

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.64/TT/2015 alongwith I.A. No.23/2015

Coram:

Shri P.K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I.S. Jha, Member

Date of Order: 29.07.2019

In the matter of

Determination of transmission tariff for Essar Gujarat TPS-Bachau 400 kV D/C (triple) line and Extension of Bachau Sub-station under Transmission System for connectivity of Essar Power Gujarat Limited in Western Region under Regulation 86 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

And in the matter of

Power Grid Corporation of India Limited,
"Saudamini", Plot No. 2,
Sector – 29, Gurgaon – 122 001

.....Petitioner

Versus

1. Essar Power Gujarat Limited
Equinox Business Park,
5th Floor, Tower-2,
Off. Bandra-Kurla Complex, L.B.S Marg,
Kurla (W), Mumbai – 400 070.
2. Madhya Pradesh Power Management Company Limited
Shakti Bhawan, Rampur, Jabalpur- 482 008.
3. Maharashtra State Electricity Distribution Company Limited
Hong Kong Bank Building, 3rd Floor,
M.G. Road, Fort, Mumbai – 400 001.
4. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan, Race Course Road,
Vadodara – 390 007.



5. Electricity Department
Government of Goa, Vidyut Bhawan, Panaji,
Nr. Mandvi Hotel, Goa – 403 001
6. Electricity Department
Administration of Daman & Diu
Daman – 396 210.
7. Electricity Department
Administration of Dadra Nagar Haveli,
U.T. Silvassa – 396 230.
8. Chhattisgarh State Electricity Board
P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh – 492 013
9. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited
3/54, Press Complex, Agra-Bombay Road,
Indore – 452 008

.....Respondents

Parties Present:

For Petitioner: Ms. Swapna Seshadri, Advocate, PGCIL
Ms. Ritu Apurva, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri Zafrul Hasan, PGCIL

For Respondents: Shri Alok Shankar, Advocate, EPGL
Ms. Shruti Verma, EPGL
Shri Rajeev Kamal Gupta, MPPMCL

Order

The instant petition has been filed by Power Grid Corporation of India Limited (PGCIL) for determination of transmission tariff for Essar Gujarat TPS-Bachau 400 kV D/C (triple) line and Extension of Bachau Sub-station in Western Region, from its date of commercial operation to 31.3.2019 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”).



2. Essar Power Gujarat Limited (EPGL), Respondent No.1, filed Interlocutory Application No.23/2015 in the instant petition raising interrogatories to ascertain whether PGCIL had the option to postpone the construction of the transmission system in view of the force majeure conditions affecting its generation project.

Background

3. During the pendency of the instant petition, Essar Power Gujarat Limited (EPGL), Respondent No. 1, filed Petition No 187/MP/2015 praying for declaration that Phase-II of its generation project is affected by force majeure conditions and to keep the LTA granted to it in abeyance and to restrain PGCIL from claiming any transmission charges till the commissioning of its generation project. The Commission vide order dated 11.10.2017 disposed of Petition No.187/MP/2015 observing that EPGL has to either use the transmission system or pay the transmission charges or continue to pay the transmission charges till the transmission line is utilized or pay the relinquishment charges if it intends not to use the connectivity line. The Commission also observed that the PGCIL is entitled to encash the bank guarantee in terms of Article 5.0 (c) of the Transmission Agreement between PGCIL and EPGL and on recovery of the same, should be adjusted against the capital cost of the transmission system.

4. EPGL filed Writ Petition No.9125 of 2017 before the Hon'ble Delhi High Court against the Commission's order of 11.10.2017 and sought interim injunction against the encashment of BG by PGCIL. The Hon'ble High Court granted stay upto 17.10.2017 on encashment of BG till EPGL files a statutory appeal before Hon'ble Appellate Tribunal for Electricity (APTEL). Accordingly, EPGL filed Appeal before APTEL against the Commission's order dated 11.10.2017 in Petition No.187/MP/2015 and also sought the



stay of the PGCIL's letter of 12.10.2017 regarding invocation of BG amounting to ₹112 crore. APTEL extended the stay granted by Hon'ble Delhi High Court till 23.10.2017. However, APTEL vide judgement dated 22.11.2017 upheld the Commission's order of 11.10.2017 and allowed PGCIL to invoke the BG. Accordingly, PGCIL encashed the BG of ₹112 crore of EPGL.

5. PGCIL filed Review Petition No. 13/RP/2018 before this Commission seeking limited review of the order dated 11.10.2017 on the aspect of adjustment of Bank Guarantee of ₹112 crore against the capital cost of the instant transmission assets. The Commission, vide order dated 9.4.2019, allowed the Review Petition directing that the encashed BG alongwith the interest accrued therein from the date of encashment shall be adjusted against the annual transmission charges of the subject transmission system after the tariff for the said transmission line is determined in Petition No. 64/TT/2015.

6. As per the Investment Approval dated 14.12.2011, Essar Gujarat TPS-Bachau 400 kV D/C (triple) line and Extension of Bachau Sub-station (hereinafter referred to as "transmission asset") was scheduled to be put into commercial operation before 13.2.2014. PGCIL initially claimed tariff in the petition on the basis of the anticipated date of commercial operation of 1.4.2015. PGCIL has further sought approval of COD of the instant asset under proviso (ii) of clause (3) of Regulation 4 of the 2014 Tariff Regulations as it is not able to provide service due to non-readiness of the generating station, which is not attributable to it, its suppliers or its contractors.

7. PGCIL has submitted, vide affidavit dated 17.10.2017, that the instant asset was put into commercial operation on 2.4.2016 and the Auditor certificate and the revised



Tariff Forms as per the COD will be filed soon. PGCIL has also submitted the CEA Energisation Certificate and the RLDC idle charging certificate alongwith the affidavit dated 28.11.2016 in support of the COD.

8. However, PGCIL, vide affidavit dated 4.7.2019, has submitted that the instant transmission asset would be put to alternate use with the proposed extension of the line upto Jam Khambhaliya, for which RfP has been issued and it is like to fructify by June, 2020. PGCIL further requested to dispose the instant petition with a liberty to the petitioner to approach the Commission for decision on all aspects including tariff after COD of the Jam Khambhaliya and extension of the instant transmission line upto Jam Khambhaliya. Similar request was made by the learned counsel for the petitioner during the hearing on 11.7.2019.

9. We have considered the submissions of PGCIL. As discussed above, the Commission has already come to the conclusion that EPGL's generation has been delayed and PGCIL should adjust the BG amount recovered from EPGL towards the transmission charges of the instant assets as determined in the instant petition. However, in view of the submissions by PGCIL in the affidavit dated 4.7.2019 that a fresh petition would be filed, the present petition is being disposed of.

10. The issues raised by EPGL in I.A. No.23/2015 have become infructuous in view of the Commission's order dated 11.10.2017 in Petition No.187/MP/2015 and therefore the IA is disposed of.



11. In view of the above discussion, Petition No.64/TT/2015, alongwith I.A. No.23/2015 filed by EPGL, is disposed of.

sd/-
(I.S. Jha)
Member

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

sd/-
(P. K. Pujari)
Chairperson

