

BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**I.A. No.25/2000****And****IA. No.31/2000****In****Review Petition No.37/2000****In****Petition No.1/1999****Coram:**

1. Shri S.L. Rao, Chairman
2. Shri D.P. Sinha, Member
3. Shri G.S. Rajamani, Member
4. Shri A.R. Ramanathan, Member

In the matter of

Petition for review of IEGC orders dated 30.10.1999 and 21.12.1999.

And in the matter of

Powergrid Corporation of India Limited ...Petitioner

The following were present:

1. Shri Parag Tripathi, Sr.AdvocatePetitioner
2. Shri Pramod Dayal, Advocate -do-
3. Shri Bhanu Bhushan, Dir.(Operations), PGCIL -do-

ORDER**(Date of Hearing 22-06-2000)**

The present petition has been filed for review of the order dated 30.10.1999, limited to the directions contained in paragraph 3.17 of the order for setting up of Monitoring Committee. An application (IA 25/2000) has been filed for condonation of delay in filing this review petition. The petitioner has also filed another application (IA 31/2000) for permission to urge additional legal grounds on the question of jurisdiction of the Commission, not urged before the Commission earlier at the time of hearing of the main petition..

2. In terms of para 3.17 of our order dated 30.10.1999, we had directed the Central Transmission Utility (which function is presently with the petitioner), to constitute a Monitoring Committee. The relevant portion of our direction is extracted below :

"With the above status of the chief functionary of the CTU and RLDCs we also consider it appropriate that there shall be a Monitoring Committee at the CTU level covering all the 5 RLDCs. The functions of this Committee shall include periodic monitoring of the functions of RLDCs and review of RLDCs directions and their compliance/non-compliance by the agencies. The Committee shall consist of the following members:

1. *Chairman, Powergrid*
2. *Chairman of all REBs*

3. *One representative from the generating companies owned or controlled by the Central Government to be rotated annually.*

The Chairman, Powergrid shall chair the Committee. Director (Operation), Powergrid shall be the Secretary of the Committee. The Members shall attend the meeting personally and no proxies shall be allowed. The quorum for the meeting shall be 5 members. The Committee shall meet at least thrice in a year."

3. The review petition has been filed on 2-6-2000, though as per Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999, a review petition is to be filed within 60 days of the making of the order. The review petition has been filed with a delay of 156 days.

4. In support of its application for condonation of delay, the petitioner has stated that after examination of the matter departmentally, the case was referred to Additional Solicitor General of India who after going through the order opined that direction contained in para 3.17 of the order dated 30.10.99 is contrary to the statutory scheme of Section 55 of the Electricity (Supply) Act, 1948. It has been further stated that PGCIL in the last week of April, 2000 was advised that it would be possible to seek a limited review on the directions contained in para 3.17 of the order dated 30.10.99 for modification/ deletion so that the requirement of constituting the Monitoring Committee could be dispensed with. As noted above, the present review petition has been filed on 2-6-2000.

5. The petitioner, while seeking condonation of delay should have elaborately explained the delay beyond the 60 days from the IEGC order which expired on 30th December, 1999 and the date of this petition i.e. up to 1st June, 2000. In support of its request for condonation of delay, it only suggests that the opinion of the learned Additional Solicitor General of India was received during the last week of April, 2000. It does not further explain the various actions taken till the advice was received from the learned Additional Solicitor General in the last week of April, 2000. Finally, there is no explanation for the delay in filing the petition even after the opinion of the learned Additional Solicitor General of India was received. It has taken more than 5 weeks after the stated receipt of advice to file the present petition. In our view, the petitioner has failed to discharge its burden of satisfactorily explaining the delay in filing the present review petition. Therefore, IA 25/2000 seeking condonation of delay in filing the review petition is dismissed and with its dismissal, review petition itself stands rejected

6. Even otherwise, we are satisfied that the review petition is not maintainable. Shri Parag Tripathi, Sr. Advocate appearing for the petitioner submitted that RLDC is a statutory body. As defined in Section 55 (2) of the Electricity (Supply) Act, 1948, RLDC is an apex body. By virtue of provisions of Section 13 (c) and 13 (h) of the ERC Act, 1998, only the Commission is empowered to exercise control over the functioning of RLDCs and this role cannot be delegated to a Monitoring Committee since it will amount to placing the Monitoring Committee over RLDCs which are the apex bodies. He argued that the constitution of the Monitoring Committee in accordance with the directions contained in the order dated 30-10-1999 amounts to substituting a non-statutory body over RLDC. He pointed out that it is a mistake and therefore calls for a review of the directions of the Commission on the subject. He argued that the Monitoring Committee cannot decide the issues which fall within the jurisdiction of the Commission. In our directions for constitution of the Monitoring Committee, there is no delegation of the powers and functions of the Commission as laid down under the ERC Act to the Monitoring Committee and in the context of the order, the word " review" used in connection with the Monitoring Committee was not that of judicial review of the orders passed by RLDCs. It is clear that the direction was given with a view to injecting transparency and encouraging process of consultation of the users in the functioning of the statutory body. The apprehensions of the petitioner in this regard are totally unfounded.

7. In the light of the foregoing discussion, this review petition and the Interlocutory Applications (IA 25/2000 and 31/2000) filed by the petitioner are not maintainable and are hereby dismissed.

Sd/-
(A.R. Ramanathan)
Member

Sd/-
(G.S. Rajamani)
Member

Sd/-
(D.P. Sinha)
Member

Sd/-
(S.L. Rao)
Chairman

New Delhi dated the 22nd June, 2000.