review Order till the filing of Appeal before this Tribunal.

9. We find that even though the main reason for delay was pendency of Review Petition before the Central Commission, however, even after the disposal of Review Petition, the Applicant failed to file the Appeal promptly and more than 120 days were taken in filing the Appeal. We are not convinced about the explanation given for the delay. Even though the Review Petition was pending before the Central Commission for 2 years and 8 months, the Applicant also did not make a request to the Central Commission for early disposal of the petition. We feel that the Applicant has not been diligent in seeking the remedy.

10. We also notice that the tariff was relating to period 1.8.2007 to 31.3.2009 under the Tariff Regulation, 2004. All billings and recoveries from the beneficiaries of the transmission system has been made on the basis of the Central Commission's order. Thereafter, the tariff for the period 1.4.2009 to 31.3.2014 as per the new Tariff Regulations, 2009 has also been decided. The Appellant is only seeking change in method of recovery of revenue loss on account of shutdown of the line by reimbursement in instalment instead of recovery through

transmission tariff as decided by the Central Commission. Change in methodology at this belated stage which will disturb the tariff and billing for the subsequent period also. Further, as recorded by the Central Commission in the Review order other beneficiaries of the transmission system have not consented to the change in methodology of payment and have not filed any reply or appeared before the Commission in the Review despite notice. We are, therefore, not inclined to interfere in the issue.

11. In view of above, we dismiss the IA for condonation of delay due to the reason that no satisfactory explanation has been given for the delay after passing of the Review Order by the Central Commission and also for lack of diligence. Accordingly, the Appeal is also rejected.

12. Pronounced in the open court on this
20th day of September, 2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE

vs