

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 162/MP/2011

- Subject : Petition for determination of transmission charges for additional scope of work and corresponding amendment of transmission charges approved by Commission vide its order dated 28.10.2010 for transmission system being established by petitioner as there is a change/ addition in the scope of work of the project.
- Date of Hearing : 29.1.2013
- Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member
- Petitioner : East-North interconnection Company Limited
- Respondents : Punjab State Transmission Corporation Limited and others.
- Parties present : Ms Meenakshi Arora, ENICL
Shri G.V. Sreeraman, ENICL
Shri Mahesh Sharma, ENICL
Shri Pulkit Sharma, ENICL
Shri S. Venkatesh, ENICL
Shri T.A. Reddy, ENICL
Shri Padamjit Singh, PSPCL
Shri TPS Bawa, PSPCL
Shri R.B. Sharma, BRPL
Shri Ramchandra, PGCIL

Record of Proceedings

Learned counsel for the petitioner submitted that the bidders including the petitioner were provided the toposheets at the time of bidding which would be the most accurate representation of what was required to be executed by the bidder once the bid was awarded. The learned counsel explained that at the time of bidding, the petitioner was provided with a toposheet and a survey report. The toposheet is a most detailed report given to the bidder at the time of bidding. The survey report contained some inaccurate statement. However, the survey report was accompanied by a tower by tower report which gives the exact location with all coordinates, the site of the next tower, the nature of the land etc. The petitioner has gone by the documents provided at the time of bidding. Ld. Counsel further submitted that what was sought to be suggested to the petitioner at the time of execution of the project was that the start

points were at a distance of 80 Kms from the given coordinates. Ld. Counsel submitted that even going by the toposheet, it could not have been known to the petitioner that even the start and end points could be different from what had been represented in the survey report. The Ld. Counsel sought permission of the Commission to make a power point presentation regarding the toposheets to explain the case of the petitioner.

2. The representative of the petitioner made a presentation of the toposheets with the exact coordinates and landmarks through which the proposed transmission line was crossing and explained that a set of longitude and latitude defined only one point and the location was unique and could not be changed once the route was drawn on the toposheets of Survey of India. He further explained that the petitioner has quoted based on the coordinates given in the toposheets. He further explained that no separate toposheets were provided to the bidders beyond this point mentioned in the toposheets and therefore, the petitioner could not have checked and verified beyond the points given in the toposheets supplied.

3. The Commission desired to know whether the petitioner sought clarification from the BPC when it did not find the sub-station at the coordinates given in the toposheets. Ld. Counsel explained that in the pre-bid meeting, a question was asked "please provide the inter-connection points for the transmission lines. The details should be provided by the BPC at least 30 days prior to Bid Deadline. Designing of the transmission system depends on the technology used at the origin and termination points." The response provided was that "the start and the end points will be the sub-stations of PGCIL at the respective locations and the obligations for arranging their connection shall be as per para 4.2.1 of the TSA."

4. The Commission desired to know the implication of the words "respective locations". Ld. Counsel explained that the respective location would mean the start and end points given in the documents, provided to the bidders. The Commission further observed that the words "obligations for arranging the inter-connection" would mean that the sub-station was existing and inter-connection would be arranged to that sub-station as nowhere it has been said that new sub-station would be built. Ld. Counsel replied that Article 4.2.1 (b) of the TSA provides that Long Term Transmission Customers at their own cost and expense undertake to be responsible for arranging and making available the Interconnection Facilities to enable the TSP to connect the Project". Ld. Counsel explained that the word 'Interconnection facility' will take within its sweep everything that is required to make possible the connection of the transmission line with the grid and sub-station will be included within the facility. Ld. Counsel submitted that Article 4.2.1(b) is widely worded and leaves no doubt that it is the responsibility of the LTTCs to provide for the interconnection or the sub-station where the line is to be terminated.

5. Learned counsel for the petitioner submitted that the BPC has clarified that there are no forest stretches in the route alignment as per the Survey Report and initiation of process of seeking forest clearance is not required. However, it is now found that as per the new coordinates provided for the start and end points, there is a forest stretch for

the Bongaigaon sub-station. The petitioner is required to bear extra cost. Learned counsel further submitted that particular substation was not specified or clarified to the petitioner.

6. Learned counsel further submitted that certain new facts have come to light from the rejoinder of PSPCL that at Siliguri and Purnea there are more than one substation at the same location which are differently located. It is not clear to which sub-station the transmission line will be connected.

7. Learned counsel submitted that as per para 1.5 (a) of RfP, the BPC would provide a survey report containing indicative route alignment and the disclaimer under the said provision would relate to the route of the transmission line and not to the start and end points. Reply to the query of the Commission as to what check the petitioner has exercised for ascertaining the location of the coordinates, Ld. Counsel submitted that the petitioner has checked the locations on the basis of global positioning system. The representative of the petitioner submitted that the BPC has not provided the toposheets as per the coordinates of the existing sub-stations which now have been informed and therefore, the bidder has no occasion to check the same. Ld. Counsel referring to the letter of the BPC dated 27.4.2009 submitted that there is a clear representation that there were no forest stretches in the route alignment and therefore the requirement forest clearance was not covered under the disclaimer. In reply to the query of the Commission what action the petitioner took after it found out that the sub-station was in the middle of forest, Ld. Counsel replied that there was no forest stretches between the coordinates given along with the survey report and the petitioner believed that sub-stations would come at the given coordinates.

8. The Commission desired to know whether land acquisition is required for laying transmission line. Ld. counsel replied that the licensee is required to obtain permission for right of way on the land on which transmission towers are to be installed and pay the compensation.

9. Learned counsel submitted that vide its letter dated 9.3.2011, the petitioner took up the matter with PSEB for clarification as to whether the transmission line should be extended to the existing sub-stations of PGCIL, which would result in additional line length of about 80 KM and sought resolution of the issues. Learned counsel submitted that CEA in its reply dated 28.4.2011, after verifying with PGCIL confirmed that the transmission lines of the petitioner would be terminated at the respective gantries of PGCIL substations and any change in the transmission line length should be dealt with as per transmission service agreement. Learned counsel further submitted that PFC in its affidavit dated 16.12.2011, has admitted that the coordinates of start and end points provided in the survey report do not match with the coordinates of the terminal substations as subsequently provided by PGCIL. Learned counsel submitted that PSPCL in its affidavit dated 10.12.2012 has brought out that there are two substations at Siliguri and two sub-stations at Purnea and it was not told at the time to which sub-station the transmission lines would be connected. In reply to a query of the Commission, whether the coordinates match with the sub-stations, Ld counsel

submitted that coordinates match with one of the sub-stations at Purnea and Siliguri. Learned counsel submitted that the petitioner has been awarded the project on the basis of bids quoted on the basis of certain coordinates mentioned in the survey report. If the petitioner is required to go beyond the specified coordinates, then there is a far more additional cost for which pro-rata tariff should be provided which will balance the interest of investor with the consumers.

10. In reply to another query of the Commission whether forest stretch is still involved, Ld counsel confirmed the same and submitted that as abundant precaution, the petitioner has applied for forest clearance.

11. The representative of the Punjab State Transmission Corporation Limited (PSPCL) submitted that the summary record of the 21st meeting of Standing Committee clearly specifies that the transmission system is part of the system strengthening in the Northern Region. He submitted that right from the stage of approval, there was no ambiguity about the start and end points as the transmission line was to connect Bongaigaon and Siliguri. The Commission observed that the bidders were not parties to the decision of the planning authority and therefore, the petitioner had no access to the said decision except to the extent it is reflected in the bid documents.

12. The Commission desired to know from the representative of PSPCL whether the bidders were required to verify the start and end points. The representative of PSPCL submitted that the line has to start from the gantry of the sending-end sub-station and end with the gantry of the receiving-end sub-station. The Commission observed that no sub-stations were indicated at the time of bid which resulted in mismatch of the coordinates with sub-stations. The representative of PSPCL referred to the submission of the petitioner at para 24 of the petition and submitted that the petitioner was admittedly aware that there were no sub-stations at the coordinates given in the toposheets and should have satisfied itself about the locations of the sub-stations before submitting the bid.

13. Learned counsel for BRPL submitted that the petitioner has got the project on the basis of its experience. Ld. Counsel submitted that the petitioner and its 100% equity holding company are well experienced entities and are aware of the problems encountered by the transmission licensees during the course of establishing the transmission lines and therefore such problems should have been either settled before accepting the Letter of Intent or inbuilt resolutions of the problems should have been incorporated in the price bid. Ld. Counsel submitted that clarification was given during bidding that interconnection points were the respective sub-stations of PGCIL and it is the responsibility of the petitioner to satisfy itself about the existence of sub-stations before submitting the bid. In reply to the query of the Commission whether a wrong information can be permitted under disclaimer, learned counsel submitted that even if wrong information was given, the bidders were supposed to go and verify on ground

about the existence of sub-station as it was one of the conditions of the RfP. Ld. Counsel submitted that the issue involved is technical since it is the responsibility of the petitioner to get connectivity as otherwise it would be like constructing lines without any connection. The Commission directed the Ld. Counsel to clarify as what would happen if the petitioner construct the lines as per the specifications in the tender documents and ask the beneficiaries to provide connectivity as per the provision of the TSA. Ld. Counsel submitted that ENCIL after incorporation conducted the bid process and was subsequently acquired by the successful bidder. ENCIL as a juristic personality is responsible for its past actions. Ld. Counsel submitted that the claims of the petitioner are under Change in Law as per the submission in the petition. Learned counsel further submitted that the petition has been filed under section 62 read with section 63 of the Act for determination of transmission charges for additional scope of work and corresponding changes in the transmission charges adopted by the Commission. Learned counsel submitted that change in the length of the transmission lines cannot be covered in the change in the scope of work. Ld. Counsel submitted that the tariff adopted under section 63 of the Act cannot be reopened and re-determined under section 62 of the Act. Ld. Counsel for BRPL concluded his arguments stating that the petitioner is not entitled to any relief either under the provisions of the PPA or the provisions of the Act.

14. In response argument regarding maintainability of the petition, the learned counsel for petitioner submitted that at the stage of admission, it was argued on behalf of the petitioner that the petition had also been filed under section 79 of the Act as the issue involved related to regulation of inter-state transmission system. The Commission after accepting the submission has admitted the petition. Ld counsel relying on para 29 of the Commission's order dated 16.10.2013 in Petition No.155/2015 (Adani Power Ltd V UHVPNL & DHVPNL) submitted that even in cases of tariff adopted on the basis of competitive bidding, the Commission has jurisdiction under section 79 of the Act to adjudicate the dispute and grant appropriate relief.

15. The Commission observed that the petitioner has been informed by the CEA after consultation with CTU that the gantries of the sub-stations are situated at a far away distance from the location of the coordinates. As a corollary, CEA and CTU as planners should have planned the new sub-station and as a transmission licensee, the petitioner would have prepared his plan with reference to the schedule of new sub-station. If the line is constructed before the sub-station comes up, the petitioner would lose return on its investment and as such the petitioner should have prepared its pert chart accordingly. The Commission asked the Ld. counsel to place on record the proof of any such documents to confirm that the petitioner had taken up the matter with CEA/CTU. Learned counsel for the petitioner clarified that it had taken up the matter PGCIL who advised the petitioner to connect to their existing sub-stations. Thereafter, the petitioner took up the matter with CEA who confirmed that the sub-stations would be the existing sub-stations of PGCIL and any change in the line length would be decided in terms of the TSA. Ld. counsel further submitted that PGCIL in its affidavit dated

20.10.2011 had denied to have furnished the details of sub-stations to PFC during the bidding process. The coordinates were confirmed by PGCIL subsequently after the award of the transmission project.

16. The representative of the Punjab State Transmission Corporation Limited submitted that in view of the strong disclaimer in the forwarding letter of PFC accompanying the Survey Report, the petitioner cannot base its case on the basis of the coordinates given in Survey Report. He further submitted that the monthly progress report of the project should have been supplied at the early stage of the project to detect the discrepancy regarding the coordinates of the sub-stations which have not been supplied to all long term customers till now. He submitted that the petitioner could have sought any number of clarifications from the BPC before submission of the bid and having not done so, the petitioner has brought the issue to the point of no return and cannot be granted the relief at this stage. The learned counsel for the petitioner submitted that the statement is incorrect as details has been supplied and even placed on the official website on monthly basis. The representative of PSPCL further submitted that the petitioner should be directed to supply copy of order for transmission towers and conductors as at the time of ordering for conductor, one comes to know about the the length of the transmission line. The representative of PSPCL submitted that the there is no merit in the claims of the petitioner and should be rejected.

17. After hearing the parties, the Commission reserved order in the petition. The petitioner and respondents were directed to file written submissions by 20.2.2013.

By the order of the Commission,

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(T. Rout)
Joint Chief (Law)