

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 13/SM/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shi A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 5.11.2015

In the matter of

Notice under Section 19 of the Electricity Act, 2003 for revocation of the inter-State transmission licence granted to North Karanpura Transmission Company Ltd

And

In the matter of

North Karanpura Transmission Company Ltd.
North Dwarka Depot, Near Sector 8 Metro Station,
Sector-21, Dwarka, New Delhi-110075

Respondent

ORDER

Based on the tariff based competitive bidding carried out by Rural Electrification Corporation Transmission Projects Company Limited (RECTPCL) under Section 63 of the Electricity Act, 2003 (Electricity Act), Reliance Energy Transmission Ltd. was selected as the successful bidder and was awarded to execute on build, own, operate and maintain basis the Transmission System-System Strengthening in Northern Region for import of power from North Karanpura and other projects outside the Northern Region and System Strengthening in Western Region for import of power from North Karanpura and other projects outside the Western Region and also for power evaluation from projects within Western Region (hereinafter "transmission project").

2. The Commission vide order 13.9.2011 in Petition No.170/2011 adopted the tariff



and vide order dated 22.12.2010 in Petition No.171/2010 granted transmission licence to North Karanpura Transmission Company Limited (hereinafter “the licensee”). As per the licence issued to the NKTCL, the transmission elements were required to be executed as per the following time schedule:

| S. No. | Scope of Work | Completion Target from the effective date |
|---------------|------------------------------------------------|--------------------------------------------------|
| 1. | Sipat/Korba(Pooling)-Seoni 765 kV S/C Line | 36 months |
| 2. | Lucknow-Bareilly 765 kV S/C Line | 42 months |
| 3. | Bareilly-Meerut 765 kV S/C Line | 42 months |
| 4. | Agra-Gurgaon(ITP)-400 kV Quad D/C line | 30 months |
| 5. | Gurgaon(ITP)-Gurgaon (PG) 400 kV Quad D/C Line | 30 months |
| 6. | Gurgaon (ITP) 400/220 kV GIS Substation | 30 months |

3. The licensee was required to implement all elements of the project by 20.11.2013, counting from the effective date as defined in the TSA.

4. The licensee approached the Commission by filing Petition No. 169/2010 for certain relief including declaration of delay in grant of authorization under Section 164 of the Act as majeure event and for extension of the date of commercial operation of the project. The Commission vide order dated 9.5.2013 disposed of the petition holding that time taken for authorization under Section 164 of the Electricity Act is not a force majeure event and therefore, the petitioner cannot be granted any relief on this account. Aggrieved by the said order dated 9.5.2013, NKTCL preferred Appeal No. 139 of 2013 before the Appellate Tribunal for Electricity (Appellate Tribunal). The Appellate Tribunal vide its judgment dated 2.12.2013 held that delay in grant of the Section 164 license is an event of force majeure and consequently, set aside the Commission`s order dated 9.5.2013.

5. In the light of the decision of the Appellate Tribunal, the Commission heard licensee NKTCL, LTTCs and PGCIL in Petition No. 19/MP/2013 regarding



implementation of the transmission project and vide order dated 2.9.2015 decided that the licensee NKTCL would be entitled to relief as per the TSA on account of force majeure for delay in grant of powers of the Telegraph Authority by the Central Government as decided by the Appellate Tribunal for Electricity. The Commission further directed that the exact qualification of relief would be done after execution of project and production of documentary evidence with regard to cost escalation attributable to such force majeure events. The Commission granted 30 months time counting from 1.10.2015 for execution of the transmission project and sought a firm commitment and action plan from the petitioner for execution of the project, within 15 days of the issue of the order. The relevant portion of the said order dated 2.9.2015 is extracted as under:

“39. The Commission has therefore decided to give a final chance to NKTCL and TTCL to submit their firm commitment and action plan to implement the transmission projects within a period of 15 days from the date of issue of this order taking into consideration the following:

(a) Since transmission licenses have been granted, tariff has been adopted and section 164 approvals have been granted, NKTCL and TTCL shall confirm that they would implement the projects within a period of 30 months counting from 1.10.2015.

(b) NKTCL and TTCL shall approach the MoP for issue of section 68 notification within a period of 15 days and if approached, MoP is requested to issue the section 68 approval at the earliest keeping in view the timeline for implementation of the projects.

(c) NKTCL and TTCL shall be entitled to relief as per the TSAs on account of force majeure for the delay in grant of powers of Telegraph Authority by the Central Government as decided by the Appellate Tribunal for Electricity. The exact quantification of the relief will be done after execution of the projects and on production of documentary evidence with regard to cost escalation attributable to such force majeure events.

(d) There will be no upfront revision of tariff as it will be against the principle of discovery of tariff through competitive bidding. The affected party is required to be compensated for the force majeure event which can be worked out after the exact impact is known after the execution of the project.

(e) No petition for revision of tariff shall be entertained except in cases of force majeure events or change in law which are permitted under the TSA.



(f) The above affidavit shall be made without any conditions. In case any condition is attached, it will be presumed that NKTCL and TTCL are not interested to implement the projects.

40. In case NKTCL and TTCL find the above conditions not acceptable, the Commission would expect NKTCL and TTCL to make applications or submit consent on affidavit within a period of 15 days from the date of issue of this order for revocation of licences under sub-section (2) of section 19 of the Act. It is pertinent to note that uncertainty in implementation of these projects which are already delayed will be against the interest of consumers and public interest requires that some other project developers implement the projects in accordance with the Transmission Licence Regulations and the Tariff Policy.”

6. The licensee NKTCL preferred Appeal No. 200 of 2015 before Appellate Tribunal challenging the said order alongwith IA No. 337 of 2015 for stay. The Appellate Tribunal vide order dated 23.9.2015 directed the Commission not to take any coercive step till 30.9.2015. The Appellate Tribunal vide its judgment dated 30.9.2015 rejected the stay application observing as under:

“9. Having considered the matter in its proper perspective and after carefully examining the extracts of CEA report, we are of the opinion that it would not be possible either to stay the impugned order or to give any directions as urged by Mr. Sanjay Sen, learned Senior Counsel for the Appellant. As stated in the CEAs report the transmission projects awarded to the Appellants are critical for transmission of power. Admittedly, there is no progress in construction of transmission lines. Any order passed by us staying the impugned order or giving directions as suggested by the Mr. Sen will be counter productive as it will further delay the commissioning of the projects. In our pima facie opinion the Central Commission has adopted a balanced approach. Hence the applications for stay are rejected and are disposed of as such.”

Even after lapse of one month from the date of rejection of stay application by the Appellate Tribunal, the licensee NKTCL has not filed the necessary affidavit regarding its firm commitment and action plan to implement the project as per the direction in the said order.

7. The Commission in para 41 of the order dated 2.9.2015 had observed as under:-

“41. In the event, no reply is received from NKTCL and TTCL for implementation of the projects or no application/consent under sub-section (2) of section 19 is received within 15



days of the issue of this order or such longer period as the Commission may permit, it will be considered that NKTCL and TTCL are not interested to execute the projects and necessary action will be initiated for revocation of licence after following the procedure in terms of sub-section (3) of section 19 read with Regulation 20 of the Transmission Licence Regulations.”

8. Since the licensee NKTCL has not submitted the affidavit indicating its firm commitment and action plan to implement the project in terms of directions in order dated 2.9.2015, the Commission proceeds to initiate necessary action for revocation of the licensee.

9. The transmission system is of great significance in the context of it being related to the evacuation of power generated from the identified generation projects which has been specifically emphasized by CEA in its report as under:

- “6. The following transmission system had been agreed as part of evacuation system for North Karanpura:
- i. North Karanpura - Gaya 400kv D/c (Quad)
 - ii. North Karanpura - Ranchi 400kv D/c (Quad)
 - iii. Sipat/Korba (pooling)- Seoni 765kV S/c
 - iv. Lucknow -Bareli 765 kV S/c
 - v. Bareli-Meerut 765 kV S/c
 - vi. Agra-Gurgaon (ITP)-Gurgaon(PG) 400kV D/c (Quad)
 - vii. 2x500MVA 400/220kV substation at Gurgaon (ITP)

As a part of transmission system for evacuation of DVC generation projects, Balia-Lucknow 765 kV S/c was planned. Similarly 765kV system beyond Meerut i.e. Agra-Meerut 765kV and Meerut - Bhiwani 765kV lines were also planned as a part of "765kV scheme under central part of Northern region".

The proposed Lucknow-Bareli-Meerut 765kV link (mentioned at (iv) & (v) above) is the missing link connecting the two systems indicated above at 765kV level. Hence, it was proposed that in case of delay in North Karanpura generation project these lines would help in transfer of power from generations in Eastern region to Northern region. Similarly proposed Agra- Gurgaon (ITP)-Gurgaon (PG) 400kV D/c along with proposed Gurgaon (ITP) substation would help in meeting the growing power demand of the NCR area.

In the 29th meeting of the Standing Committee of Northern Region it was decided that even if the North Karanpura generation project of NTPC was delayed, the elements (iv) to (vii) of North Karanpura transmission system would help in providing a strong inter-connection between Eastern and Northern Region and therefore, the implementation of these

elements is delinked from North Karanpura generation project. As such non-implementation/delay of the transmission lines which was to be utilized for evacuation of surplus power of the Eastern Region and Open Access Application in the Eastern Region, would affect transmission of power from the Eastern Region up to load centers in the Northern Region.”

Therefore, the implementation of the transmission project cannot be further delayed and it is necessary to revoke the licence in public interest so that necessary action can be taken by the concerned authority/agency to select a Transmission Service Provider in accordance with the tariff policy for execution of the transmission project.

10. Section 19 of the Electricity Act, 2003 (Electricity Act) provides as under:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely: -

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –

(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or

(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he Revocation of licence is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months” notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.”



11. Regulation 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters)

Regulations, 2009 provides as under:

“20. Revocation of Licence (1) The Commission may revoke the licence, in any of the following circumstances, namely:-

- (a) Where the licensee in the opinion of the Commission, makes willful and prolonged default in doing anything required of it by or under the Act, or the Rules or the regulations framed pursuant to the Act;
- (b) Where the licensee breaches any of the terms and conditions of its licence;
- (c) Where the licensee fails, within the period fixed in this behalf by its licence or any longer period which the Commission may allow therefor, to show to the satisfaction of the Commission, that it is in a position fully and efficiently to discharge the duties and obligations imposed on him by its licence;
- (d) Where in the opinion of the Commission the financial position of the licensee is such that it is unable to fully and efficiently discharge the duties and obligations imposed on it by its licence;
- (e) Where licensee has failed or neglected to undertake transmission in electricity;
- (f) Where the licensee fails to submit the information as required under these regulations;
- (g) Where the licensee breaches any of the terms and conditions of Transmission Service Agreement during the construction or operations phase;

Provided that the licence shall not be revoked except after an enquiry by the Commission in accordance with principles of natural justice, and unless the licensee has been given not less three months' notice in writing stating the grounds for revocation of licence and considering the cause shown by the licensee within the period of that notice against the proposed revocation:

Provided further that the Commission may, instead of revoking the licence, permit the licence to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms and conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(2) When the licensee makes an application for revocation of the licence and the Commission is satisfied that public interest so requires, the Commission may revoke licence, on such terms and conditions as it thinks fit.

(3) The Commission shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect and shall simultaneously specify how and by whom the obligations under the licence are to be discharged after such revocation.

(4) If the Commission at any stage is satisfied that the project has been abandoned by the licensee thereby affecting its construction, operation or maintenance, the Commission may direct the Central Transmission Utility or any other person found suitable by the Commission, to immediately take over construction, operation or maintenance of the project as an interim measure pending finalization of proceedings for revocation of licence and sale and vesting of utilities of the licensee in accordance with sections 20 and 21 of the Act.”

12. Considering the strategic importance of the transmission projects for inter-regional transfer of power which has a direct bearing on the development of the electricity sector and the economy of the country, any further delay in implementation of the project will severely prejudice the public interest. The Commission is of the view that the transmission licence granted to the licensee NKTCL is liable to be revoked on the following grounds:

(a) By not implementing the transmission project even after obtaining the necessary approval under Section 68 and Section 164 of the Electricity Act, the licensee NKTCL has made willful and prolonged default in execution of the transmission project which the licensee was under obligation to execute within the timeline mentioned in the licence and the provisions of Articles 11.6 and 11.7 of the TSA. Therefore, the licence of the licensee NKTCL is liable to be revoked on the ground covered under Section 19 (1) (a) of the Electricity Act and Regulation 20 (1) (a) of the Transmission Licence Regulations.

(b) The Commission vide order dated 2.9.2015 directed the licensee NKTCL to place on affidavit its firm commitment and action plan to execute the transmission project within an extended timeline of 30 months starting from 1.10.2015. The licensee has failed to respond to the said order even after lapse of one month from the date of order of the Appellate Tribunal rejecting to stay application of the licensee. Therefore, the licensee NKTCL has failed to show to the satisfaction of the Commission that it is in a position to fully and effectively discharge the duties and obligation imposed on him under the licence. Therefore, the licence of licensee NKTCL is liable for revocation on the ground covered under Section 19 (1) (c) (i) of the Electricity Act and Regulation 20 (1) (c) of the Transmission Licence Regulation.

13. In exercise of our power conferred under Section 19 (3) of the Act and Regulation 20 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 notice is given to the licensee to show cause within three months from the date of this order as to why the transmission licence granted for the transmission project should not be revoked in terms of the provisions of Section 19 of the Electricity Act and Transmission Service Regulation as quoted above. If no response is received within three months from the date of issue of the order, the licence shall be deemed to have been revoked.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

