

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.99/MP/2017

Subject : Petition under Section 79(l) (c) and (f) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Grant of connectivity, long-term access in inter-State transmission and related matters) Regulations, 2009.

Date of Hearing : 27.2.2018

Coram : Shri P. K. Pujari, Chairperson
Shri A. K. Singhal, Member
Shri A. S. Bakshi, Member
Dr. M. K. Iyer, Member

Petitioner : Powergrid Unchahar Transmission Limited (PUTL)

Respondents : Uttar Pradesh Power Corporation Limited & Others

Parties present : Shri Sitesh Mukherjee, Advocate, PUTL
Shri Deep Rao, Advocate, PUTL
Ms. Manju Gupta, PGCIL
Ms. Supriya Singh, PGCIL
Shri R. P. Padhi, PGCIL
Shri Nishant Gupta, NTPC
Shri Manoj Kumar Sharma, NTPC

Record of Proceedings

Learned counsel for the Petitioner submitted that the present petition has been filed for seeking direction that the Petitioner is entitled for transmission charges w.e.f 1.10.2016 to 21.12.2016. Learned counsel further submitted as under:

- a) As per the TSA, the completion schedule of Unchahar-Fatehpur 400 kV D/C line was on 24.9.2016 i.e. 30 months from the effective date of 24.3.2014. The Petitioner vide its notice dated 26.7.2016 informed the LTTC's that it intends to connect Unchahar-Fatehpur 400 kV D/C line on 24.9.2016. However, the line could not be charged on 24.9.2016 due to non-readiness of the interconnection facility i. e. non-availability of 400 kV bays at NTPC Unchahar end.
- b) The Petitioner informed NTPC from time to time about the anticipated date of completion of its line as 24.9.2016 and the Petitioner also requested NTPC for clearing the area in NTPC premises for tower work and also to match the commissioning of bays at NTPC Unchahar end.

c) The deemed COD of the transmission line was achieved on 1.10.2016, after completion of mandatory seven days period in terms of Clause 6.2.1 of the TSA. Accordingly, the Petitioner requested CTU to bill the transmission charges upon NTPC. Thereafter, CTU raised bills upon NTPC for payment of the transmission charges since 1.10.2016. However, NTPC commenced payment of transmission charges only from 21.12.2016.

d) As per Clause 6.2.2 of the TSA, the transmission element after achieving the deemed COD shall be eligible for payment of the monthly transmission charges. Accordingly, the Petitioner vide its letter dated 29.8.2016, furnished Yearly Transmission Charge (YTC) data to NLDC. However, NLDC vide its letter dated 19.9.2016 informed that in light of the Commission's orders and prevailing regulations, the transmission charges of Unchahar-Fatehpur 400 kV D/C line shall be payable by NTPC and therefore, the same are not included in PoC.

e) The Petitioner informed about the completion of the line on 24.9.2016 and the deemed COD on 1.10.2016 to all the LTTCs. Subsequently, UPPCL vide its letters dated 21.1.2017 and 22.2.2017 and RUVNL vide its letter dated 17.1.2017 levied the liquidated damages without any reason.

f) The Petitioner is not liable to pay the liquidated damages for the delay of seven days in achieving the CoD i.e. 24.9.2016 to 1.10.2016. The Petitioner has also informed the LTTC's that the period of seven days is mandated period and in achieving the CoD of the Unchahar Fatehpur 400 kV D/c line in accordance with the provisions of the TSA. However, the transmission line would have been commissioned on 24.9.2016, if the bay at the NTPC Unchahar end had been ready. Further, liquidated damages under Clause 6.4.1 per of the TSA can be imposed only when the TSP fails to achieve the CoD of any of the element of the project. Since, there is no delay on the part of the Petitioner, it is not liable to pay the liquidated damages.

g) As per Clause 4.2.1 of the TSA, the LTTC's are required to comply with all the obligations under the TSA. Therefore, readiness of the inter-connection facility is the responsibility of LTTC's. The LTTC's cannot be absolved from its liability to pay the transmission charges for the period 1.10.2016 to 21.12.2016. In support of his contention, learned counsel relied upon the judgment of Hon'ble Supreme Court titled as Kailash Nath Associates versus DDA [(2015) 4 SCC 136].

2. The representative of NTPC submitted that since LTA to NTPC was granted in November 2016, liability of NTPC cannot be before 1.12.2016. He further submitted that, NTPC started making payment from 21.12.2016 i.e. from the date of supply of power from the line. However, NTPC is ready to make the payment of IDC or Annual

transmission charges of the transmission asset, if any, from 1.12.2016 or from the CoD of the line, whichever is later.

3. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

Sd/-

**T. Rout
Chief (Law)**