

**CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI**

**Petition No. 73/MP/2014**

Subject : Petition under Sections 61, 63 and 79 (1) (f) of the Electricity Act, 2003 read with Articles 11 and 12 of the Transmission Service Agreement executed between Jabalpur Transmission Company Limited and Long Term Transmission Customers on 1.12.2010 and Clause 10 of the Competitive Bidding Guidelines dated 17.4.2006.

Date of hearing : 7.8.2014

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

Petitioner : Jabalpur Transmission Company Limited, New Delhi

Respondents : Adhunik Power and Natural Resources Ltd., Kolkata & Others

Parties present : Shri Amit Kapur, Advocate for the petitioner  
Ms. Poonam Verma, Advocate for the petitioner  
Ms. Rimali Batra, Advocate for the petitioner  
Shri Harshit Gupta, JTCL  
Shri Harsh Shah, JTCL  
Shri Pulkit Sharma, JTCL  
Shri Hemant Sahai, Advocate for M.B.Power Limited  
Shri Abhishek Gupta, M.B.Power  
Shri Y.K.Sehgal, CTU  
Shri Ankit Prasoon

**Record of Proceedings**

Learned counsel for the petitioner referred to Record of Proceedings for the hearing dated 11.7.2014 and submitted that no reply has been filed by the respondents. Learned counsel requested the Commission to hear the case of the petitioner due to the urgency involved in the matter. Learned counsel for the petitioner further submitted as under:

(a) The petitioner is establishing a transmission system for system strengthening for the Western and Northern Regions which comprises two

transmission lines, namely Dharamjaygarh (Chhattisgarh) - Jabalpur pool (Madhya Pradesh) 765 kV D/C line-384 km (DJ transmission line) transmission line and Jabalpur pool (Madhya Pradesh) – Bina (Madhya Pradesh) 765 kV Quad S/C line-250 km transmission line (JB transmission line).

(b) The present petition has been filed for seeking extension of time and reimbursement of the escalated costs of the projects on two grounds, namely, 'Force Majeure' events on account of pending forest clearance and delay in grant of right of way authorization under Section 164 of the Electricity Act, 2003 and 'Change in Law' events in the nature of changes in the forest guidelines with respect to diversion of forest land for non-forest purposes.

(c) The project line length encompasses 537 Ha of forest land (437 Ha in Madhya Pradesh and 113.7 in Chhattisgarh). The forest clearance (Stage I and Stage II) for the project is pending till date due to which the petitioner has not been able to commence work in the forest area. The petitioner has, ever since the award of the project and transmission licence in 2010 and 2011 respectively, made constant efforts for obtaining the forest clearance. The petitioner has completed work in non-forest area and is unable to commence work in the forest area due to the pending forest clearances.

(d) The delay in grant of forest clearance has impacted 35% of the total line length area of the Project. The delay was on account of change in 2004 Forest Guidelines. Earlier, as per the 2004 Forest Guidelines, the petitioner was permitted to obtain compensatory afforestation land (being degraded land) by depositing twice the afforestation cost related to the forest area being diverted which was subject to the Chief Secretary of the State granting a certificate/declaration that there was no suitable non-forest land for compensatory afforestation available in the State of Madhya Pradesh and Chhattisgarh. The petitioner could not have started work on the non-forest land until the forest clearance was obtained.

(e) Considering the fact that the TSA was executed on 1.12.2010 and the transmission licence was granted to the petitioner on 1.10.2011, the petitioner could not have started work until the transmission licence was issued by this Commission besides obtaining the applicable forest clearances as per the applicable regime that existed since 2004.

(f) As per the amendment in the 2004 forest guidelines in 2012, the availability of compensatory afforestation was restricted to States that have 50% forest cover of their total geographical area. Considering the forest areas in Madhya Pradesh and Chhattisgarh is not more than 50%, the notification dated 13.2.2012 disentitled the petitioner from obtaining compensatory afforestation land in Madhya Pradesh and Chhattisgarh. Following which, the petitioner was constrained to renew the process of identifying non-forest land for compensatory afforestation leading to an additional

capital outlay on account of price increase in the input materials, such as conductor, steel, cement, labour, etc. This amendment therefore is 'Change in Law' in terms of Article 12 of the TSA. The petitioner has made all efforts to complete the project in non-forest area..

(g) There is a delay of approximately 18 months in grant of Right of Way authorisation under Section 164 of the Electricity Act, 2003. The said delay was beyond the control of the Petitioner. The petitioner submitted its application for seeking the authorisation under Section 164 on 11.5.2012 whereas the Ministry of Power intimated the Section 164 authorisation to the petitioner on 20.1.2014. Therefore, the petitioner is not liable for the delay in grant of the authorisation in Section 164.

(h) Learned counsel for the petitioner relied upon Judgments of the Supreme Court, orders of APTEL and this Commission and submitted that delay/non-grant of the forest clearance and authorisation under Section 164 is a force majeure event. He also placed reliance on the principles of frustration of contract and supervening impossibility in case of the absence of the forest clearance.

(i) Learned counsel for the petitioner also placed on record letters written by POSOCO to CEA and Power Grid on 19.3.2013 and 7.2.2014 respectively, subsequent to the filing of the present petition to submit the urgency recognised by POSOCO in commissioning of the petitioner's transmission lines to relive/pre-empt the problem of congestion in the transmission corridors.

(j) Learned counsel for the petitioner submitted that the petitioner has made best efforts to develop the lines and has completed work in the non-forest area to the following extents:

(i) DJ transmission line: 97% foundations, 90% of tower erection and 57% stringing works have been completed, and

(ii) JB transmission line: 99% foundations, 98% of tower erection and 95% stringing works have been done.

2. Learned counsel for MB Power (Madhya Pradesh) Ltd. submitted that its only concern was evacuation of power from the Power Plant, which is likely to be commissioned in the months October or November 2014. He further submitted that MB Power has entered into a Bulk Power Transmission Agreement with PGCIL and in absence of the petitioner company's transmission lines, MB Power's power will get stranded.

3. The representative of PGCIL explained the status of Power Purchase Agreements executed by MB Power (Madhya Pradesh) Ltd. and other power projects,

for supply of power in the State of Madhya Pradesh. He did not raise any objection with respect to the submissions made on behalf of the petitioner.

4. After hearing learned counsels for the petitioner, MB Power (Madhya Pradesh) Ltd and representative of PGCIL, the Commission reserved order in the petition.

**By order of the Commission**

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