

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**IA No. 78/2019 in
Petition No. 308/MP/2019**

Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S. Jha, Member

Date of Order: 21st of October, 2019

In the matter of

Petition under Section 63 and 79(1)(c) and 79 (1)(f) of the Electricity Act, 2003 seeking an extension in the Scheduled Commercial Operation Date along with compensatory and declaratory relief under the Transmission Services Agreement dated 14.3.2016 on account of Force Majeure and Change in Law events.

**And
In the matter of**

Application seeking interim relief.

**And
In the matter of**

Khargone Transmission Limited
Core-4, Scope Complex
7 Lodhi Road
New Delhi-110003

....Applicant

Vs

- 1) Madhya Pradesh Power Management Company Limited
Block No. 11, Ground Floor, Shakti Bhawan
Vidyut Nagar, Rampur, Jabalpur
Madhya Pradesh-482008
- 2) Chhattisgarh State Power Distribution Company Limited
P.O. Sunder Nagar, Dangania
Raipur, Chhattisgarh-492013
- 3) Gujarat Urja Vikas Nigam Limited
Vidyut Bhawan, Race Course
Vadodara, Gujarat-390007



4) Maharashtra State Electricity Distribution Company Limited
Prakashgad, 4th Floor, Bandra (East)
Mumbai-400051

5) Electricity Department
Government of Goa
Vidyut Bhawan, Panaji
Goa-605001

6) DNH Power Distribution Corporation Limited
Administration of Dadar Nagar Haveli
66 kV, Amli Road, Silvassa-396230

7) Electricity Department, Daman and Diu
Administration of Daman and Diu
Plot No. 35, OIDC Complex
Near Fire Station, Somnath
Daman-396210

.....Respondents

Parties Present:

For Applicant : Shri Sanjay Sen, Senior Advocate
Shri Saahil Kaul, Advocate
Shri TAN Reddy, KTL
Ms. Anisha Chopra, KTL

For Respondents : Ms. Sikha Ohri, Advocate, NTPC
Shri Matrugupta Mishra, Advocate, NTPC
Shri Rajesh Jain, NTPC
Shri Sachin Jain, NTPC
Shri Nishant Gupta, NTPC

ORDER

Background

The Petitioner, Khargone Transmission Limited (KTL) is a fully owned subsidiary of Sterlite Grid 4 Limited (SGL) which was selected as a successful bidder through the International tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the "Act") to establish the following transmission systems on Build, Own, Operate and Maintain basis and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the project:



- (i) LILO of one circuit of Khandwa-Rajgarh 400 kV D/C Transmission Line at Khargone TPP (LILO) (hereinafter referred to as “KR Line”);
- (ii) Khargone TPP Switchyard-Khandwa pool 400 kV D/C (Quad) Transmission Line (hereinafter referred to as “KK Line”);
- (iii) Khandwa Pool -Indore 765 kV D/C Transmission Line (hereinafter referred to as “KI Line”);
- (iv) Khandwa Pool -Dhule 765 kV D/C Transmission Line (hereinafter referred to as “KD Line”);
- (v) Establishment of 765/400 kV, 2x1500 MVA pooling station at Khandwa (Khandwa S/s);
- (vi) 2 nos. of 765 kV line bays and 7x80 MVAR switchable line reactors (1 unit as spare) along with 800 Ω NGR and its auxiliaries for Khandwa Pool – Dhule 765 kV D/C at Dhule 765/ 400 kV substation of Bhopal Dhule Transmission Company Limited (Other Elements).

2. KTL approached the Commission for grant of transmission licence in Petition No. 157/TL/2016 and for adoption of tariff of the transmission system in Petition No. 156/AT/2016. The Commission in its order dated 17.11.2016 in Petition No. 157/TL/2016 granted licence to KTL for inter-State transmission of electricity and in order dated 11.11.2016 in Petition No. 156/AT/2016 adopted the tariff of the transmission system.



3. As per the TSA dated 14.3.2016, KR Line (Khargone-Rajgarh) was to be completed and commissioned within 20 months from the effective date, i.e. by February, 2018 and KK Line (Khargone-Khandwa), KI Line (Khandwa-Indore), KD Line (Khargone-Rajgarh), Pooling station at Khandwa and others elements were to be completed and commissioned within 37 months from the effective date, i.e. by July, 2019.

4. On account of delay in completion of certain elements of the transmission system, the Applicant has filed the Petition No. 308/MP/2019 *inter-alia* seeking the following prayers:

“(a) Allow the instant Petition and declare that (i) delay due to diversion of the route approved under Section 164 of the Electricity Act for the Khandwa Pool - Dhule 765 kV D/C Transmission Line as per the CEA’s directions; (ii) delay in approval of power line crossing proposals submitted by the Petitioner to MPPTCL; (iii) delay due to diversion of route for the construction of 400 kV Khargone-Khandwa Transmission Line due to interception with the railway track of NTPC Limited; (iv) delay in the acquisition of land for the Khandwa Substation due to agitations by villagers; and (v) delay in obtaining highway crossing approvals from NHAI, are events which were unavoidable and prevented the Petitioner from performing its obligations under the TSA and therefore constitute Force Majeure Events in terms of Article 11 of the TSA;

(b) Declare that the Petitioner would not be liable in any manner for a breach of its obligations under the TSA due to the delay in construction of the Project in accordance with Article 11.7(a) of the TSA;

(c) Permit the Petitioner to delink the Khandwa Pool – Dhule 765 kV D/C Transmission Line from the rest of the transmission elements, as laid out in Schedule 3 of the TSA, for optimum utilization of the transmission system to ensure evacuation of the entire generation capacity of the NTPC Khargone TPP through the Khargone-Khandwa Pool – Indore corridor by October 2019, as suggested by the CEA in the minutes of the meeting dated 29.07.2019;

(d) Declare that MPPTCL’s letter dated 08.06.2017 imposing the H+6 criteria upon the Petitioner for laying the Khandwa Pool – Dhule 765 kV D/C Transmission Line and the Khandwa Pool – Indore 765 kV D/C Transmission Line amounts to a Change in Law in terms of Article 12 of the TSA;

(e) Declare that the requirement imposed by NTPC vide its letter dated 15.12.2018, compelling the Petitioner to divert the route approved for the Khargone TPP Switchyard – Khandwa pool 400 kV D/C (Quad) Transmission Line is a Change in Law event in terms of Article 12 of the TSA;



(f) Declare that circular No. R/3283/2016/7/2A dated 11.05.2017 issued by the Government of Madhya Pradesh and the circular dated 31.05.2017 issued by the Government of Maharashtra introducing payment of compensation to landowners whose land was affected by the laying of transmission lines, is a Change in Law event in terms of Article 12 of the TSA;

(g) Declare that CEA's directions issued vide letter dated 29.07.2019, to divert the approved route of the Khandwa Pool – Dhule 765 kV D/C Transmission Line, to an alternate route is an addition in the scope of work and is a Change in Law event in terms of Article 12 of the TSA;

(h) Declare that the additional bank guarantees in the amount of Rs. 2 crore and Rs. 5 lacs demanded by NHA1 as a precondition for issuance of highway crossing approvals for erection of the Khandwa Pool – Indore 765 kV D/C Transmission Line over the National Highway - 3 constitutes a Change in Law event in terms of Article 12 of the TSA;

(i) Grant liberty to the Petitioner to approach this Hon'ble Commission for relief on account of occurrence of Force Majeure and Change in Law events detailed in the instant Petition with the actual time and cost overruns, including the applicable Interest During Construction and Incidental Expenditure During Construction, upon commissioning of the Project; and

(j) Pass any other order as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.”

5. The Petitioner has filed IA with the following prayers:

“(a) Permit the Petitioner to delink the Khandwa Pool-Dhule 765 kV D/C Transmission Line from the rest of the transmission elements, as laid out in Schedule 3 of the TSA, for optimum utilization of the transmission system to ensure evacuation of the entire generation capacity of the NTPC Khargone TPP through the Khargone-Khandwa Pool-Indore corridor by October 2019, as suggested by the CEA in the minutes of the meeting dated 29.7.2019 and 5.8.2019;

(b) Declare that the Applicant is entitled to collect transmission charges as per the provisions of the TSA for the following elements from their actual commercial operation date:

(i) Khargone TPP Switchyard-Khandwa pool 400 kV D/C (Quad) Transmission Line.

(ii) Khandwa Pool -Indore 765 kV D/C Transmission Line.

(iii) 765/400 kV, 2x1500 MVA pooling station at Khandwa.

(iv) 2 nos. of 765 kV line bays and 7x80 MVAR switchable line reactors (1 unit as spare) along with 800 Ω NGR and its auxiliaries for Khandwa Pool – Dhule 765 kV D/C at Dhule 765/ 400 kV substation of Bhopal Dhule Transmission Company Limited (Other Element)

(c) Grant the Applicant same treatment that has been given to North Karanpura in the Commission's order dated 20.3.2019 in Petition No. 194/MP/2017 in respect of



completion of the project in a compressed timeframe and to recover the cost so as to place the Applicant in the same economic position as per the provisions of the TSA.”

6. IA was listed for admission on 27.9.2019 with notice to the Respondents. During the course of hearing, learned senior counsel for the Applicant submitted as under:

(a) As per Schedule 3 of the TSA, in order to recover transmission charges from the Long Term Transmission Customers (LTTTCs) under the TSA, the Applicant is required to simultaneously commission each of the elements constituting the Project. In other words, each of the elements mentioned in Schedule 3 of the TSA, namely the KD Line, KI Line, KK Line, Khandwa Substation and the Other Elements, are pre required for declaring the commercial operation of the other elements. Therefore, a delay in the commissioning of any of the abovementioned elements shall disentitle the Applicant from recovering the transmission charges for the other pre-required elements, even if some or all of the other pre-required elements are commissioned.

(b) The KI Line, KK Line, Khandwa Substation and the other Elements are expected to be commissioned in the month of November, 2019 whereas KD Line is expected to be commissioned in May, 2020 subject to fresh approval under Section 164 of the Electricity Act, 2003, grant of forest clearance and other statutory approvals.

(c) NTPC has vide letter dated 22.7.2019 acknowledged the delay in commissioning of various elements and advised KTL to complete Khargone TPP switchyard- Khandwa Pooling station-Indore corridor on priority.



(d) Unit#1 of NTPC Khargone TPP has been commissioned and power is being evacuated through LILO line. Further, Unit#2 is expected to be commissioned in the month of November, 2019 for which Khargone TPP switchyard- Khandwa Pooling station-Indore corridor is required to be commissioned matching with Unit#2.

(e) CEA has vide minutes of the meeting dated 29.7.2019 advised the Applicant to complete KK Line, KI Line and Khandwa sub-station ahead of KD Line so that power from both unites of NTPC can be evacuated without any bottleneck.

7 None appeared on behalf of the Respondents despite notice.

8. The Petitioner, vide Record of Proceedings for hearing dated 27.9.2019, was directed to implead NTPC as party to the Petition and to file revised memo of parties. The Respondents and NTPC were directed to file their reply to the IA. No reply has been filed by the Respondents.

Analysis and Decision

9. We have considered the submissions of the Applicant and perused the documents on record. As per the TSA, Scheduled Commercial Operation Date of the Project was July, 2019. According to the Applicant, the project has got delayed due to the following Force Majeure and Change in Law Events which affected the completion of the project and prevented the Applicant from performing its obligations under the PPA:



(a) Diversion of the approved route of the Khandwa Pool-Dhule Transmission line to avoid intersection with the route proposed for the Jamphal Dam, as directed by CEA;

(b) Delay in approval of power line crossing proposals submitted by the Petitioner to MPPTCL;

(c) Delay due to diversion of route for the construction of 400 kV Khargone-Khandwa transmission line owing to interception with the railway track of NTPC Limited;

(d) Delay in construction of the Khandwa sub-station due to agitation by local villagers;

(e) Delay in receiving crossing approvals for erection of KI Line over National Highway -3 from the National Highways Authority of India;

(f) Additional expenditure incurred/to be incurred in diversion of the approved route of the KD Line pursuant to the directions of the CEA contained in its letter dated 29.7.2019;

(g) Additional expenditure incurred due to introduction of right of way compensation to affected land owners by the Government of Madhya Pradesh and Government of Maharashtra;

(h) Additional expenditure incurred in complying with the H+6 criteria imposed by MPPTCL for erection of the KI Line;



(i) Additional expenditure incurred in construction of 400 kV Khargone-Khandwa transmission line along with diverted route as directed by NTPC; and

(j) Additional expenditure incurred/to be incurred in furnishing bank guarantees of Rs. 5 lakh and Rs. 2 crore.

10. The Applicant has submitted that KK Line, KI Line, Khandwa Substation and the other associated elements together matching with the timeline of commissioning of Unit-2 of NTPC Khargone TPP are scheduled to be commissioned shortly. However, due to Force Majeure Events, the Petitioner is not able to complete the KD Line simultaneously with the other elements of the Project in terms of the Schedule 3 of the TSA. Schedule 3 of the TSA is extracted as under:

**“Schedule: 3
Scheduled COD**

[Note: As referred to in the definition of “Element”, “Scheduled COD”, and in Articles 3.1.3 (c), 4.1 (b) and 4.3 (a) of this Agreement]

Sr. No.	Name of the Transmission Element	Scheduled COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
1.	LILO of one ckt of Khandwa Rajgarh 400 kV D/C line at Khargone TPP	20 months # (February-2018)	0.39%	NIL
2.	Khargone TPP Switchyard-Khandwa pool 400 kV D/C (Quad) line	37 months # (July-2019)	8.34%	Elements marked at Sr. No. 2, 3, 4, 5, 6 are required to be commissioned simultaneously
3.	Khandwa Pool- Indore 765 kV D/C line	37 months # (July-2019)	29.62%	
4.	Khandwa Pool- Dhule (BDTCL) 765 kV D/C line	37 months # (July-2019)	40.62%	
5.	Establishment of 765/400kV, 2X1500 MVA pooling station at Khandwa	37 months # (July-2019)	17.20%	
6.	2 nos. of 765 kV line bays	37 months #	3.83%	



	and 7X80 MVAR Switchable line reactors (1 unit as spare) along with 800 Ω NGR and its auxiliaries for Khandwa Pool-Dhule 765 kV D/C at Dhule 765/400 kV substation of M/s BDTCL	(July-2019)		
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The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.

Scheduled COD for overall Project: 38 months from Effective Date #.

Scheduled COD in months is considering Effective Date in June, 2016. It is clarified that in case there is delay in achieving Effective Date the schedule shall be compressed, accordingly to achieve Schedule COD for Element 1 by February, 2018 and for Elements 2 to 6 by July, 2019.”

11. As per Schedule 3 of the TSA, in order to recover transmission charges from the Long- Term Transmission Customers, the Applicant is required to simultaneously commission each of the elements covered under the Project. In other words, each of the elements mentioned in Schedule 3 of the TSA, namely KD Line, KI Line, KK Line, Khandwa Substation and the Other Elements, are pre required for declaring the commercial operation of the other elements. Therefore, delay in the commissioning of any of the abovementioned elements shall disentitle the Applicant from recovering the transmission charges for the other pre-required elements, even if some or all of the other pre-requisites elements are commissioned.

12. It is pertinent to note that as per Regulation 6.3(A) (4)(v) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code Regulations, 2010 as amended from time to time, if an element is required to be commissioned prior to the commissioning of the other pre-required elements under the relevant TSA, then the same can only be done if the CEA confirms that such commissioning is in the



interest of the power system. The relevant portion of Regulation 6.3.A is extracted as under:

“6.3A Commercial operation of Central generating stations and inter-State Generating Stations

...
4. Date of commercial operation in relation to an inter-State Transmission System or an element thereof shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from the sending end to the receiving end:

Provided that:

...
(v) An element shall be declared to have achieved COD only after all the elements which are pre-required to achieve COD as per the Transmission Services Agreement are commissioned. In case any element is required to be commissioned prior to the commissioning of pre-required element, the same can be done if CEA confirms that such commissioning is in the interest of the power system.”

13. The Applicant has submitted that the route of the KD Line approved under Section 164 of the Electricity Act, 2003 traversed from the Khargone and Khandwa districts of Madhya Pradesh to the Dhule district of Maharashtra. However, since the above route was intersecting with the proposed land for the Jamfal-Kanoli-Sulwade Lift Irrigation Project (“**Jamfal Dam**”), the Applicant was prevented from carrying out construction activities on the route by the Minor Irrigation Division of Dhule (“**MIDD**”), Divisional Forest Officer and the District Collector of Dhule.

14. The issue was discussed in the CEA. CEA in the minutes of the meeting dated 5.8.2019 has observed that power from both the units of the NTPC Khargone TPP can be evacuated through the Khargone TPP-Khandwa Pool-Indore corridor. For ensuring the above, the Applicant is required to complete the following elements to match with the commissioning of Unit No. 2 of the NTPC Khargone TPP, being (i) Khargone TPP Switchyard-Khandwa Pool 400 kV D/c (Quad) line along with 2 nos.



of 400 kV bays at Khandwa Pool; (ii) 2x1500 MVA, 765/ 400 kV ICTs along with associated bays at Khandwa pooling station; (iii) 240 MVA, 765 kV and 125 MVA, 400 kV bus reactors along with associated bays at Khandwa pooling station; and (iv) Khandwa Pool -Indore 765 kV D/c line along with 2 nos. of 765 kV bays at Khandwa pool.

15. We have perused the CEA's Minute of Meeting dated 5.8.2019 placed on record by the Applicant. Relevant portion of the Minutes of Meeting dated 5.8.2019 is extracted as under:

"6.0 After further deliberations, following was agreed:

(i) The existing LILO of one ckt of Rajgarh - Khandwa 400kV D/C line at Khargone TPP is sufficient for power evacuation from Unit 1 of NTPC Khargone even under n-1 contingency condition and would be used for power evacuation during trial run and subsequent commercial operation of Unit 1 of NTPC Khargone.

(ii) NTPC would intimate in writing about the scheduled commissioning date of Unit 2 of NTPC Khargone STPP. The second unit at NTPC Khargone STPP cannot be charged till the planned evacuation system of Khargone STPP (2x660 MW) gets completed. For the 2nd unit of NTPC Khargone STPP, the following transmission elements needs to completed by M/s KTL by October, 2019:

(a) Khargone TPP Switchyard -Khandwa pool 400 kV D/C (Quad) line

(b) Khandwa Pool – Indore 765 kV D/C line

(c) Establishment of 765/400kV, 2x1500MVA pooling station at Khandwa pool along with 240 MVA, 765 kV and 125 MVA, 400kV bus reactors.

(iii) M/s KTL would submit the progress report of above transmission elements to CEA on monthly basis."

16. During the course of hearing on 15.10.2019, learned counsel for the Respondent, NTPC submitted that the trial operation run in respect of Unit 1 of Khargone Thermal Power Project (TPP) has been completed and is expected to achieve commercial operation in the month of October, 2019. Learned counsel submitted that Unit-2 of Khargone TPP would be commissioned by January, 2020. However, the same would be synchronized by November, 2019. In response,



learned counsel for the Petitioner submitted that all other elements of the KTL Project except KD Line would be commissioned by November, 2019 in order to match with the commissioning schedule of NTPC Khargone TPP Unit-2 to evacuate power from both the units of NTPC Khargone TPP.

17. Considering CEA's letter dated 29.7.2019, minutes of meeting of CEA dated 29.7.2019 and 5.8.2019 and submissions made by the parties during the hearing, we permit the Applicant to declare the commercial operation of element mentioned in prayer (b) of para 5 of this order except item (iv) of Para 5 (b) without linking it to the commercial operation of the Khandwa pool-Dhule 765 kV D/C Transmission Line whose completion has been affected by several factors which have been claimed by the Applicant as force majeure and change in law in the main Petition, without prejudice any liability that may arise from the final order of the Commission. CEA in its minutes has recorded for completion of the above elements by November, 2019. Accordingly, we direct the Applicant to ensure that Khargone-Khandwa Pool-Indore corridor is completed and put into operation matching with the timeline of commissioning of the Unit 2 of the NTPC Khargone TPP.

18. NTPC is directed to submit commissioning schedule of the units of its generating station to the Applicant. The Applicant is directed to commission the elements matching with the commissioning of the generating project by following due procedure in the TSA and Grid Code.

19. IA No. 78/MP/2019 is disposed of in terms of the above.



20. Issue notice to the Respondents in the main Petition. The Respondents are directed to file their replies, by 1.11.2019 with an advance copy to the Applicant, who may file its rejoinder, if any, by 13.11.2019.

21. The Petition No. 308/MP/2019 shall be listed for hearing in due course for which notice will be issued separately.

Sd/-
(I.S. Jha)
Member

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

sd/-
(P.K. Pujari)
Chairperson

