

CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

Petition No. 32/MP/2014

Subject : Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework for tariff-based competitive bidding for transmission service of 400 kV D/C quad transmission line from Bongaigaon-Siliguri and 400 kV D/C quad transmission line from Purnia-Biharsharif being implemented by East-North Interconnection Company Ltd.

Date of hearing : 5.8.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S.Bakshi, Member

Petitioner : East-North Inter-connection Company Ltd.

Respondents : Jodhpur Vidyut Vitran Nigam Limited & Ors.

Parties present : Shri Amit Kapur, Advocate for the petitioner
Ms. Poonam Verma, Advocate for the petitioner
Ms. Rimali Batra, Advocate for the petitioner
Shri T.A.Reddy, ENCIL
Shri Harsh Shah, ENCIL
Shri Harshit Gupta, ENCIL
Shri M.K.Sharma, Advocate, Rajasthan Discoms
Shri Pardeep Mishra, Advocate, Rajasthan Discoms

Record of Proceedings

Learned counsel for the petitioner submitted that the Commission vide Record of Proceedings for the hearing dated 8.7.2014 directed the respondents to file their replies. However, no reply has been filed the respondents. He further submitted that though the counsel for the distribution companies of Rajasthan and Shri Padamjit Singh in his personal capacity appeared in the first hearing and sought time for filing replies but no reply has been filed by them till date. Learned counsel requested the Commission to hear the petition on merit which was allowed by the Commission. Learned counsel for the petitioner further submitted as under:

(a) The petitioner is an inter-State transmission licensee developing and implementing an inter-State transmission system to enable import of North-Eastern Region/Eastern Region surplus power by Northern Region. The project comprises two lines, namely the Bongaigaon–Siliguri 400 kV quad D/C (221 Km) and Purnia–Biharsharif 400 kV quad D/C (233 km).

(b) The petitioner has approached this Commission for seeking extension of time and reimbursement of the escalated costs of the projects on two grounds, namely, 'Change in Law' (₹ 85 crore) and 'Force Majeure Events' (₹ 89 crore).

(c) The Commission has, by its orders dated 8.5.2013 and 31.7.2013 in Petition No. 162/MP/2011, recognized that the petitioner is entitled to be reimbursed the additional cost on account of forest clearance under the provisions of Article 12 of the TSA. This Commission held that the need to obtain forest clearance as a 'Change in Law' as the petitioner at the time of the bid was not required to obtain forest clearance as there was no forest area involved in the line length of the project as explicitly communicated by the BPC. This change was held to be a 'Change in Law' event having an impact on the cost of the project of the petitioner.

(d) The petitioner has been granted the liberty in terms of the said orders in Petition No. 162/MP/2011 to approach this Commission for the reimbursement of additional costs due to 'Change in Law'. On the basis of the orders of the Commission in Petition No. 162/MP/2011, the cost of ₹ 85 crore incurred by the petitioner for additional condition of obtaining Forest Clearance and the time and cost over-run, should be granted to the petitioner without any further delay.

(e) The Purnia–Biharsharif 400 kV quad D/C (233 km) was commissioned on 13.9.2013 and the beneficiaries are utilizing the line. The Bongaigaon–Siliguri 400 kV quad D/C (221 Km) line has been substantially developed with 100% of foundations, 100% of tower erection and 90% of stringing being complete and the line will be commissioned by December 2014.

(f) Stage-I Forest Clearance for the forest areas in Assam and West Bengal were granted on 5.12.2013 and 13.1.2014 respectively. The Stage-II Forest Clearance for the forest areas in Assam and West Bengal were granted on 11.3.2014 and 4.7.2014 respectively.

(g) With regard to 'Force Majeure Events', each of the events leading to the delay in achieving the SCOD is a force majeure event impacting the progress of the project and therefore, the petitioner is entitled to a grant of time and additional cost of Rs. 89 crore in terms of the TSA. The events namely (a) delay in the grant of Forest Clearance, (b) riots in Kokrajhar, (c) bandhs in Assam, (d) right of way challenges (realignment and demands for excess compensation), (e) thefts of conductors etc. (f) obstruction at Mahendrapur, and (g) the floods in Bihar and Uttarkhand are Force Majeure Events within the meaning of Article 11 of the TSA.

(h) Learned counsel for the petitioner relied upon various Judgments of the Hon'ble Supreme Court, the Hon'ble Appellate Tribunal and this Commission where these events have been held to be force majeure events.

(i) The petitioner has, in compliance with the terms of the TSA, in a timely manner served notices of commencement and termination of Force Majeure events to LTTC's.

(j) The project is of great significance and will be rendered commercially unviable if the relief in the present petition is not granted to the petitioner. This Commission has, in earlier cases, observed that (a) the affected party should be given benefit of additional cost incurred due to time over-run. (b) Additional IDC and overhead costs incurred on account of delay should be allowed.

2. After hearing the learned counsel for the petitioner, the Commission reserved order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**