

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 308/MP/2019

Coram:

**Shri P. K. Pujari, Chairperson
Shri I.S.Jha, Member
Shri Arun Goyal, Member**

Date of Order: 20th July, 2020

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 Scheduled Commercial Operation Date along with compensatory and declaratory relief under the Transmission Service Agreement dated 14.3.2016 on account of Force Majeure and Change in Law events.

And

In the matter of

Khargone Transmission Limited
Core-4, Scope Complex,
7 Lodhi Road,
New Delhi – 110 003

...Petitioner

Versus

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 – 4000051
5. Electricity Department, Government of Goa
Vidyut Bhawan, Panaji,
Goa – 605 001
6. DNH Power Distribution Corporation Limited
Administration of Dadar Nagar Haveli,
66 kV, Amla Road, Silvassa - 396230
7. Electricity Department, Daman and Diu
Administration of Daman and Diu
Plot No. 35, OI DC Complex,
Near Fire Station, Somnath,
Daman – 396210

...Respondents

The following parties were present:

Shri Sanjay Sen, Senior Advocate, KTL
Shri Saahil Kaul, Advocate, KTL
Ms. Shikha Ohri, Advocate, NTPC
Shri Matrugupta Mishra, Advocate, NTPC
Shri Sachin Jain, NTPC
Shri Manoj Dubey, Advocate, MPPMCL

ORDER

The present petition has been filed by the Petitioner, namely, Khargone Transmission Limited (hereinafter referred to as “KTL” or the Petitioner), a fully owned subsidiary of Sterlite Grid 4 Limited (SGL) seeking extension in the Scheduled Commercial Operation Date along with compensatory and declaratory reliefs under the Transmission Service Agreement (TSA) dated 14.3.2016 on account of Force Majeure and Change in Law events. The Petitioner has made 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 NHAI 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.*

Background

2. The Petitioner was selected as a successful bidder to establish a project consisting of the following transmission elements on Build, Own, Operate and Maintain (BOOM) 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).

3. As per TSA dated 14.3.2016, LILO of one circuit of KR Line (Khargone-Rajgarh) i.e. asset at sl. no. (i) of paragraph 2, was to be completed and



commissioned within 20 months from the effective date, i.e. by February, 2018 while remaining elements at paragraph 2 {sl. no. (ii) to sl. no. (vi)} i.e. KK Line (Khargone-Khandwa transmission line), KI Line (Khandwa-Indore transmission line), KD Line (Khargone-Dhule transmission line), 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 Petitioner has filed the instant Petition for extension in SCoD along with compensatory and declaratory reliefs under TSA dated 14.3.2016.

Submissions of the Petitioner

5. The Petitioner has mainly submitted that the project has got delayed due to various force majeure as well as change in law events, which have affected the development of the Project, and are set out below:

Force majeure events:

- (a) Delay due to 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 the CEA;
- (b) Delay in approval of power line crossing proposals submitted by the Petitioner to Madhya Pradesh Power Transmission Company Limited ("MPPTCL");
- (c) 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;
- (d) Delay in the construction of the Khandwa Substation due to agitations by local villagers;



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

Change in law events:

(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 29.07.2019;

(g) Additional expenditure incurred due to introduction of right of way compensation to affected landowners by the Governments of Madhya Pradesh and 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 the diverted route as directed by NTPC; and

(j) Additional expenditure incurred/ to be incurred in furnishing bank guarantees demanded by NHAI in the amounts of Rs. 5 lacs and 2 crore.

6. The Petitioner has submitted that the aforesaid force majeure events have so far led to a cumulative loss of approximately 29 months of working time in respect of the different elements of the Project, rendering it impossible to complete the Project within the timelines stipulated in the TSA. Total working time lost due to the force majeure events is summarized below:

S. No.	Uncontrollable Event	Time Overrun (in months)
1.	Delay due to diversion of the approved route of the KD Line to avoid intersection with the route proposed for the Jamphal Dam, as directed by the CEA.	13 months*
2.	Delay in approval of power line crossing proposals submitted by the Petitioner to MPPTCL.	25 months
3.	Delay due to diversion of route for construction of the KK Line to avoid interception with the railway track of	2 months



	NTPC Limited.	
4.	Delay in the construction of the Khandwa Substation due to agitations by local villagers.	20 months
5.	Delay in receiving highway crossing approvals from NHA for construction of the KI Line	29 months*

** The delay due to the above reasons is continuing as the required permissions and approvals to resume construction activities has not been granted yet.*

7. The Petitioner has submitted that as a result of the occurrence of the abovementioned uncontrollable events, the Petitioner is seeking an extension in SCOD of the Project on a day for day basis in terms of Article 4.4.2 read with Article 11.7 of the TSA. The Petitioner has further sought declaratory and compensatory relief for the change in law events as per the mechanism provided under Article 12 of the TSA. The Petitioner submits that the commercial efficacy and viability of the Project will be adversely affected if the impact of these events is not remedied.

8. The Petitioner has submitted that force majeure events have led to unavoidable delays and have prevented the Petitioner from performing its obligations under the TSA i.e. to achieve commercial operation of the Project by SCOD. Therefore, the Petitioner is an 'Affected Party' in terms of the meaning of Article 11.2.3 of the TSA. It has submitted that upon the occurrence of a force majeure event, rights and obligations of the parties are suspended and the Petitioner is entitled to claim relief for such force majeure events after complying with the procedure prescribed under the TSA.

9. The Petitioner has further submitted that due to the occurrence of various events which constitute 'change in law', implementation of the Project at the bid out tariff has become commercially impracticable, entitling the Petitioner to an enhancement in tariff as per Article 12 of the TSA.



10. The Petitioner has submitted that as per Article 12, an event constitutes a change in law if it occurs after the cut-off date that is a date which is 7 days prior to the bid deadline. In the instant case, the bid deadline was 11.4.2016 and accordingly, the cut-off date was 4.4.2016. The events have occurred after the cut-off date resulting in the Petitioner incurring additional expenditure and are therefore covered within the meaning of change in law events in terms of Article 12 of the TSA. Consequently, the Petitioner has submitted that it is entitled to enhancement in tariff in terms of Article 12.2.1 of the TSA.

11. The Petitioner has submitted that it is not in a position to quantify the actual time and cost overrun due to the aforementioned force majeure and change in law events as the KD Line is still under construction. However, the Petitioner has submitted that it can demonstrate the actual time and cost overrun due to the uncontrollable events, along with documentary evidence, once the KD Line is commissioned.

Hearings before the Commission

12. The Petitioner had also filed IA No. 78/IA/2019 in the Petition, which was disposed of by the Commission vide Order dated 21.10.2019.

13. The Petition was heard on 11.12.2019 and the Commission directed the Petitioner and respondents to file their reply. In response, Respondent MPPMCL and NTPC have filed their reply. The Petitioner has filed rejoinder to the reply of MPPMCL.



14. The Petition was again heard on 30.6.2020 and after hearing the parties, the Commission reserved the Order in the Petition.

Analysis and Decision

15. We have considered the submissions of the parties. The Petitioner, KTL has filed the instant Petition seeking extension in the Scheduled Commercial Operation Date along with compensatory and declaratory reliefs under the Transmission Service Agreement (TSA) dated 14.3.2016 on account of force majeure and change in law events.

16. The Petitioner in terms of the Transmission Service Agreement dated 14.3.2016 entered into with the LTTCs, was required to put the said Project into commercial operation by July 2019. However, due to various Force Majeure events as claimed by the Petitioner in the instant Petition, the commissioning of Project has been delayed and in particular, one element, namely Khandwa Pool-Dhule 765 kV D/C transmission line is yet to be completed.

17. Petitioner has submitted that several force majeure and change in law events have affected the completion of the project, full impact of which is not yet quantified, since one element (KD Line) of the Project is still to be completed.

18. The Petitioner during the last hearing dated 30.06.2020, has submitted that it has commissioned all the other (5 out of total 6) elements of its Project, except Khandwa - Dhule 765kV D/C Line. The Petitioner submitted that while the KD Line is yet to achieve commercial operation, the Commission may consider granting



declaratory reliefs/ in-principle approval as prayed for by the Petitioner in respect of KD line.

19. We note that the Petitioner vide IA No. 78/IA/2019 in Petition No. 308/MP/2019 had sought permission to delink the Khandwa Pool- Dhule 765 kV D/C Transmission Line from the other elements of the project.

The prayer of the Petitioner under paragraph 5(b) of 78/IA/2019 was as under:

“(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)”

20. The Commission vide its Order dated 21.10.2019 disposed of the said IA and had observed as under:

“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.”



21. In terms of our order dated 21.10.2019 in the afore-mentioned IA, we have allowed a few elements of the Project to be put into commercial operation delinking them from rest of the elements in terms of recommendation of CEA and requirement of the generator (NTPC). However, any decision on time overrun and relief on account of force majeure/ change in law events can only be taken for the Project as a whole. The Petitioner has itself stated that it is unable to quantify the impact of such force majeure and change in law events since the Project is yet to be completed. Therefore, we are of the view that since the complete project has not been implemented by the Petitioner till date, it would not be appropriate to take a view on the claimed force majeure and change in law issues at this stage and neither would it be possible to grant any kind of declaratory in-principle reliefs.

22. The Petitioner, however, is granted liberty to approach the Commission for appropriate relief, in terms of the provisions of the TSA after completion of the project.

23. Petition No. 308/MP/2019 is disposed of in terms of above.

sd/-

(Arun Goyal)
Member

sd/-

(I.S.Jha)
Member

sd/-

(P.K.Pujari)
Chairperson

