

बिहार ग्रिड कम्पनी लिमिटेड

(संयुक्त उपक्रम बिहार स्टेट पावर (होल्डिंग) कं० लि० एवं पावरग्रिड)

BIHAR GRID COMPANY LIMITED

(Joint Venture of Bihar State Power (Holding) Co. Ltd. & POWERGRID)



बिहार ग्रिड

द्वितीय तल, अलंकार प्लेस, बोरिंग रोड, पटना-800 001, दूरभाष : 0612-2530477 (कार्यालय)
2nd Floor, Alankar Place, Boring Road, Patna - 800 001, Tel. : 0612-2530477 (Of.), e-mail : bihargrid@gmail.com

CIN : U40100BR2013PLC019722

Ref: JV/PT/BG/Review Petition/ARR 22-23/788

Date:19.10.2022

To,

The Secretary,
Bihar Electricity Regulatory Commission,
Vidyut Bhawan-II,
Bailey Road, Patna-800021.

Sub: Prayer for review of the Hon'ble Commission's Tariff Order under Case No. 19 of 2021 for "Truing up for FY 2020-21, Annual Performance Review for FY 2021-22, Annual Revenue Requirement (ARR) and Transmission charges for FY 2022-23 to FY 2024-25 under Bihar Electricity Regulatory Commission (Conduct of Business) Regulation, 2005" issued for Bihar Grid Company Limited regarding.

Reference- Tariff Order of BERC-Case NO. -19 / 2021, Patna dated 25.03.2022.

Respected Sir,

1. This has reference to the Hon'ble Commission's Tariff Order dated 25.03.22 under Case No. 19 of 2021 issued for "Truing up for FY 2020-21, Annual Performance Review for FY 2021-22, Business Plan and Annual Revenue Requirement (ARR) and Transmission charges for FY 2022-23 to FY. 2024-25 under Bihar Electricity Regulatory Commission (Conduct of Business) Regulation, 2005" for Bihar Grid Company Limited & above referred letter regarding the subject.
2. After going through the Tariff Order issued on 25.03.2022, it is felt that Tariff Order may be reviewed i.r.o the disallowance. In view of the above our humble submission to Honorable commission is "please admit the review petition along with supporting annexures provided in soft copy for the reason the data in the annexure are very volumeness & pass the order as deems fit". Further, the application seeking condonation of delay is also attached herewith along with the review petition.
3. The said petition is submitted herewith in 06 copies, duly supported by Notarized Affidavit & a Cheque bearing sl. no. 254896 dated 19.10.2022 of Rs. 2.0 (Two) Lakh only drawn in favor of BERC, Patna.

Thanking You,

Encls- As above.

Yours faithfully,

(Mohammad Nasim Eqbal)
CGM(O&M/Comm.)

BEFORE THE BIHAR ELECTRICITY REGULATORY COMMISSION
REVIEW PETITION NO. OF 2022



IN THE MATTER OF:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 31 of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for review of the Order dated 25.03.2022 passed in Case No. 19 of 2021

IN THE MATTER OF:

Bihar Grid Company Ltd.

...Review Petitioner

VAKALATNAMA

I, Md. Nasim Eqbal, working as Chief General Manager, in Bihar Grid Company Limited, Appellant in the above appeal do hereby appoint and retain Mr. Anand K. Ganesan, Mrs. Swapna Seshadri, & Ms. Neha Garg, MSA Partners, Advocates to appear, plead and act formed in the above petition and to conduct and prosecute all proceedings that may be taken in respect thereof and applications for return of documents, enter into compromise and to draw any moneys payable to me in the said proceeding and also to appear in all applications for review.

Place :


Signature of the Party

Date :

Executed in my presence.

"Accepted"

(Signature with name and designation)


(Md. Nasim Eqbal,
Chief General Manager)

(Address for service on the Counsel for Appellant/Respondent. Furnish D-246, Defence Colony, New Delhi- 110024
Phone No. 011-41403716
9810941482 / 9818735544

Identify the deponents Signature L.T.I. who has/have affirmed in My Presence.


18/10/22
Advocate

Sri/Smt. Md. Nasim Eqbal
who is identified by Sri
Advocate Solely affirmed
declared before me.
18/10/22

DHARAMPUR PD.
Govt. of India

S. No. 937 Date 18/10/22



02/10/22

YL 0003768953

GOVERNMENT OF BIHAR
e-Court Fee



DATE & TIME : 17-OCT-2022 10:26:19
NAMES OF THE ACC/ REGISTERED USER : SREI INFRASTRUCTURE FINANCE LIMITED
LOCATION : CIVIL COURT PATNA
e-COURT RECEIPT NO : BRCT1919D2119M292
e-COURT FEE AMOUNT : ₹ 95
(Rupees Ninety Five Only)



BRCT1919D2119M292



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BEFORE THE HON'BLE BIHAR ELECTRICITY REGULATORY COMMISSION,
PATNA

IA No. of 2022

IN

REVIEW PETITION No..... OF 2022

IN THE MATTER OF:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 31 of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for review of the Order dated 25.03.2022 passed in Case No. 19 of 2021

IN THE MATTER OF:

Bihar Grid Company Ltd.
2nd floor, Alankar Place,
Boring Rd, Anandpuri,
Patna, Bihar 800001

...Petitioner

APPLICATION SEEKING CONDONATION OF DELAY IN FILING THE
REVIEW PETITION UNDER REGULATION 31(1) OF THE BERC
(CONDUCT OF BUSINESS) REGULATIONS, 2005

Most Respectfully Showeth:

1. The Petitioner – Bihar Grid Company Ltd. (hereinafter referred to as “BGCL”) is a company incorporated as joint venture with shareholding of Bihar State Power (Holding) Company Ltd. and Power Grid Corporation Of India Ltd. (50:50).
2. The present Review petition has been filed by BGCL against the Tariff Order dated 25.03.2022 passed by this Hon’ble Commission in Case No. 19 of 2021 which was concerned with Truing-up for FY 2020-21, Annual Performance Review (APR) for FY 2021-22, Annual Revenue Requirement (ARR) for



Sri/Smt. Md. Nazim Akbar
who is identified by Sri.....
Advocate Solemantly affirmed
declared before me.

DHARAMPR PD.
Govt. of India

S. No. Date: 18/10/22

YL 0003768955

**GOVERNMENT OF BIHAR
e-Court Fee**

DATE & TIME :

17-OCT-2022 10:29:30

NAMES OF THE ACC/ REGISTERED USER :

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LOCATION :

CIVIL COURT PATNA

e-COURT RECEIPT NO :

BRCT1919D2119M294

e-COURT FEE AMOUNT :

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(Rupees Ninety Five Only)



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the control period of FY 2022-23 to FY 2024-25 and determination of Transmission tariff for FY 2022-23 for BGCL.

3. BGCL is not repeating the contentions raised by it in the petition and craves leave for the same to be read as part of the present application.
4. There is a delay of days in filing the review petition as compared to the prescribed period of 60 days under Regulation 31 (1) of the BERC (Conduct of Business) Regulations, 2005. The delay has been caused due to reasons mentioned herein below.
5. In the Tariff Order dated 25.03.2022, this Hon'ble Commission had given some directives in Para 7.2 regarding the data required from BGCL. Therefore, to satisfy the Hon'ble Commission, BGCL compiled the details of capitalization from the initial stages which has taken substantial time and effort.
6. BGCL could not have produced this data in the required format despite exercising due diligence during the tariff proceedings as the clarity has come after the directives being issued by this Hon'ble Commission. BGCL has take steps to produce relevant and sufficient data in the format as desired in the directives issued by this Hon'ble Commission.
7. Since the detailed data which was been compiled by BGCL now is voluminous in nature, delay has occurred in filing the review petition. The review petition needs to be filed within 60 days of the passing of the Impugned Order. However, a perusal of the review petition will show the detailed exercise which was carried out by BGCL and the data which had to be collated by BGCL to satisfy this Hon'ble Commission of the actual capital expenditure incurred by it.



8. The balance of convenience lies in favour of the Petitioner. If the present application is not allowed, irreparable loss will be caused to the Petitioner if the delay in filing the review is not condoned.
9. The application is bona fide and in the interest of justice. The fees on the application stands paid.
10. In the circumstances, it is respectfully prayed to this Hon'ble Commission to:
 - a. Condone the delay of days in filing the review petition;
 - b. Pass any other Order as this Hon'ble Commission may deem fit & proper

Handwritten signature

DATE:

PETITIONER

PLACE:

BIHAR GRID COMPANY LTD.



Identify the deponents Signature
L.T.I. who has/have affirmed in
My Presence.

Handwritten signature
Advocate



BEFORE THE HON'BLE BIHAR ELECTRICITY REGULATORY COMMISSION,
PATNA

IA No. of 2022

IN

REVIEW PETITION No..... OF 2022

IN THE MATTER OF:

Bihar Grid Company Ltd.

...Petitioner

AFFIDAVIT

I, Md. Nasim Eqbal s/o Md. Ilyas aged about 58 years, resident of Patna, Bihar
, do

hereby solemnly affirm and state as under:

1. I say that I am working as Chief General Manager in the Petitioner, Bihar Grid Company Ltd. and am conversant with the facts of the present case and hence competent to swear the present affidavit.
2. I say that the contents of the accompanying application filed are based on the information available with BGCL in the normal course of business and believed by me to be true.
3. I say that Annexures to the accompanying reply are true and correct copies of their original.



DEPONENT

VERIFICATION

Identify the deponents Signature
L.T.I. who has/have affirmed in
My Presence.




18/10/22
Advocate

Sr/Smt. Md. Nasim Eqbal
who is identified by Sri.....
Advocate Solemnly affirmed
declared before me. 

DHARMENDRA P.D.
Govt. of India

S. No. 205 Date 18/10/22

01/10/22

YL 0003768856

GOVERNMENT OF BIHAR
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LOCATION : CIVIL COURT PATNA
e-COURT RECEIPT NO : BRCT1919D2119M295
e-COURT FEE AMOUNT : ₹ 95
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BRCT1919D2119M295



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VERIFICATION

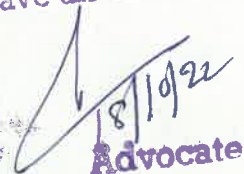
I, the deponent above-named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at _____ on this ____ day of October, 2022


DEPONENT



Identify the deponents Signature
L.T.I. who has/have affirmed in
My Presence.


Advocate

**BEFORE THE HON'BLE BIHAR ELECTRICITY REGULATORY
COMMISSION, PATNA**

REVIEW PETITION NO..... OF 2022

IN

CASE NO. 19 OF 2021

IN THE MATTER OF:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 31 of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for review of the Order dated 25.03.2022 passed in Case No. 19 of 2021

IN THE MATTER OF:

Bihar Grid Company Ltd.
2nd floor, Alankar Place,
Boring Rd, Anandpuri,
Patna, Bihar 800001

...Review Petitioner

MEMORANDUM OF PETITION

Most Respectfully Showeth:

1. The Petitioner – Bihar Grid Company Ltd. (hereinafter referred to as “BGCL”) is a company established under the provisions of the Companies Act, 1956 and is presently functioning under the provisions of the Companies Act, 2013.
2. BGCL is a company incorporated as joint venture with shareholding of Bihar State Power (Holding) Company Ltd. and Power Grid Corporation of India Ltd. (50:50)



3. BGCL is an intra-state transmission licensee and has been granted a license by this Hon'ble Commission vide its Order dated 29.04.2013 in Case No. 7 of 2013. A transmission license has been issued to BGCL on 21.06.2013.
4. Over the last several years, BGCL has been filing appropriate petitions seeking the determination of its Annual Revenue Requirements (ARR), its Annual Performance Review (APR) and truing-up. The present proceedings are concerned with Truing-up for FY 2020-21, Annual Performance Review (APR) for FY 2021-22, Annual Revenue Requirement (ARR) for the control-period FY 2022-23 to FY 2024-25 and determination of Transmission tariff for FY 2022-23 for BGCL.
5. After scrutinizing the Case No. 19 of 2021, along with the additional pleadings filed in the same, and conducting public hearing, this Hon'ble Commission has passed an Order dated 25.03.2022 determining the various aspects including the capitalization, fixed cost parameters and allied aspects. It is respectfully submitted that there is a substantial reduction in the capital cost as claimed by BGCL and as permitted by this Hon'ble Commission. A certified copy of the Tariff Order dated 25.03.2022 passed by this Hon'ble Commission in Case No. 19 of 2021 is attached herewith as **Annexure A**.
6. This Hon'ble Commission has also issued certain directives to BGCL on the "details of capitalization and the revision in project cost". The Directive 1 issued by this Hon'ble Commission inter alia reads as under:

***"7.2 Compliance of Directives issued:
Directive 1: Details of Capitalisation***



The Commission has directed BGCL to submit the scheme-wise details of actual capitalization showing the details of:

- i. Final cost of project versus approved DPR cost versus awarded cost*
- ii. Break up of scheme wise actual BoQ quantity vs LoA BoQ quantity (along with supporting reasons for change in quantity)*
- iii. Breakup of scheme wise actual hard cost in consonance with audited values versus LoA hard cost*
- iv. Calculation of interest from the planned date of infusion of debt fund up to planned date of commercial operation versus calculation of interest from the date of infusion of debt fund up to actual date of commercial operation.*
- v. Detailed working of approved variation due to impact of entry tax, other taxes, foreign exchange rate variation and miscellaneous expenses in MoM of BoD versus the expenses as approved in DPR*
- vi. Reconciliation with audited value along with supporting documents, of the above stated expenses (as mentioned in point v above) separately for each item of deviation"*

7. Over the last several years, BGCL has been endeavouring to satisfy this Hon'ble Commission on the capital cost incurred by it. In fact, the directives issued by this Hon'ble Commission from time to time have been taken by BGCL with utmost seriousness. However, due to the fact that this Hon'ble Commission required the capital expenditure incurred to be reflected in a particular manner, and BGCL was preparing its accounts in accordance with the Accounting Standards, BGCL has suffered a huge reduction in the capital expenditure and as a result, in its transmission tariff recovery.

8. BGCL is therefore, moving the present Review Petition under Section 94(1) (f) of the Electricity Act read with Regulation 31 of the Bihar Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 seeking review of the Order dated 25.03.2022 since there is



discovery of new and important matter and evidence, which despite exercise of due diligence, could not be produced by BGCL when the original petition was heard by this Hon'ble Commission.

9. BGCL is conscious of the scope of review proceedings but states that the material which has been called for by this Hon'ble Commission is now available in the manner as has been directed by this Hon'ble Commission. There were no formats prescribed during the proceedings and the data required to be represented in a particular manner has been made known to BGCL only by the directives issued at Para 7.2 of the Order dated 25.03.2022.
10. So far, BGCL was seeking tariff based on the formats prescribed in the BERC (Multi-year transmission tariff and SLDC Charges) Regulations, 2018 and 2021. The tariff filing forms attached to the Transmission Tariff Regulations were being followed by BGCL to claim its capital cost. Even during the tariff proceedings, there were no technical validation or record of proceedings issued by this Hon'ble Commission calling for the details of capitalization in any other format.
11. It is respectfully submitted that though certain similar directives were issued in the previous Tariff Order dated 12.03.2021, BGCL could not envisage that the tariff and truing up petition itself was to be filed in a revised format containing all such details. It is also a fact that BGCL has challenged the Order dated 12.03.2021 before the Appellate Tribunal for Electricity by filing DFR No. 145 of 2022.
12. However, when BGCL noted that the details called for by this Hon'ble Commission were for the purposes of prudence check, BGCL



immediately took steps to produce relevant and sufficient data in the format as desired in the directives issued by this Hon'ble Commission. In the respectful submission of BGCL, this amounts to new and important matter of evidence which was not in its knowledge and could not be produced by it despite exercise of due diligence in the original tariff proceedings.

13. It is also submitted that tariff determination is a continuous process and is in the nature of inquisitorial proceedings. Since framing of tariff is a continuous process, the Hon'ble Supreme Court has observed in the case of ***UP Power Corporation Limited v. NTPC and Ors.*** (2009) 6 SCC 235 that the Regulatory Commissions have a wide power to revisit the tariff determined at various stages. Relevant extracts from the judgement are as under:

"34. While exercising its power of review so far as alterations or amendment of a tariff is concerned, the Central Commission in the strict sense does not exercise a power akin to Section 114 of the Code of Civil Procedure or Order 47 Rule 1 thereof. Its jurisdiction, in that sense, as submitted by Mr. Gupta, for the aforementioned purposes would not be barred in terms of Order 2 Rule 2 of the Code of Civil Procedure or the principles analogous thereto.

35. Revision of a tariff must be distinguished from review of a tariff order. Whereas Regulation 92 of the 1999 Regulations provides for revision of tariff, Regulations 110 to 117 also provide for extensive power to be exercised by the Central Commission in regard to the proceedings before it.

36. Having regard to the nature of jurisdiction of the Central Commission in a case of this nature, we are of the opinion that even principles of res judicata will have no application.

721 Poulson

38. *The Central Commission, as indicated hereinbefore, has a plenary power. Its inherent jurisdiction is saved. Having regard to the diverse nature of jurisdiction, it may for one purpose entertain an application so as to correct its own mistake but in relation to another function its jurisdiction may be limited. The provisions of the 1998 Act do not put any restriction on the Central Commission in the matter of exercise of such a jurisdiction. It is empowered to lay down its own procedure.*

40. *Regulations 92 and 94, in our opinion, do not restrict the power of the Central Commission to make additions or alterations in the tariff. Making of a tariff is a continuous process. It can be amended or altered by the Central Commission, if any occasion arises therefor. The said power can be exercised not only on an application filed by the generating companies but by the Commission also on its own motion.*

46. *The concept of regulatory jurisdiction provides for revisit of the tariff. It is now a well-settled principle of law that a subordinate legislation validly made becomes a part of the Act and should be read as such."*

14. BGCL is seeking review based on the new and important evidence that has come to light after a detailed scrutiny which it has undertaken for satisfaction of the directives issued by this Hon'ble Commission. In the alternative, BGCL is also submitting that this Hon'ble Commission has the regulatory power to revisit the tariff on appreciation of the voluminous material being presented by BGCL in the formats as desired and directed by this Hon'ble Commission.
15. The Petition filed is also delayed as compared to the period of 60 days prescribed by the Regulation 31(1) Of the BERC (Conduct of Business) Regulations, 2005. However, since the BGCL has compiled the details



of capitalization from the initial stages, it has taken substantial time and effort to compile the same. BGCL is filing a separate application for condonation of delay in filing the present review petition.

DIRECTIVES AND RELEVANT DATA SHOWING COMPLIANCE OF THE SAME

DIRECTIVE 1(i): Final cost of project versus approved DPR cost versus awarded cost

16. It is respectfully submitted that BGCL set up/extended 7 new sub-stations, 15 bay extensions and 23 transmission lines as part of Stage 1 transmission system. The primary costs in setting up the line can be divided into – land acquisition cost, crop compensation and equipment cost. The financing cost, IDC and other cost (IEDC) are in addition to the above components.
17. BGCL is attaching herewith as **Annexure B**, a cost comparison on all these aspects at the stage of DPR, at the stage of issuance of LOA and the final cost as on 31.03.2022.
18. This data has been compiled from the books of BGCL and represents the values with and without taxes as well the amendments that have been made from time to time.
19. BGCL is also filing as **Annexure C**, the amendments which were made in the various sub-station packages, the reasons and date of the amendment, the contracts which had to be amended, the amounts before and after the amendment, as well as the differential cost. As will be clear from the perusal of Annexure A, all the amendments have been



named for operational reasons such as site requirements, change in route of underground cables, additional civil works, small corrections in the work to be executed, etc.

20. A perusal of **Annexure B** will also clarify that there is not a substantial increase in the cost as finally executed when compared with the DPR except due to the time over-run which has been incurred in the project execution. The time over-run is for reasons entirely beyond the control of BGCL as will be explained subsequently. BGCL is also filing herewith as **Annexure D**, a breakup of the substation wise and transmission line wise data which corroborate the summary provided by BGCL in **Annexure B**. This data has been painstakingly prepared by BGCL to satisfy this Hon'ble Commission that BGCL has been serious in executing the project and only requires that the actual capital expenditure which has been incurred by it should form part of tariff determination since the assets commissioned are providing the necessary services to the intra-state grid.
21. Under the Electricity Act, following the principles of Section 61 and 62, in a cost-plus tariff determination regime, the actual cost of the assets providing service ought to be permitted. All reasonable costs and expenses along with a return on equity should be permitted to transmission licensees and the data now filed clearly indicates that BGCL has been able to set up and develop an excellent intra-state transmission network within the State of Bihar which was lacking for several earlier years. BGCL has been able to set up 109 assets in a short span of 4 to 5 years and the actual capital cost incurred as funded by debt and equity ought to be recognised for the purposes of tariff determination.



DIRECTIVE 1(ii): Break up of scheme wise actual BoQ quantity vs LoA BoQ quantity (along with supporting reasons for change in quantity)

22. BGCL is filing herewith as **Annexure E**, a summary sheet showing the changes/amendments along with the cost implication, reason for the amendment in each sub-station and transmission line. The details of the BoQ variations in the substations and transmission lines are already available in **Annexure D**. In **Annexure E**, BGCL has specifically addressed the Directive 2 which gives the reasons for difference in the actual BoQ quantity and the LOA BoQ quantity. The difference has been explained with respect to each scheme and along with supporting reasons.
23. BGCL is also filing herewith as **Annexure F**, the relevant documents issued by it to its contractors which support the claim of BGCL that the change in the BoQ quantity is for the capitalization and work implementation in the various schemes and not for any other purpose.

DIRECTIVE 1 (iii): Breakup of scheme wise actual hard cost in consonance with audited values versus LoA hard cost

24. It is stated that in every scheme, the actual hard cost incurred and the audited values would differ slightly. At the stage of LOA, the slight changes as compared to the DPR are built in to assume the hard cost that is estimated to be incurred. However, the actual hard cost is known only when the project gets implemented and there is a sequential contract closure. Even after implementation of the projects, as a prudent utility, BGCL ensures that before making final payments, the



contractor has worked as per the terms of contract. Certain amounts are also held back as Contract Performance Guarantee.

25. BGCL is filing herewith as **Annexure G**, the breakup of scheme wise actual hard cost as reflected in the audited values versus the LOA Hard costs. The details of land acquisition, crop compensation and equipment cost along with IDC and IEDC based on the various schemes executed has been summarised. The reference to the LOA number, the vendor and the work along with the tax component is reflected. The IDC, IEDC and crop compensation is being reflected year wise upto 2015 and thereafter, for each year. It will be clear that the entire capital cost incurred is towards project implementation and for assets giving useful service to the intra-state grid.

Directive 1 (iv): Calculation of interest from the planned date of infusion of debt fund up to planned date of commercial operation versus calculation of interest from the date of infusion of debt fund up to actual date of commercial operation.

26. The primary reason for issuance of Directive 1(iv) is for this Hon'ble Commission is to apply prudence check on the issue of time over-run. It is respectfully submitted that the time over run in the case of various sub-stations and transmission lines executed by BGCL can be summarised as under:
- i. Delays due to land acquisition
 - ii. Delays due to obtaining engineering approvals after surveys
 - iii. Delays due to the various govt policies such as demonetisation and GST in the year 2017, delay in grant of approvals under the Bihar mines and minerals Act, 2017, the Wildlife Protection Act, 1972, the Forest Act, 1980, Covid related delays etc.



- iv. Time lost due to monsoon season affecting the commissioning works at various sub-stations;
- v. Public protests, hindrances caused by locals at site locations
- vi. Delays due to modification of works, replacement of damaged items, inspection of insurance agency, change in location, SLDC approvals, elections, etc.

27. The SCOD (Scheduled Commercial Operation Date) versus the actual COD along with the time over-run in the case of each sub-station and transmission line has been documented. BGCL is filing as **Annexure H**, a summary sheet showing these dates along with the appropriate reason for the delay. The time over-run is ranging from period of 10-15 days to a period of 53 months. The reasons have been encapsulated in the **Annexure H**. It is respectfully submitted that the reasons are completely beyond the control of BGCL and ought to be condoned. BGCL is relying on the principles decided by the Appellate Tribunal for Electricity (hereinafter referred to as "APTEL") & Central Electricity Regulatory Commission (hereinafter referred to as the "**Central Commission**") on the issue of time over-run in the following cases:

(a) **Maharashtra State Power Generating Company Ltd v MERC & Ors** (Judgment dated 27.04.2011 in Appeal No. 127 of 2011)

"The Central Commission has also not laid down any benchmark norms for prudence check, but its Regulations only indicate the area of prudence check including cost overrun and time overrun. The State Commission has not examined the reasons for delay in commissioning of the project and attributed the entire time overrun related cost with respect to the contractual schedule agreed with BHEL to the Appellant. In our view, this is not prudence check. In the absence of specific regulations, we will now



find answer to the question raised by us relating prudence check of time overrun related costs.

7.4. The delay in execution of a generating project could occur due to following reasons:

i) due to factors entirely attributable to the generating company, e.g., imprudence in selecting the contractors/suppliers and in executing contractual agreements including terms and conditions of the contracts, delay in award of contracts, delay in providing inputs like making land available to the contractors, delay in payments to contractors/suppliers as per the terms of contract, mismanagement of finances, slackness in project management like improper co-ordination between the various contractors, etc.

ii) due to factors beyond the control of the generating company e.g. delay caused due to force majeure like natural calamity or any other reasons which clearly establish, beyond any doubt, that there has been no imprudence on the part of the generating company in executing the project.

iii) situation not covered by (i) & (ii) above.

In our opinion in the first case the entire cost due to time over run has to be borne by the generating company. However, the Liquidated Damages (LDs) and insurance proceeds on account of delay, if any, received by the generating company could be retained by the generating company. In the second case the generating company could be given benefit of the additional cost incurred due to time over-run. However, the consumers should get full benefit of the LDs recovered from the contractors/suppliers of the generating company and the insurance proceeds, if any, to reduce the capital cost. In the third case the additional cost due to time overrun including the LDs and insurance proceeds could be shared between the generating company and the consumer. It would also be prudent to consider the delay with respect to some benchmarks rather than depending on the provisions of the contract between the generating company and its contractors/suppliers. If the time schedule is taken as per the terms of the contract, this may result in imprudent time schedule not in accordance with good industry practices.



7.5. *In our opinion, the above principles will be in consonance with the provisions of Section 61(d) of the Act, safeguarding the consumers' interest and at the same time, ensuring recovery of cost of electricity in a reasonable manner."*

(b) NRSS XXXI (B) Transmission Limited v CERC & Ors & Batch
– Judgment dated 03.12.2021 in Appeals No. 129 of 2020 & 276 of 2021

16.10 *The Central Commission failed to understand that the IDC and IEDC is not a financial benefit to the Appellant but due to the financial liability to be borne by the Appellant. This Tribunal vide Judgment dated 20.10.2020 in Appeal No. 208 of 2019in – Bhopal Dhule Transmission Company Limited v Central Electricity Regulatory Commission &Ors. ("Bhopal Dhule Judgment") held that the Commission erred in denying Change in Law relief to the appellant for IDC which is a direct consequence of the Change in Law event. The relevant extract of the Judgement is reproduced herewith –*

"8.7 The Central Commission's reasoning in the Impugned Order reads in two exceptions to the grant of Change in Law relief under Article 12.1.2 of the TSA namely: (a) that IDC is not a direct consequence of the Change in Law events and therefore must be denied; and (b) that no relief can be allowed for additional IDC incurred since IDC is not a component that is disclosed or evaluated at the time of bidding. CERC has in the same breath held that uncontrollable events in the form of Changes in Law have impacted the Project, but that the Appellant deserves no compensation for the same. Neither of these find any mention in the text of Article 12 of the TSA.

1.15 *Since the spirit of Article 12 of the TSA is to ensure monetary restitution of a party to the extent of the consequences of Change in Law events, such exceptions cannot be read into Article 12 of the TSA. The Appellant has submitted that a crucial factor for the Appellant whilst bidding for the Project was that uncontrollable Change in Law events would be duly accounted for in accordance with Article 12 of the TSA. By the Impugned Order, the Central Commission has wrongly altered the meaning of the Change in Law clause of the TSA long after award of the bid and commissioning of the Project.*



..... 1.16 Such a denial of the IDC by the Central Commission is in contravention of the provisions of Article 12.1.1 of the TSA in the facts and circumstances of the present case. By adopting such an erroneous approach, the Central Commission has rendered the Change in Law clause in the TSA completely nugatory and redundant. Such an interpretation by the Central Commission is causing the Appellant grave financial prejudice as it has no other means of recovering the IDC which it was constrained to incur for no fault of its own.

.... 1.17 We are of the view that the Central Commission erred in denying Change in Law relief to the Appellant for IDC and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant's Project in accordance with the TSA. Therefore, the impugned order passed by the Central Commission is liable to be set aside as the same is in contravention of settled law laid down by the Hon'ble Supreme Court (Supra) and also the previous orders passed by the Central Commission in Petition No73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the Commission differently. In view of these facts, the Appellant is entitled for the change in law relief as prayed for in the instant Appeal. The issue is thus, decided in favour of the Appellant."

16.11 Therefore, we are of the opinion that the Appellant is entitled to be fully compensated for the IDC and IEDC incurred on account of Change in Law & Force Majeure Events.

.....
17.1 The Commission erred in passing the judgement as the claim of the Appellant in on account of change in length of the transmission line and not due to time overrun. It can well be understood that slackness has not resulted into increase of length of the Transmission lines. The Appellant is not claiming extension of time because of change in the Gantry Coordinates but seeking relief due to change in the length of the Transmission Line as a result of change in Gantry Coordinates.

17.2 Shri Pradeep Mishra, Learned Counsel for Respondent No. 2 submitted that the decision dated 20.11.2019 in Appeal No. 121 of 2015; Sasan Power Ltd. Vs. CERC & Ors. of this Tribunal is not



applicable in the present case as the PGCIL vide its letter dated 04.07.2014 had informed the Petitioner as there may be change in north coordinate by few meters during detailed Engineering. Further, submitted that due to any fault on behalf of Appellant or PGCIL the replying Respondent cannot be penalized by making them to pay the higher tariff.

17.3 The submission is devoid of merit as any indication for change of coordinates which results into increased length after the submission of bids can't deny the Appellant with the additional cost incurred due to the erroneous Survey Report. However, we acknowledge that the contention of the Respondent that the Long Term Transmission Customers cannot be penalised by making them to pay the higher tariff for reason not accountable to them. We are inclined to pass directions to the Central Commission to develop a regulatory mechanism to deal with the matter so that such erroneous reports are dealt with firm hands.

17.4 Shri Alok Shankar, Learned Counsel for Respondent no. 19 submitted that the RFP issued by the Bid Process Coordinator, REC Transmission Project Company Limited (RECTPCL) is a standard form document. The RFP expressly instructs the bidders to undertake independent due diligence and disclaims completeness of any information. The learned Central Commission upon review of the provisions of the RFP and the conduct of the Appellant concluded that no relief could be granted.

17.5 The Commission has duly acknowledged the fact that the Survey Report is erroneous and misled the Appellant by granting extension of SCOD and cost incurred in obtaining the Forest Clearance. The change in Gantry Coordinates have also been acknowledged, however, compensation has not been granted for reasons as explained in the said judgement of the Commission which is unjustified. The point of challenge is compensation on account of unforeseen and uncontrollable events occurred due to the erroneous Survey Report and not the RFP document.

17.6 Therefore, we agree with the Appellant that full compensation has to be granted for the change in the length of the Transmission lines."



(c) **Power Grid Corporation of India v. MPPMCL & Ors.** (Petition No. 203/TT/2021) - Order dated 26.05.2022

“35. The land acquisition was scheduled to be completed by 22.12.2017 against which the approval was received on 24.5.2018 causing a delay of about 153 days. It is evident from the chronology and correspondence dates made available by the Petitioner that the Petitioner applied for land acquisition well in time, carried out regular follow-up with the concerned Authority and promptly complied to the directives of land acquisition department like timely payment as per demand note etc. The delay of 153 days in making available of sub-station land had a cascading effect on the execution of the transmission asset. **Therefore, the time over-run of 153 days due to delay caused by land acquisition is beyond the control of the Petitioner and the same has been condoned.**

.....

36. It is observed from the chronology of Forest Clearance submitted by the Petitioner that the forest clearance proposal was made on 12.12.2017 and the stage-I clearance was received on 23.1.2019. However, working permission/ permission for tree cutting for tower foundation works was received on 19.5.2019 from the DFC, Banaskantha of Forest department. **Therefore, the total period of 553 days was taken on account of Forest clearance related issues.**

.....

In view of above, the additional time delay of 343 days in availability of sub-station land had a cascading effect on the execution of the transmission asset. Therefore, the time over-run of 343 days due to **delay caused by forest clearance is beyond the control of the Petitioner and is condoned.**

.....

Consequent to the above notification of Government of Gujarat, **severe RoW/ law and order issues surfaced** owing to



obstruction of works by the landowners as a result of reduction in diminution value of land for corridor compensation. The progress of works as such was severely impacted due to non - availability of right of way consequent to the notification.....

The hindrance in work due to obstruction of work by local villagers between 10.3.2018 to 6.7.2020 (849 days) and between 12.7.2019 to 31.8.2020 (416 days) when the work was carried out under police protection also contributed to the time over-run. The combined impact of the delays on above counts after considering the overlapping period comes to about 905 days between 10.3.2018 to 31.8 2020. The time delay of 905 days had a cascading effect on the execution of the transmission asset and is beyond the control of the Petitioner.

.....
45. Therefore, the time over-run of 725 days in execution of 400 kV Banaskantha (Radhanesda) Pooling Station–Banaskantha (PG) D/C line along with 2 numbers 400 kV line bays at Banaskantha (PG) due to hindrance caused by delay in acquisition of sub-station land, delay in forest clearance of transmission line and RoW issues is beyond the control of the Petitioner and is condoned in line with Regulation 22 (2) of the 2019 Tariff Regulations.”

(emphasis supplied)

(d) ***Power Grid Corporation of India Ltd. v. Bihar State Power (Holding) Company Ltd.*** - Petition No. 278/TT/2015 – Order dated 20.09.2017

“Delay due to Severe rains & floods:-

19. The petitioner has submitted that a major part of the line is passing through Jajpur district and the State of Odisha was severely affected by flood in river Brahmani & Baitarani during September, 2011 due to which Jajpur district remained cut off for many days, leading to delays.



.....
25. Hence, we are of the view that the delay due to **ROW issues, forest clearance, severe rains** and court cases were uncontrollable. Also the delay due to the non-readiness of the downstream system of OPTCL cannot be attributed to the petitioner. Hence the total delay of 991 days in case of Asset-2 is condoned.

(emphasis supplied)

(e) **Power Grid Corporation of India Ltd. v. Assam Electricity Grid Corporation & Ors.** – Petition No. 237/TT/2018 – Order dated 05.07.2019

“III. Delay due to Severe Rain fall: The Petitioner has submitted that severe rain fall in and around Silchar and Imphal area affected the supply of coarse and sand aggregate of the project and heavy rain resulted in difficulties in foundation works of equipment and GIS hall. In support of the delay, the Petitioner has submitted paper clippings as documentary evidence. From the submissions made by the Petitioner, it is observed that the out of the total time period of 53 days from 5.7.2017 to 28.8.2017, around 15 days is affected due to severe rail fall and which is beyond the control of the Petitioner. Hence, the time delay of 15 days is condoned.

.....
V. Economic Blockade/Bandh in Assam: The Petitioner has submitted paper clippings as documentary evidence in support of delay due to economic blockade/Bandhs during April 2017 to March 2018. We have gone through the documentary evidence submitted by the Petitioner and it is observed that in the time period from April, 2017 to October, 2018, about 37 days is affected due to economic blockade and the same is beyond the control of the Petitioner. Therefore, the time delay of 37 days is condoned.”



28. There are several judgements of the APTEL & Central Commission on the issue of time over-run. Any delay in obtaining permissions from Government Authorities, land acquisition, ROW issues, adverse weather conditions, etc. have been consistently treated as reasons beyond the control of the transmission licensee. BGCL is also praying for the same by this Hon'ble Commission.
29. The summary sheet gives an overall view to this Hon'ble Commission. The supporting documents regarding reasons for delay on the basis of which the summary sheet has been prepared is attached hereto and marked as **Annexure I**.
30. Even though this Hon'ble Commission has asked for the calculation of interest from the planned date of infusion of debt fund up to planned date of commercial operation versus calculation of interest from the date of infusion of debt fund up to actual date of commercial operation, BGCL has made a more comprehensive calculation giving the details and justification for the time over-run which has caused the increase in IDC/IEDC.
31. The correct way to deal with the matter would be to apply prudence check on the reasons for time overrun and thereafter, permit the consequent IDC and IEDC.

DIRECTIVE 1(v): Detailed working of approved variation due to impact of entry tax, other taxes, foreign exchange rate variation and miscellaneous expenses in MoM of BoD versus the expenses as approved in DPR.

AND



DIRECTIVE 1 (vi): Reconciliation with audited value along with supporting documents, of the above stated expenses (as mentioned in point v above) separately for each item of deviation.

32. BGCL is filing as **Annexure J**, the details of each component of tax including excise duty, central sales tax, entry tax, GST, customs duty and service tax. The tax component has been collated from the invoices of contractors received for all the substations and transmission lines.
33. Further, BGCL is filing as **Annexure K**, the details of foreign exchange variation including package wise basic cost in USD, date of LOA, rate as on the date of LOA, amount as compared with the date of payment, rate as on date of payment, the actual amount incurred along with the difference is being indicated.
34. Every change in rate of taxes or foreign exchange rate variation and miscellaneous expenses is not approved by the board of directors. However, the investment approval taken pursuant to DPR is approved which was done on 15th September, 2014 which totalled to Rs 1699.36 Crores. Thereafter, the revised cost estimates (RCE 1) was prepared and approved by the board of directors on 13th February, 2017 which yielded an amount of Rs 1833.23 Crores. Progressively, as the schemes got completed, the RCE 2 was prepared and approved by the Board on 27th December, 2018, for an amount of Rs 2091.89 Crores. Copies of the Original Investment approval, RCE 1 and RCE 2 are attached hetero and marked as **Annexure L**.
35. Apart from the above data by which the directives stand substantially complied with, BGCL is also giving the following details in **Appendix 1**:



- i. The summary sheet of the amounts incurred as per the actual invoice date i. 31.03.2022, the amounts reflected in the Balance sheet as on 31.03.2022, the breakup of hard cost (without taxes) in the invoices as on 31.03.2022 and LOA
 - ii. The package wise details of the supply and service component of hard cost with and without taxes as on 31.03.2022.
 - iii. Details of IDC, IEDC and crop and land compensation as well as minor assets such as furniture and office equipment as on 31.03.2022.
 - iv. Details of auxiliary service availed by BGCL for the various works along with date of LOA, amount of LOA and the tax component.
36. BGCL respectfully submits that the data now presented will enable this Hon'ble Commission to take a comprehensive relook on the capital cost permitted to it so far and the actual capitalization in its books which ought to be recognised for tariff determination.
37. The present petition is bonafide and in the interest of justice. The fees on the petition stands paid. BGCL is filing a separate application seeking condonation of delay in filing review.

PRAYER

38. In the facts and circumstances mentioned above, BGCL respectfully prays to this Hon'ble Commission –
- (a) Admit the review petition;



- (b) Review the Order dated 25.03.2022 on the aspects of capital expenditure to be allowed to BGCL and the resultant transmission tariff;
- (c) Take on record the detailed compliance of the various directives issued by this Hon'ble Commission to BGCL;
- (d) Appreciate the new and detailed evidence produced by BGCL before this Hon'ble Commission in the present proceedings;
- (e) Pass such further order(s) as deemed fit and proper.

DATE:

PLACE:

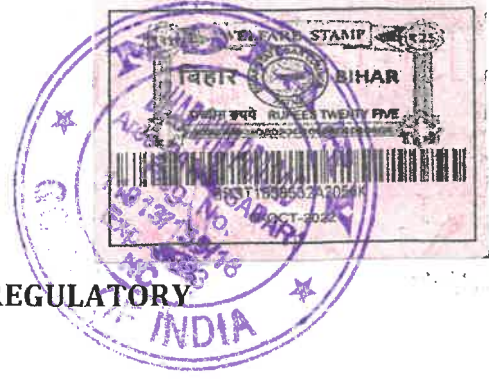


PETITIONER

BIHAR GRID COMPANY LTD.

List of Annexures

Annexure Number	Description	Mode of Submission
A	Tariff Order dated 25.03.2022 passed by this Hon'ble Commission	Soft Copy
B	Cost comparison at the stage of DPR, at the stage of issuance of LOA, and the final cost as on 31.03.2022.	Soft Copy
C	Substation and Transmission Line package-wise list of Amendments	Soft Copy
D	Reasons for Delay in Commissioning of Substations and Transmission Line	Soft Copy
E	Substation and Transmission Line package-wise list of Amendments	Soft Copy
F	Supporting Documents regarding variation in BoQ quantity	Soft Copy
G	Breakup of scheme wise actual hard cost as reflected in the audited values versus the LOA Hard costs	Soft Copy
H	Reasons for Delay in Commissioning of Substations and Transmission Line	Soft Copy
I	Supporting documents for Delay in Commissioning of Transmission Assets	Soft Copy
J	Details of each component of tax	Soft Copy
K	Details of foreign exchange variation	Soft Copy
L	Copies of the Original Investment approval, RCE 1 and RCE 2	Soft Copy



BEFORE THE HON'BLE BIHAR ELECTRICITY REGULATORY COMMISSION, PATNA

REVIEW PETITION NO..... OF 2022

IN

CASE NO. 19 OF 2021

IN THE MATTER OF:

Bihar Grid Company Ltd.

...Petitioner

AFFIDAVIT IN SUPPORT

I, Md. Nasim Eqbal s/o Md. Ilyas aged about 58 years, resident of Patna, Bihar, do

hereby solemnly affirm and state as under:

1. I say that I am working as Chief General Manager in the Petitioner, Bihar Grid Company Ltd. and am conversant with the facts of the present case and hence competent to swear the present affidavit.
2. I say that the contents of the accompanying Petition filed are based on the information available with BGCL in the normal course of business and believed by me to be true.
3. I say that Annexures to the accompanying reply are true and correct copies of their original.

[Signature]
DEPONENT



Sri/Smt. *Md. Nasim Eqbal*
who is identified by Sri *[Signature]*
Advocate Solemnly affirmed
declared before me.
DHARMVIR P.D.
Govt. of India

S.No. *306* Date *18/10/22*

07/10/2022

YL 0003768855

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LOCATION : CIVIL COURT PATNA
e-COURT RECEIPT NO : BRCT1919D2119M294
e-COURT FEE AMOUNT : ₹ 95
(Rupees Ninety Five Only)



BRCT1919D2119M294

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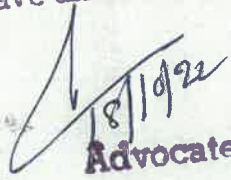
VERIFICATION

I, the deponent above-named, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at _____ on this ____ day of October, 2022


DEPONENT

Identify the deponents Signature
L.T.I. who has/have affirmed in
My Presence.


Advocate

