

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 71/MP/2014**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri M. Deena Dayalan, Member**

**Shri A.K.Singhal, Member**

**Date of Hearing: 22.5.2014**

**Date of order: 02.7.2014**

**In the matter of**

Petition under Section 79 (1) (f) and (k) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 in relation to extension of the Required Commercial Operation Date (RCOD) of Western Region System Strengthening Scheme-II (Project-B) up to 1.1.2014.

**And**

**In the matter of**

Power Grid Corporation of India Ltd.  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi 110 016

**...Petitioner**

**Vs**

1. Western Region Transmission (Maharashtra) Pvt. Ltd.  
12<sup>th</sup> Floor, Building No.10 B, DLF Cyber City,  
Gurgaon-122 002
2. MP. Power Trading Company Limited  
Shakti Bhawan, Jabalpur-482 002
3. Gujarat Urja Vikas Nigam Ltd  
Sardar Patel Vidyut Bhawan, Race Course,  
Vadodara-390 007
4. Maharashtra State Electricity Distribution Company Ltd.  
Prakashgad, 4th Floor, Andheri (E), Mumbai-400 052
5. Chhattisgarh State Power Distribution Co. Ltd.  
Vidhyut Sewa Bhawan, Danganiya, Raipur-492 013

6. Electricity Department, Vidhyut Bhawan,  
Panaji, Goa-403 001
7. Electricity Department, Daman and Diu  
Daman-396 210
8. Electricity Department  
Dadra and Nagar Haveli, UT Silvassa-396 230
9. M.P. Audyogik Kendra Vikas Nigam Ltd.  
3/54, Press Complex, Agra Mumbai Road,  
Indore-452 008.

**Respondents**

**Parties Present:**

**For petitioner:** Shri Sanjay Sen, Senior Advocate, PGCIL  
Shir P.Padhi, PGCIL  
Shri Akhil Kumar, PGCIL  
Shri Pasi P., PGCIL  
Shri R.Rao, PGCIL

**For respondent :** Shri L.N.Mishra, WRTMPL  
Shri Anil Rawal, WRTMPL  
Shri Rupin Rawat, WRTMPL

**ORDER**

The petitioner, Power Grid Corporation of India Limited has filed this petition for extension of the Revised Commercial Operation Date (RCOD) for Western Region System Strengthening Scheme-II (Project-B) upto 1.1.2014 on the ground that events responsible for delay in completion of the project are analogous to Force Majeure conditions.

2. The facts of the case as submitted by the petitioner are as under:

- (a) By order dated 30.12.2008 in Petition No. 27/2008, Western Region Transmission (Maharashtra) Pvt. Ltd. (WRTMPL) was granted transmission licence for construction, commissioning, operation and maintenance of the

transmission lines falling under Western Region System Strengthening Scheme-II (Project 'B')..

(b) As per the Implementation Agreement (IA) executed between the petitioner and WRTMPL, the scheduled date of commercial operation of the project was 31.3.2010. On account of the delay in signing of the Transmission Service Agreement by the beneficiaries, the Commission had in the order dated 30.12.2008 in Petition No. 27/2008 granted nine months time (i.e. upto 31.12.2010) for achieving the commercial operation of the project.

(c) Subsequently, WRTMPL approached the Commission for extension of Required Commercial Operation Date (RCOD) due to delayed receipt of approval under Section 164 of the Electricity Act 2003 (the Act) and unprecedented downpour immediately after receipt of section 164 approval. The Commission vide order dated 31.12.2010 in Petition No. 296/2010 came to the conclusion that delay of 9 months had taken place due to time taken in getting the Section 164 approval and unprecedented rainfall were in the nature of force majeure conditions. The Commission vide its order dated 31.12.2010 directed WRTMPL and PGCIL to mutually decide the issue of extension of Required Commercial Operation Date (RCOD) in terms of relevant provisions of IA. Accordingly, RCOD was extended by PGCIL till 31.8.2011.

(d) WRTMPL could complete only two transmission lines, namely, LILO of Sholapur-Karad and LILO of Lonikhand-Kalwa within 31.8.2011. WRTMPL in its letters dated 22.8.2011 and 27.12.2011 requested PGCIL for extension of

RCOD of remaining lines to November 2012. The request was forwarded by PGCIL to the beneficiaries of the project for their comments who approved extension of the date of RCOD. PGCIL vide its letter dated 17.2.2012 directed WRTMPL to make all out efforts to ensure completion of the project by 30.11.2012. WRTMPL could not execute the project by 30.11.2012 and again requested PGCIL for extension of RCOD up to May 2013. However, PGCIL did not extend the RCOD and directed WRMPTL to complete the projects by 31.5.2013 without prejudice to its rights under the IA. As the project could not be completed by 31.5.2013, WRTMPL sought further extension of six months vide its letter dated 31.5.2013. PGCIL without extending RCOD directed WRTMPL to complete the lines by 30.11.2013.

(e) After project-wise completion of all the lines, WRTMPL in its letter dated 7.2.2014 submitted comprehensive description of the events alongwith documentary evidence which adversely affected the progress of the project.

(f) The details of date of commercial operation of the various elements of the project are as under:

<b>S. No.</b>	<b>Name of Assets</b>	<b>Commissioning date</b>	<b>Date of commercial operation (COD)</b>
1.	LILO of Solapur-Karad line at Solapur	Commercial operation on (within(RCOD)	21.1.2011
2.	LILO of Lonikhand-Klaw line Ckt-I at Pune	Commercial operation on (within RCOD)	15.4.2011
3.	Parli-Solapur	3.10.2011	1.11.2011
4.	Solapur-Kolhapur Ckt-I and CKt-II	30.6.2012	1.7.2012 and 1.8.2012

5.	LILO of Lonikhand-Kalwa line Ckt-II at Pune	8.7.2013	1.8.2013
6.	Parli-Pune	8.11.2013	1.12.2013
7.	Pune-Aurangabad	5.12.2013	1.1.2014

(g) Since there was delay in completion of the elements of the project mentioned at Sr. No. 3 to 7 with reference to ROCOD, WRTMPL vide its letter dated 7.2.2014 requested PGCIL to revise RCOD up to 1.1.2014 due to the following force majeure events:

- (i) Severe law and order problem in areas near Navlakh Umbre village;
- (ii) Necessity to change tower designs to erect multi-circuit towers common to Pune-Aurangabad and Parli-Pune lines, near Talegaon sub-station.
- (iii) Delay in de-notification of wild life sanctuaries, encountered in the final survey of Pune-Aurangabad line.

3. The petitioner has submitted that on receipt of the request for WRTMPL, the petitioner constituted a committee consisting of PGCIL officials to analyze the reasons given by WRTMPL for extension of RCOD. The committee after examination of the documents had *inter-alia* observed as under:

- (i) Various elements under the project got affected by mass agitations, RoW issues, court cases, etc. which have slowed down the construction progress and in this regard WRTMPL has placed on record documentary evidences for delay for each line separately.

(ii) The challenges faced by WRTMPL may qualify as force majeure events since these events prevented and unavoidably delayed WRTMPL in performing its obligations under IA and are beyond its reasonable control. Magnitude of RoW issues involving adjudications by the courts are beyond the control of WRTMPL and it could not complete the project in time despite consistent mitigation measures. Settlement of about 161 court cases was not only beyond the control of WRTMPL but also slowed down the construction progress in various locations.

(iii) Since the project is executed under tariff based competitive bidding route, WRTMPL shall not be entitled for any increase in tariff due to delay in execution of the project.

(iv) CERC in a number of orders has acknowledged and held that RoW issues, court cases and issues regarding clearances are beyond the control of a transmission line proponent and has allowed time over-runs in various cases on account of RoW issues and delay in forest clearance.

(v) The reasons projected for delay in commissioning of project appear to be beyond the control of WRTMPL and may be covered under Force Majeure events under clause 9.3 of the IA.

(vi) RCOD may be extended up to 1.1.2014. With regard to interests of the beneficiaries, WRTMPL has already acknowledged the committee`s earlier letters that extension of RCOD of the project

would not have any adverse impact on transmission charges payable by the beneficiaries and shall remain unaltered as indicated in the Power Transmission Agreement (PTA).

4. In the backdrop of the above facts, the petitioner has approached the Commission for extension of RCOD of the project up to 1.1.2014.

5. During the course of hearing, learned senior counsel for the petitioner submitted that PGCIL had constituted an internal committee to assess the reasons for delay in completion of the project. The committee in its recommendation has concluded that the reasons for delay in commissioning the project may be covered under force-majeure events under clause 9.3 of IA and has recommended that RCOD of the project may be extended up to 1.1.2014. Learned senior counsel submitted that there is no cost over-run due to proposed extension of RCOD as WRTMPL has agreed that there would be no change in the transmission charges. Learned senior counsel submitted that since Gujarat and MP are not in favour for extension of RCOD, the petitioner has approached the Commission for extension of time. The representative of WRTMPL submitted that extension of RCOD may be granted by the Commission as prayed in the petition.

6. We have considered the submissions of the Learned Senior Counsel for the petitioner and the representative of WRTMPL. We have decided to dispose of the petition at the admission stage.

7. The IA is a contractual document between the petitioner and WRTMPL. Clause 4.3 (iii) of the IA provides that "the parties may meet at such intervals as they may decide to discuss the progress and implementation of the project and

accordingly may mutually agree on the adjustment of the Required Commercial Operation Date". Clause 4.4.2 of the IA provides as under:-

"The Required Commercial Operations Date of the Project B may be extended up to one hundred eight (180) days from its Required Commercial Operation Date first determined pursuant to this Agreement by reason of one or more Force Majeure Events. In case there is a further delay on account of Force Majeure, the Required Commercial Operations Date of such Project B may be extended further (beyond 180 days), with the mutual consent of the parties. "

8. Previously, the Commission dealt with the request of WRTMPL for extension of RCOD in Petition No. 296/2010. The Commission in its order dated 31.12.2010 directed WRTMPL and PGCIL to mutually decide the issue of extension of Required Commercial Operation Date. The relevant portion of the said order is extracted as under:

"17. It is evident from the above provisions of the Implementation Agreement that adjustment of the Required Commercial Operations Date has to be made through mutual agreement of the parties. Moreover, the extension of the RCOD can be made with the mutual consent of the parties if there is delay on account of one or more of the force majeure events. Based on our findings in paras 13 and 14 of this order, we are prima facie of the view that the delay in commencement of the projects was due to time consumed for compliance of the procedure by the petitioners for obtaining the approval under Section 164 of the Act and heavy downpour of rain for one month in respect of Project B which were beyond the control of the petitioners and can be covered under force majeure events under clause 9(3)(i) and (iii) of the Implementation Agreement. **Therefore, we direct the petitioners and the Respondent No. 1 to mutually decide the issue of extension of RCOD in respect of the transmission lines of the petitioners and the commissioning of the substations of Respondent No. 1 in terms of the relevant provisions of the Implementation Agreement keeping in view our findings regarding the delay in commencement and completion of the projects and arrive at a mutual agreement for the early completion of the projects.** In so far as the interests of the beneficiaries are concerned, the petitioners have already committed that the proposed extension of RCOD of the projects would not have any adverse impact on the transmission charges payable by the beneficiaries and shall remain unaltered as indicated in the TSA. We direct that the petitioners shall remain bound by this commitment."

9. WRTMPL vide its letter dated 7.2.2014 requested the petitioner to revise RCOD up to 1.1.2014 due to force majeure events and has provided a comprehensive description of the events leading to the delay in execution of the project. Subsequently, the petitioner constituted a committee to analyze the issues



projected by WRTMPL. The committee after examination of events has recommended for extension of RCOD upto 1.1.2014. The petitioner has submitted that the extension of RCOD would not affect the transmission tariff payable by the beneficiaries as per the TSA.

10. In terms of Para 4.4.2 of the IA, the RCOD of the project can be extended by mutual consent of the parties i.e. the petitioner and WRTMPL. Since, the petitioner has accepted the events responsible for execution of the project as the events in the nature of force majeure and WRTMPL has accepted that the extension of RCOD would not have any impact on the transmission charges payable by the beneficiaries, we are of the view that the petitioner and WRTMPL should sort out the issue of extension of RCOD between themselves in terms of the relevant provisions of the IA and approval of the Commission for the same is not necessary.

11. The petition No. 71/MP/2014 is disposed of in terms of the above.

**sd/-**  
**(A.K. Singhal)**  
**Member**

**sd/-**  
**(M. Deena Dayalan)**  
**Member**

**sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**