

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Shri Ashok Basu, Chairman
2. Shri G.S. Rajamani, Member
3. Shri K.N.Sinha, Member

**Review Petition No.97/2002
in
Petition No.9/1999**

And in the matter of

Review of Commission's order dated 3.6.2002

And in the matter of

Power Grid Corporation of India Ltd. Petitioner

Vs

Karnataka Power Transmission Corporation Ltd. & others Respondents

The following were present:

1. Shri R.K. Vohra, PGCIL
2. Shri G. M. Rao, PGCIL
3. Shri Sunil Agrawal, PGCIL
4. Shri U.K. Tyagi, Chief Mgr, PGCIL
5. Shri P Kishore Kumar, DGM, PGCIL
6. Shri Padmakumar, Ex. Engineer, KSEB
7. Shri R Balachandran, KSEB
8. Shri S Misra, AGM, GRIDCO

**ORDER
(DATE OF HEARING 19-12-2002)**

Power Grid Corporation of India Ltd., the petitioner herein has filed the present petition for review of order dated 3.6.2002 in Petition No.9/1999 with a further prayer to revise tariff of 400 kV Jeypore-Gazuwaka line and 500 MW HVDC back-to-back station at

Gazuwaka between Southern and Eastern Region. We consider it necessary to scan through the facts of the case in brief before considering the issues.

2. The petitioner had filed Petition No.9/1999 for approval of transmission tariff for 400 kV Jeypore-Gazuwaka line and 500 MW HVDC back-to-back station at Gazuwaka between Southern and Eastern Region for the period up to 31.3.2001. The tariff was approved by the Commission vide its order dated 3.6.2002. While approving tariff, the Commission considered the expenditure of Rs.641.63 crores, incurred up to 31.3.2001. The Commission, however, found that there was a delay of about six months in execution of the project which was not explained by the petitioner to the satisfaction of the Commission. Therefore, the Commission, while approving the tariff directed pro-rata reduction in IDC of Rs.11.95 crores from the expenditure of Rs.641.63 crores. The tariff was decided based on the reduced amount.

3. The petitioner was entrusted with the implementation of Jeypore-Gazuwaka line and HVDC back-to-back station, approved by Ministry of Power vide letter dated 21.2.1995 at a cost of Rs.659.98 crores. The project was to be completed within 48 months from the date of issue of the sanction, that is, by 20.2.1999. However, the assets were declared under commercial operation with effect from 1.9.1999. It has been stated by the petitioner that the Detailed Project Report (DPR) was prepared by the petitioner much in advance of the approval accorded by Ministry of Power on 21.2.1995. On account of advance action taken by the petitioner, it was possible to reach a stage of preparedness for award of contracts, coinciding with the investment approval accorded

by Ministry of Power. However, because of certain unforeseen circumstances, as explained in the petition, there occurred delay in the commissioning. The components of the project as also the envisaged financing arrangements are stated to be as under :-

Sl. No.	Package Description	Funding Arrangement
1.	Jeypore-Gazuwaka Transmission Line (a) Tower Package (b) Line materials packages	Domestic ADB
2.	HVDC back-to-back Converter Station at Gazuwaka	Suppliers arranged funding
3.	AC Switchyard at Gazuwaka	ADB

5. It is stated that a major portion of the expenditure for HVDC back-to-back converter station was to be covered by the proceeds from loan from West Merchant Bank, UK (WMB). According to the petitioner, it had invited bids for the project with the understanding that Government of India guarantee would be available for the project as in the case of HVDC back-to-back at Chanderpur. However, because of change in Government policy, the facility of Government of India guarantee was denied. Accordingly, the petitioner managed guarantee from Indian commercial banks with the consent of WMB. In the process, it took one year against the period of four months envisaged in DPR. It is further stated that the bids for HVDC back-to-back and AC sub-station for Gazuwaka were invited separately. The AC interface data to be submitted by the contractor for AC sub station was to be used by HVDC contractor for design purposes. However, there was a delay in award of contract for AC switch yard causing delay in submission of AC interface data and consequential delay in completion of HVDC back-to-back project. It stated that the delay in award of AC switch yard contract was

due to refusal of Asian Development Bank (ADB) who had advanced the loan, to accept the recommendation of the petitioner for award of AC switch yard contract to Siemens, the lowest bidder. The petitioner has stated that the recommendation for acceptance of bid by Siemens was submitted to ADB on 6.6.1996 whereas ADB conveyed its final decision for award of contract to BHEL, the second lowest bidder on 14.3.1997, after a gap of about nine months. It is explained that immediately after receipt of concurrence from ADB, the process for finalisation of contract for AC switchyard was started. The AC interface data could be frozen by September 1997 as against the agreed date of May 1997 with HVDC contractor. This caused an additional delay of four months. In addition, the petitioner has attributed delay of one month to the temporary by-pass of HVDC system at the request of APTRANSCO and another forty days' delay to system conditions. To support its contention, the petitioner has placed on record a string of communications exchanged with different authorities.

6. The petitioner had not placed on record the detailed reasons, as explained in the review petition to support the reasons for the delay in execution of the project. It is now stated that at the time of filing of original tariff petition, all the documents could not be arranged from different departments of the petitioner even after exercise of due diligence and non-production of reasons, supported by records is not intentional.

7. WBSEB (Respondent No.7) in its reply has not given any reasons opposing review. KSEB (Respondent No.3) in its reply in opposition to the review petition has submitted that the petitioner had failed to provide the reasons for delay during the entire

period of hearing and, therefore, the reasons now furnished cannot be accepted. KPTCL (Respondent No.1) in its reply has contested the explanation furnished by the petitioner in support of delay in execution of the project, without offering any views on the maintainability of the review petition. GRIDCO (Respondent No.9) has submitted that the delays could have been eliminated by the petitioner with proper planning and coordination and, therefore, there is no justification for excusing the delay and has also opposed the review of order dated 3.6.2002 on the plea taken by the petitioner regarding its inability to place the relevant information on record during pendency of Petition No.9/1999.

8. We have considered the rival submissions. Without expressing any opinion on sufficiency or justification for the reasons placed on record in the review petition to explain the delay in execution of project, it is necessary for us to take a view whether or not there is proper justification for not filing the explanation during pendency of the petition. The petitioner, vide order 19.9.2001 in Petition No.9/1999 was asked to explain the reasons for time over run, if any, in execution of the project. In the affidavit filed before the Commission on 8.2.2002, the petitioner took a stand that there was no time over run and the different elements of the project were energised and commissioned by 2.3.1999, though in the same affidavit it was stated that the date of commercial operation of HVDC system was 1.9.1999. In the review petition, the petitioner admits the factum of delay and has furnished the reasons in support thereof as has been noticed above and has taken a stand which is at variance with that taken earlier. The right of review is possible only on limited grounds mentioned in order 47, Rule I of the Code of Civil

Procedure (CPC). In our opinion, the grounds for review now furnished by the petitioner are not covered under the statutory prescription. The Commission in its order dated 1.1.2003 in Review Petition No.102/2002 has already taken a view that for the purpose of filing of petition for approval of tariff before the Commission, the different departments of the petitioner company cannot be considered entities, separate from the petitioner. Therefore, there is no gain saying that the new evidence produced by the petitioner in support of delay in execution of the project could not be produced by the petitioner after exercise of due diligence.

9. In the light of foregoing discussion, we do not find any merit in the present review petition and the same is dismissed with no order as to costs.

**Sd/-
(K.N. SINHA)
MEMBER**

**Sd/-
(G.S. RAJAMANI)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRMAN**

New Delhi dated the 6th February, 2003