

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No.296 of 2010

**Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date of Hearing: 28.12.2010

Date of Order: 31.12.2010

In the matter of:

Request for extension of the Required Commercial Operation Date (RCOD) for execution of Western Region System Strengthening Scheme-II (Projects B & C)

And

In the matter of:

Western Region Transmission (Gujarat) Pvt.Ltd., Mumbai
Western Region Transmission (Maharashtra) Pvt.Ltd., Mumbai **Petitioners**

Vs

1. Power Grid Corporation of India Limited, Gurgaon
2. Maharashtra State Electricity Distribution Company Limited, Mumbai
3. Gujarat Urja Vikas Nigam Ltd., Vadodra
4. Chattisgarh State Electricity Board, Raipur
5. Electricity Department, Govt. of Goa, Panaji
6. Electricity Department, Admn. of Daman and Diu, Daman
7. Electricity Department, Dadra and Nagar Haveli, Silvassa
8. Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
9. M. P. Power Trading Co. Ltd., Jabalpur**Respondents**

Advocates/Representatives of the parties present

1. Shri Alok Roy, WRTM/WRTG
2. Shri L N Mishra, WRTM/WRTG
3. Shri Anil Rawal, RPTL
4. Shri Kiran A, RPTL
5. Shri Mayank Bhardwaj, RPTL
6. Shri Rupin, WRTM
7. Shri Hasan Murtaja, Advocate, WRTM
8. Shri Prashant Sharma, Power Grid
9. Shri S. Mittal, PGCIL



10. Shri Ajay Holani, PGCIL
11. Ms. Manju Gupta, PGCIL
12. Shri P.J. Jani, GUVNL

ORDER

Power Grid Corporation of India, the Central Transmission Utility in its letter: Reference Number CC/PI/2010 dated 4.11.2010 had forwarded letter No.RPTL/WRSSS-II/IA/63 dated 7.10.2010 and letter No.RPTL/WRSSS-II/IA/64 dated 13.10.2010 received from Reliance Power Transmission Limited for extension of the scheduled date of commercial operation of Project B and C under Western Region System Strengthening Scheme-II for reasons beyond the control of the project companies. Considering the importance of the matter, these letters were treated as a miscellaneous petition for consideration of the issue at hand and accordingly notices were issued vide order dated 24.11.2010 for hearing of the matter on 7.12.2010. The petitioner was directed to file any further document relevant to the matter after serving the copies of the same on the beneficiaries. The petitioner has filed additional documents on 6.12.2010 after serving the copies on the beneficiaries.

2. During the hearing on 7.12.2010, Respondent No.3, Gujarat Urja Vikas Nigam Limited (GUVNL) was granted time till 20.12.2010 to file its reply and the petitioner was granted time till 27.12.2010 to file its rejoinder. GUVNL filed its reply vide affidavit dated 20.12.2010. The petitioner has filed its rejoinder to the reply of GUVNL vide affidavit dated 27.12.2010. Replies to the petition have also been filed by Madhya Pradesh Power Trading Company Ltd. and Power Grid Corporation Ltd.



3. GUVNL in its reply of 20.12.2010 had made a specific request for an opportunity of hearing for putting forth its views before the Commission. Considering the request of GUVNL, the matter was taken up for hearing on 28.12.2010. Having heard the representatives of the petitioners, GUVNL and Power Grid Corporation of India Ltd. and after perusing the documents on record, we proceed to dispose of the petition in terms of our decision in the succeeding paras.

4. The Commission in its orders dated 30.12.2008 in Petition No.27/2008 and Petition No.28/2008 had granted the transmission licences to Western Region Transmission (Maharashtra) Private Limited, Mumbai and Western Region Transmission (Gujarat) Private Limited, Mumbai for construction, commissioning, operation and maintenance of the transmission lines falling under Western Region System Strengthening Scheme-II (Project-B) and Western Region System Strengthening Scheme-II (Project-C) respectively. The scheduled date of commercial operation of the projects was 31.3.2010 as per the Implementation Agreement. On account of the delay in signing of the Transmission Service Agreements by the beneficiaries, the Commission had, in the above mentioned order, granted nine months time for achieving the commercial operation of the projects i.e. upto 31.12.2010. Reliance Power Transmission Limited (RPTL) has submitted that the period of 24 months allowed by the Commission for implementation of the project got effectively reduced by ten months on account of delay in signing of the Power Transmission Agreement by the beneficiaries and delayed receipt of approval under the Section 68 and Section 164 of the Electricity Act, 2003 and unprecedented down-pour of rain immediately after receipt of the approval. RPTL has requested that project companies may be provided extension in



Required Commercial Operation Date (RCOD) for Project B and Project C by nine months and six months respectively under clause 4.3(iii) of the Implementation Agreement by readjusting RCOD to September 2011 and June 2011 respectively.

5. The petitioners in their written submission dated 5.12.2010 have submitted the following in elaboration and furtherance of RPTL's letters dated 7.10.2010 and 13.10.2010:

(a) As per the order of the Commission, Respondent No. 1 invited proposals for international competitive bidding basis for selection of Independent Private Transmission Company (IPTC) to establish transmission line associated with Project B and Project C. Reliance Energy Transmission Ltd. (subsequently renamed as Reliance Power Transmission Ltd.) was notified as the prospective IPTC. Project B and Project C are being implemented by the petitioners as the special purpose vehicles of RPTL.

(b) Two Implementation Agreements dated 23.11.2007 were executed between Respondent No. 1 and the petitioners for transmission lines associated with the Western Regions System Strengthening Schemes in respect of Project B and Project C. Under the Implementation Agreements, Required Commercial Operation Date has been defined to mean the date by which projects are required to be made ready for commercial operations unless extended in accordance with clause 3.5 or 4.4 thereof which date was specified as



31.3.2010. The said date was extended by the Commission to 31.12.2010 vide its order dated 30.12.2008 in Petition No. 27/2008 and 28/2008.

- (c) When the applications were made before the Commission for transmission licences, the EPC contract dated 15.5.2008 with third parties were in place and the petitioner has already set up site offices. Mobilization of manpower and machinery for implementation of the project was in place before the end of January 2009. Design and engineering related to the project was also completed on 15.12.2008.
- (d) After grant of licence by the Commission in its order dated 30.12.2008, the petitioners took steps for signing of the Power Transmission Agreement (PTA) with the beneficiaries. On 16.1.2009 all beneficiaries except Respondent Nos. 2 (MSEDCL) and 9 (MP Trading Company Ltd.) signed the PTA. After much persuasion, the PTA was signed by Respondent No. 2 on 11.2.2009 and by Respondent No. 9 on 3.3.2009. After signing of the PTA, the petitioners took steps to achieve the financial closure on 18.5.2009 as against the anticipated date of 25.1.2009.
- (e) The petitioners applied to Government of India, Ministry of Power on 22.4.2008 seeking approval under section 164 of the Electricity Act, 2003 (the Act). Though the petitioner duly followed up the matter, grant of approval under section 164 got delayed on account of absence of procedure for granting approval under section 164 of the Act. The procedure for grant of



permission under section 164 of the Act was published by Ministry of Power on 26.3.2009. The petitioner complied with the said procedure and after following up with Ministry of Power and Central Electricity Authority, a notification was issued on 17.7.2009 conferring the powers of the telegraph authority on the petitioner under section 164 of the Act. The petitioner has submitted that 15 months' time was consumed for getting the approval under section 164 of the Act.

- (f) Financial closure could be achieved by the petitioners only by making disbursements conditional upon receipt of such approval under Section 164 of the Electricity Act, 2003 as demanded by the lenders. Therefore, disbursements could not take place in the absence of the said approval. Without such disbursements, it was not possible for the Petitioners to implement the Project in a full-fledged manner so as to achieve the completion date. After issue of the notification, the petitioners could get the first disbursement from the financial institutions on 10.9.2009.
- (g) The petitioners have also submitted that while process of vendor identification and finalization for procurement of conductor insulator and other hardware got completed prior to issuance of transmission license, the actual placement of order could not take place till receiving finance from the lenders for such procurement and the same was held up due to lack of clearance under section 164 of the Electricity Act, 2003. However, some orders were placed prior to disbursement from the lenders by making advance payment by the



petitioners through their own resources to minimize the delay in implementation of the project.

- (h) The construction activities commenced immediately on receipt of approval under section 164 but the work got severely hampered due to unprecedented rain fall during September to November 2009. As per submission the rain fall during this period in all major districts of Maharashtra through which transmission lines had to pass and / or were passing was upto 554% higher as compared to that during Long Period Average of 50 years from 1941 to 1991, on the basis of data from Indian Metrological Department. The details of rain fall are as under:

% departure of rainfall in year 2009 from the Long Period Average (1941-1991) in major Districts of Maharashtra								
	Pune	Sholapur	Beed	Aurangabad	Kolhapur	Sangil	Osmanabad	Ahmednagar
Sep, 2009	2	26	33	7	106	48	6	-21
Oct. 2009	53	33	33	-6	64	21	21	8
Nov. 2009	353	106	296	554	194	216	90	362

- (i) in view of the delays due to delay in the approvals and unprecedented rainfall, about 10 months period was lost, leaving only 14 months for the execution of the project within time schedule given by the commission i.e by 31.12.2010. The petitioner has requested for extension by 9 months for project B and 6 months for the project C to re-store the time lost out of 24 months originally provided by the Commission for construction activities for the project.



- (j) Approval under Implementation Agreement included approval under section 68 of the Act for laying the overhead lines. Though a request was made to Ministry of Power on 18.3.2008, the approval was conveyed by Ministry of Power on 19.3.2009.
- (k) In Project C, on Rajgarh-Karamsrd line, a stretch of around 37 hectares of reserve forest is encountered, out of which 37 hectares are in Gujarat and rest in Madhya Pradesh. Though a proposal was initiated in April 2009 with the DCF, Devgarh Baria and is being followed up thorough the intervention of the CTU and Chairman, Western Regional Power Committee, work on the line is still stuck up pending forest clearance.
- (l) The reasons elaborated above have a cascading effect on the implementation of the projects. The petitioners have diligently and effectively commenced and progressed in the construction of the transmission lines and the additional time taken is on account of the factors beyond the control of the petitioners. The Commission had allowed for completion of the project by 31.12.2010 which allowed a period of 24 months for completion. Out of 24 months, a period of approximately 10 months was lost by reason of delay in approval and unprecedented rainfall in Maharashtra on account of which construction activities were hampered.
- (m)The petitioner has submitted that in the circumstances, it is necessary, expedient and in the interest of justice that time to complete the project be extended by nine months from 31.12.2010 to 31.9.2011 in respect of Project B and from 31.12.2011 to 30.6.2011 in respect of Project C. It has been further

submitted that the extension prayed for is within the benchmark time schedule of 28 months provided by the Commission for similar projects under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

6. Gujarat Urja Vikas Nigam Limited in its reply dated 20.12.2010 has made the following submissions:

(a) The beneficiaries who did not sign the Power Transmission Agreement (PTA) signed the same during March 2009. There was no considerable delay in signing the PTA and the plea of the petitioners seeking extension of RCOD on this ground cannot be accepted. Pursuant to the grant of licence, the petitioner should have infused equity contribution and started the commencement of the project till the PTA was signed.

(b) The petitioner was granted the transmission licence on 30.12.2008 and clearance under section 68 of the Act on 19.3.2009. The petitioner was therefore empowered to lay down or place electric lines including undertaking works under sections 67 and 68 of the Act and ought to have promptly commenced the work within the extended time frame granted by the Commission.

(c) By virtue of the approval under section 164 of the Act, the petitioners are conferred powers of telegraph authority under the Telegraph Act so that the petitioners could avail right of way through payment of compensation for the inconvenience caused. The compensation amount to be paid by the petitioners



towards any damage, detriment and inconvenience caused for the Right of Way is much less as compared to compensation under section 67 of the Act.

(d) The relief available under Force Majeure conditions under clause 4.4.2 of the Implementation Agreement was already granted by the Commission through order dated 30.12.2008 whereby nine month's extension in RCOD was granted and accordingly the petitioners are not now entitled for the relief prayed for.

(e) As regards the delay on account of unprecedented rain during September to November 2009, the petitioners should have made adequate planning in advance in anticipation of monsoon season and quantum of rain based on the geographical location so as to ensure completion of the construction activity. In any case, only Project B was affected by rain and the same cannot be considered for delay in completion of Project C.

7. The Respondent No. 9, Madhya Pradesh Power Trading Corporation Ltd. in its reply dated 4.12.2010 has submitted that the issue of non-signing of the PTA by the beneficiaries have already been considered in the Petition No. 27/2008 and 28/2008 and accordingly RCOD was revised. The same reasons cannot be agitated again and again. Moreover, the petitioner in violation of clause 4.4.1 of the Implementation Agreement has failed to obtain the consent of the beneficiaries. It has been submitted that further revision and extension of RCOD will lead to consequential losses to be passed on to the beneficiaries for no fault on their part.



8. Respondent No. 1, Power Grid Corporation of India Ltd., in its reply dated 30.12.2010 has submitted that Power Grid Corporation of India Ltd. is implementing substation portions including bay extension work under Western Region System Strengthening Scheme-II for Project B and Project C whereas the lines under the schemes are implemented by Western Region Transmission (Maharashtra) Pvt. Ltd. for Project B and Western Region Transmission (Gujarat) Pvt. Ltd. for Project C. As per the Implementation Agreement the schedule date of commercial operation of the projects was 31.3.2010. However, the Commission while granting the transmission licences to the petitioners had granted nine months extension for achieving the commercial operation of the projects considering the delay in signing of the PTA by the beneficiaries of the nature of and analogous to force majeure events. Respondent No. 1 has also placed on record the progress of the transmission lines in Project B and Project C as Annexure I and II to its reply. The Respondent No. 1 has also submitted the implementation status of substations under Project B and Project C undertaken by PowerGrid. It has been submitted that all the substations under Project B and C will be completed by March 2011. Respondent No. 1 has prayed that it should be allowed to declare the DOCOs of substations/bay extensions on their commissioning and to charge the tariff accordingly. As regards the extension of time prayed by the petitioner, Respondent No. 1 has not offered any comments whatsoever.

9. During the hearing of the petition, the representatives of the petitioners and the respondents argued on the same lines as indicated in the written submissions. On a query by the Commission about the role of the Commission in the issue related to mutual agreement between the petitioner and Respondent No. 1, the representative of



Respondent No. 1 submitted that since the Commission has granted the time extension at the time granting transmission licensee to the petitioner, the matter has been referred to the Commission this time also.

10. The issue before the Commission for consideration is the extension of RCOD sought by the petitioners for completion of the WRSSS-II Project B and C. Though Respondent No. 3 and 9 have objected to the grant of extension of time to the petitioners, they agreed that the lines are required for improvement of transmission facility in the region and the beneficiaries should not be burdened with additional charges for extension of the RCOD. Respondent No. 1 which is the responsible party under the Implementation Agreement to grant extension of time has left it to the Commission to take a view in the matter.

11. The Commission while disposing the petitions for grant of transmission licences by the petitioners had granted extension of time for completion of the projects by 31.12.2010. The Commission had taken the unprecedented decision considering the delays in signing the Power Transmission Agreement by the beneficiaries. In the same orders dated 30.12.2008, the Commission had directed the respondents to expedite signing of the Power Transmission Agreement within a period of 15 days from the date of issue of the said orders. The decision of the Commission in the orders dated 30.12.2008 to grant extension of the RCOD does not preclude the Respondent No. 1 to consider the request of the petitioners for further extension of the RCOD in terms of the provisions of the Implementation Agreement. The Respondent No. 1 has mechanically forwarded the letters written by the petitioners to this Commission without any comments or



recommendations. Respondent No. 1 being the Central Transmission Utility is responsible to “ensure development of an efficient, coordinated and economical system of inter-State transmission lines for smooth flow of electricity from the generating stations to the load centres”. Therefore, it is incumbent of the Respondent No. 1 to monitor the progress of the project and take remedial measures for timely completion of the project.

12. The petitioners have sought extension of time mainly for two reasons - the delay in obtaining the approval under Section 164 of the Act, and heavy downpour of rain for three months in Maharashtra just after the approval under Section 164 was granted. The Respondent No. 3 has submitted that the petitioners should have proceeded with the construction work on the authority of Sections 67 and 68 of the Act after grant of licence by this Commission without waiting for approval under Section 164 of the Act. The petitioners in their rejoinder have submitted that “there were monthly progress reports and meetings in WRPC and other forums where all concerned parties were kept informed of the issues being faced delaying the progress on the projects including delay in receipt of the approval under Section 164 of the Electricity, Act, 2003 and the steps being taken by petitioners. No such contention was ever raised by the participants at any stage”. The representative of the petitioners explained during the hearing that the approval under Section 164 of the Act was still necessary to enable it to “place the telephonic or telegraphic communications necessary for proper coordination of work”. As regards the delay on account of rainfall, the petitioners in their rejoinder have submitted that the construction activity could have commenced only after obtaining approval under Section 164 of the Act and the approval coincided with unprecedented rainfall in Maharashtra and excavation activity could not commence effectively.



Accordingly, the petitioners have pleaded rainfall in case of Project B in Maharashtra only.

13. The Central Government has notified the Works of Licensee Rules, 2006 under Section 67(2) read with Section 176(2)(e) of the Act which enables a licensee to carry out the works, lay down or place electricity supply line or fix any support of overhead line among other things. The petitioners after obtaining the licence from the Commission were authorized to carry out the works under Works of Licensee Rules, 2006. It is, however, noticed that the petitioners were granted the approval by Ministry of Power, Govt. of India under Section 68 of the Act to lay the overhead lines only on 19.3.2009. Therefore, the petitioners after obtaining the transmission licences and approval under section 68 of the Electricity Act, 2003 were authorized under Act to carry out the work of laying the transmission line after 19.3.2009. The petitioners did not start the work till the notification for authorization of the petitioners under section 164 was issued on 17.7.2009. We agree with the petitioners that the approval under Section 164 is necessary for the purpose of placing the telephonic or telegraphic communication necessary for the proper coordination of work on the transmission line. The Ministry of Power, Govt. of India also realizing the importance of the approval under Section 164 of the Act for the transmission licensees proceeded to lay down a procedure for processing the cases for grant of approval under Section 164 which delayed the notification authorizing the petitioners to exercise the power of telegraph authority for the purpose of laying the electric lines and other works. The petitioners received the approval under Section 68 of the Act on 19.3.2009 and the approval under Section 164 of the Act on



17.7.2009. Effectively there is a delay of four months on account of the approval under Section 164 of the Act.

14. As regards the heavy downpour of rain from September to November, 2009 in Maharashtra, it is observed from the data placed on record by the petitioner that the percentage departure in rainfall from Long Period Average of 50 years from 1941 to 1991 was much higher (up to 554%) during November, 2009 compared to the rainfall during September and October, 2009. The work of the petitioners on account of rainfall has been affected for a period of one month. In view of the above, we find that the petitioners have a case for extension of RCOD for a period of eight months in case of Project B and six months in case of Project C as the reasons for the delay were beyond the control of the petitioners.

15. The next question arises as to what relief can be granted by the Commission to the petitioners on account of delay in commencement of the project for the reasons beyond their control. The petitioners have written the letters dated 7.10.2010 and 13.10.2010 to the Respondent No. 1 for extension of time in terms of the under clause 4.3(iii) of the Implementation Agreement which have been forwarded by Respondent No. 1 to the Commission for perusal. The Commission had to intervene and treat the letters as a petition considering the indifferent attitude shown by Respondent No. 1 to take appropriate decision in accordance with the Implementation Agreement. The representative of Respondent No. 1 during the hearing had explained that the letters were forwarded to the Commission since the Commission had extended the RCOD while granting licence to the Petitioners. We reiterate that the Commission had no intention to



intervene in a matter which is governed by the terms and conditions of Implementation Agreement between the petitioners and the Respondent No. 1. The Commission in its order dated 30.12.2008 while granting the licences to the petitioners had to issue appropriate directions to the beneficiaries to sign the PTA and granted 24 months time for completion of the project while denying any increase in the transmission service charges to the petitioners by virtue of extension of time in order to ensure that the commencement of work on the project is not further delayed.

16. Clause 4.3(iii) of the Implementation Agreement provides that “Time shall be of essence of this Agreement. However, the parties may meet at such intervals as they may decide to discuss the progress and implementation for the Project and accordingly may mutually agree on the adjustment of the Required Commercial Operation Date”. Further clause 4.4.2 of the Implementation Agreement of Project C provides as under:

“The Required Commercial Operations Date of the Project C may be extended up to one hundred eighty (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 C may be extended further (beyond 180 days), with the mutual consent of the parties”.

Similar provisions also exist in the Implementation Agreement for Project ‘B’.

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.

18. The Petition No. 296/2010 is disposed of in terms of our directions above.

Sd/-
(M.Deena Dayalan)
Member

Sd/-
(V.S.Verma)
Member

Sd/-
(S. Jayaraman)
Member

Sd/-
(Dr. Pramod Deo)
Chairperson

