

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 42/RP/2016 in 236/MP/2015

Petitioner : Power Grid Corporation of India Ltd. (PGCIL)

Respondents : Kudgi Transmission Ltd. (KTL) and Others

Petition No. 44/RP/2016 in 236/MP/2015

Petitioner : NTPC Limited (NTPC)

Respondents : Kudgi Transmission Ltd. and Others

Subject : Petition for review of the Order dated 27.6.2016 in Petition No. 236/MP/2015.

Date of hearing : 27.4.2017

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

Parties present : Shri Sitiesh Mukherjee, Advocate, PGCIL
Shri Gautam Chawla, Advocate, PGCIL
Ms. Akansha Tyagi, Advocate, PGCIL
Shri Aryaman Saxena, PGCIL
Ms. Suparna Srivastava, Advocate, NTPC Ltd.
Shri Alok Shankar, Advocate, KTL
Shri V.K. Jain, NTPC
Shri V.K. Garg, NTPC
Ms. Pratiksha Mishra, Advocate, BESCOM
Shri S.S. Barpanda, NLDC

Record of Proceedings

Learned counsel for the review petitioners submitted that the present review petitions have been filed seeking review of order dated 27.6.2016 in Petition No. 236/MP/2015 for rectification of errors and the consequent modification in liability to pay transmission charges for the first element of the transmission project.

2. Learned counsel for PGCIL submitted as under:

- (a) The transmission line is a part of New Narendra sub-station. In the 29th meeting of Empowered Committee on Transmission held on 15.6.2012, it was agreed that the implementation of the transmission system required

for evacuation of power from Kudgi TPS shall be undertaken through tariff based competitive bidding process.

- (b) As per Schedule 3 of the Transmission Service Agreement (TSA) entered into between Kudgi Transmission Limited (KTL) and LTTC's on 14.5.2013, the first element of the project contemplated to be completed within a period of 18 months and other two elements within a period of 28 months.
- (c) In the month of February, 2014, the investment approval for the project was accorded with commissioning schedule of December 2015, matching with the overall commissioning schedule of transmission lines under KTL.
- (d) On 24.4.2015, CEA reviewed the progress of transmission lines associated with Kudgi generating station and during the meeting NTPC informed that Kudgi STPS has been delayed and first unit is now scheduled for commissioning in March, 2016. NTPC further informed that it would require drawing start-up power from June, 2015 onwards and the construction of 400 kV bays at NTPC Kudgi shall be ready by 30.6.2015. CEA directed NTPC to seek approval from the requisite agencies for drawal of start-up power from Kudgi- Narendra (New) 400 kV D/C line.
- (e) In the meeting convened by CEA on 10.7.2015, PGCIL informed that works of 400kV D/C (Quad) Narendra (New) - Narendra Transmission Line could not be completed due to severe RoW constraints at 5 nos. of locations near Kudgi area and PGCIL is trying its best to resolve the issue and complete the work at the earliest. CEA directed PGCIL to complete the work by August, 2015.
- (f) NTPC is liable for payment of transmission charges as per Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges) Regulation, 2010 (Sharing Regulations) which provides that for Long Term Transmission Customers availing power supply from inter-State generating stations, the charges attributable to such generation for long term supply shall be calculated directly at drawal nodes which shall be effective only after commercial operation of the generator. Till then it shall be the responsibility of the generator to pay transmission charges.
- (g) PGCIL has no liability under TSA or Sharing regulations to pay transmission charges as PGCIL is neither a party to the TSA nor has signed any Indemnification Agreement with KTL and therefore, no liability can be incurred due to mismatch of the commissioning dates of the first element of the transmission lines and the New Narendra sub-station. It is a settled principle of law that in the absence of a contract, there cannot be a penalty for a third party to the contract without the force of law. Therefore, PGCIL is not liable to pay the transmission charges to KTL as directed by the Commission in order dated 27.6.2016 in Petition No. 236/MP/2015.

3. Learned counsel for NTPC Limited submitted as under:

- (a) The deemed COD of the first element of the transmission project was 4.8.2015. However, it was charged on 16.11.2015 due to ROW issues.
- (b) The Hon'ble Supreme Court in its judgment dated 3.3.2016 in *PGCIL v. Punjab State Power Corporation Limited and Others* has held that COD of transmission lines can be achieved only on fulfillment of the three conditions, namely; (i) the line has been charged successfully, (ii) its trial operation has been successfully carried out, and (iii) it is in regular service.
- (c) As per second proviso to Regulation 3(12) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (2009 Tariff Regulations), in case an element of the transmission system is ready for regular service but is prevented from providing such service for reasons not attributable to the transmission licensee, its supplier or contractors, the Commission may approve the date of commercial operation prior to the element coming into regular service. On the other hand, as per Section 2(72) of the Electricity Act, 2003, transmission line cannot be said to have been completed unless switchgear and other connected works are also completed. Therefore, the date of commercial operation would be considered as 16.11.2015.
- (d) The Commission vide order dated 25.5.2016 in Petition No. 254/TT/2015 held that the liability of transmission charges to be limited to commissioning of first unit or date of start of power flow into 220 kV network, whichever is earlier.
- (e) The Commission vide order dated 29.7.2016 in Petition No.201/TT/2015 declared the bays of PGCIL at New Narendra associated with the first element under commercial operation on 11.12.2015, whereas the petitioner has started drawing start-up power from 16.11.2015 through one No. double circuit line of the first element. Accordingly, the transmission charges for the period from 16.11.2015 to 11.12.2015 are liable to be shared between NTPC and PGCIL in the ratio of 50:50.

4. Learned counsel for KTL submitted that all the issues raised by the review petitioners were rejected by the Commission in the impugned order. Learned counsel for KTL further submitted that due to non-availability of inter-connection facility required by NTPC and PGCIL, the transmission asset could be tested and charged. As per the provision of the TSA, there is no pre-required element for COD. The Commission in the impugned order held that power may flow from Narendra- Kudgi and then through 220 kV of KPTCL or vis-a-vis till commissioning of Kudgi STPP, therefore, the charges should be paid by the review petitioners.

5. Learned counsel for BESCO submitted that as a Long Term Transmission Customer (LTTC), it is not responsible for commissioning of the project or inter-connection facilities and no liability can be foisted on it for payment of transmission charges for any failure of any other party under the TSA or any Regulations. Learned

counsel for BESCO further submitted that as per Article 6.2.2 of the TSA, it is only upon the achieving of the SCOD, transmission charges become recoverable from LTTC. Since, the first element has not achieved COD, the liability to pay transmission cannot be on the LTTC's.

6. Learned counsel for PGCIL requested for time to file rejoinder to the replies filed by the respondents. Request was allowed by the Commission.

7. After hearing the learned counsels for the review petitioners, KTL and BESCO, the Commission directed PGCIL to file its rejoinders by 22.5.2017 with an advance copy to the respondents failing which the order shall be passed based on the documents available on record.

8. Subject to the above, the Commission reserved the order in the Review petitions.

By order of the Commission

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