

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Dated: 24, September, 2013**

**Present: MR. JUSTICE KARPAGA VINAYAGAM, CHAIRPERSON**  
**MR. V J TALWAR, TECHNICAL MEMBER,**

**Appeal No. 43 of 2012**

**IN THE MATTER OF:**

Power Grid Corporation of India Ltd  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon – 122001  
Haryana

.....Appellant

VERSUS

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Vidyut Marg  
Jaipur – 302 005
3. Ajmer Vidyut Vitran Nigam Ltd  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer- 305 001  
Rajasthan.
4. Jaipur Vidyut Vitran Nigam Ltd  
Vidyut Bhawan, Janpath, Jaipur - 302 005  
Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd  
New Power House, Industrial Area,  
Jodhpur-342 003

Rajasthan

6. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla – 171004
7. Punjab State Power Corporation Ltd.  
The Mall, Patiala – 147 001
8. Haryana Vidyut Prasaran Nigam Limited  
IInd Floor, Shakti Bhawan, Sector 6,  
Panchkula (Haryana) 134 109
9. Power Development Department  
Government of Jammu & Kashmir,  
Janipura Grid Station, Jammu (Tawi) – 180 007
10. Uttar Pradesh Power Corporation Ltd  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226 001
11. Delhi Transco Ltd  
Shakti Sadan, Kotla Road,  
New Delhi – 110002
12. BSES Yamuna Power Ltd  
Shakti Kiran Building, Karkardooma,  
New Delhi – 110092
13. BSES Rajdhani Power Ltd  
BSES Bhawan, Building No. – 20,  
Nehru Place, New Delhi – 110019
14. North Delhi Power Ltd  
Power Trading & Load Dispatch Group  
Cennet Building, Pitampura,  
New Delhi – 110034
15. Chandigarh Administration  
Sector 9, Chandigarh – 160 022
16. Uttarakhand Power Corporation Ltd  
Urja Bhawan, Kanwali Road

Dehradun – 248 001

17. North Central Railway  
Regional Headquarters,  
Civil Lines, Allahabad-211 001

18. New Delhi Municipal Council  
Palika Kendra, Sansad Marg,  
New Delhi – 110002

.....Respondents

Counsel for the Appellant : Mr M G Ramachandran

Counsel for the Respondent : Mr Manu Sheshadari for R-1  
Mr R B Sharma for R-13

### **Appeal No. 107 of 2012**

#### **IN THE MATTER OF:**

Power Grid Corporation of India Ltd  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon – 122001  
Haryana

.....Appellant

#### **VERSUS**

1 Central Electricity Regulatory Commission  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001

2 Uttarakhand Power Corporation Ltd  
Urja Bhawan, Kanwali Road  
Dehradun – 248 001

.....Respondents

Counsel for the Appellant : Mr M G Ramachandran

Counsel for the Respondent : Mr Manu Sheshadari for R-1

**PER MR. V.J. TALWAR, TECHNICAL MEMBER**

1. These two Appeals involving similar questions of law and facts were taken up together for hearing and are being disposed of through this common judgment.
2. The Appellant, Power Grid Corporation of India Limited, is a Government Company within the meaning of Companies Act, 1956 and is undertaking Interstate Transmission of Electricity in India as a Transmission Licensee. The Appellant also discharges the functions of the Central Transmission Utility as provided under the Electricity Act, 2003.
3. Central Electricity Regulatory Commission (hereinafter referred to as the “**Central Commission**”) is the 1<sup>st</sup> Respondent. The Appellant is a transmission licensee of the Central Commission and accordingly the tariff for the services rendered by the Appellant is determined by the Central Commission.
4. Other Respondents in Appeal no. 43 of 2011 (viz., 2<sup>nd</sup> Respondent to 18<sup>th</sup> Respondent) are the Distribution Licensees, Transmission Licensees and other beneficiaries of the transmission system of the Appellant in the Northern Region. 2<sup>nd</sup> Respondent in Appeal No. 107 of 2011 is the Distribution Licensee in the State of Uttarakhand.
5. The Appellant filed petitions before the Central Commission for the approval of the transmission tariff for the transmission project covered under System Strengthening Scheme in Uttarakhand including Interest During Construction (IDC) and Incidental

Expenditure During Construction (IEDC) up to date of their commercial operation.

6. The Central Commission passed the impugned Orders dated 4.10.2011 and 16.3.2012 disallowing IDC and IEDC for the delay attributable to the Appellant. Aggrieved by these Impugned Orders, the Appellant has filed these two Appeals viz., 43 of 2012 challenging the order dated 4.10.2011 and Appeal No. 107 of 2012 challenging the order dated 16.3.2012.

7. The relevant facts of the case are given below:

a) The Appellant has undertaken the implementation of the System Strengthening Scheme in Uttarakhand in the Northern Region. The Board of Directors of the Appellant, vide memorandum dated 13.07.2004, accorded the investment approval and expenditure sanction to the transmission project at an estimated cost of the project of Rs. 76.42 crores, including interest during construction of Rs. 3.05 crores based on 4<sup>th</sup> quarter 2003 price level.

b) The scope of work covered under the project was as follows:

Transmission Lines:

- LILO of one circuit of Dhauliganga-Bareilly 400 kV D/c (charged at 220 kV) at Pithoragarh
- LILO of one circuit of Tanakpur-Bareilly 220 kV D/c at Sitarganj

Substations:

- 220/132 kV Pithoragarh – New S/s – 6x33.3 MVA
- 220/132 kV Sitarganj – New S/s- 2x100 MVA

c) The Assets in question in these Appeals comprises of (i) LILO of one circuit of Tanakpur-Bareilly 220 kV D/c line at Sitarganj

and (ii) 220/132 Substation at Sitarganj. These Assets were scheduled to be commissioned within a period of 24 months from the date of first letter of award for transformer package. The first letter of award for transformer package was made in March 2005. Accordingly, the scheduled date of completion was in April 2007. The assets covered in these appeals were declared under commercial operation as indicted below:

Sl No.	Name of the Project	Actual CoD	Appeal No.
I	LILO of 220 kV Tanakpur-Bareilly Transmission line (Ckt. – II) at Sitarganj alongwith associated bays	1.3.2009	43 of 2012
	220/132 kV Interconnection Transformer (ICT) -I at Sitarganj along with associated bays	1.3.2009	
II	220/132 kV Interconnection Transformer (ICT)-II at Sitarganj along with associated bays	1.8.2009	107 of 2012

- d) Both the projects were scheduled for commissioning by April 2007. However, the 1<sup>st</sup> Project was actually commissioned on 1.3.2009 and 2<sup>nd</sup> Project was actually commissioned on 1.8.2009. Thus, there was a time overrun of 23 months in the commissioning of the 1<sup>st</sup> Project and time overrun of 28 months for 2<sup>nd</sup> Project .
- e) The Appellant filed a petition being Petition No. 202 of 2009 for approval of provisional tariff for the 1<sup>st</sup> project. The Central Commission vide order dated 22.10.2009 approved the provisional tariff for the project and directed the Appellant to file a fresh petition for approval of the final tariff after the approval of the revised cost estimate.

- f) Accordingly, the Appellant on 30.12.2010 filed a petition, being Petition No. 1 of 2011, before the Central Commission for the approval of the final transmission tariff for the 1<sup>st</sup> project upto 1.3.2009 (date of commercial operation) including IDC and IEDC for time overrun of 23 months.
  - g) The Appellant filed a petition being no. 117 of 2010 for approval of tariff for 2<sup>nd</sup> Project on 29.3.2010. The Central Commission vide its order dated 24.5.2010 directed the Appellant to submit the Revised Cost Estimates along with certain clarifications regarding time over run.
  - h) On 4.10.2011, the Central Commission passed the Impugned Order in Petition No. 1 of 2011 (1<sup>st</sup> Impugned order) determining the transmission tariff for 1<sup>st</sup> Project allowing IDC and IEDC for delay of 17 months and disallowed these for the period from September 2008 to February 2009.
  - i) On 16.3.2012, the Central Commission passed the 2<sup>nd</sup> Impugned Order in Petition No. 117 of 2010 determining the transmission tariff for 2<sup>nd</sup> Project allowing IDC and IEDC for delay of 17 months and disallowed these for the period from September 2008 to July 2009.
  - j) Aggrieved by both the Impugned Orders dated 4.10.2011 and 16.3.2012, the Appellant has filed the Appeal no. 43 of 2012 and Appeal No. 107 of 2012 respectively before this Tribunal.
8. Mr. M G Ramachandran, the Learned Counsel for the Appellant in both the Appeals has made the following submissions assailing the Impugned Orders dated 4.10.2011 and 16.3.2012:

- a) The Central Commission has only proceeded on the basis that 4 months is enough time for residual activities of installation and commissioning of an ICT. The Central Commission has not dealt with the delay on account of each aspect separately and only held that all residual work including commissioning of ICT - I could have been completed '*within a reasonable time, say four months*' from the date of obtaining the permission from the Uttarakhand High Court.
- b) There is no reason or justification given for not allowing the time overrun till CoD except the assumption/presumption contained in the Impugned order that the most of the works should have been completed by 21.4.2008 i.e. before the vacation of the stay order by the High Court and a period of 4 months was sufficient to complete the remaining works. Such a finding cannot be termed as a judicial finding of reasons. The Appellant's case could not have been rejected on perceptions, like 'could have been completed', 'say 4 months'.
- c) The Central Commission as a regulatory authority and discharging functions of tariff determination ought to have considered the specific pleas of the Appellant giving reasons for the time overrun and claiming the same to be beyond the reasonable control of the Appellant.
- d) The foundation work started in March 2006 but no work could be carried on during the period July 2006 to October 2006 on account of heavy rains. The foundation work was completed only in May 2007;

- e) During the period from March 2007 onwards, the work in the Switchyard area could not be taken up and carried out on account of the stay order granted by the court which continued until 21.4.2008;
- f) Simultaneously, on account of the CRGO steel shortage the supplier of ICTs could not manufacture and supply the 1<sup>st</sup> ICTs by the scheduled date of September 2006 and it was ready to be supplied in June 2007. However, in June 2007 the Appellant was not in a position to take delivery of the transformer on account of the stay granted by the court in regard to the construction work on the land covering 132 kV switchyard and part of transformer foundations.
- g) Thus, during the period from March 2007 till 21.4.2008, the Appellant was affected by Court cases on the Switchyard land besides the shortage of CRGO Steel and inability of the supplier to supply the ICT-I at site until June 2007.
- h) When 1<sup>st</sup> ICT was ready for delivery at site in June 2007, there was no possibility of Power Grid receiving the ICT at site on account of the stay on the construction granted by the High Court which was eventually vacated on 21.4.2008;
- i) Under the circumstances, the Appellant was in a position to require supplier to send the ICT to the site only after 21.4.2008. Immediately after the vacation of the stay order, the Appellant had called upon Messrs Transformers and Rectifiers to send the ICT, the ICT was then inspected and pre-dispatch process was undertaken and was dispatched on 31.5.2008 i.e. in about a month and the ICT got delivered at the site on 19.6.2008;

- j) The installation of ICT after its receipt in June 2008 was also seriously affected by incessant rains during May 2008 to September 2008;
- k) The ICT was installed in all respects on 31.12.2008 or there about which is confirmed by the letter of 27.12.2008. The inspection of the ICT by the CEA was however on 17/18.2.2009.
- l) In the absence of the availability of land at the project site, it was not possible for the Appellant to take delivery of the ICTs from the supplier and store it. ICT is a sensitive item which cannot be stored in a make shift arrangement. It is a technically complex item and therefore, requires a proper space for its storage and a proper procedure for its upkeep. In absence of such a proper space for its storage, the ICT can develop technical problems which would not lead to successful testing and commissioning subsequently and may have to be returned to the Supplier's works leading to further delay and consequent costs.
- m) It is also relevant that the Performance Guarantee and Warranty to be given by the supplier is always for a limited period. It is not in the interest of any person that the Appellant accepts the transformer even pending court cases, it was quite possible that the Appellant had to store the transformer for a long period and thereby losing warranty claim against the manufacturer.
- n) The erection of ICT involves the activities of unloading, oil filtration, oil filling & erection of assemblies. The Manual on

Transformers prepared by the Central Board of Irrigation and Power (CBIP) which states that as a precautionary measure erection, installation and commissioning in the rainy season should be avoided.

- o) In terms of the above, the actual work period for the Appellant to complete was between June 2008 to 20.12.2008 i.e. about 6 months time and another 2 months time was taken for the CEA's inspection.
- p) Accordingly, the delay in commissioning of ICT-I vis-à-vis the schedule as per the investment approval was due to reasons beyond control of the Appellant and the Central Commission ought to have at least dealt with all these aspects in the Impugned Order.
- q) The fundamental error in the decision of the Central Commission is that it has proceeded on the basis of surmises and general feeling that all residual work could be completed within 4 months instead of examining the material placed before it on each aspects causing delays and all such aspects being for reasons not attributable to the Appellants.
- r) This Tribunal in the Judgment dated 27.4.2012 in Appeal No. 134 of 2011(Power Grid v. Central Electricity Regulatory Commission) has held that Central Commission has not considered the detailed reasons given by the Appellant for the delay that has occurred and remanded the matter for re-consideration. The ratio of the above judgment applies to the present case.

9. The learned Counsel for the Appellant made the following additional submissions in support of his claim in Appeal No. 107 of 2012.
- a) The Scheduled Date of Commissioning of ICT-I was June 2007 and thereafter the commissioning of ICT-II was to be taken up and completed by September 2007. The ICT have to be installed sequentially and, therefore, there was a time gap of about four months between the installation of ICT-I and ICT-II.
  - b) The ICT-I was commissioned in March 2009 and ICT-II was commissioned in August 2009. After the commissioning of ICT-I on 1.3.2009, ICT-II was dispatched by the Supplier on 14.3.2009 and was received at the site on 15.4.2009. The erection work was completed by 22.6.2009. The Central Electricity Authority inspected the ICT-II on 2.7.2009 and granted approval for charging ICT-II on 10.7.2009. The ICT-II was then commissioned on 1.8.2009.
  - c) The main reason for the delay in the supply of ICT-II by the Supplier was also on account of the global shortage of CRGO which was placed before the Central Commission.
10. In reply to the above grounds urged by the Appellant, Mr R B Sharma, the Learned Counsel for the Respondent -13 in Appeal No. 43 of 2012, made the following submissions:
- a) The time schedule of 24 months for completion of the project was decided by the Appellant himself after considering the relevant inputs.

- b) The Appellant has attributed the delay partially due to heavy rains in Sitarganj and accumulation of water in the switchyard area, no work could be done from July to September, 2006. Heavy rains during this period (monsoon) in the foothills of Himalaya are a normal feature and the appellant has failed to explain as to why the ground level of switch yard area was not raised?
- c) The supplier has accepted the delivery schedule of the Appellant knowing fully well about the worldwide paucity of the CRGO core laminations. Time is essence of the contract and the supplier is liable for liquidated damages for delay in supply. It appears that the Appellant is saving his own act of Omission and Commission by pleading the case of the transformer supplier.
- d) The question related to the inspection by the Electrical Inspector and the delay attributed on this issue, the records submitted by the Appellant would show that the Appellant completed its work and the project was ready for inspection on 17.2.2009 and the inspection was done on 17<sup>th</sup> & 18<sup>th</sup> February, 2009. Thus, there was no delay in grant of the clearance by CEA. The letter sent by Appellant on 27<sup>th</sup> November, 2009 for inspection was in the nature of advance information and to complete the statutory requirement of depositing inspection fee etc.
- e) The Central Commission in the impugned order has concluded that the residual work, including the Commissioning of ICT, could have been completed within a

reasonable period, say four months, from the date of permission by the High Court and the project could have been completed much ahead of the actual date of Commissioning. This assessment of the Commission was also based on the information submitted by the Appellant vide its Affidavit dated 27.6.2011. Perusal of the affidavit dated 27.6.2011 would reveal that the Appellant himself has scheduled that the balance work of the Sub-station like erection of ICT, cabling, transformer oil filtration etc. to be completed within schedule time of 2 months and 20 days after the completion of civil works. As against the requirements of 2 months and 20 days for completing the balance work, Commission allowed 4 months-adequate time to complete the work.

f) The delay in completion of the transmission line has not been explained by the Appellant. The Appellant has been silent on this aspect in oral as well as in written submissions before this Tribunal. It is to be noted that the work stoppage due to court case from 2.3.2007 to 21.04.2008 operated only against the Sub-station work. The work associated with the transmission line could have been completed any time by the Appellant.

11. The learned Counsel for the Central Commission made elaborate submissions in support of the Impugned order.
12. In the light of the rival contentions, the following questions may arise for consideration.

- (a) Whether the Central Commission was correct in holding that the residual work including the commissioning of the ICT could have been completed by the Appellant within a period of four months and disallowing the delay for the remaining period?
  - (b) Whether the Central Commission has considered the delay in commissioning of transmission line and accordingly partly allowed the delay and partly disallowed the delay.
13. The Appellant had filed both the Petitions for determination of transmission tariff before the Central Commission. However, it has challenged only one aspect of tariff fixation relating to disallowance of IDC and IEDC for some portion of the delayed period. Therefore, it would be better to examine the findings of the Central Commission on this aspect. The relevant portion of Central Commission's Impugned Order dated 4.10.2011 is reproduced below:

***“TIME OVER-RUN***

*8. The investment approval for the project was granted on 13.7.2004 and the project was scheduled to be commissioned within 24 months from the date of first letter of award for transfer package. The first letter of award for transformer package has been issued in March 2005 and the project was to be commissioned in April 2007. But, the project has been put under commercial operation on 1.3.2009. Thus, there has been a time over-run of 25 months.*

*9. The petitioner submitted that the delay has been due to delay in delivery of ICT (due to CRGO shortage), court case in respect of part of substation land, re-routing of 220 kV LILO and*

*objections raised by the irrigation department during excavation of foundation near Nanak Sagar dam.*

*10. It is observed that the supplier of ICT rescheduled the supply of second transformer from June to September 2007 due to CRGO shortage. The ICT has been supplied in June 2008. The delay from September 2007 to June 2008 has not been explained by the petitioner. It has also been observed that M/s Areva, in their letter dated 3.10.2007 mentioned that it had requested the petitioner to intimate them the date of delivery of the transformer at site. The petitioner has failed to inform M/s Areva about the date of delivery of transformer. The supplier was ready to deliver the transformer and there has been delay on the part of the petitioner. No justification has been provided by the petitioner regarding the delay in commissioning the transformer beyond September 2007. Though the petitioner has submitted the reasons for delay in construction of transmission line, no specific reasons have been provided for the delay during the period September 2007 to June 2008.*

*11. The petitioner has submitted that no work could be carried out from March 2007 to April 2008 on account of the pending of a court case filed by one Shri. Gurbhchan Singh in the Khatima District Court, claiming adequate compensation for his land from the petitioner. The work started on 21.4.2008 after depositing ` 30 lakh with the Collector, U.S. Nagar in compliance with the directions of the Uttarakhand High Court.*

*12. The project was due for completion by March 2007. The progress of work was affected due to rescheduling of supply of ICT by the manufacturer. However, it is observed that the petitioner could have carried out all the work related to bay equipments except the ICT by March 2007. Moreover, permission for work was given by the Uttarakhand High Court on 21.4.2008. All the residual work, including the commissioning of the ICT, could have been completed within a reasonable period, say four months, from the date of permission by the High Court and the project could have been completed much ahead of the actual date of commissioning. The delay of*

*four months from April to August 2008 is condoned. The delay of six months beyond August 2008, i.e. from September 2008 to February 2009 is not condoned and accordingly, IDC and IEDC for this period of 6 months are not allowed.”*

14. Findings of the Central Commission in Impugned Order dated 16.3.2012 are set out below:

**“TREATMENT OF IDC AND IEDC**

*11. As per the investment approval, the transmission assets are scheduled to be commissioned within 24 months from the first Letter of Award for transformation package i.e. March 2005. Accordingly, the transmission assets were scheduled to be commissioned by April 2007. However, the transmission assets were declared under commercial operation on 1.8.2009 i.e. after 28 months of the scheduled date*

Particular	Apportioned approved cost	Revised Cost Estimate	Actual cost incurred as on DOCO (claimed)	Expenditure from DOCO to 31.3.2010	Expenditure from 1.4.2010 to 31.3.2011	Total estimated completion cost
220/132 kV, 100 MVA ICT-II at Sitarganj along with associated bays (Asset -1)	1117.85	2326.00	1867.40	384.15	69.79	2321.34

*12. Time overrun of 28 months has been attributed to unprecedented rain/flood in the vicinity of sub-station, Civil Suits filed by PGCIL for land acquisition in Courts of Civil Judge/ District Court, Writ petition in High Court and delay in supply of 220/132 kV transformer due to shortage of CRGO core lamination and condenser bushing in the international market.*

*13. Petitioner, vide affidavit dated 5.7.2010, has submitted that due to heavy rain/flood no work could be carried out during July to October, 2006 and the foundation work 220 kV and 132 kV switchyard was completed in May, 2007. Thus, by May, 2007*

*only foundation work was completed, while March, 2007 was the scheduled commissioning date. **Rain during monsoon months is a normal phenomenon and it cannot be considered as force-majeure. The work could have been planned accordingly to avoid delay in the project. Further, no documentary evidence was provided by the petitioner showing flood in the substation area during this period. Thus, keeping in view that there was no major hindrance to work, all the works except commissioning of ICT could have been completed by March, 2007.***

*14. Petitioner has also submitted that the work was stopped in the 132 kV switchyard, from March, 2007 to April, 2008, due to court orders. Some area of ICT foundation was also in the disputed land. The court gave permission to resume the work on 21.4.2008 and the erection and testing of the 220 kV and 145 kV equipments was taken up after getting the permission and was completed in February, 2009. However, the ICT was supplied in April, 2009 against the schedule of September, 2006. Subsequently, the erection of transformer was completed in June, 2009 and after CEA inspection the ICT was declared under commercial operation on 1.8.2009.*

*15...*

*16...*

*17. From the submissions of the petitioner and the documents enclosed with the petition, **it has been noted that the supplier of the ICT i.e. M/s Transformers & Rectifiers (India) Ltd. had rescheduled the supply of second transformer to September, 2007. M/s Transformers & Rectifiers (India) Ltd., in its letter dated 2.5.2007, has stated that due to CRGO shortage, the supply of ICTs for Sitarganj had to be reschedule to June and September, 2007. However, the petitioner has not submitted any documentary evidence justifying the reasons for delay in supply of ICT beyond September, 2007. Further, M/s Areva in its letter dated 3.10.2007, has also stated that the petitioner has not***

***intimated the date of delivery of transformers at site inspite of repeated reminders. Therefore, it has been observed that supplier was willing to supply transformers in September, 2007, but there was delay on the part of PGCIL. The petitioner has not given sufficient reasons for delay in supply of transformer beyond September, 2007.***

18. As per the schedule, work was due to be completed by March, 2007. ***On account of the court case, the supply of ICT was rescheduled to September, 2007. However, there was no embargo on the petitioner to complete other works related to bay equipment, etc., by the schedule date. The petitioner obtained the permission from the court on 21.4.2008 for resumption of work. It was expected of the petitioner to complete the residual work as well as the commissioning of the ICT much earlier than the actual date of completion since the supplier was ready to supply ICT in September, 2007. Keeping in view the total erection time of 8 months as per the schedule, four months from May, 2008 to August, 2008 is considered adequate for completion of the rest of the work after permission was granted by the Court. Accordingly, the delay upto August, 2008 has been condoned and delay beyond August, 2008 i.e. September, 2008 to July, 2009 has not been condoned, since the petitioner has not given any justification for delay in starting the work before the institution of court case in March, 2007 and delay in supply of ICT beyond September, 2007, despite the readiness of M/s. Areva to supply the ICT. Accordingly, IDC and IEDC for 11 from September, 2008 to July, 2009 months have not been allowed. The petitioner is at liberty to claim the liquidated damages from the supplier of ICT for delay in supply of the ICT by the OEM.***

19. The date of Investment Approval is 13.7.2009 and the date of First Letter of Award is March, 2005. The petitioner has claimed the IDC and IEDC w.e.f. the date of Letter of Award. Accordingly, IDC and IEDC had been allowed from the date of

*First Letter of Award after deducting the period of 11 months on account of delay on the part of the petitioner.”*

15. The crux of the Central Commission’s findings in both the Impugned Orders are set out below:

- Rain during monsoon months is a normal phenomenon and it cannot be considered as force-majeure. The work could have been planned accordingly to avoid delay in the project.
- Keeping in view that there was no major hindrance to work, all the works except commissioning of ICT could have been completed by March, 2007.
- The supplier of the ICT i.e. M/s Transformers & Rectifiers (India) Ltd., vide its letter dated 2.5.2007, had rescheduled the supply of first transformer to June 2007 and the second transformer to September, 2007.
- M/s Areva, the contractor for the substation, in its letter dated 3.10.2007, has also stated that the Appellant had not intimated the date of delivery of transformers at site inspite of repeated reminders.
- The petitioner has neither submitted any documentary evidence nor given sufficient reasons justifying the delay in supply of ICTs beyond September, 2007.
- Thus, there was delay on the part of PGCIL to receive the transformers.
- The Appellant has not given any justification for delay in starting the work before the institution of court case in March, 2007.

- It was expected of the Appellant to complete the residual work as well as the commissioning of the ICT much earlier than the actual date of completion since the supplier was ready to supply both the ICTs by September, 2007.
  - Four months from May, 2008 to August, 2008 has been considered adequate for completion of the rest of the work after permission was granted by the High Court of Uttarakhand.
  - Accordingly, IDC and IEDC for 6 months from September, 2008 to Feb, 2009 in case of ICT –I and for 11 months from September, 2008 to July, 2009 in case of ICT – II have not been allowed.
16. With the backdrop of the Commission's finding on the issue of partial disallowance of IDC and IEDC and the contentions raised by the learned counsel of the contesting parties we shall now analyse the case.
17. It is noted from the records that the Board of Directors of the Appellant accorded the investment approval and expenditure sanction to the transmission project in Uttarakhand on 13.7.2004. The Project had several elements including following elements, which are the subject matters of present Appeal.
- (i) LILO of one circuit of 220 kV Tanakpur – Barelli line at Sitarganj (Transmission line)
  - (ii) Commissioning of 100 MVA 220/132 kV Transformer at Sitarganj (ICT –I)
  - (iii) Commissioning of 100 MVA 220/132 kV Transformer at Sitarganj (ICT –II).

18. These works were required to be completed by March 2007. However, there was considerable delay in commissioning of these works. Following broad reasons for delay are culled out from the submissions made by the Appellant in the Appeals and written submissions.

**I. Reasons for delay in commissioning of Transmission Line**

- Unprecedented rain in the year 2006 and in 2008.
- Rerouting required due to construction of 132 kV line by PTCUL.
- Objections raised by the UP Irrigation Department in erection of towers near Nanak Sagar Dam
- Obstruction by farmers in erection of towers.

**II. Reasons for delay in Commissioning of ICT – I & ICT – II**

- Unprecedented rains in the area in the year 2006 and 2008 resulting accumulation of water in the switchyard area;
- Delay in supply of ICT due to shortage of CRGO;
- Stoppage work at the substation site due to court order;
- ICT, being complex equipment, cannot be stored in the make-shift arrangement;
- Transformers are to be commissioned in sequence. Work on commissioning of ICT – II could start only after commissioning of ICT –I.

19. It is noted that the case of Appellant revolved around delay in commissioning of ICTs only. While the Appellant has made elaborate submissions giving detailed reasons for delay in commissioning of ICTs in the oral arguments as well as in the written submission, it was silent on the issue of delay in commissioning of the Transmission line. Appellant has just mentioned in para G(iv) & (vi) of the Appeal 43 of 2012 that the work on the project also suffered due certain objections which

were raised by the UP Irrigation Department during excavation of the foundation in locations near Nanak Sagar Dm and 220 kV LILO had to be rerouted as M/s PTCUL was constructing a 132 kV line adjacent to the appellant's line and has occupied the appellant's corridor. However, it has not addressed the issue raised by the Respondent -13 that the reasons given by the Appellant for delay in commissioning of the line are not sufficient and the line could have been commissioned any time since it was not covered by the court's stay order.

20. Perusal of the Commission's findings on the issue of time over-run in the Impugned Orders reproduced above would also reveal that the Commission has dealt with only the delay in commissioning of ICTs. The Commission had allowed IDC and IEDC for delay of 17 months in commissioning of the Transmission line and ICTs and disallowed these for the balance period. However, it has not given any finding on delay in commissioning of the line. It has not discussed as to whether the delay in commissioning of the line could be or could not be attributed to the Appellant either wholly or partially. The grievance of the Appellant is that the Central Commission has wrong fully disallowed IDC and IEDC both for Transmission line and ICTs. Considering that both, the line as well as ICT could put to use simultaneously and accordingly could have attained commercial operation on the same day, it is necessary to know the findings of the Commission on this aspect.
21. Further, the Commission has held that the delay in supply of ICT-I after June 2007 to June 2008 and delay in supply of ICT – II after September 2007 to February 2009 had not been explained by the Appellant. The Appellant has now explained before this Tribunal

that the transformer is a technically complex item and therefore, requires a proper space for its storage and a proper procedure for its upkeep. In the absence of the availability of land at the project site due to court case, it was not possible for the Appellant to take delivery of the ICTs from the supplier and store it. ICT is a sensitive item which cannot be stored in a make shift arrangement. The Performance Guarantee and Warranty given by the supplier is always for a limited period. It is not in the interest of the beneficiaries that the Appellant accepts the transformer even during pending court cases where the transformer had to be stored for a long period and losing warranty claim against the manufacturer. The Appellant has also submitted that the Central Commission has proceeded on the basis of surmises and general feeling that all residual work could be completed within 4 months instead of examining the material placed before it on each aspects causing delays and all such aspects being for reasons not attributable to the Appellants.

22. This Tribunal in its Judgment dated 27.4.2012 in Appeal No. 134 of 2011(Power Grid v. Central Electricity Regulatory Commission) has held that Central Commission has not considered the detailed reasons given by the Appellant for the delay that has occurred and remanded the matter for re-consideration. The relevant portion of this judgment is quoted below:

*“9. Therefore, we confirm the finding of the Central Commission in respect of 4 months delay. However, the Central Commission in respect of 3 months delay has simply stated “the Petitioner has not given any justification for the remaining 3 months delay”. We are not able to accept this finding. As a matter of fact, the Appellant in their petition filed*

*before the Central Commission gave detailed reasons for the entire delay, which besides delay in approval of loan and theft and tower collapse also included delay in granting shut down for crossing of EHV lines of the State Transmission licensee by the State Load Dispatch Centre and crossing of Railway line by the Railways. In fact the Central Commission in the impugned order has recorded as under:*

*“The petitioner has further submitted that there was delay in getting approval from M/s CSPTCL and Railways for power line crossings. It has also been submitted that after award of transmission line to the respective contractors, preliminary route surveys are carried out and most optimal routes are selected considering the involvement of ROW, forest land and avoiding inhabited areas. Thereafter, detailed surveys are carried out to finalise the exact tower location and path of the transmission line”.*

*10. The reading of the petition filed by the Appellant, would make it clear that the delay of 3 months was attributed by the Appellant to certain reasons and circumstances but these have not been considered and verified by the Central Commission in order to hold that the explanation was not satisfactory. It merely observed in the impugned order “Petitioner has not given any justification for the remaining 3 months delay”.*

*11. According to the Appellant, the approval for railway crossing was granted in the month of September, 2010 only after which the Project could be completed and commissioned by the Appellant. If this is true, the time spent between restoration of the damaged towers in July, 2010 to grant of shut down by the Railways for Railway crossing on 14<sup>th</sup> /15<sup>th</sup> September may not be attributable to the Appellant’s fault. Therefore, the Central Commission ought to have considered these facts with reference to the delay and passed order after verification. Since this was not done*

*in this case, we deem it fit to set aside the said portion of the order and remand the matter to the Central Commission for considering the said explanation in respect of 3 months delay and give a finding of the facts after verification of facts and hearing the parties.*

*12. Accordingly, this portion of the order is set aside and remanded. Appeal is partly allowed to the extent as indicated above.”*

**23. Summary of our findings:**

- (a) The Central Commission has not considered the detailed reasons given by the Appellant for the delay that has occurred and did not provide basis for arriving at the figure of four months for completion of balance works.**
- (b) Perusal of the Commission’s findings on the issue of time over-run in the Impugned Orders would also reveal that the Commission has dealt with only the delay in commissioning of ICTs. The Commission has not given any finding on delay in commissioning of the line. It has not discussed as to whether the delay in commissioning of the line could be or could not be attributed to the Appellant either wholly or partially. The grievance of the Appellant is that the Central Commission has wrongfully disallowed IDC and IEDC both for Transmission line and ICTs. Considering that both, the line as well as ICT could put to use simultaneously and accordingly could have attained commercial operation on the same day, it is necessary to know the findings of the Commission on this aspect.**

24. In view of the above, the impugned orders on this aspect are set aside remanding back to the Central Commission with the direction that it shall examine the reasons for the delay in commissioning the transmission line as well as the ICTs afresh, considering all the relevant particulars furnished by the Appellant and the Respondents and decide the matter by passing reasoned order uninfluenced by its earlier findings and the observations made by this Tribunal.
25. We make it clear that we have not expressed any opinion on the issue to be decided by the Central Commission. We advise the Central Commission to pass the order on this issue after hearing both the parties preferably within 3 months from the date of this judgment.
26. The Appeals are partly allowed to the extent indicated above.
27. However, there is no order as to costs.

**(V J Talwar)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 24, September, 2013

REPORTABLE/~~NOT REPORTABLE~~