

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 121/TL/2012

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri M.Deena Dayalan, Member

Shri A.K.Singhal, Member

Date of Hearing: 13.3.2014

Date of Order: 16.4.2014

In the matter of

Application under Section 14 read with Section 15(1) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of transmission licence and other related matters) Regulations, 2009 for grant of Transmission Licence to Nagapattinam-Madhugiri Transmission Company Limited.

And

In the matter of

POWERGRID NM TRANSMISSION LIMITED

B-9, Qutab Institutional Area,

Katwaria Sarai,

New Delhi-110 016

Petitioner

Vs

IL&FS Tamil Nadu Power Company Limited,

B-Block, Navin`s Presidium,

4th Floor, 103, Nelson Manickam Road,

Aminjikarai, Chennai-600 029

Respondent

The following were present:

Shri M.G.Ramachandran, Advocate for the petitioner

Ms. Anushree Bardhan, Advocate for the petitioner

Shri U.K. Tyagi, PGCIL

Shri B.Vamsi, PGCIL

Shri S.T.Thomas, PGCIL

Shri Hazig Beg, ITPCL

Shri S.C. Misra, ITPCL

Shri V. L. Dua, ITPCL

Shri A.R.Sah, ITPCL

ORDER

PFC Consulting Limited through its subsidiary company Nagapattinam-Madhugiri Transmission Company Limited carried out the international competitive bidding in terms of the Guidelines issued under Section 63 of the Electricity Act, 2003 for execution of the "Transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A" on Build, Own, Operate and Maintain basis to act as Transmission Service Provider after being acquired by the successful bidder. Based on the competitive bidding, Power Grid Corporation of India Limited (PGCIL) was selected as the successful bidder. After completing all requirements in terms of the RfP, such as signing of the Transmission Service Agreement (TSA) and Contract Performance Guarantee etc., PGCIL acquired 100% equity holdings in Nagapattinam-Madhugiri Transmission Company Limited on 29.3.2012. In terms of the TSA, the transmission system would be utilized for evacuation of power from the generating station of IL&FS Tamil Nadu Power Company Limited (ITPCL).

2. Power Grid Corporation of India Limited through its subsidiary Nagapattinam-Madhugiri Transmission Company Limited filed the petitions for grant of transmission licence and adoption of transmission tariff on 4.4.2012. During pendency of the petitions, PGCIL filed Petition No. 143/MP/2012 raising apprehension regarding the execution of the generation project of ITPCL and seeking issue of appropriate direction with regard to whether or not to implement Transmission system associated with IPP projects in Nagapattinam/Cuddalore Area. Subsequently, PGCIL filed IA No. 5/2013 in Petition No.121/TL/2012 on 22.2.2013 seeking a direction for execution of the project with time and cost over-

run and for extension of period of 36 months from the date of grant of transmission licence. The Commission vide its order dated 9.5.2013 proposed to grant transmission licence to the petitioner. The Commission also disposed of the IA No.5/2013 directing the petitioner to first try to resolve the issues in consultation with ITPCL in terms of TSA and in case of non-resolution of issues to approach the Commission in accordance with law. The petitioner in its affidavit dated 5.6.2013 submitted that in terms of the provisions of Article 3.3.4 of the TSA, the parties met on 20.5.2013 to find out a mutually agreeable solution to the issues of time over-run and cost overrun but the respondent refused to accept the liability for time and cost overrun.

3. The Commission granted the licence to Nagapattinam-Madhugiri Transmission Company Limited vide order dated 20.6.2013. In the same order, the Commission directed the petitioner with regard to the cost escalation on account of delay in grant of transmission licence in the following terms:

"13. The transmission project has been awarded to the applicant on the basis of the competitive bidding after the applicant was found to be the lowest bidder among the 18 bidders who participated in the bidding. The evacuation of power from the generation project is linked to the execution of the transmission project and any move by the applicant to abandon the project on the plea of delay in grant of transmission licence would adversely affect the execution and commissioning of the generation project. Moreover, PGCIL was selected as the successful bidder and the applicant company is its 100% acquired company. Even though the grant of transmission licence was delayed, it is not the case that the applicant would not be granted the transmission licence. In that event, PGCIL and the applicant should have taken action to execute the project.

14. However, we are not averse to consider the claim of the applicant for cost and time overrun within the framework of the TSA. To consider whether the delay in issue of the transmission licence has resulted in cost overrun, we direct the applicant to submit the following by 10.7.2013 with an advance copy to the respondent:

- (a) What was the bid validity period and whether the applicant has extended bid validity period or not?
- (b) Whether tender/bid has been cancelled?
- (c) PERT chart showing the milestones for different activities for execution of the project.

15. We also direct CTU to submit the contingency plan of action envisaged to evacuate the power in case of delay in execution of the project on or before 10.7.2013, with an advance copy to the respondent.

16. We are of the view that execution of the transmission project should not be affected on account of the apprehension generated by the applicant regarding viability of the generation project involving the environmental issue associated with the generation project or the apprehension of the applicant regarding cost and time overrun of the project. The applicant is directed to go ahead with the execution of the subject transmission project and try to draw upon its vast experience in order to execute the project in the shortest possible time frame. The issue of extension of time for execution of the project and associated cost implication would be considered on merit by the Commission in accordance with the provisions of the TSA after considering all details of the cost of the project assumed at the time of bidding and indexation etc."

4. PGCIL filed the contingency plan of action envisaged to evacuate the power from the generation project of ITPCL in case of delay in execution of the project vide its letter dated 10.7.2013. According to the contingency plan, evacuation would be done through LILO of 400 kV Neyveli-Trichy D/C transmission line at Nagapattinam. During the hearing on 8.8.2013, the representative of the respondent submitted that the contingency plan submitted by CTU is not adequate for evacuation of power. Considering the importance of the project, the Commission had directed the petitioner to proceed with the execution of the transmission project and try to draw upon its vast experience in order to execute the project in the shortest possible time without linking the same to its request for cost and time overrun. We had also directed Central Electricity Authority to ensure that evacuation plan is adequate and file its submission in this regard. .

5. The petitioner vide its affidavit dated 28.10.2013 has submitted that it has started all procurement activities and all efforts are being made to execute the transmission project expeditiously. The petitioner has submitted that finalization for the transmission project is dependent on the settlement of time and cost

overrun issues which are under consideration of the Commission and has requested the Commission to settle the issues to expedite the transmission project.

6. CEA vide its letter dated 19.11.2013 has submitted that both the interim /contingency and main power evacuation schemes are to be implemented by PGCIL and the Commission may direct PGCIL to implement the approved transmission schemes without further delay so that power from ITPCL is not bottled up. The relevant portion of the CEA's letter is extracted as under:

"1.The Evacuation Plan for generation project of IL&FS Tamil Nadu Power Company Ltd (ITPCL) [2X600 MW] consists of Dedicated Transmission System to be implemented by the Generating Developer i.e ITPCL and Inter-State Transmission System (ISTS) to be developed by a company of PGCIL i.e PNMTL awarded through TBCB. Further, an Interim Transmission System has been approved to be implemented by PGCIL under regulated tariff mechanism. However, on the request of ITPCL, due to generation and transmission system mis-match on the implementation ISTS, Contingency Transmission System has been approved.

2. The main transmission system from Nagapattinam pooling station onward [viz (i) Nagapattinam Pooling Station-Salem (new) 765 kV D/C line (initially charged at 400 kV) and (ii) Salem-Madhugiri 765 kV S/C line-2 (initially charged at 400 kV)] was awarded to Power Grid Corporation of India Ltd (PGCIL) through tariff based competitive bidding and the 'zero date' was 18.4.2012. It was scheduled to be commissioned in 36 months. However, even after 18 months have elapsed, it is understood that PGCIL has neither started construction work at site nor placed the award for works. As such the main transmission system is not likely to be ready in matching time frame with the commissioning of the generating units of ITPCL (As per ITPCL, the first unit of the generation project is likely to be commissioned by October, 2014). After the award of the transmission scheme to PGCIL through TBCB, it has approached CERC on various issues about which CEA does not have any official information.

3. In the original interim arrangement, there was LILO of one circuit of Neyveli-Trichy 400 kV D/C line and subsequently due to delay on part of PGCI, CEA agreed for LILO of second circuit of Neyveli-Trichy 400 kV D/C line also so that some quantum of power can be evacuated subject to margins available in the transmission system."

7. The petitioner has filed IA No.1/2014 with prayer to decide the issues of time and cost overrun at the earliest to enable it to expedite the transmission project implementation and enable award of EPC contract. The petitioner has submitted that after grant of transmission licence on 15.7.2013, it had approached the Ministry of Power for grant of approval under section 164 of the Act which was granted on 9.12.2013. The petitioner has submitted that essential requirements for taking up the project viz. grant of transmission licence and clearance under section 164 of the Act stand fulfilled. However, the licence granted is incomplete as it has not dealt with the compensation for the time and cost overrun owing to delay in granting the licence and delay in grant of clearance under section 164 of the Act. The petitioner has further submitted that in its affidavit dated 5.8.2013, the petitioner had prayed for 36 months time from the date of resolution of the time and cost over-run issues for execution of the project as on August 2013 and allow an increase of levelized tariff by 23%. The petitioner has submitted that the change in project cost stands revised to 32.09% as on December 2013 and the execution time of the project shall be 30 months from the date of Lol which shall be placed within 15 days from the date of settlement of time and cost over-run issues. The petitioner has submitted the details of the cost variation as under:

% Variation from February 2012 to December, 2013												
S.No.	Cost Components	Base (% of Total project cost)	VARIATION FACTORS ON ACCOUNT OF							CURRENT (%of total project cost)	% Difference (Current Vs. Base)	
			INDICES	\$ IMPACT	SAFEGUARD DUTY	EXCISE DUTY	SERVICE TAX	CUSTOM DUTY	TOTAL			
1.	TOWER PARTS	24.84	10.35%				1.87%			12.41%	27.93	3.08
2.	CONDUCTOR	20.94	13.88%				1.87%			16.01%	24.29	3.35
3.	EARTHWIRE	0.37	8.15%				1.87%			10.17%	0.41	0.04
4.	INSULATORS	3.73	0.00%	35.42%	25.00%				1.58%	71.95%	6.42	2.69
5.	HARDWARE FITTINGS	2.72	12.03%				1.87%			14.12%	3.10	0.38
6.	CON & EARTH ACCESS	0.98	10.92%				1.87%			12.99%	1.11	0.13
7.	TOWER ERECTION	2.43	26.87%					1.87%		29.24%	3.14	0.71
8.	CIVIL WORKS	9.74	13.22%					1.87%		15.34%	11.23	1.49

9.	STRINGING	1.24	26.87%				1.87%		29.24%	1.60	0.36
10.	F&IETC.	3.45	35.00%						35.00%	4.65	1.21
11	CROP COMPENSATIO N	3.00								3.60	0.60
12	ADDITIONAL ROW	0.00								1.44	1.44
13	IEDC	3.52							0.00%	4.19	0.67
14	CONTINGENCIE S	2.11							0.00%	2.52	0.40
15	PRICE VARIATIOIN	12.68							0.00%	15.10	2.42
16	MARKET CORRECTION FACTOR	0.00								0.00	0.00
17	IDC	8.26							0.00%	9.14	0.89
18	INTEREST RATE IMPACT	0.00								11.87	11.87
19	ADDITIONAL EQUITY	0.00								0.36	0.36
	INTEREST ON ACQUISITION PRICE	0.00									0.00
	TOTAL PROJECT COST	100.00								132.09	32.09

8. During the course of hearing, learned counsel for the petitioner submitted that the Empowered Committee on Transmission in its 29th meeting held on 15.6.2012 took the decision for keeping the implementation of the transmission project on hold till there is clarity on the materialization of generation project. Learned counsel submitted that on account of lack of clarity regarding execution of the transmission project, the Commission did not proceed with the passing of the order on the application for grant of transmission licence and adoption of transmission charges. Since there was no order from the Empowered Committee with regard to the execution of the transmission project and from the Commission with regard to grant of transmission licence for about 15 months, the petitioner could not proceed with the execution of the project. Learned counsel further submitted that in the circumstances, the force majeure event having prevailed in terms of clause 3.3.4 of the TSA for more than 9 months, the TSA can be terminated. However, the petitioner is willing to complete the project with appropriate adjustment for the reasonable cost increase and grant of 30 months time from the date of settlement of time and cost increase issues.

9. The representative of the respondent placed on record the status of the generation project of ITPCL supported by photographs and submitted that since the generation project is coming up in the month of October, 2014, the Commission may direct the petitioner to start the work for execution of the transmission project immediately so that evacuation of power does not get affected. With regard to the contingency plan for evacuation of power, the representative of the respondent confirmed that a contingency plan has been put in place by PGCIL though the arrangement would not be sufficient to evacuate the entire power from the project.

10. We have considered the submissions of the petitioner and respondent. Based on the regulatory approval accorded by this Commission for execution of High Capacity Power Transmission Corridor XI (Transmission System associated with IPP projects in Nagapattinam/Cuddalore Area), the present transmission project is being executed for evacuation of power from the generation project of the respondent. In line with the decision of the Empowered Committee on Transmission, the trunk transmission corridors were to be executed through competitive bidding and sub-stations/pooling stations were to be executed by PGCIL on cost plus basis. PFC Consulting as the Bid Process Coordinator carried out the competitive bidding and based on its lowest bid, PGCIL was selected as the successful bidder and acquired the Nagapattinam-Madhugiri Transmission Company Limited. Consequently, PGCIL through its wholly owned subsidiary Nagapattinam-Madhugiri Transmission Company Limited filed the application for transmission licence. During the pendency of the petition, National Green Tribunal in its judgment dated 23.5.2012 suspended the environment clearance to the

generation project of the respondent and directed the Ministry of Environment & Forest to initiate a carrying capacity study taking into account the assimilative and supportive capacity of the region to be completed within a maximum period of three months. The National Green Tribunal also directed the Ministry of Environment & Forest to review the environment clearance based on the cumulative impact assessment study and stipulate any additional environmental conditions if required. PGCIL asked the respondent about the status of the generation project to which the respondent vide its letter dated 29.5.2012 had informed that the Cumulative Impact Assessment Study and Impact thereof would be completed within next two to three months. In the said background, PGCIL filed petition No.143/MP/2012 seeking appropriate directions whether or not to implement the project. Learned counsel for the petitioner in his written note of argument during the hearing has submitted that in the light of the judgement of the National Green Tribunal, PGCIL approached the Empowered Committee on Transmission which in the minutes of its 29th meeting held on 15.6.2012 directed PGCIL to put the project on hold and since there was no directions of the Empowered Committee, PGCIL could not proceed with the project. It is noticed that the respondent in its affidavit dated 24.8.2013 has placed on record the Corrigendum dated 14.8.2013 issued by Ministry of Environment & Forest to its earlier environment clearance dated 31.5.2010 and has submitted that after issue of the Corrigendum, there is no uncertainty regarding materialization of the generation project. PGCIL does not appear to have placed the same before the Empowered Committee and sought its views regarding the implementation of the project. However, the petitioner in its IA No. 5/2013 filed on 22 February 2013 sought time extension and cost escalation for implementation of the project. The Commission has thereafter taken up the petition and in the order dated 9.5.2013

proposed to grant transmission licence and issued public notice under section 15(5) of the Act and in the order dated 20.6.2013 issued transmission licence to the petitioner. In the order dated 20.6.2013, the Commission has taken note of the delay in the issue of the transmission licence and has assured the petitioner to mitigate the hardship after the project is executed. The Commission has made it clear that the petitioner should execute the project within the shortest possible time frame by drawing upon its vast experience and the issue of extension of time and associated cost escalation would be considered on merit by the Commission in accordance with the provisions of the TSA after considering the details of the cost of the project assumed at the time of the bidding and indexation etc. Subsequent to the grant of the licence, the petitioner has applied and obtained the approval on 9.12.2013 under section 164 of the Act for execution of the project. The petitioner in its IA 1/2014 has sought cost escalation of 32.09% from February 2012 to December 2013 over the base project cost without disclosing the cost of the project assumed at the time of bidding as directed in our order dated 20.6.2013.

11. Despite our clear directions in our order dated 20.6.2013 to mitigate the hardship of the petitioner on account of the delay in grant of transmission licence, the petitioner has submitted that placement of LOI to the contractor and financial closure activities are linked to the settlement of cost and time increase issues before proceeding further. In our view, in a competitively bid project, upfront revision of tariff based on the cost escalation indices as claimed by the petitioner cannot be permitted as it will violate the sanctity of the competitive bidding. However, the Transmission Service Provider cannot be made to suffer on account of reasons which are beyond its control. After execution of the project, the

petitioner may approach the Commission with a petition which will be dealt in line with the bidding guidelines and the TSA. It is also pertinent to mention that the petitioner has contributed to the delay in execution of the project by not taking the expeditious action even though the transmission licence was granted to the petitioner vide order dated 20.6.2013.

12. The petitioner is directed to go ahead with execution of the project. As regards the extension of time for execution of the project, the petitioner is required to execute the project within 36 months from the effective date and is required to obtain the transmission licence within 6 months from the effective date in terms of Article 3.1.3 of the TSA. In other words, the petitioner is required to implement the project within 30 months from the date of grant of transmission licence. In this case the petitioner was granted transmission licence on 20.6.2013 and accordingly, the petitioner should execute the project within a period of maximum 30 months with effect from 20.6.2013.

13. The respondent during the hearing has submitted the progress of work of the generation project. The representative of the petitioner submitted that the first unit of the generation project would be commissioned by October 2015. CEA in its letter dated 19.11.2013 has recommended that both the interim/contingency and main power evacuation schemes are to be implemented by PGCIL and necessary directions should be issued to PGCIL in this regard. We direct the petitioner to execute the transmission system as expeditiously as possible and also put in place the interim arrangement for evacuation of power so that power from the generation project of the respondent is not bottled up. Any delay in the execution

of the transmission project beyond 30 months from 20.6.2013 i.e. 20.12.2015 shall be dealt with as per the TSA.

14. Petition No.121/MP/2012 and I.A. No. 1/2014 are disposed of in terms of the above.

Sd/-
(A.K.Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson