

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 08/RP/2014

in

Petition No. 62/TT/2012

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A. K. Singhal, Member
Shi A. S. Bakshi, Member**

Date of Hearing : 05.08.2014

Date of Order : 08.12.2014

In the matter of:

Review of the order dated 23.12.2013 passed by the Commission in Petition No. 62/TT/2012.

And in the matter of:

Power Grid Corporation of India Limited
"Saudamani", Plot No.2,
Sector-29, Gurgaon -122 001.

.....Petitioner/Review petitioner

Vs

1. Madhya Pradesh Power Management Company Ltd.,
Shakti Bhawan, Rampur
Jabalpur-482 008.
2. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th floor
Andehri (East), Mumbai-400 052.
3. Gujarat Urja Vikas Nigam Ltd.,
Sardar Patel Vidyut Bhawan,
Race Course Road, Vadodara-390 007.
4. Electricity Department, Government of Goa,
Vidyut Bhawan, Panaji,
Near Mandvi Hotel, Goa-403 001.
5. Electricity Department,
Administration of Daman and Diu,
Daman-396210.



6. Electricity Department,
Administration of Dadra Nagar Haveli,
U.T. Silvassa-396 230.
7. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh-492 013.
8. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Ltd.,
3/54, Press Complex, Agra-Bombay Road
Indore-452 008.

....Respondents/Respondents

For review petitioner : Shri M. G. Ramachandran, Advocate, PGCIL
Shri Swapnil Verma, PGCIL
Shri S.S Raju, PGCIL
Shri Mohd. Mohsin, PGCIL

For respondent : None

ORDER

This review petition has been filed by Power Grid Corporation of India Limited (PGCIL) seeking review of the order dated 23.12.2013 in Petition No. 62/TT/2012, wherein transmission tariff for Extension of 765/400 kV Bilaspur pooling station alongwith LILO of Sipat-Seoni Ckt-2 with 3X80 MVAR switchable line Reactor (Asset-1) and 765/400 kV, 1500 MVA auto Transformer-3 (Asset-II) (hereinafter referred to as "transmission assets") under WRSS XI scheme in Western Region was allowed for the period starting from the date of commercial operation to 31.3.2014. The review petitioner has requested to review and rectify the order dated 23.12.2013 in Petition No. 62/TT/2012.

2. Asset Nos. I and II covered in the impugned order were scheduled to be commissioned on 1.3.2012. The assets were commissioned on 1.4.2012 and 1.8.2012, resulting in time over-run of one month and five months respectively. The



Commission in the impugned order condoned time over-run in case of Asset-I. However, time over-run of five months in case of Asset-II was not condoned and IDC and IEDC for five months amounting to ₹123.78 lakh were disallowed. The review petitioner has filed the instant petition seeking review of the said order. The Commission while dealing with the issue of time over-run of the assets covered in Petition No.62/TT/2012 held as under:-

"22. We have considered the time overrun aspect very carefully. The delay in commercial operation of Asset-I is marginal, of one month, and is condoned. As regards the delay in commercial operation of Asset-II, it is seen from the documents submitted by the petitioner that the transformers were delivered at Antwerp (Belgium) on 19.12.2011 for loading. These transformers arrived at Bombay port on 2.5.2012, loaded for Bilaspur on 11.5.2012 and are stated to have reached at site on 19.6.2012. It has been mentioned by the petitioner that the delay in transportation of the transformers is on account of bad weather conditions leading to freezing of sea. However, the petitioner has failed to produce any documentary evidence in support of its plea. It is further seen that it took 1½ months for the transformer to reach the site. As such, delay in execution of 1500 MVA ICT III at Bilaspur sub-station (Asset-II) cannot be condoned. Accordingly, IDC and IEDC incurred by the petitioner during the period of delay of 5 months are disallowed."

3. The review petitioner has submitted as under:-

a. The affidavits dated 26.7.2013 and 25.9.2013 filed in Petition No.62/TT/2012 specifically explained that the delay in commissioning of the transformers occurred on account of bad weather and freezing of river and sea making it impossible to transport the transformers from Antwerp, Belgium to Mumbai and thereon to Bilaspur by road. These affidavits were over-looked by the Commission while passing the impugned order. Therefore, there is an error apparent on the face of record which needs to be rectified;

b. The petitioner has submitted that the causes for delay are easily verifiable. The letter issued by the shipping agency establishes that the



equipment was ready to be shipped but could not be transported due to bad weather and the facts mentioned in the affidavits were not disputed by the beneficiaries; and

c. The reasons for delay are beyond the control of the petitioner and the impugned order be reviewed and the time over-run may be condoned.

4. Madhya Pradesh Power Management Company Limited (MPPMCL), Respondent No.1, has filed its reply vide affidavit dated 25.3.2014. MPPMCL has submitted as under:-

- a) The Commission has rightly disallowed the time over-run of five months in commissioning of Asset-II.
- b) The review petitioner has failed to place on record the terms of contract in relation to supply of the transformers and the terms of transport/shipping contract, etc.
- c) Procurement of the transformers is the responsibility of the respective supplier, transporter and the review petitioner. The beneficiaries including MPPMCL have nothing to do with procurement process. The review petitioner should claim compensation from the supplier or transporter. Since the review petitioner has chosen not to claim any compensation from them, it should suffer the logical consequences.
- d) Freezing of river and sea in north Europe is a normal situation and could not be considered as force majeure condition. Hence, the cost of the delay should

not be passed on to the beneficiaries by condoning the time over-run of five months.

5. The review petition was admitted on 17.4.2014. The review petitioner was directed to submit a certificate from a Government Agency, preferably Indian Embassy/Consulate in Belgium in support of its claim that no shipment was feasible from December, 2011 from the location due to freezing of the sea, as mentioned in the letter dated 5.5.2012 issued by M/s. Belfor Logistics. The review petitioner vide its letter dated 27.5.2014 sought time upto 15.7.2014 to file information which was allowed. The review petitioner vide affidavit dated 10.7.2014 has submitted a copy of a letter dated 1.11.2011 issued by Bulgarian River Shipping J.S. Co. along with certain other documents such as advisories issued by the Bulgarian Authorities.

6. MPPMCL in its additional reply vide affidavit dated 30.7.2014 has submitted that a mere declaration by the Bulgarian River Shipping J.S. Co. that the freezing of Danube Fairway as a "*force majeure*" condition cannot be classified as a "*force majeure*" condition binding on the parties hereto. The terms and conditions of "*force majeure*" between Bulgarian River shipping J.S. Co and the review petitioner vis-a vis, the review petitioner and the answering respondent is different. The information filed by the review petitioner vide affidavit dated 10.7.2014 was collected from the website of the maintenance agency of Danube river and the same cannot be relied upon. The review petitioner has failed to bring on record any authentic information from any government agency, preferably Indian Embassy or consulate in Belgium.



7. We have heard the learned counsel for the petitioner and the documents on record including the reply of MPPMCL. The petitioner has filed the Review Petition mainly on the ground while passing the impugned order, the Commission came to the conclusion that the petitioner has not produced any documentary evidence in support to its contention that delay in transformer was on account of bad weather conditions which led to freezing of the sea whereas the petitioner had explained the reasons in its affidavits dated 26.7.2013 and 25.9.2013 which was not considered by the Commission. In affidavit dated 26.7.2013, the review petitioner had given the following explanation:-

“ii) 1500 MVA ICT III at Bilaspur S/S

It is submitted that the transformer for this bank has been supplied by M/s CGL Electric System, Hungry. The transformers were inspected and cleared for dispatch by Powergrid. Copy of CIP & MICC is enclosed herewith as Encl -2 (page 11 to 12). These transformers were shipped on board and further dispatched from the port at Antwerp, Belgium on 19.12.2011. However, due to very bad weather condition and very low temperature in Northern Europe, the river and sea were frozen. Because of which, the transformers were stuck-up at the port and could not be transported. Copy of Bill of Lading is enclosed. The transformers could reach at site only by 19.6.2012. Copy of LR is enclosed. It took approximately a transit time of six months as against a normal transit time of 2 months (40 days for sea travel and 20 days for land travel from Mumbai to Bilaspur). On receipt of the transformers at site, the same were erected, checked for all pre-commissioning tests, commissioned and declared under commercial operation w.e.f. 1.8.2012. Keeping in view of the freezing of water due to extreme weather condition in Europe, which were beyond the control of the petitioner and its supplier, Hon'ble Commission may kindly condone the delay in commissioning of the transformer.”

8. The review petitioner had also placed on record the Bill of Lading dated 19.12.2011, Consignment Note note dated 11.5.2012 from Agarwal's Carriers Corporatin of India. The petitioner vide its affidavit dated 25.9.2013 had placed on record a certificate of Belfor Logistics which explained the delay of 4 ½ months for shipment of the transformer. After going through the affidavits dated 26.7.2013 and 25.9.2013, it cannot be denied that the petitioner had placed on record certain evidence regarding the freezing of the sea affecting the shipment of the transformer.

Without going into the merit of the submissions in the affidavit, the fact remains that the affidavit was overlooked while passing the impugned order. To that extent, the case of the petitioner is covered under 'error apparent on the face of record' and needs to be reviewed. Accordingly, in exercise of the power under Section 94 (f) of the Electricity Act, 2003 read with Order 47 Rule 1 of CPC and Regulation 103 of the Conduct of Business Regulations, we allow the review petition by withdrawing para 22 of the order, in order to consider the issue of time over-run on account of the delay in transportation of transformer due to bad weather conditions on merit.

9. Coming to the merits of the case, it is noticed that in the affidavit dated 26.7.2013, the review petitioner has given the following reasons for the time over-run of five months in case of 1500 MVA ICT III at Bilaspur Sub-station:-

- a. The transformers were shipped on board and further dispatched from Antwerp, Belgium on 19.12.2011. However, due to bad weather conditions and low temperature in Northern Europe, the river and sea were frozen. Because of which, the transformers were stuck-up at the port and could not be transported;
- b. The transformers reached the site only on 19.6.2012. It took approximately a transit time of six months as against the normal transit time of two months (40 days for sea travel and 20 days for land travel from Mumbai to Bilaspur); and
- c. Freezing of water due to extreme weather conditions in Europe is beyond the control of the petitioner and its supplier and hence the time over-run in commissioning of the transformer may be condoned.

10. The review petitioner vide affidavit dated 25.9.2013 had reiterated the submissions made in its affidavit dated 26.7.2013.

11. During the last hearing on 5.8.2014, learned counsel for the review petitioner submitted that in compliance with directions of the Commission, the review petitioner has placed on record a letter for Bulgarian River Shipping J.S. Co. which is a Belgium Government Agency and the said letter clearly states that during the period under consideration, navigation was extremely difficult. We had directed the review petitioner to explain the reasons for delay in transportation of the transformer from Mumbai to Bilaspur after its arrival at the port at Mumbai on 30.4.2012 and arrival at the site in Bilaspur on 19.6.2012. The review petitioner vide affidavit dated 8.9.2014 has submitted that the ship reached Mumbai port on 30.4.2012. The transformer was loaded in trailers after custom clearance and the trailers moved on 11.5.2012. The trailers reached Bilaspur site on 16.6.2012 & 19.6.2012 i.e. after about 35 to 40 days, which is mainly due condition of roads and onset of monsoon in Madhya Pradesh and Chhattisgarh. Further, the review petitioner submitted that erection testing and commissioning period of transformer bank of 3 units as per L2 network is 79 days but in this case, review petitioner erected, tested and commissioned the transformer bank by 31.7.2012 i.e. within 45 days. In addition, the review petitioner vide affidavit dated 10.7.2014 has submitted the following documents:-

- a. Letter dated 1.11.2011 of Bulgarian River Shipping J.S. Co. declaring Force Majeure for the km 401 to km 586 of Danube Fairway from 1st November, 2011; and
- c. Certain pages/documents downloaded from the website of Executive Agency for Exploration and Maintenance of the Danube River to show



that navigation was difficult from December, 2011 to February, 2012 on River Danube because of freezing of the river. One particular document pertaining to 7.2.2012 shows that there was floating of ice and no navigation was possible for roughly 100 km.

12. We have considered the reasons given by the petitioner for the time over-run of five months in case of CG Sipat Transformer. As per the submissions of the review petitioner in affidavit dated 1.7.2014, the transit time is normally 2 months (40 days for sea travel and 20 days for land travel from Mumbai to Bilaspur). In the instant case the transformers were shipped on 19.12.2011 and they reached Mumbai on 30.4.2012. It took 133 days as against the normal period of 40 days which the petitioner has attributed to bad weather conditions and freezing of River Danube. On perusal of documents on record filed in affidavit dated 26.7.2013 and 25.9.2013, it is noticed that the transformer was inspected and cleared for shipment by PGCIL on 19.12.2011. The transformer has been loaded in the ship on the same day which is apparent for the Bill of Lading issued on 19.12.2011. As per the Bill of Lading, the port of loading is Antwerp and the port of discharge is Mumbai.

13. Linear Bill of Lading dated 29.2.2012 has been placed on record vide affidavit dated 1.7.2014 which shows the port of loading as Constanza and port of discharge as Mumbai. The petitioner has placed on record vide affidavit dated 25.9.2013 a copy of the letter dated 5.5.2012 issued by Belfor Logistics which reads as under:-

“The CG Sipat transformer was delayed because the river was frozen and the transformer had to wait in the barge at the port and there was no other option to move the transformer by any other route. We tried to use the ice cutting mechanism but it failed and our barge got stuck in the river. The ships also

were avoiding to take berth at the port due to frozen water. This made matter more worst resulted in not getting ship. Hence, the delay of 4 ½ months.”

14. In response to our directions, the petitioner has submitted a letter dated 1.11.2011 from Bulgarian River Shipment J. S. Co. regarding force majeure in Bulgarian-Romanian part of the Danube. Relevant portion of the letter is quoted below:-

“Herewith we would like to draw your attention to the fact that in past days the water level in the BG-RO part of the Danube started rapidly to decrease. A number of shallows already appeared between km. 525 up to km. 586 with min draft between 220-240 cm.

Due to extremely low water level and limited parameters of the fairway, the navigation in this part of the Danube is extremely difficult. Meeting of the convoys and sailing during the night is prohibited. Passing of the convoys through the shallows is made barge by barge thus leading to great delays and huge waste of time and fuel.

Having in mind above mention obstacles and referring to Part II, article 14.1 from Bratislava Agreements and the respective terms from CMNI, starting from 1st November, we declare Force Majeure for the km. 401-km 586 of Danube fairway.

For the period of low waters, Bulgarian River Shipping Co. will limit considerably any carries activities, as loading/discharging/movement/towage of barges through above mentioned area. No delivery terms will be kept for any barges, passing or planned to pass trough this area.

In case that the depth of the of shallows dropped below 200 cm, the navigation in this part of the Danube will be totally ceased, all vessels will be anchored in the nearest save spots, fulfillment of the transport contract will be stopped or generally suspended.”

15. The review petitioner has also placed on record the documents downloaded from the website of Executive Agency for Exploration and Maintenance of the Danube River, which is an agency under the Ministry of Transport, Information Technology and Communication and comes under Republic of Bulgaria. Perusal of the documents shows that in the month of February, 2012 navigation was closed on different dates in certain parts of the Danube river.

16. From the above documents, it appears to us that the transformer was loaded on 19.12.2011 at Antwerp. Subsequently, a linear bill of lading has been issued on 29.2.2012 with the port of loading as Constanza. The transformer was unloaded at Mumbai on 29.4.2012. Counting the shipment from 29.2.2012, it took about two months to reach Mumbai as against the period of 40 days for sea travel. Therefore, 20 days time has been taken extra by the shipping agency for which no explanation is available.

17. Next we come to the transportation of the transformer from Mumbai to Bilaspur. As against the normal period of 20 days as indicated by the petitioner, the transportation has taken 49 days. We had directed the review petitioner to explain the reasons for this delay. The petitioner in its affidavit dated 8.9.2014 has explained as under:-

“Reason for delay for late arrival of transformer at site:

That the ship reached Mumbai port on 30.4.2012. The transformer was loaded in trailers after custom clearance and the trailers moved on 11.5.2012 (the normal time for custom clearance is 7-15 days). The trailers reached Bilaspur site on 16.6.2012 and 19.6.2012, i.e., after about 35 to 40 days, which is mainly due to the conditions of roads and also onset of Monsoon in MP and Chhattisgarh. Further, the erection, testing and commissioning period of transformer bank of 3 units as per L2 Network is 79 days but in this case, petitioner erected, tested and commissioned the transformer bank by 31st July 2012, i.e. within 45 days.”

18. Even if we accept the delay of 11 days for custom clearance and loading of the transformer in the trailers, the transportation took 35 days from 11.5.2012 to 16.6.2012. The petitioner has explained the reasons as monsoon and bad road conditions without any documentary proof to that extent. The review petitioner has not submitted any documentary evidence in the original petition as well as

subsequent submission regarding delay due to bad road conditions and onset of Monsoon in Madhya Pradesh and Chhattisgarh. Therefore, there is no convincing explanation for delay of about 15 days in road travel.

19. Keeping in view the above, we are of the view that the delay of 20 days in sea travel and 15 days in road travel has not been satisfactorily explained by the petitioner. Accordingly, we disallow time over-run of 35 days in respect of the transformer and, accordingly, the IDC and IEDC for the said period is disallowed.

20. The instant review petition is partly allowed and accordingly the staff of the Commission is directed to take action for consequential revision of tariff in Petition No. 62/TT/2012.

21. This order disposes of Petition No. 08/RP/2014 in Petition No. 62/TT/2012.

sd/-

(A. S. Bakshi)
Member

sd/-

(A. K. Singhal)
Member

sd/-

(M. Deena Dayalan)
Member

sd/-

(Gireesh B. Pradhan)
Chairperson