

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 333/MP/2019

Subject : Petition under Sections 63 and 79 (1) (c) and (d) of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for allowing time overrun and cost overrun and the Approval of increase in tariff adopted for Nagapattinam–Salem–Madhugiri Transmission System on account of force majeure and Change in Law events.

Petitioner : Powergrid NM Transmission Company Limited (PNMTCL)

Respondents : IL&FS Tamil Nadu Power Company Limited and Ors.

Date of Hearing : 26.5.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri M. G. Ramachandran, Sr. Advocate, PNMTCL
Ms. Ranjitha Ramachandran, Advocate, PNMTCL
Ms. Manju Gupta, PGCIL
Shri Vamsi, PGCIL
Shri Vipin Joseph, PGCIL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri R. Kathiravan, TANGEDCO

Record of Proceedings

The matter was heard through video conferencing.

2. Learned senior counsel for the Petitioner submitted that pursuant to the direction of the Commission dated 16.4.2014, the present Petition has been filed for approval of time over-run and cost over-run and increase in tariff adopted for Nagapattinam-Salem-Madhugiri Transmission System on account of force majeure and change in law events. Learned senior counsel for the Petitioner requested to issue notice to the Respondents.

3. Learned counsel for the Respondent, Tamil Nadu Generation and Distribution Company Limited (TANGEDCO) objected to the maintainability of the Petition and submitted that the instant transmission system was specifically designed to evacuate the power from the Independent Power Projects (IPPs), namely, NSL Power Private Limited (NPPL), PEL Power Limited (PPL) and IL&FS Tamil Nadu Power Company Limited (IL&FS), which have either not come up at all or have relinquished the Long-Term Access originally sought. Accordingly, these generators are necessary party to the present Petition and are required to be impleaded as party to the Petition.

Learned counsel submitted the Bulk Power Transmission Agreement (BTPA) entered into with these generators, which fixes the liability of payment of transmission charges and/or liquidated damages in case of failure to utilize the system, is also required to be brought on record. Similarly, the various Southern Region beneficiaries such as Andhra Pradesh, Kerala, and Karnataka, etc. also need to be impleaded as party to the Petition. In absence of the above, the Petition, in the present form, is not complete and accordingly not maintainable. Learned counsel requested for time to file its reply on the maintainability of the Petition.

4. In rebuttal, learned senior counsel for the Petitioner submitted that the contentions of the Respondent, TANGEDCO are extraneous to the scope of the present Petition. Learned senior counsel submitted that the instant Petition has been filed seeking the force majeure and change in law reliefs under the Transmission Service Agreement and IL&FS, being the identified Long-Term Transmission Customer of the Project, has been impleaded as party to the Petition. Moreover, TANGEDCO being the beneficiary of the power generated from IL&FS has also been impleaded as Respondent as per the direction of the Commission in its order dated 4.4.2019 in Petition No. 19/RP/2018. Learned senior counsel submitted that TANGEDCO is trying to mix up the BPTA with TSA. He further added that, in order to avoid the delay in proceedings, TANGEDCO may be directed to file a comprehensive reply on maintainability as well as on merits of the case.

5. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, TANGEDCO, the Commission directed the Petitioner to serve a copy of the Petition on the Respondents, if not served already.

6. The Commission further directed TANGEDCO to file its reply on maintainability of the Petition by 15.6.2020 and within two weeks thereafter i.e. by 30.6.2020 on merits of the case, with advance copy to the Petitioner, who may file its rejoinder, if any, by 10.7.2020.

7. The Commission directed the Petitioner to submit the following details/information by 26.6.2020:

(a) Following information in tabular form for each line separately along with necessary proofs and whether such events have been claimed under force majeure or change in law or both:

Reason for delay	Date of Application	Date of receipt of approval	Total time taken	Time accounted for while bidding	Additional time claimed as delay
Grant of Transmission licence					
Adoption of tariff					
Approval under Section 164 of the Act					
NGT clearance					
Any other					

(b) Auditor certified calculation (in comparison with original tax estimations based on original estimated project cost) of amount claimed due to introduction of GST clearly mentioning the adjustment of service tax and other such taxes/duties which were earlier envisaged in the project cost

estimations, however, subsumed in GST in reconciliation with the amount specified in the auditor certificate submitted with the Petition.

(b) Details of reduction in the rate of other taxes/duties, if any, which contributed in reduction of capital cost during construction period.

(c) Present payment status of 'Balance anticipated expenditure to be incurred (Estimated)' as stated in the auditor certificate submitted with the petition.

(d) Clarify the portion of 'Balance anticipated expenditure to be incurred (Estimated)' with regard to 'tree/crop compensation' specified in the auditor certificate submitted with the petition, included in 'Claim towards cost over run on account of change in law and force majeure'

8. The Commission directed that due date of filing of reply, rejoinder and details/information should be strictly complied with.

9. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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