

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 136/MP/2018

Coram:
Shri P. K. Pujari, Chairperson
Shri A. K. Singhal, Member
Dr. M. K. Iyer, Member

Date of Order: 5th of September, 2018

In the matter of

Petition under Section 17 of the Electricity Act, 2003 for taking over the assets namely the Indian Portion of 132 kV S/C Deothang-Rangia Transmission Line and associated bays at Rangia sub-station from Government of India.

**And
In the matter of**

Approval under Section 17 of the Electricity Act, 2003 for approval of the Commission.

**And
In the matter of**

Power Grid Corporation of India Limited
'Soudamini', Plot No. 2, Sector 29,
Guagaon-122 001, Haryana

.....Petitioner

Vs.

1. PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place, R.K.Puram,
New Delhi-110 066
2. Damodar Valley Corporation
DVC Headquarters, DVC Towers, VIP Road,
Kolkatta-700 054.
3. West Bengal State Electricity Distribution Company Limited



Bidyut Bhawan, Bidar Nagar,
Block DJ, Sector-II
Salt Lake City, Kolkata-700 091

Union of India
Through, the Secretary
Ministry of Power, Shram Shakti Bhawan,
Rafi Marg, New Delhi-110 001

..Respondents

Parties present:

Shri Amit Bhatnagar, PGCIL
Shri Ashish Anand Bared, Advocate PTC
Shri Paramhans, Advocate, PTC

ORDER

The Petitioner, Power Grid Corporation of India Limited, has filed the present petition seeking approval for acquisition of the Indian portion of 44.45 km 132 kV S/C Deothang-Rangia Transmission Line and associated bays at Rangia sub-station in Assam by the Petitioner from Government of India/Bhutan Power Corporation (BPC) /Royal Government of Bhutan (hereinafter referred to as 'RGoB') in pursuance of the decision taken by the Government of India, BPC and RGoB at zero cost subject to the recovery of O&M charges in line with the terms and conditions of the Agreement entered into with PTC India Ltd. The Petitioner has made the following prayers:

“(a) Approve the acquisition of the Indian portion of 44.45 km 132 kV S/C Deothang–Rangia Transmission Line and associated bays at Rangia S/S in Assam by the Petitioner from Government of India/Bhutan Power Corporation/Royal Government of Bhutan in pursuance to the decision taken by the Government of India, Bhutan Power Corporation and Royal Government of Bhutan at zero cost subject to the recovery of O&M charges in line with the terms and conditions of the Agreement entered with PTC.

(b) In case of any additional liability on account of taxes and duties, if any on account of the said takeover, the same may be reimbursed at one time cost.



(c) As the said petition is being filed on the directions of Government of India, it is prayed that the misc. petition filling fee in the instant asset may be allowed to be recovered through Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) Regulations, 2010 or any other sharing regulation mechanism notified by CERC from time to time.”

Background of the Case:

2. 132 kV S/C Deothang-Rangia Transmission Line and bays extensions at Deothang sub-station in Bhutan and Rangia sub-station [Assam State Electricity Board (ASEB)] in India established by Royal Government of Bhutan for reliable operation and evacuation of power generated at Kurichhu Hydro Electric Project (60MW) and funded by the Ministry of External Affairs (MEA), Government of India under PTA assistance, was constructed by the Petitioner on the request of RGoB. The said transmission line was test charged and commissioned on 31.3.2008. The Bhutan Portion of 13 km of the transmission line alongwith the bays at Deothang was taken over by Bhutan Power Corporation (hereinafter referred to as 'BPC'). However, Indian portion of 44.45 km of line alongwith bays at Rangia sub-station could not be taken over by BPC as it cannot own and operate assets beyond the International boundary. BPC through RGoB expressed its desire that the Indian portion be taken over by the Indian instrumentalities.

3. In the meeting held on 25.1.2012 under Joint Secretary (Hydro), Government of India, Ministry of Power (MoP), it was decided that Indian portion of Deothang- Rangia transmission line (44.45 km) be handed over to PGCIL for the purposes of Operation and Maintenance. PGCIL, vide its letter dated 27.7.2017 agreed to take up the Operation and Maintenance of the Deothang- Rangia transmission line on the following



terms and conditions:

(a) Existing O & M Agreement between PGCIL and PTC shall continue to operate except with minor change in the nature of the agreement which shall change from Consultancy to Transmission services; and

(b) Approval/appraisal from CERC, if required, shall be taken.

4. Government of India, Ministry of Power, vide letter dated 30.8.2017 directed the Petitioner to clarify whether conditions mentioned above are a pre-requisite or are to be completed by it once PGCIL takes over the assets. In case the conditions are a pre-requisite, then PGCIL, may complete the same and intimate the MoP for further necessary actions. Subsequently, Government of India, Ministry of Power vide its letter dated 30.10.2017 informed that the approval of the MoSP(I/C) was conveyed to the Ministry of External Affairs for taking over 44.45 km of the 132 kV sub-station transmission line from Motanga on Indo-Bhutan Border to Rangia sub-station of ASEB and Deothang bay at Ranga sub-station of ASEB by PGCIL. Government of India, Ministry of External Affairs, vide its letter dated 28.11.2017 requested Ministry of Power to take up the transfer of the Indian portion of the transmission line expeditiously with PTC and PGCIL for appropriate action concerning modification of existing O&M Agreement.

5. Government of India, Ministry of Power, vide its letter dated 5.1.2018 clarified that as per Section 14 of the Electricity Act, 2003 (hereinafter referred to as the 'Act'), PGCIL being a CTU is a deemed transmission licensee and therefore, shall require



approval from the Commission under Section 17(1)(a) Act for taking over the Indian Portion of 132 kV S/C Deothang-Rangia transmission line and associated bay at Rangia sub-station. Ministry of Power, Government of India further clarified that approval by the Commission shall be without prejudice to any other approval that may be required from other Regulators like RBI, etc. for the proposed takeover. Accordingly, the Petitioner has filed the present petition for the Commission`s approval under Section 17 of the Act.

6. Notices were issued to the respondents to file their replies. However, no reply has been received from the respondents.

Analysis and Decision:

7. We have considered the submission of the Petitioner and perused documents on record. The present petition has been filed under Section 17 of the Act for approval for acquisition by PGCIL of the Indian portion of 44.45 km 132 kV S/C Deothang-Rangia transmission line from Government of India/Bhutan Power Corporation/Royal Government of Bhutan.

8. The transmission line of 59.45 km (15 km on Bhutan side and 44.45 km on India side) was constructed by PGCIL. The line was built at the instance of Royal Govt. of Bhutan and was funded by Govt. of India. The portion of transmission line on Bhutan side has been taken over by Bhutan Power Corporation and the Govt. of India has decided that the transmission line on Indian side be taken over by PGCIL.

9. Government of India, Ministry of Power vide its letter dated 30.10.2017 conveyed



approval of the MoSP(I/C) to the Ministry of External Affairs for taking over 44.45 km of the 132 kV sub-station transmission line from Motanga on Indo-Bhutan Border to Rangia sub-station of ASEB and Deothang bay at Rangia sub-station of ASEB by the Petitioner. Subsequently, Government of India, Ministry of Power vide its letter dated 5.1.2018 directed the Petitioner to seek prior approval of the Commission under Section 17 of the Electricity Act for taking over the 44.45 km 132 kV S/C Deothang-Rangia transmission line.

10. Section 17 (1) of the Act provides as under:

“Section 17: Licensee not to do certain things:

(1) No licensee shall, without prior approval of the Appropriate Commission,-

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.”

As per Section 17 (1) (a) of the Act, prior approval of the Commission is required for a licensee to acquire by purchase or takeover of the utility of any other licensee. PGCIL being a deemed licensee under Section 14 of the Act is required to obtain prior approval of the Commission to take over the transmission assets of any other licensee.

11. Government of India has got the transmission assets constructed by PGCIL under the PTA assistance at the instance of Government of Bhutan. Therefore, Government of India is the owner of the subject transmission lines. In terms of third



proviso under section 14 of the Electricity Act, 2003, if the Appropriate Government undertakes transmission of electricity, it shall be deemed to be a licensee under the Act. In the present case, PGCIL which is a deemed transmission licensee in its capacity as the CTU is required to take over the transmission licence from the Government of India which is a deemed licensee. Therefore, the requirements of Section 17(1)(a) of the Act are satisfied. Accordingly, we accord approval for taking over of the 44.45 km of 132 kV S/C Deothang-Rangia Transmission Line and associated bays at Rangia sub-station by PGCIL from Government of India. From the date of taking over, these assets shall be treated as ISTS.

12. According to the Petitioner, since the transmission assets would be taken over at zero cost, there will be no implication of the existing capital cost of the transmission assets in regard to return of equity, interest on loan, depreciation, etc. Therefore, the assets will not be included in PoC. The Petitioner has submitted that the Operation and Maintenance Agreement dated 19.12.2012 entered into between the Petitioner and PTC for maintenance of the transmission line by the Petitioner would be continued till useful life the assets. However, the recovery of O & M charges shall continue to be made in terms of O & M Agreement dated 19.12.2012 between PGCIL and PTC.

13. The Petitioner in the second prayer has prayed to reimburse the additional liability, if any, on account of taxes and duties due to take-over the subject transmission assets. Since, no expenditure has been incurred by the Petitioner in this regard, the Petitioner is granted liberty to approach the Commission in accordance with law for the expenditure incurred on account of taxes and duties after take-over of the transmission

assets.

14. The Petitioner has sought reimbursement of fee paid by it for filing the petition as per the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 or any other Sharing Regulations mechanism notified by the Commission from time to time. Regulation 52 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 deals with reimbursement of fees in specified cases. Miscellaneous Applications filed for approval under Section 17 of the Act are not covered under the said regulations. Therefore, filing fees cannot be reimbursed.

15. The Petition is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(P. K. Pujari)
Chairperson

