

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 64/RP/2016**

**in  
Petition No.164/TT/2015**

**Coram:**

**Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of Order : 21.7.2017**

**In the matter of:**

Review petition under Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 29.4.2016 in Petition No. 164/TT/2015.

**And in the matter of:**

Power Grid Corporation of India Limited,  
"Saudamini", Plot No. 2,  
Sector 29, Gurgaon-122001  
Haryana

.....**Petitioner**

**Vs**

1. Bihar State Power (Holding) Company Limited  
(Formerly Bihar State Electricity Board),  
Bidyut Bhawan, Bailey road,  
Patna-800 001, Bihar
2. West Bengal State Electricity Distribution Company Ltd.  
Bidyut Bhawan, Bidhan Nagar Block DJ  
Sector-II, Salt Lake City  
Calcutta-700 091.
3. Grid Corporation of Orissa Ltd.  
Shahid Nagar, Bhubaneswar-751 007.
4. Damodar Valley Corporation  
DVC Tower, Maniktala Civic Centre,  
VIP Road Calcutta-700 054.



5. Power Department, Government of Sikkim,  
Gangtok- 737 101
6. Jharkhand State Electricity Board  
In Front of Main Secretariat Doranda,  
Ranchi-834 002.

.....Respondents

**For petitioner** : Shri Deepak Jain, Advocate, PGCIL  
Ms. Shantala Sankrit, Advocate, PGCIL  
Shri Tanay AK Pareek, Advocate, PGCIL  
Ms. Tanvi Sharma, Advocate, PGCIL  
Shri S.S Raju, PGCIL  
Shri M.M. Mondal, PGCIL  
Shri S.K. Venkatesan, PGCIL  
Shri Amit Yadav, PGCIL  
Ms. Pratibha Raje Parmar, PGCIL

**For respondent** : None

### **ORDER**

This review petition has been filed by Power Grid Corporation of India Limited (PGCIL) under Regulation 103(1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 29.4.2016 in Petition No.164/TT/2015, wherein the transmission tariff was allowed for Reconductring Ckt-I of 400 kV D/C Siliguri-Purnea (HTLS cond.) transmission line under ERSS-I in Eastern Region (hereinafter referred to as the "instant asset") for 2014-19 tariff period under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (referred as "2014 Tariff Regulations"). Aggrieved by the said order, the Review Petitioner has filed the instant review petition. The Review Petitioner has prayed to condone the complete time over-run of 53 months in commissioning of the instant assets and allow the IDC and IEDC for the corresponding period.



## **Brief facts of the case**

2. The Review Petitioner claimed tariff for the instant assets in Petition No. 164/TT/2015 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (referred as "2014 Tariff Regulations"). As per the Investment Approval dated 4.10.2006, instant assets were scheduled to be commissioned within 36 months from the date of Investment Approval. Accordingly, the assets were scheduled to be commissioned on 3.10.2009 (i.e. 1.11.2009). However they were commissioned on 1.4.2014, after a time over-run of 53 months. While allowing the tariff for the 2014-19 period, vide order dated 29.4.2016, the Commission condoned the time over-run of 28.5 months due to delay in tying up with World Bank, delay in delivery of conductor due to tsunami in Japan, tower collapse and delay in grant of shutdown. However, the remaining time over-run of 24.5 months were not condoned in the impugned order. The Commission while dealing the time over-run in Petition No. 164/TT/2015 has held as under:-

"12. We have considered the submissions of the petitioner. There was delay in tie-up with World Bank which delayed the award of contract by 18 months, i.e. from the date of investment approval to the date of signing of loan agreement on 28.3.2008. In a similar case, the delay due to tie-up with World Bank was condoned in order dated 12.5.2015 in Petition No. 53/TT/2013. We are of the view that the delay of 18 months in signing the loan agreement with World Bank is due to the procedures laid down by it and hence it is condoned. The time over-run of four and half months (from 1.2.2012 to 16.6.2012) due to delay in delivery of conductor due to tsunami in Japan is a force majeure condition and it is beyond the control of the petitioner and hence it is condoned. Time over-run of one month (from 17.6.2012 to 16.7.2012) on account of tower collapse due to storm (after excluding overlapping delay) is also beyond the control of petitioner so it is condoned. Time over-run of 5 months due to shifting of shutdown from May to October, 2015 is also condoned. Accordingly, out of total time over-run of 53 months in commissioning of the instant asset 28.5 months are condoned and the remaining 28.5 months is not condoned."

3. Aggrieved by the said order, the Review Petitioner has filed the instant review petition seeking condonation of the entire period of time over-run of 53 months and consequently to allow the corresponding IDC and IEDC. The instant review petition was admitted on



6.12.2016 and the respondents were directed to file reply to the review petition. However, none of the respondents have filed any reply.

4. The tariff for the Circuit-II of Siliguri-Purnea (HTLS cond.) transmission line covered in the ERSS-I, which was commissioned on 1.6.2013, was allowed under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (referred as "2009 Tariff Regulations") vide order dated 12.4.2016 in Petition No.104/TT/2013. There was time over-run of 43 months in commissioning of Circuit-I. Time over-run of 28.5 months in commissioning of Circuit II was condoned and the remaining 14.5 months was not condoned. The Review Petitioner filed a Review Petition No.63/RP/2016 against the order dated 12.4.2016 seeking condonation of the entire period of time over-run of 43 months. The Commission rejected the Review Petition No.63/RP/2016 vide order dated 20.7.2017.

#### **Grounds for Review**

5. The grounds submitted by the Review Petitioner in the instant review petition are identical to the submissions made in Review Petition No. 63/RP/2016 and they are as follows:-

- a) High Tension Low Sag (HTLS) conductor was being used for the first time in India and funded by World Bank. This new conductor was capable of carrying more power on same tower structure than any other conductor. This resulted in cost saving and less burden on the DICs.



- b) The contract was awarded in September, 2010, after all necessary compliance with the World Bank, which was scheduled to be awarded around mid 2007 as per approved FR plan. After signing of the loan agreement with the World Bank, it took around 24 months to award the contract which again required the compliance and NOC from the World Bank.
- c) Chronology of events had been submitted to the Commission in the Petition No. 164/TT/2015 however, the same has been inadvertently overlooked while condoning the delay in the impugned order.
- d) The petitioner had to modify the qualifying requirements as per requirement of the funding agency and resultantly, there was delay of two years in finalization of contracts after draft bidding documents were forwarded to World Bank for their approval. Further, HTLS conductor was also to be sourced through international competitive bidding route which was not available in India. Further, during this period no investment was made in this project.
- e) Severe ROW constraints were faced in various locations during de-stringing phases. Sometimes local villagers mixed up with anti-socials elements threatened the contractors and stopped the work at various locations. Prolonged persuasion and meetings at District administration level were taken several times. Letters were not written to the authorities every time there were problems, methods like mediation was adopted to avoid hindrance in the carrying of work. Though the RoW problems in the instant case was for a small duration, it led to delay for greater duration due to halting of work, subsequent mobilization and re-



mobilization of resources/gangs and time consumed in regaining the desired work pace. Thus, at least two months delay was caused due to ROW problems.

- f) The Siliguri-Purnea line is crossing two major railway lines. The Review Petitioner wrote letters dated 21.2.2013 and 2.4.2013 to the railway authorities seeking traffic blocks. The railway authorities cleared the railway block on 7.5.2013. It took around 3 months to obtain required clearance from the concerned Railway Authority and same was beyond the control of the Review Petitioner. These letter were submitted in the main petition, but were overlooked by the Commission while issuing the impugned order.
- g) Designated ISTS Customers (DIC's) are not burdened due to delay as there was no increment in IDC. As the LOA award was delayed, infusion of fund started from 31.3.2011 i.e. 54 months after IA resulting in less IDC. The initial advance for the project could be released only on 31.3.2011;
- h) No expenditure against IDC and IEDC was made till 31.3.2011. The subject asset was commissioned after 26 months of fund infusion. Hence, in the instant case duration of fund infusion is within the time period of investment approval.

6. During the hearing on 24.1.2017, the learned counsel for the petitioner submitted that High Tension Low Sag (HTLS) was being used for the first time in India and was funded by World Bank. The contract was awarded in September, 2010 after complying with all the requirements of World Bank, which was scheduled to be awarded around mid 2007 as per approved FR plan. After signing the loan agreement with the World Bank, it took around 24



months to award the contract which again required the compliance and NOC from the World Bank. The petitioner had to modify the qualifying requirements as per requirement of the World Bank. There was delay of two years in finalization of contract after draft bidding documents were forwarded to World Bank for their approval. Learned counsel for the petitioner further submitted that HTLS Conductor was to be sourced through international competitive bidding route and requested to condone the time over-run on this count. He further requested to allow the IDC and IEDC claimed for the corresponding period.

### **Analysis and Decision**

7. We have considered the submissions of the Review Petitioner. The instant assets were scheduled to be commissioned by 1.11.2009. However, they were commissioned on 1.4.2014. There was time over-run of 53 months in commissioning of the instant assets. Time over-run of 28.5 months due to the time taken for grant of loan by the World Bank, delay in delivery of conductor due to Tsunami in Japan, tower collapse and delay in grant of shut-down were condoned and the remaining period of time over-run of 24.5 months was not condoned. The Review Petitioner has filed the instant review petition seeking condonation of the remaining 24.5 months of time over-run. The Review Petitioner has contended that the delay in award of contract due to World Bank, delay due to International Competitive Bidding, delay due to RoW issues and delay in grant of traffic block by railway authorities were not appreciated in the impugned order. The grounds raised by the Review Petitioner in the instant review petition are identical to the grounds raised by the Review Petitioner in Review Petition No.63/RP/2016, except for the delay in grant of traffic block by railway authorities which is an additional



ground submitted by the Review Petitioner in the instant review petition. The Commission has already dealt with the three of the above said four grounds in its order dated 20.7.2017 in Review Petition No.63/RP/2017. The relevant portion of the order dated 20.7.2017 is extracted hereunder:-

“6. We have considered the submissions of the Review Petitioner. The instant assets were scheduled to be commissioned by 1.11.2009, however they were commissioned on 1.6.2013. There was time over-run of 43 months in commissioning of the instant assets. Time over-run of 28.5 months due to the time taken for grant of loan by the World Bank, Tsunami in Japan, tower collapse and delay in grant of shut-down were condoned and the remaining period of time over-run was not condoned. The Review Petitioner has filed the instant review petition seeking condonation of the remaining 14.5 months of time over-run. Review Petitioner has contended that the delay in award of contract due to World Bank, delay due to International Competitive Bidding and delay to RoW issues were not appreciated in the impugned order.

7. The Review Petitioner’s first contention is that the Commission did not consider the delay in awarding the contract. The Review Petitioner submitted that the contract was awarded in September, 2010 after complying with the requirements of the World Bank, which was scheduled to be awarded in the middle of 2007 as per the FR. This delay of 38 months in awarding the contract was beyond the control of the Review Petitioner and should be condoned. After signing the loan agreement on 28.3.2008 with World Bank, it took around 24 months to award the contract after complying with the requirements of the World Bank. The requirements were raised for the first time which was not envisaged by the Review Petitioner initially. Further, the World Bank revised the Qualifying Requirements on two occasions and the two-stage bidding process delayed the award of contract.

8. We have considered the submissions of the Review Petitioner. On 29.8.2008, World Bank approved the Qualification Requirement (QR) and technical specifications and on 3.9.2010 loan agreement was signed. The Review Petitioner, in affidavits dated 15.12.2015 and 19.10.2015 filed in the main petition submitted that the Review Petitioner planned to complete the award of contract of conductor in June, 2007 i.e. 9 months from the date of Investment Approval (4.10.2006). It is observed that at the time of Investment Approval, the Review Petitioner had forwarded proposal to Ministry of Power (MoP). Further, MoP had forwarded the same to Ministry of Finance (MoF) as per para 17 and 10 of order dated 12.4.2016 in Petition No. 104/TT/2013. From the submissions of the Review Petitioner with regard to World Bank funding for the period 2003 to 2005, it is observed that period from sending bid documents to contract signing is around 7 months to 15 months. With regard to World Bank funding for the period 2006 to 2008, it is observed that period from preparation of bid documents to contract signing is around 4 months to 20 months. The Review Petitioner was fully aware at the time of Investment Approval that proposal of funding is at a very preliminary stage and MoP and MoF may take some time for approving the documents, however, the Review Petitioner provided for only 9 months for the entire activity of MoP approval to contract signing. The Review





Petitioner was conscious that it would take upto 15 months time by World Bank from the date of bid documents preparation to contract signing, which is only a part of the entire activity of getting the loan. However, the Review Petitioner has not factored properly the time required for loan signing with World Bank and award of contract. It is observed from the chronology of events submitted by the Review Petitioner, i.e. 29.8.2008 (approved QR and Technical Specifications) to 3.9.2010 (date of signing of the agreement), that there is no delay on the part of the World Bank. The World Bank has replied promptly to all Review Petitioner's communication. The Review Petitioner has stated that World Bank requested to modify QR twice which is beyond the control of the Review Petitioner. However, requirement of revision of QR by World Bank cannot be said to be beyond the control of Review Petitioner as preparation of QR as per requirements of World Bank was responsibility of the Review Petitioner. It is observed from the submissions of the Review Petitioner that the time over-run from 29.8.2008 to 3.9.2010 was fully within the control of the Review Petitioner. Further, the Review Petitioner had raised the issue of revision of the Qualifying Requirements by the World Bank on two occasions and two stage bidding process in the main petition and the Commission issued order dated 12.4.2016 after considering the Review Petitioner's submissions. The Review Petitioner cannot reargue the matter on merits at the review stage. Accordingly, review on this count is not allowed.

9. The Review Petitioner's second contention is that the delay due to International Competition Bidding was not considered in the impugned order. The Review Petitioner has submitted that delay of two years in finalisation of contracts after forwarding the Bidding Documents to the World Bank for approval was not considered by the Commission. Further, the HTLS conductor was not available in India and was sourced through International Competitive Bidding route and was introduced for the first time in India. We have considered the submissions of the Review Petitioner. As regards the contention that HTLS conductor was not available in India and was sourced through International Competitive Bidding, the Review Petitioner was well aware of the fact that the HTLS conductor was not available in India and was to be sourced through international bidding. Accordingly, the Review Petitioner should have factored the time required for acquiring the HTLS through international bidding while getting the timeline approved for purchasing the HTLS conductor. Further, the Review Petitioner has availed World Bank funding in the past and was aware of the various requirements of the World Bank. We are of the view that the Review Petitioner failed to factor the time required for purchasing the HTLS conductor through international bidding at the time Investment Approval. The delay in acquiring the HTLS conductor is attributable to the Review Petitioner. Further, the Review Petitioner had raised the issue of international bidding and World Bank procedures in the main petition and the Commission issued order dated 12.4.2016 considering the Review Petitioner's submissions. The Review Petitioner cannot reargue the matter on merits at the review stage. Accordingly, the review on this count is also not allowed.

10. The third contention of the Review Petitioner is that the Commission did not consider the delay that occurred due to RoW issues in the impugned order. The Review Petitioner has submitted letters dated 10.1.2013, 28.1.2013 and 29.1.2013 in Petition No. 104/TT/2013. The Review petitioner has submitted that at least two months delay occurred due to RoW problems. We have gone through three letters. We notice that letter dated 10.1.2013 was addressed to SDO, Islampur requesting for co-operation for re-



conducting work of 400 kV D/C Siliguri-Purnea transmission line. The said letter is just an intimation regarding start of work. Subsequently, two letters dated 28.1.2013 and 29.1.2013 were addressed to District Administration regarding RoW issues. There is no further communication to prove RoW problem continued for two months. We are not convinced that the RoW problems continued for two months in the absence of any documentary evidence. Further, RoW issues were considered by the Commission in the impugned order. The Review Petitioner is trying to reargue the matter on merits, which is not allowed at the stage of review. Accordingly, the Review Petitioner's prayer for review on this count is also disallowed."

8. As the Review Petitioner's contentions regarding the delay in award of contract due to World Bank, delay due to International Competitive Bidding and delay to RoW issues have already been dealt by the Commission in order dated 20.7.2017, we do not find any need to deal with the same again in this order. The findings of the Commission in order 20.7.2017 are applicable to the instant case.

9. Accordingly, we deal with the Review Petitioner's last contention that the delay in grant of traffic block by railway authorities were not appreciated in the impugned order. The Review Petitioner has contended that the Review Petitioner sought the traffic blocks from the railway authorities, vide letters dated 21.2.2013 and 2.4.2013. However, the traffic block was granted by the railway authorities only on 7.5.2013 and this led to delay of three months. It is the contention of the Review Petitioner that these letters were submitted by the Review Petitioner in the main petition, however the same were not considered by the Commission while issuing the order dated 29.4.2016. We have considered the submissions of the Review Petitioner. We note that though the Review Petitioner has enclosed two letters, dated 21.2.2013 and 2.4.2013, written by the Review Petitioner to the railway authorities seeking traffic block and two letters from N.F. Railway dated 9.4.2013 and 6.5.2013 granting traffic block in the main petition, the Review Petitioner did not rely on these evidence in the main petition in support of its



prayer. Hence, these letters were not referred to in the impugned order. It is further observed that the Review Petitioner vide letter dated 21.2.2013 sought traffic and power block between Dalkola to Telta section for four hours on 12.3.2013 and it was followed by letter dated 2.4.2013, where the Review Petitioner sought traffic block from Ranipatra-Purnea section on 10.4.2013 and Dalkhola-Telta section on 16.4.2013. The Review Petitioner has not submitted the reasons for revising the permission for Dalkhola-Telta section. The NF Railway vide letter dated 9.4.2013 gave clearance for Ranipatra-Purnea section as requested by the Review Petitioner and the permission for Dalkhola-Telta line was given for 7.5.2013. The railway authorities gave the permission as requested by the Review Petitioner in one case and in the case of second section, permission was given after 20 days of the requested date. We are of the view that the Review Petitioner was aware that the instant work involves railway crossing and accordingly the Review Petitioner should have planned well in advance. Further, the Review Petitioner has not submitted the details of time actually provided for in the FR and the time actually taken for obtaining the clearance, in the absence of which it is difficult to assess the delay in granting the traffic blocks. In any case, the period of delay in granting the permission for traffic block by railways which resulted in an effective delay of 20 days (traffic block granted on 7.5.2013 as against required date of 16.4.2013) is subsumed by the delay on account of shifting of the shutdown of the transmission line from May, 2013 to October, 2016, at the instance of OCC which has already been condoned in the order dated 29.4.2016. Therefore, the claim for condoning of delay on account of delay in granting traffic blocks by railways no more



survives. There is no merit in the Review Petitioner's contention. Accordingly, the review on this count is also rejected.

10. The Review Petition No.64/RP/2016 is disposed of in terms of the above.

sd/-  
**(M.K. Iyer)**  
**Member**

sd/-  
**(A.S. Bakshi)**  
**Member**

