

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 122/MP/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A. K. Singhal, Member

Shri A. S. Bakshi, Member

Date of Hearing : 18.06.2015

Date of Order : 26.11.2015

In the matter of:

Petition under Section 79 of the Electricity Act, 2003 read with statutory framework for tariff-based competitive bidding for transmission service and 765 kV S/C transmission line from Jabalpur-Bhopal, 765 kV S/C transmission line from Bhopal-Indore, 400 kV D/C transmission line from Bhopal-Bhopal, 765 kV S/C transmission line from Aurangabad-Dhule, 765 kV S/C transmission line from Dhule-Vadodara, 400 D/C transmission line from Dhule-Dhule, 2x1500 MVA 765/400 kV sub-station at Bhopal and 2x1500 MVA 765 / 400 kV sub-station at Dhule, being implemented by the Petitioner.

And

In the matter of:

Bhopal Dhule Transmission Company Limited
F-1, "The Mira Corporate Suites", 1 & 2 Ishwar Nagar,
Mathura Road, New Delhi – 110065

... Petitioner

Vs.

1. Power System Operation Corporation Limited,
B-9, 1st Floor, Qutab Institutional Area,
Katwaria Sarai
New Delhi – 110016
2. Power Grid Corporation of India Limited,
Plot No - 2, Saudamini,
Sector 29
Gurgaon – 122002
3. Chhattishgarh State Power Trading Corporation Company
2nd Floor, Vidyut Sewa Bhawan,
Danganiya, Raipur – 492013
4. Sterlite Energy Limited
1st Floor, City Mart Complex,

Baramuda, Bhubaneshwar – 751003

5. GMR Kamalanga Energy Limited
10th Floor, C&D Block, IBC Knowledge Park, Opp.: Fire Station,
Bannerughatta Road, Bangalore – 560029
6. Navbharat Power Private Limited
Malaxmi House, 82583/3, Road No 2m
Banjara Hills, Hyderabad – 500034
7. Monnet Power Company Limited
Monnet House, 11 Masjid Moth,
Greater Kailash Part II, New Delhi – 110048
8. Jindal India Thermal Power Limited
B1, Local Shopping Complex,
Vasant Kunj, New Delhi – 110070
9. Lanco Babandh Power Private Limited
Plot No – 397, UdyogVihar V,
Gurgaon – 122016
10. Ind Barat Energy (Utkal) Limited
Plot No 30A, Road No 1, Film Nagar,
Jubilee Hills, Hyderabad – 500033
11. MB Power (Madhya Pradesh) Limited
235 Okhla Industrial Area,
Phase III, New Delhi Delhi – 110020
12. RKM Powergen Limited
147, Gitanjali Avanti Vihar
Sector 1, Raipur (C.G. – 492004)
13. Athena Chhattisgarh Power Limited
7124 B Block, 5th Floor, Roxana Towers,
Greenlands, Begumpet, Hyderabad – 500016
14. Jindal Power Limited
2nd Floor, DCM Building, Plot No – 94
Sector 32, Gurgaon – 122001
15. SKS Power Generation (Chhattisgarh) Limited
501 B, Elegant Business Park, Andheri,
Kurla Road, J. B. Nagar, Andheri (East), Mumbai – 400059
16. Korba West Power Co. Limited
6th and 7th Floor, Vatika City Point,
M. G. Road, Gurgaon – 122002

17. DB Power Limited
813, Phase V, Udyog Vihar,
Gurgaon, Haryana – 122016
18. Visa Power Limited
No.9, HLL Building, Shakespeare Sarani,
Kolkata – 700071
19. KSK Mahanadi Power Company Limited
82/293/82/A/431/A, Road No 22
Jubilee Hills, Hyderabad – 500033
20. Bharat Aluminium Company Limited
C/o Administrative Building,
Balco Nagar, Korba – 495684
21. Vandana Vidyut Limited
Vandana Bhawan, MG Road,
Raipur, Chhattisgarh – 492001
22. Lanco Amarkantak Power Limited
Plot No 397, UdyogVihar,
Phase-3, Gurgaon – 122016
23. Chhattisgarh Steel & Power Limited
142, Saheed Smarak Complex, G. E. Road,
Raipur, Chhattisgarh
24. GMR Chhattisgarh Energy Pvt. Limited
10th Floor, Tower D, IBC Knowledge Park, 4/1
Bannerghatta Road, Near Dairy Circle, Bangalore – 560029
25. Central Electricity Authority
Sewa Bhawan,
R. K. Puram
New Delhi – 110066
26. Western Region Power Committee
F-3 MIDC Area Marol,
Andheri (East),
Mumbai – 400093

... Respondents

Parties present:

For Petitioner: Shri M.G.Ramachandran, Advocate, BDTCL
Shri Pulkit Sharma, BDTCL
Shri T.A.N.Reddy, BDTCL

For Respondents: Shri Alok Shankar, Advocate, GMR
Shri S.S.Barpanda, POSOCO
Ms. Amisha Baruah, POSOCO
Ms. Abiha Zaidi, NLDC
Shri V.Srinivas, POSOCO
Shri B.K.Arya, CEA

ORDER

The petitioner, Bhopal-Dhule Transmission Company Limited, has filed the present petition under Section 79 of the Electricity Act, 2003 (the Act) *inter alia* to allow the transmission charges of the elements with effect from completion of project i.e. from the date of approval for energisation by Electrical Inspector.

Background of the case:

2. PFC Consulting Ltd. (PFCCL) was appointed as the Bid Process Coordinator for selection of the Transmission Service Provider in accordance with Tariff Based Competitive Bidding Guidelines for Transmission Service issued by the Central Government under Section 63 of the Electricity Act, 2003 (the Act) in respect of the transmission system for system strengthening of Western Region (Project) comprising the following transmission lines and substations:

Transmission lines:

- (i) Jabalpur- Bhopal 765 kV S/C transmission line
- (ii) Bhopal- Indore 765 kV S/C transmission line
- (iii) Bhopal- Bhopal 400 kV D/C transmission line
- (iv) Aurangabad- Dhule 765 kV S/C transmission line
- (v) Dhule- Vadodra 765 kV S/C transmission line
- (vi)** Dhule- Dhule 400 kV D/C transmission line

Sub-stations:

- (i) 765/400 kV 2x1500 MVA Sub-station at Bhopal
- (ii) 765/400 kV 2x1500 MVA Sub-station at Dhule

For this purpose, Bhopal-Dhule Transmission Company Limited (BDTCL) was incorporated as Special Purpose Vehicle by PFC Consulting Ltd. to initiate the work

on the project and subsequently to act as Transmission Service Provider (TSP) after being acquired by the successful bidders. Based on the tariff based competitive biddings, Sterlite Transmission Projects Private Limited (STPPL) emerged as the successful bidder and Letter of Intent was issued to STPPL on 31.1.2011. BDTCL was acquired by STPPL on 31.3.2011 as its fully owned subsidiary. BDTCL also entered into Transmission Service Agreement with the Long Term Transmission Customers (LTTCs) of the project on 7.12.2010. Thereafter, BDTCL approached the Commission for adoption of transmission charges and grant of transmission licence and the Commission vide order dated 28.10.2011 in Petition No. 108/2011 adopted the tariff and vide order dated 12.10.2011 in Petition No. 110/2011 granted transmission licence to BDTCL, valid for a period of 25 years to discharge the functions as the Transmission Service Provider.

3. Gist of the submission of the petitioner is summarised as under:
 - (a) Out of the six transmission lines, five transmission lines along with the two sub-stations at Dhule and Bhopal have been commissioned and the petitioner is paying fees and charges of the Regional Load Dispatch Centre since the month of June 2014, till date, on monthly basis to Western Region Load Dispatch Centre (WRLDC).
 - (b) There has been delay in commissioning of the last element due to the following reasons:
 - (i) On 29.1.2013, Ministry of Power notified the "Modified Procedure for obtaining the authorization under Section 164 of the Electricity Act, 2003 and was communicated to the petitioner by MOP on 20.1.2014, i.e.36 months from the award of the Project (31.1.2011).

In the absence of requisite authorization under Section 164 of the Act, the petitioner faced severe right of way constraints and difficulties in starting construction and was unable to implement the most optimum route-alignment.

(ii) Ministry of Forest and Environment vide its Notification No. 11-423/2011-FC dated 13.2.2012 changed the "Guidelines for diversion of forest land for non-forest purposes" under the Forest (Conservation) Act, 1980 (Forest Guidelines). As a result, the petitioner received Forest Clearance under the Forest Conservation Act, 1980 for Jabalpur-Bhopal transmission line on 25.3.2015 in Madhya Pradesh (112.370 Hectares), for Dhule-Vadodara transmission line on 27.8.2014 for Gujarat (38.40 Hectares) and Maharashtra (17.216 Hectares). In the absence of the requisite Forest Clearance for Jabalpur-Bhopal transmission line till 25.3.2015, the petitioner was not able to commence work in the forest and associated areas.

(c) In view of the foregoing, the petitioner approached the Central Electricity Authority (CEA) to consider its situation and possible solution for commissioning of different elements of the Project. CEA, in its Minutes of Meeting dated 24.9.2013, considered the petitioner's request and advised the petitioner to work on all the elements independently, as every element under the Project was crucial for evacuation of power from various IPP's. Accordingly, the petitioner put its entire effort and additional resources to commission all the elements and sub-stations under the Project.

(d) Since then the petitioner has been declaring deemed commercial operation of each element independently, as and when the certification was received from the electrical inspector, and after complying with all the processes and procedures. The approval for energisation of the elements in the project under Regulation 43 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 and the schedule for successful trial operations of transmission elements in the project are as under:

Element	Approval for Energisation by CEA	Trial Operation Certificate
400kV D/C Bhopal(BDTCL)-Bhopal (MPPTCL) Transmission Line	13.6.2014	5.7.2014
765kV S/C Bhopal-Indore Transmission Line	13.8.2014	19.11.2014
400kV D/C Dhule (BDTCL)-Dhule (MSETCL) Transmission Line	29.9.2014	6.12.2014
765kV D/C Dhule-Aurangabad Transmission Line	20.10.2014	5.12.2014
765kV S/C Dhule (BDTCL)-Vadodara (PGCIL) transmission line	2.2.2015	*Deemed Declaration as per TSA w.e.f. 9.2.2015
765/400kV Dhule sub-station	28.2.2014	5.12.2014
765/400kV Bhopal sub-station	13.6.2014 & 26.9.2014	5.7.2014 & 30.9.2014
Jabalpur-Bhopal 765 kV S/C transmission line	1.6.2015	9.6.2015

**As the 765 kV S/C Dhule (BDTCL)-Vadodara (PGCIL) Transmission Line has been certified by Electrical Inspector, but the same could not be energised due to non-availability of sub-station at Vadodara end by Powergrid and hence it has been declared deemed commercial operation w.e.f. 9.2.2015 as per the Article 6.1.1 of the TSA and charged at 66 kV level voltage for anti-theft charging. The Hon'ble Commission has already considered the issue in Petition No. 66/TT/2015 for DhuleS/S and Dhule to Vadodhara transmission line.*

(e) With regard to the Commercial Operation Date (COD), as per the TSA, an “element shall be declared to have achieved COD after all the element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this agreement, have been declared to have achieved their

respective COD”. The summary of the pre-requisites as per the TSA are as under:

S. No	Transmission Element	Elements which are required for declaring of COD of the respective elements
a	765/400 kV Bhopal sub-station	With (b) & (d)
b	765 kV Bhopal- Bhopal D/C transmission line	With (a) & (d)
c	765 kV Bhopal-Indore S/C transmission line	With (a), (b) & (d)
d	765 kV Bhopal- Jabalpur S/C transmission line	With (a), (c) & (b)
e	765/400 kV Dhule sub-station	With (f) & (h)
f	765 kV Dhule- Dhule transmission line	With (e) & (h)
g	765 kV Dhule- Vadodra S/C transmission line	With (e), (f) & (h)
h	765 kV Dhule-Aurangabad transmission line	With (e), (f) & (g)

(f) Central Transmission Utility (CTU) initially processed the payments for the elements mentioned in the Project with effect from 1.9.2014 and 5.2.2015 and on 27.3.2015, reconciled the payments with regard to the elements of the Project and the payment had been made by them regularly till 17.4.2015. Thereafter, CTU informed the petitioner that the entire payments have been withheld pursuant to the discussion held in the Validation Committee Meeting. Even though the transmission lines/sub-stations have been made available progressively from 28.2.2014, 13.6.2014, 13.8.2014, 26.9.2014, 29.9.2014, 20.10.2014 and 2.2.2015, the payments have been allowed for Bhopal and Dhule hub only with effect from 19.11.2014 and 5.12.2014 respectively.

(g) Power System Operation Corporation Limited (POSOCO), vide its letter dated 10.4.2015 proposed that the matter shall be discussed in the Validation Committee meeting scheduled for 17.4.2015. In the said

validation committee meeting on 17.4.2015, it was observed that the Bhopal-Indore 765 KV S/C transmission line and the Bhopal-Bhopal 400 kV D/C transmission line should not be considered for next Point of Connection (PoC) application period as the Jabalpur-Bhopal 765 kV S/C transmission line is yet to be commissioned. Accordingly, all Dhule hub elements should be considered in the first quarter of the 2015-16 PoC period.

4. Against the above background, the petitioner has made the following prayers:
- “(a) Allow the Petition and direct POSOCO to consider the elements of Bhopal hub and Dhule hub for next PoC application period i.e. first quarter of FY 15-16.
- (b) Consider the element Jabalpur- Bhopal 765 kV S/C Transmission line (“**JBLLine**”) for next PoC application period i.e. first quarter for FY 15-16 as the same is scheduled to be commissioned by 10th May, 2015.
- (c) Allow the transmission charges of the elements w.e.f. Completion of Project i.e. from date of Approval for Energisation by Electrical Inspector.
- (d) Pass such other order(s) as this Hon’ble Commission deem fit and proper in the facts and circumstances of this case.
- (e) Direct CTU to disburse the transmission charges collected as per approved MTC.”

Proceedings before the Commission

5. The matter was heard on 12.5.2015. Notice was issued to the respondents to file reply to the petition. Subsequently, the petitioner vide its additional affidavit dated 11.5.2015 placed on record the Minutes of 1st Validation Committee Meeting for the year 2015-16.

Reply by the Respondents

6. Reply to the petition has been filed by the Power System Operation Corporation Ltd. (POSOCO), SKS Power Generation (Chhattisgarh) Ltd. and Power Grid Corporation of India Limited (PGCIL).

7. POSOCO vide its reply dated 26.5.2015 has submitted as under:

(a) As per the provisions of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges) Regulations, 2010 (Sharing Regulations), the respective Inter-State Transmission System (ISTS) licensee is required to provide the Yearly Transmission Charges (YTC) for computation of PoC charges. The petitioner has submitted YTC for different elements and the same have been considered during the computation period of PoC charges. POSOCO has submitted the details of element-wise PoC computation period as under:

Assets of BDTCL			
Name of Element	Anticipated COD as intimated by BDTCL	COD as per RLDC records and Trial operation certificate	Considered for PoC Computation since Application period
765 kV S/C Dhule-Aurangabad transmission line	1.5.2014	06.12.2014	April, 2014 June, 2014 (2014-15_Q1)
765 kV S/C Bhopal-Indore transmission line	1.5.2014	20.11.2014	April, 2014 June, 2014 (2014-15_Q1)
400 kV D/C Dhule-Dhule transmission line	5.5.2015	7.12.2014	April, 2014 June, 2014 (2014-15_Q1)
400 kV D/C Bhopal-Bhopal transmission line	1.5.2015	Ckt II on 1.7.2014 and Ckt I on 13.8.2014	April, 2014 June, 2014 (2014-15_Q1)
765/400 kV, 2X1500 MVA Bhopal sub-station	1.4.2014	Ckt I on 5.7.2014 and Ckt II on 1.10.2014	April, 2014 June, 2014 (2014-15_Q1)
765/400 kV, 2X1500 MVA Dhule sub-station	1.4.2014	7.12.2014	April, 2014 June, 2014 (2014-15_Q1)
765 kV S/C Dhule –Vadodara	30.12.2014	-	October, 14 – December 14 (2014-15_Q3)
765 kV S/C Bhopal-Jabalpur	1.5.2015	Not Yet	May, 15 – June, 15 (2015-16_Q1)

(b) Proviso to Clause 6.2.1 of the TSA provides that an element shall be declared to have achieved COD only after all the element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

(c) The declaration of COD of some elements was a pre-requisite for the declaration of the COD of the other elements. In the present case, 765 kV S/C Bhopal-Jabalpur line is yet to be commissioned. However, the petitioner has been claiming the tariff of those elements which are dependent on the COD of 765 kV S/C Bhopal-Jabalpur line. For instance, the COD of 765 kV S/C Bhopal-Indore line is conditional upon COD of 765 kV S/C Bhopal-Jabalpur line.

(d) POSOCO vide letter dated 25.03.2015 sought clarification from the petitioner regarding the matter for consideration in the PoC applications for the next year.

(e) The issue was taken up by POSOCO at the Validation Committee Meeting held on 17.4.2015 for the application period of 1.5.2015 to 30.6.2015, wherein the following decision was taken:

“Validation committee was of the view that in view of the pre-requisite of the commissioning of transmission elements associated with Bhopal end of BDTCL system expected to be fulfilled with anticipated commissioning of 765 kV Jabalpur-Bhopal transmission line, the same may be included in the PoC of ensuring application period. However, for the treatment of tariff of the transmission lines of BDTCL system already completed and the tariff having been granted in earlier quarters, BDTCL shall approach CERC so as to examine fulfilment of pre-requisites for commissioning of various elements and consequent treatment of tariff granted in the earlier quarters.”

(f) Accordingly, POSOCO, in the capacity of an Implementing Agency, considered the 765 kV S/C Bhopal-Jabalpur line for computation of PoC charges for the first quarter of 2015-16. The petitioner had claimed that the sixth element would be commissioned and energised by 10.5.2015. However, the same has not yet been commissioned.

(g) As per clause 7(1) (1) of the Central Electricity Regulatory Commission (Sharing of inter-state transmission Charges and losses) (First Amendment) Regulations, 2011, the transmission Licensees are required to provide the YTC data to the Implementing Agency i.e. POSOCO. Accordingly, POSOCO requested all the transmission licensees to submit the data on affidavit in order to avoid any future disputes. The affidavit was required to broadly contain the following:

(i) That the tariff being claimed is in accordance with the order of the Commission.

(ii) That the tariff being claimed is in accordance with the provisions of the TSA or any other agreement signed with the beneficiaries.

(iii) That the Implementing Agency/CTU shall be kept indemnified at all times from any and all damages, losses, and claims arising out of or resulting from the data furnished by the transmission licensee.

(iv) That if any an excess amount is claimed, then the transmission licensee shall refund the same with interest and the transmission licensee shall be liable for any penalty imposed by the Commission.

8. SKS Power Generation (Chhattisgarh) Limited (SKS) in its reply dated 22.5.2015 has submitted as under:

(a) The petitioner had claimed Force Majeure and Change in Law vide its letter dated 3.2.2014. However, the petitioner in its said letter did not clearly specify Force Majeure events. The petitioner has claimed Change in Law and Force Majeure events on account of the following:

(i) Delay in Section 164 approval: As per Article 5.1.3 of the TSA, TSP is required to obtain all clearances under the TSA. The petitioner had not referred to Article of the TSA under which delay in approval of Section 164 authorization is a force majeure event.

(ii) Delay in Forest Clearance: As per the provision of the TSA, change in law is triggered when change in enactment, adoption, promulgation, amendment, modification or repeal of law or change in the interpretation of law or imposition of a requirement for obtaining any consent, clearances and permits which was not required earlier leads to additional recurring or non-recurring expenditure by TSP, with reference to 7 days prior to bid date. The petitioner should first demonstrate that letter dated 13.2.2012 issued by MOEF is Change in Law event.

(iii) Delay in obtaining finalization of coordinates of sub-station: As per Article 5.1.4 of the TSA, TSP is responsible for final selection of site including its geo-technical investigation. Therefore, the

petitioner cannot claim for delay in the project on account of obtaining finalization of coordinates of sub-station.

(iv) Delay in supply of transformers at substation due to unprecedented heavy rain in July 2013: The petitioner should demonstrate that unprecedented heavy rain was in excess of the statistical measures for the last 100 years.

(b) All claims of Change in Law and Force Majeure event claimed by the petitioner are not maintainable. Claim of all cost increases by the petitioner is hence consequentially denied.

(c) As per Schedule 3 of the TSA, all elements of the Project are required to be commissioned progressively as per the schedule given in the table thereof. Therefore, the petitioner cannot claim any tariff until all the elements of transmission system are commissioned as certified by the respective agency.

9. The petitioner in its rejoinder dated 9.6.2015 to reply of SKS has reiterated that it had carried out work on each of the transmission elements progressively in an independent manner. The same was done in compliance with the directions of the CEA in its Minutes of Meeting dated 24.9.2013, as each element was considered critical for evacuation of power and for system strengthening of the Western Region. Work on each of the elements was carried out independently in view of the fact there were Force Majeure events and Change in law at different stages for each element. The same made it impossible for work to be carried

simultaneously. Therefore, the petitioner ought not to be penalised for the same.

The petitioner has further submitted as under:

(a) The present petition has been filed for regularisation of the tariff realised for past quarters. Pursuant to the Validation Committee Meeting dated 17.4.2015, the petitioner vide its affidavit dated 18.6.2015 submitted the details of commissioning of all elements including the additional line as under:

Element	Approval for Energisation by CEA	Trial Operation Certificate
765 kV Jabalpur -Bhopal S/C transmission line	1.6.2015	9.6.2015

(b) At different stages during the implementation of the Project, different authorities, including the CEA and POSOCO, have acknowledged the need to work on each element independently to avoid possible congestion and evacuation for smooth flow of power. Some of the transmission elements which were being constructed by the petitioner in the instant Project were also highlighted as critical for evacuation of power and system strengthening.

(c) The petitioner has been duly paid the transmission tariff in regard to the various elements of the above mentioned project from the date of their COD upon trial operation; notwithstanding that all the elements were not subjected to trial operation and COD simultaneously. Similarly, all the charges payable to the Regional Load Dispatch Centre and other related fees, pertaining to the period from the trial operation, have been paid from the beginning irrespective of the COD of other elements.

10. Power Grid Corporation of India Limited (PGCIL) in its reply dated 17.6.2015 has submitted as under:

(a) The Implementing Agency considered various transmission lines/ sub-stations under the Project in consecutive POC periods commencing from Q1 of 2014-15. The petitioner had cited non-completion of the transmission element Bhopal-Jabalpur transmission line under Bhopal hub and the transmission element Dhule-Vadodara transmission line under Dhule hub due to force majeure conditions. Accordingly, in line with provisions of Article 6.1.1 of the TSA, the petitioner declared deemed commercial operation of other transmission elements and requested the CTU for disbursement of transmission charges. The details of deemed commercial operation of each element is as under:

S.No	Transmission element	Elements which are pre-required for declaring COD of the respective element	Date of deemed Commercial Operation
a	765 / 400kV Bhopal sub-station	With (b) & (d)	19.11.2014
b	400kV Bhopal -Bhopal D/C transmission line	With (a) & (d)	
c	765kV Bhopal - Indore S/C transmission line	With (a), (b) & (d)	
d	765 kV Bhopal-Jabalpur S/C transmission line	With (a), (c) & (b)	Force majeure * (9.6.2015)
e	765 / 400kV Dhule sub-station	With (f) & (g)	5.12.2014
f	400kV Dhule-Dhule transmission line	With (e) & (g)	
g	765kV Dhule - Aurangabad transmission line	With (e), (f) & (h)	
h	765 kV Dhule-Vadodara S/C transmission line	With (e), (f) & (q)	9.2.2015 **

* The petitioner declared that Bhopal-Jabalpur line was under force majeure due to delay in forest clearance and obtaining Section164 authorisation for the Project and declared deemed commercial operation of other elements in the group viz. Bhopal sub-station, Bhopal-Bhopal line and Bhopal-Indore line with effect from 19.11.2014. The line was finally charged on 9.6.2015

** The petitioner declared that Dhule-Vadodara line was under force majeure due to delay in forest clearance and obtaining Section164 approval for the project and

declared deemed commercial operation of other elements viz. Dhule sub-station, Dhule-Dhule line and Dhule-Aurangabad line with effect from 5.12.2014.

(b) CTU has been disbursing the transmission charges for the elements, except for Bhopal-Jabalpur transmission line from their respective deemed COD dates mentioned above.

(c) The matter of fulfilment of pre-requisites for commissioning of various transmission elements of the Project by the petitioner and consideration of their tariff in POC was also discussed in the 4th Validation Committee meeting held on 17.4.2015. The petitioner has commissioned the Bhopal-Jabalpur transmission line on 9.6.2015 and further course of action would be taken as per the Commission's direction.

11. The matter was next heard on 18.6.2015. During the course of hearing, learned counsel for GMR Kamalanga Energy Limited requested for time to reply to the petition which was allowed. However, GMR Kamalanga Energy Limited has not filed its reply. During the course of hearing, the representative of CEA submitted that the petitioner has started the transmission work as per the schedule and has completed most of the works in non-forest areas as per the schedule and the petitioner could not complete the work in forest area due to non-grant of forest clearance. The representative of POSOCO submitted that YTC data is provided by the transmission licensees to the Implementing Agency and the same are considered for computation of PoC charges. The representative of POSOCO further submitted that transmission system of the petitioner comprises of two parts, i.e. Bhopal hub and Dhule hub.

(a) In Bhopal hub, 400 kV Bhopal (MP)-Bhopal (BDTCL) D/C, 2x1500 MVA ICTs at Bhopal and 765 kV Bhopal-Indore S/C lines had been commissioned earlier and power flow was taking place. The last element i.e. 765 kV Jabalpur-Bhopal was commissioned on 10.6.2015.

(b) In Dhule hub, 765 kV Dhule-Aurangabad, 765/400 kV ICTs at Dhule and 400 kV Dhule (BDTCL)-Dhule (MSETCL) had been charged. However, there was no power flow as bays at Dhule (MSETCL) were reportedly not ready. The last element i.e. 765 kV Dhule-Vadodara has been commissioned on 14.6.2015 and now power flow is taking place through 765 kV Aurangabad-Dhule-Vadodara line.

12. The Commission directed CEA and POSOCO to clarify as to whether each transmission element of BDTCL could be put in regular service after successful trial operation independently, without commissioning of the pre-requisite transmission elements as defined in the Schedule 3 of the Transmission Service Agreement.

13. POSOCO vide affidavit dated 29.6.2015 has submitted that as per Regulation 5 (2) of the 2014 Tariff Regulations, "trial operation in relation to a transmission system or an element thereof shall mean successful charging of the transmission system or an element thereof for 24 hours at continuous power flow". In the present case:

(a) Circuit-1 and circuit-2 of 400 kV D/C Bhopal-Bhopal were charged on 1.07.2014 and 13.8.2014 respectively and ICT-1 and ICT-2 of 1500 MVA each at 765/400 kV Bhopal substation were also energized on

05.07.2014 and 1.10.2014 respectively. However, the actual power flow on the 400 kV D/C Bhopal-Bhopal (MPPTCL) line could take place only after 765 kV S/C Bhopal-Indore line was put into regular service with effect from 20.11.2014.

(b) 765 kV S/C Bhopal-Jabalpur transmission line was charged on 8.6.2015, the 24 hours trial operation was completed on 9.6.2015 and the said line was put into regular service with effect from 0000 hours of 10.6.2015.

(c) 765 kV S/C Dhule-Aurangabad line was charged on 6.12.2014 and ICT-1 and ICT-2 of 1500 MVA each at 765/400 kV Dhule substation were also energized on 7.12.2014. 765 kV S/C Dhule-Vadodara line could not be energized due to non-availability of substation at Vadodara end by PGCIL as has been submitted by the petitioner. 400 kV D/C Dhule (BDTCL)-Dhule (MSETCL) line was charged from Dhule (BDTCL) end but the circuit could not be closed from Dhule (MSETCL) end due to non-readiness of the bays at MSETCL end. 765 kV S/C Dhule-Vadodara line was charged on 12.6.2015, the 24 hours trial run operation was completed on 13.6.2015 and the line was put into regular use with effect from 0000 hours of 14.6.2015. The actual power flow on 765 kV S/C Dhule-Aurangabad line could take place after 765 kV S/C Dhule-Vadodara line was put into regular service with effect from 14.6.2015.

14. CEA vide letter dated 8/9.7.2015 has submitted that the combination of transmission elements under Scheme A and B could be independently put into

regular service after successful trial operation, irrespective of the prerequisites specified in the TSA.

Analysis and Decision:

15. We have considered the submissions of the petitioner and the respondents. The main issue which arises for our consideration is whether the COD for the different elements under the Project can be declared without fulfilling the pre-requisites as given in TSA?

16. The petitioner had raised the instant issue before the Validation Committee and the same was discussed in the meeting of Validation Committee held on 17.4.2015. The relevant extract of the Minutes of Meeting is as under:

“Validation committee was of the view that in view of the pre-requisite of the commissioning of transmission elements associated with Bhopal end of BDTCL system expected to be fulfilled with anticipated commissioning of 765 kV Jabalpur-Bhopal transmission line, the same may be included in the PoC of ensuring application period. **However, for the treatment of tariff of the transmission lines of BDTCL system already completed and the tariff having been granted in earlier quarters, BDTCL shall approach CERC so as to examine fulfillment of pre-requisites for commissioning of various elements and consequent treatment of tariff granted in the earlier quarters.**”

17. Clause 6.2 of the TSA provides as under:

“6.2 Commercial Operation:

6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.”

Perusal of the above provision of the TSA reveals that an element can be declared to have achieved COD only after all the elements which are pre-requisite have achieved their respective COD. As the execution work was delayed, the petitioner was advised by CEA in its meeting dated 24.9.2013 to work on all the elements independently, since each element under the project was critical for evacuation of power. Accordingly, the petitioner commissioned each element independently. Relevant portion of minutes of said meeting dated 24.9.2013 is extracted as under:

“It was enquired about latest commissioning schedule of various transmission line and sub-station, JTCL/BDTCL submitted that details of transmission works along with latest target date of commissioning. The BDTCL/JCTL representative was advised to work on all elements independently as every element under these projects is crucial for evacuation of power from various IPPs.”

18. During the hearing on 18.6.2015, the representative of the CEA submitted that the petitioner had started the transmission work as per the schedule and has completed most of the works in non-forest areas as per the schedule and the petitioner could not complete the work in forest area due to non-grant of forest clearance.

19. CEA vide letter dated 8/9.7.2015 clarified that as per the Schedule 3 of the TSA, wherein the elements which are required for declaring of COD of the respective elements have been specified, the Scheme A and Scheme B are independent of each other and their COD could be declared independently. However, there is dependency of commissioning of a transmission element on other element (s) within Scheme A and Scheme B. Transmission elements under Scheme A could be independently put into regular service after successful trial

operation, irrespective of the pre-requisites specified in the TSA. Relevant portion of the said letter dated 8/9.7.2015 is extracted as under:

“1. BDTCL has implemented the transmission scheme System Strengthening for Western Region as under:

S. No	Transmission Element	Elements which are required for declaring of COD of the respective elements	Scheduled COD	Date of Successful trial operation
a	Bhopal sub-station (2X1500 MVA, 765/400 kV	With (b) & (d)	March 2014	5.7.2014 and 30.9.2014
b	Bhopal-Bhopal (MPPTCL) 400 kV D/C line	With (a) & (d)	March 2014	30.9.2014 and 12.8.2014
c	Bhopal-Indore 765 kV S/C line	With (a), (b) & (d)	March 2014	19.11.2014
d	Jabalpur Pool- Bhopal 765 kV S/C line	With (a), (c) & (b)	March 2014	9.6.2015
e	Dhule sub-station (2x1500 MVA,765/400 kV)	With (f) & (h)	March 2014	6.12.2014
f	Dhule- Dhule (MSETCL) 765 kV D/C Quad	With (e) & (h)	March 2014	6.12.2014
g	Dhule- Vadodra 765 kV S/C line	With (e), (f) & (h)	March 2014	13.6.2015
h	Aurangabad- Dhule (IPTC) 765 kV S/C line	With (e), (f) & (g)	March 2014	5.12.2014

2. In the above schemes, basically there are two sub-schemes, say Scheme A and Scheme B. Scheme A consists of transmission elements at (a), (b), (c) and (d). Scheme B consists of transmission elements at (e), (f) (g) and (h)

3. As per the Schedule 3 of the Transmission Service Agreement, wherein the elements which are required for declaring of COD of the respective elements has been specified, it can be seen that the Scheme A and Scheme B are independent of each other and their COD could be declared independently. However, there is dependency of commissioning of a transmission element on other element (s) within Scheme A and Scheme B as shown in the above table.

4. Scheme A consists of Jabalpur-Bhopal-Indore 765 kV S/C line and Bhopal 765/400 kV substation along with its inter-connection at 400 kV level. The trial operation of the transmission elements in Scheme A has been completed during the period 5.7.2014 to 9.6.2015. The Scheme A establishes interconnection between three existing substations of the Western Region grid, namely Jabalpur 765/400 kV substation (PGCIL), Indore 765/400 kV substation (PGCIL) and Bhopal (MPPTCL) 400 kV substation. The following combination of transmission elements under Scheme A could be independently put into regular service after successful trial operation, irrespective of the prerequisites specified in the TSA:

- (i) Jabalpur-Bhopal 765 kV S/C line & Bhopal- Indore 765kV S/C line
- (ii) Jabalpur-Bhopal 765 kV S/C line and Bhopal 765/400 kV substation (either ICT-1 or ICT-2) and Bhopal-Bhopal (MPPTCL) 400 kV D/C line (either circuit-I or circuit-II).
- (iii) Indore-Bhopal 765 kV S/C line, Bhopal 765/400 kV substation (either ICT-1 of ICT-2) and Bhopal-Bhopal (MPPTCL) 400 kV D/C line (either circuit-I or circuit-II).

5. Scheme B consists of Aurangabad-Dhule-Vadodara 765 kV S/C line and Dhule 765/400 kV substation along with its interconnection at 400 kV level. The trial operation of the transmission elements in Scheme B has been completed during the period 5.12.2014 to 13.6.2015. The Scheme B establishes interconnection between three existing sub-stations of the Western Region grid, namely Aurangabad 765/400 kV sub-station (PGCIL), Vadodara 765/400 kV substation (PGCIL) and Dhule (MSETCL) 400 kV substation. Aurangabad and Vadodara are existing substations and Vadodara has been commissioned in June 2015. The following combination of transmission elements under Scheme B could be independently put into regular service after successful trial operation, irrespective of the prerequisites specified in the TSA:

(i) Aurangabad-Dhule 765 kV S/C line and Dhule-Vadodara 765 kV S/C line

(ii) Aurangabad-Dhule 765 kV S/C line & Dhule 765/400 kV substation (either ICT-1 or ICT-2) & Dhule-Dhule (MSETCL) 400 kV D/C line (either circuit-I or circuit-II).

(iii) Dhule-Vadodara 765 kV S/C line & Dhule 765/400 kV substation (either ICT-1 or ICT-2) & Dhule-Dhule (MSETCL) 400 kV D/C line (either circuit-I or circuit-II).”

20. It is noticed that the last element, namely 765 kV S/C Bhopal-Jabalpur transmission line, was charged on 9.6.2015, and put into regular service with effect from 0000 hours of 10.6.2015.

21. All the elements of the scheme awarded to the petitioner have been commissioned. Therefore, the purpose of prescribing the pre-requisites has been achieved. Moreover, the elements have been put into service on the basis of the recommendation of the CEA that the elements can be put into regular service after successful trial operation irrespective of the prerequisites specified in the TSA. Keeping these factors in view, we direct that the petitioner shall be entitled for transmission charges from the date each element was put into regular service without linking to the pre-requisites prescribed in the Schedule 3 of the TSA. It is clarified that in respect of the other aspects including contract year for payment of transmission charges, the provisions of the TSA shall be strictly followed.

22. The petition is disposed of in terms of the above.

Sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gareesh B. Pradhan)
Chairperson