

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 135/MP/2011

Coram:

Dr. Pramod Deo, Chairperson

Shri S.Jayaraman, Member

Shri V.S.Verma, Member

Shri M.Deena Dayalan, Member

Date of Hearing: 28.2.2012

Date of Order :11.10.2012

In the matter of

Petition for remedies under Sections 62 and 79 (1) (c) and (d) of the Electricity Act, 2003 read with Regulation 3 (12) (c) of the Central Electricity Regulatory Commission (Terms and Conditions of tariff) Regulations, 2009 and Regulations 24,111 to 113 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 as applicable to (a) Parbati- Koldam 400 kV(Quad Moose Conductor) 2 X S/C transmission lines and (b) Koldam- Ludhiana 400 kV D/C (Triple snowbird Conductor) transmission line.

And in the matter of

Parbati Koldam Transmission Company Ltd., New Delhi

Petitioner

Vs

1. BSES Rajdhani Power Limited, New Delhi
2. BSES Yamuna Power Limited, Delhi
3. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
4. Ajmer Vidyut Vitran Nigam Ltd., Jaipur
5. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
6. Haryana Power Purchase Centre, Panchkula
7. Uttar Pradesh Power Corporation Ltd., Lucknow
8. Punjab State Electricity Board, Patiala
9. North Delhi Power Ltd, Delhi
10. Chandigarh Administration, Chandigarh
11. Himachal Pradesh State Electricity Board, Shimla
12. Uttarakhand Power Corporation Ltd, Dehradun
13. Power Development Department, Govt. of Jammu & Kashmir,
14. Power Grid Corporation of India Ltd., Gurgaon
15. NHPC Ltd., Faridabad
16. NTPC Ltd., New Delhi
17. Power Finance Corporation Ltd., New Delhi
18. Rural Electrification Corporation Ltd., New Delhi.. **Respondents**



The following were present:

1. Shri Amit Kapoor, Advocate for petitioner
2. Shri Vishal Anand, Advocate for petitioner
3. Shri Arunav Patnaik, Advocate for petitioner
4. Shri S.K.Deb, PKTCL
5. Shri Lokendra Ranawat, PKTCL
6. Shri Amrik Singh, NHPC
7. Shri Mukesh Khanna, PGCIL

ORDER

The petitioner, Parbati Koldam Transmission Company Ltd. has filed this petition seeking following reliefs:

- (a) *Invoke the provisions of Sections 62 and 79(1)(c) and (d) of Electricity Act, 2003 read with Regulation 3 (12) (c) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and Regulation 24 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 for approval of date of commercial operation as July 2014.*
- (b) *Allow the petitioner to approach the Commission to file a petition under Sections 62 and 79(1)(c) & (d) of the Electricity Act, 2003 read with Regulation 86 of CERC (Conduct of Business) Regulations, 1999 and CERC (Terms and Conditions of Tariff) Regulations, 2009 for determination of Transmission Tariff.*
- (c) *Provide the guidance with regard to the tariff that the petitioner intends to charge transmission tariff for utilization of Parbati-II assets for evacuation of power from Parbati-III HEP.*
- (d) *And pass such other relief as Hon'ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice."*

2. The issues raised in the present petition concern evacuation of power from three Hydroelectric Projects, namely Parbati-II Hydroelectric Project (Parbati-II HEP) being established by NHPC Ltd, Parbati-III Hydroelectric Project (Parbati-III HEP) and Koldam Hydroelectric Project (Koldam HEP) being established by NTPC Ltd. in Kullu District of State of Himachal Pradesh. The construction of the



transmission systems associated with three HEPs was approved in 14th Meeting of Standing Committee on Transmission System Planning of Northern Region held on 30.12.2002. The transmission system associated with Parbati-III HEP is being constructed by Power Grid Corporation of India Ltd (PGCIL). The common 400 kV transmission system associated with Parbati-II HEP and Koldam HEP was planned at 16th Meeting of Standing Committee on Transmission System Planning of Northern Region held on 24.3.2004.

3. The petitioner proposed to construct the 400 kV transmission system associated with Parbati-II HEP and Koldam HEP and accordingly made an application before this Commission for grant of transmission licence which was granted on 15.9.2008 for construction, operation and maintenance of the following transmission lines:

S.No	Transmission lines	Approximate line length (KMs)
1.	400 kV S/C Parbati-Koldam transmission line-I (Quad Moose conductor)	75
2.	400 kV S/C Parbati-Koldam transmission line-II (Quad Moose conductor)	75
3.	400 kV D/C Parbati-Koldam transmission line (Quad Moose conductor)	3.5
4.	400 kV D/C Koldam-Ludhiana transmission line (Triple Snowbird conductor)	150

4. At the 26th Meeting of the Standing Committee on Power System Planning of Northern Region held on 23.10.2008 it was *inter alia* decided that the date of commercial operation of 400 kV D/C Koldam-Ludhiana transmission line should be nine months after the commissioning of Koldam HEP but not later than



commissioning of Parbati-II HEP. For finalizing the date of commercial operation of Koldam-Ludhiana line, NTPC was called upon to inform the realistic scheduled date for commissioning of Koldam HEP and in case NTPC confirmed March 2011 as the commissioning date, the date of commercial operation of Koldam-Ludhiana transmission line could be December 2011, without any need for indemnification by NTPC. It was also decided that NHPC would inform the petitioner of the possible date of commissioning of Parbati-II HEP. On 18.12.2008, NHPC signed Indemnification Agreement with the petitioner with commissioning date of Parbati-II HEP as December, 2011, with a right to review the date by 31.3.2009. A supplementary Indemnification Agreement was signed on 15.6.2009 with the revised date of commissioning of Parbati-II HEP as 31.12.2012.

5. It has been submitted that after the signing of the Indemnification Agreement with NHPC, the petitioner started working for commissioning of the transmission system with 31.12.2012 as the target date. The petitioner claims to have taken various steps to ensure timely construction of the transmission system; these steps included execution of the Bulk Power Transmission Agreements with the beneficiaries in Northern Region, obtaining forest clearances in the States of Himachal Pradesh and Punjab, obtaining clearances under Sections 68 and 164 of the Electricity Act, arranging of finances/loans amounting to ₹1101.69 crore through PFC and REC and issuance of the Letters of Awards for various packages. The petitioner has submitted that the engineering activities such as design of towers, foundation designs, designs of strengthening and type testing of towers and majority of line materials were completed by the time of filing of the petition. The petitioner has further submitted that the tower contractors were mobilized at site and construction of 80 foundations was completed for which the



contractors were paid initial advances to the tune of ₹28 crore. The petitioner has claimed to have made a total investment of approximately of an amount of ₹83 crore till 31.3.2011 Thus, according to the petitioner, site activities were in full swing to meet the schedule of commissioning.

6. The petitioner has stated that in the Quarterly Performance Review (QPR) meeting of NHPC for the quarters ending June and September, 2010 held on 10.11.2010 it was informed that Parbati-II HEP was rescheduled for commissioning in the month of July 2014. Subsequently, CEA vide its letter dated 18.5.2011 intimated the commissioning schedules of the transmission lines associated with Koldam HEP and Parbati-II HEP as under:

- (i) Koldam HEP - March 2013 onwards
- (ii) Parbati-II HEP - 2014-15

7. The petitioner has submitted that despite its all efforts to complete construction of the transmission system in accordance with the schedule as agreed to in the supplementary Indemnification Agreement signed with NHPC, the commissioning of the transmission system is being delayed because of delay in commissioning of the associated hydroelectric projects, reasons for which are not attributable to it. The petitioner has spelt out the implications of the delay in commissioning of Parbati-II HEP and Koldam HEP as under:

- (a) The petitioner's finances and survival depends on revenue to be earned and therefore early commissioning of the transmission system is crucial.



- (b) The delay in commissioning results in increase in project cost due to price escalation (approximately @ 10% per annum) and Interest during construction (IDC) (presently @11.25% per annum).
- (c) The petitioner has tied up non-recourse project financing from PFC and REC with scheduled date of commercial operation as December, 2012 and repayment for the loan starting from July, 2013. With the delay in commissioning of the transmission lines, the petitioner will not be in a position to repay loan.
- (d) The delays have caused significant apprehensions in the mind of the lenders on account of uncertainty in the commissioning date and non-availability, or insufficient availability, of funds with petitioner for repayment of loan as per loan agreement.

8. The petitioner has submitted that it is essential to freeze the commissioning date for the transmission system to an appropriate date so that inflow of tariff starts and lenders are assured of repayment of their loans. Any lack of assurance in this regard makes the project completely uncertain and hence unviable, the petitioner has contended. In view of the uncertainty in commissioning of the hydroelectric projects for which the associated transmission system is being constructed, .the petitioner has requested to approve the date of commercial operation of the transmission system as July 2014 in terms of Regulation 3 (12)(c) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the tariff regulations).



9. The transmission system for Parbati-II HEP and Parbati-III HEP was planned considering that the commissioning of Parbati-II HEP would precede the commissioning of Parbati-III HEP and thus when Parbati-III HEP was commissioned, the transmission system associated with Parbati-II HEP would be available for use for evacuation of power. The length of the transmission line associated with Parbati-II HEP proposed to be used was said to be approximately 6 Kms.

10. The petition has been filed against the above background with the prayers already noted.

11. Reply to the petition has been filed by the NTPC, NHPC and PGCIL.

12. NTPC in its reply affidavit dated 19.8.2011 has stated that as per the Central Electricity Authority letter dated 23. 2.2009, 400 kV Koldam-Ludhiana S/C transmission line is not part of the transmission system associated with Koldam HEP and that commissioning of the transmission line has to match with the commissioning of Parbati-II HEP. Therefore, NTPC has denied its liability for delay in the commissioning of the transmission system or payment of any charges therefor. The petitioner in its rejoinder dated 6.9.2011 has submitted that as per original scheme approved at 14th Standing Committee meeting, 400 kV D/C Koldam-Ludhiana S/C transmission line was part of Koldam HEP transmission system and therefore NTPC be directed to sign Indemnification Agreement with the petitioner, otherwise, NHPC be directed to do so.



13. NHPC in its reply dated 27.9.2011 has submitted that pursuant to the decision of Standing Committee, the petitioner and NHPC initially executed the Indemnification Agreement with zero date of 31.12.2011 which was subsequently revised to 31.12.2012. It has been stated that NHPC and the petitioner were already deliberating further extension of zero date and therefore, the petitioner cannot take liberty to unilaterally impose the date of commissioning of July 2014. NHPC has averred that the petition is not maintainable under Regulation 3 (12) (c) of the tariff regulations as the transmission system being developed by the petitioner is not yet ready. NHPC has urged that delay in commissioning of Parbati-II HEP cannot be said to be the reason for delay in commissioning of the associated transmission system. NHPC has further averred that the construction of Parbati-II HEP was in advance stage and it was trying its best to commission the project within given time schedule though it has no control over geological surprises and other force majeure situations. The petitioner in its rejoinder dated 24.10.2011 has submitted that commissioning of the transmission system was to be commensurate with the commissioning of Parbati-II HEP which has been delayed by NHPC, a fact admitted in the reply of NHPC. Therefore, according to the petitioner, it was justified to approach this Commission for declaration of July 2014 as the date of commissioning of the transmission system.

14. PGCIL in its reply dated 5.10.2011 has submitted that the original schedules of commissioning of Parbati-II, Koldam and Parbati-III HEPs were 2009-10, 2008-10 and 2012-13, respectively. It has stated that the transmission system was planned considering that the commissioning of Parbati-II HEP would precede the commissioning of Parbati-III HEP and when Parbati-III HEP was commissioned, the transmission system associated with Parbati-II HEP would be



available for use for some stretch. It has been submitted that there were delays in the commissioning of the hydroelectric projects which also changed the sequence of commissioning of the projects. Considering these changes, the requirement of the transmission system was discussed during the 26th and 28th Standing Committee meetings of Northern Region Transmission Planning held on 13.10.2008 and 29.12.2010 whereat it was agreed that to evacuate power from Parbati-III HEP, commissioning of a portion of the proposed Parbati-Koldam 400 kV S/C line was needed to be matched with commissioning of the transmission system associated with Parbati-III HEP. PGCIL has stated that the portion of Parbati-Koldam 400 kV S/C line to be matched with Parbati-III HEP includes from point of LILO of Parbati-Koldam transmission line for Parbati-III HEP interconnection to the point of LILO at Parbati pooling station (5-6 kms). It was further decided that commissioning of the above section of 400 kV Parbati-Koldam transmission line, required for evacuation of power of Parbati-III HEP be advanced and taken up on priority. PGCIL has further submitted that it was also decided that the transmission charges for 400 kV Parbati-Koldam transmission line would be payable in addition to the transmission charges of Parbati-III transmission system being implemented by PGCIL. The petitioner in its rejoinder affidavit dated 24.10.2011 has submitted that as per originally approved scheme, only 6 Kms stretch of Parbati- Koldam transmission line was to be used for evacuation of power from Parbati-III HEP as the remaining portion of transmission system for evacuation of Parbati-III was to be constructed by PGCIL. The petitioner has stated that PGCIL directed the petitioner to advance the commissioning of transmission line so that the former can utilize 70 Kms instead of 6 Kms of the transmission line to facilitate evacuation of power from Parbati-III HEP. The petitioner has requested for appropriate orders indicating that it would be paid



tariff for this portion of transmission line utilized for the evacuation of power of Parbati-III HEP.

15. At the hearing on 28.2.2012, learned counsel for the petitioner placed on record the copy of the minutes of the 30th meeting of the Standing Committee on Power System Planning of Northern Region held on 19.12.2011 and submitted that in the said meeting it was decided that the petitioner would make all efforts to complete one circuit of Parbati- Koldam 400 kV transmission line by July, 2012 and the other circuit in 4-5 months thereafter. Learned counsel further submitted that as per the decision, the payment of the transmission charges would be from the date(s) of commissioning. Similarly, the construction of 400 kV Koldam - Ludhiana D/C transmission line was agreed to be completed by the petitioner by March 2013 to commensurate with the commissioning of Koldam HEP. Learned counsel submitted that the petitioner had made investment for creation of transmission assets, which should be serviced by the beneficiaries as and when these assets were ready.

16. We have considered the submissions made by the parties.

17. The petitioner has prayed for approval of July 2014 as the date of commercial operation of the transmission system relying upon Regulation 3 (12) (c) of the tariff regulations. Regulation 3 (12) (c) defines the date of commercial operation of the transmission system, as under:

"(12) **'date of commercial operation' or 'COD means**

(a)

(b).....

.....



(c) in relation to the transmission system, the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful charging and trial operation:

Provided that the date shall be first day of a calendar month and transmission charge for the element shall be payable and its availability shall be accounted for, from that date:

Provided further that in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its suppliers or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service."

18. In terms of sub-clause (c) of clause (12) of Regulation 3 of the tariff regulations, the date of commercial operation of an element of the transmission system is the date, as declared by the transmission licensee, from which the said element of the transmission system is in regular service after successful charging and trial operation. Thus, primarily, the transmission system or any element thereof can be declared under the commercial operation after the element has been charged, has undergone successful trial operation and has been put in regular service. However, the second proviso to sub-clause (c) empowers this Commission to approve the date of commercial operation prior to the element coming into regular service in case this Commission is satisfied that element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee. A bare reading of the relevant provision suggests that in order that an element of the transmission system be declared under commercial operation it must have been made ready for regular service. This Commission may declare the element under commercial operation ready for regular service if it have been prevented to render the regular for reasons not attributable to the

transmission licensee. Thus, availability of the transmission element for rendering the regular service is the *sine qua non* for declaring its commercial operation. The petitioner has prayed for approval of date of commercial operation for the transmission system, not ready or available for regular service. The construction of the transmission system was not completed by the petitioner when the petition was filed. The petitioner has sought advance declaration based on the anticipated completion date of July, 2014. The first prayer made by the petitioner cannot be granted as it falls foul of the provisions of the tariff regulations.

19. Since the filing of the petition, there have been some major developments. The learned counsel for the petitioner has informed during the hearing that at the 30th Standing Committee meeting on Power System Planning of Northern Region held on 19.12.2011, the petitioner was called upon to make efforts to commission the elements of the transmission system in accordance with the following schedule:

- Commissioning of one circuit of Parbati-Koldam transmission line by July, 2012 and other circuit 4-5 months thereafter so as to match with commissioning of Parbati-III HEP, and
- Commissioning of Koldam – Ludhiana transmission line to match with the commissioning of Koldam HEP – expected by March 2013.

20. The petitioner is said to have agreed to make its best efforts to meet the above schedules. The beneficiaries have agreed to the revised schedule of commissioning of the transmission lines, which is beneficial to the petitioner being



ahead of the date proposed in the present petition. The beneficiaries are said to have agreed to payment of the transmission charges from the date(s) of commissioning. For this reason also, the first prayer made by the petitioner does not survive. The petitioner is expected to go ahead with the transmission system in right earnest so as to adhere to the revised schedule of commissioning as agreed by all parties.

21. As regards the second prayer to allow the petitioner to approach this Commission for determination of transmission tariff, it is sufficient to say that as per the tariff regulations, the petitioner is at liberty to approach this Commission for determination of tariff within six months of the anticipated date of commercial operation of an element of the transmission system. No specific approval is needed to approach this Commission for determination of tariff.

22. The third prayer is for claiming the transmission charges for the stretch of 400 kV Parbati-Koldam transmission line used for evacuation of power of Parbati-III HEP. The beneficiaries of Parbati-III HEP have already agreed to share the transmission charges of this portion. The petitioner shall file a petition for approval of the transmission charges. It is also noticed that the petitioner was granted the transmission licence for construction of transmission system for evacuation of power generated at Parbati-II HEP and Koldam HEP. Now as it transpires, a part of the transmission system is proposed to be used for evacuation of power of Parbati-III HEP. The petitioner shall approach this Commission for amendment of licence by making an appropriate application in accordance with law.



23. Petition No. 135/MP/2011 is disposed of in terms of the above order.

Sd/-
(M Deena Dayalan)
Member

sd/-
(VS Verma)
Member

sd/-
(S Jayaraman)
Member

sd/-
(Dr Pramod Deo)
Chairperson

