

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 238/MP/2017**

Subject : Petition seeking extension in Project scheduled commercial operation date and increase in transmission charges due to unforeseen and uncontrollable events post award of ERSS-VI Transmission Scheme implemented by Darbhanga-Motihari Transmission Co. Ltd. under Tariff Based Competitive Bidding guidelines (*Force Majeure* events).

Date of hearing : 18.10.2018

Coram : Shri P.K. Pujari, Chairperson  
Dr. M.K. Iyer, Member

Petitioner : Darbhanga-Motihari Transmission Company Limited

Respondents : Bihar State Power Transmission Company Limited and others

Parties present : Shri M.G. Ramachandran, Advocate, DMTCL  
Shri Shubham Arya, Advocate, DMTCL  
Shri Amal Nair, Advocate, DMTCL  
Shri Neeraj Kumar, DMTCL  
Shri Shashwat Kumar, Advocate, PFCCL  
Shri Dinesh P., Advocate, PFCCL  
Shri Shantanu Singh, Advocate, PFCCL  
Shri Amit Rawat, PFCCL  
Shri Laxmikant, PGCIL  
Ms. Jyoti Prasad, PGCIL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present petition has been filed *inter-alia* for seeking extension in Scheduled CoD of the transmission project and increase in transmission charges due to Change in Law and *Force Majeure* events. Learned counsel for the Petitioner argued at length and submitted as under:

(a) On 30.5.2014, the Commission granted transmission licence to the Petitioner. As per the TSA, the Darbhanga and Motihari Transmission Elements of the project were required to be completed within a period of 30 and 32 months from the effective date. However, the CoD for Darbhanga and Motihari Transmission Elements of project was declared on 31.3.2017 and 10.8.2017 with a delay of 295 days and 366 days respectively due to the following *force majeure* events:

- (i) Grant of forest clearance;
- (ii) Prohibition of Sand Mining;
- (iii) Flooding of Gandak River and Motihari sub-station;
- (iv) Geotechnical Surprises at Motihari Sub-station;
- (v) Kidnapping of project staff;

(vi) Delay in Railway line crossing approval for Motihari and Darbangha Transmission Line;  
(vii) Right of Way issues, etc.

(c) Due to Change in Law events, namely, (i) Change in rate of taxes and duties, (ii) Change in compensation payable for Right of Way and (iii) Demonetization, the project was delayed.

(d) The Petitioner incurred additional cost due to implication of IDC and IEDC payable to PGCIL pursuant to the Commission's order dated 1.9.2017 in Petition No. 209/TT/2016.

2. Learned counsel for PFCCL submitted that since PFCCL is a Bid Process Coordinator (BPC), no reliefs have been claimed against PFCCL. Learned counsel further submitted as under:

(a) As per Clause 1.5(a) of RfP document, the Survey Report issued by PFCCL is preliminary in nature and that no representation or warranty, expressed or implied, or acceptance of any responsibility or liability in respect of statements made in the survey report is given by the BPC.

(b) As per Clause 12.4.2 of RfP document, the bidder is required to carry out the survey and field investigations themselves for submission of the bid.

3. After hearing the learned counsels for the Petitioner and PFCCL, the Commission reserved the order in the petition.

**By order of the Commission**

**Sd/-  
(T.D.Pant)  
Deputy Chief (Law)**