

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 9/SM/2018

**Coram:
Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I.S.Jha, Member**

Date of Order: 14th of May, 2019

In the matter of

Non-compliance of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

**And
In the matter of**

DGEN Transmission Company Limited
305-306, 3rd Floor,
Eros Corporate Tower, Nehru Place,
New Delhi- 110019.

.....**Respondent**

Parties present:

None

ORDER

By order dated 24.6.2015, DGEN Transmission Company Limited was granted transmission licence to establish "Transmission System associated with DGEN TPS (1200 MW) of Torrent Power Limited" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following element:

S.No.	Scheme/ Transmission Works	Completion Target	Conductors per phase
1.	DGEN TPS-Vadodara 400 kV D/C line-114 kms	38 months from the effective date	Twin ACSR Moose or equivalent AAAC be designed for a maximum operating conductor temperature of 85°C



2.	Navsari-Bhestan 220 kV D/C line-21 kms	38 months from the effective date	ACSR Zebra or equivalent AAAC be designed for a maximum operating conductor temperature of 85°C
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2. The key milestones in the bidding process were as under:

S.No.	Events	Date
1.	Request for Qualification	30.10.2012
2.	Request for Proposal	25.3.2014
3.	Issuance of Letter of Intent	19.5.2014
4.	Date of signing of Transmission Service Agreement	30.4.2014
5.	Acquisition of SPV	17.3.2015
6.	Transmission licence issued by CERC	24.6.2015
7.	Adoption of tariff by CERC	10.6.2015
8.	Contract Performance Guarantee	13.3.2015
9.	Clearance under Section 164 of the Act	22.4.2016
10.	Execution Plan submitted to CEA	10.7.2015
11.	Awarding of EPC Contract	30.6.2015
12.	Scheduled date of completion of Project	16.5.2018

3. It is noticed that Member (Power System) convened a meeting on 26.4.2017 to review the progress of the transmission project. In the said meeting, project authority informed to close the project due to financial constraints in its parent company.

4. As per the provisions of the Regulation 7(2) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 (hereinafter referred to as the "Payment of Fees Regulations") , "the transmission licensee on being issued with a licence for inter-State transmission of electricity shall pay the licence fee at the rate of Rs.5.00 lakh per annum from the date of grant of licence upto the date of commercial operation of the inter-State transmission system or an element thereof". After the date of commercial operation, the licensee is required to pay the licence fee @ 0.11% per annum of the annual transmission charges.

5. In the present case, DGEN Transmission Company Limited (hereinafter “the licensee”) was issued the transmission licence on 24.6.2015. Till the commercial operation of the transmission assets, it is required to pay the licence fee @ Rs.5 lakh per annum. The licensee has paid the licence for the years 2015-16 and 2016-17 and has defaulted in payment of licence fee for the years 2017-18 and 2018-19. Despite several reminders from the Registry of the Commission, the licensee neither deposited the licence fee nor responded to any of the reminders. The licensee was issued a notice under Section 19 (3) of the Electricity Act, 2003 (hereinafter referred to as the “Act”) vide order dated 3.12.2018 in the present suo motu Petition directing it to show cause as why its licence should not be revoked for wilful default in depositing the licence fee and thereby non-compliance of the Payment of Fees Regulations. Relevant portion of the said order dated 3.12.2018 is extracted as under:-

“5. In accordance with Section 19 of the Electricity Act, 2003 (hereinafter referred to as "the Act"), where the licensee in the opinion of the Commission, makes willful and prolonged default in doing anything required of him by or under the Act or the Rules or the Regulations, the Commission may revoke the licence after serving a notice of not less than three months. Under the Payment of Fee Regulations, the licensee is required to pay the licence fee for the year 2017-18 and 2018-19 by 30.4.2017 and 30.4.2018, respectively. The respondent has failed to deposit the licence fee within the stipulated period and therefore, has made willful default in complying with the requirement of Transmission Licence Regulations read with Payment of Fee Regulations and the terms of its licence.

6. In view of the failure on the part of respondent to comply with the provisions of relevant Regulations and in terms of licence with regard to payment of licence fee, we direct the respondent to file its response by 31.12.2018 as to why its transmission licence granted for establishment of “Transmission System associated with DGEN TPS (1200 MW) of Torrent Power Limited” should not be revoked for willful default in depositing the licence fee..”

6. The licensee has not filed any reply to the show cause notice. The matter was listed for hearing on 7.5.2019 to give an opportunity to the licensee before taking a decision on the revocation of transmission licence. Neither the licensee neither was present nor was it



represented through any counsel during the hearing on 7.5.2019.

7. Section 19 of the Act provides for the revocation of licence of the licence under certain cases. The relevant provisions of the said section are extracted 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 willful 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.

8. Regulation 10(7) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matter) Regulations, 2009 (hereinafter referred to as “Transmission Licence Regulations”) provides that the licensee shall have the following obligation among others:

“(7) The licensee shall pay the licence fee in accordance with the Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2008 or such other regulations as may be in force from time to time”.

9. In the present case, the applicable regulation is the Payment of Fees Regulations



and the licensee is required to pay the fees in accordance with the said regulations. The licensee by not paying the licence fees for the years 2017-18, 2018-19 and 2019-20 has violated the provisions of the Regulation 10(7) of the Transmission Licence Regulations and accordingly, its case is covered under Section 19(1)(a) of the Act.

10. Regulation 14 of the Transmission Licence Regulations provides as under:

“14. Consequence of Late Payment or Non-payment of Licence Fee: Notwithstanding the liability of the licensee to pay the late payment surcharge under the Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2008 or any other regulations in force, delay in payment or non-payment of the licence fee or a part thereof, for a period exceeding 60 days, shall be construed as breach of the terms and conditions of the licence.”

As per the above regulations, non-payment of licence fees shall be construed as breach of terms and conditions of licence. Further, Regulation 20(1)(b) of the Transmission Licence Regulations provides that the Commission may revoke the licence where the licensee breaches any of the terms and conditions of the licence.

11. The Commission in its order dated 24.6.2015 in Petition No. 104/TL/2015 had granted the transmission licence to the licensee subject to the fulfillment of certain conditions including payment of licence fee throughout the period of licence. The relevant portion of the said order is extracted as under:

“10.....

(e) The Petitioner shall have the liability to pay the license fee in accordance with the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any subsequent enactment thereof. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of the licence;”

12. Since the licensee has not paid the licence fee for the years 2017-18, 2018-19 and 2019-20, the licensee has breached the terms and conditions of its licence which makes its

licence liable for revocation. Therefore, the condition of Section 19 (1) (b) of the Act is fulfilled in case of the licensee.

13. The Registry of the Commission has been issuing reminders from time to time to deposit the licence fee. However, the licensee has neither responded to the reminders nor deposited the licence fee. Therefore, the case of the licensee is covered under Section 19(1)(c)(ii) of the Act.

14. In view of the above, the Commission is of the opinion that the conditions for revocation of licence prescribed under clauses (a), (b) and (c)(ii) of sub-section (1) of section 19 of the Act are fulfilled in the present case.

15. Sub-section (3) of Section 19 of the Act provides for issue of notice to the licensee for revocation of licence. The said sub-section is extracted as under:

“(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.”

16. The licensee was issued a notice vide order dated 3.12.2018 stating the grounds for revocation of licence. More than three months has elapsed since the date of the notice and the licensee has not filed any response to the show cause. Even, the licensee was not represented in the hearing fixed on 7.5.2019. Therefore, the requirement of Section 19(3) has been complied with.



17. Sub-section (5) of Section 19 of the Act provides as under:

“(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.”

In the light of the above provision, notice is hereby given to the licensee stating that its licence shall stand revoked with effect from 15 days of the notice if no response is received in this regard.

18. A copy of this order be sent to the Central Government in Ministry of Power and Central Electricity Authority for their information and record.

19. Central Transmission Utility and Central Electricity Authority are directed to file status report on the transmission scheme for which the transmission licence had been granted to DGEN Transmission Company Ltd.

20. The Petition No. 9/SM/2018 is disposed of with the above

Sd/-
(I.S. Jha)
Member

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

sd/-
(P. K. Pujari)
Chairperson

