

CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi

Petition No. 135/MP/2018

Subject : Petition seeking payment of transmission tariff between the date of commissioning and date of charging of Element 2 and Element 3 of transmission assets of Kudgi Transmission Ltd.

Date of Hearing : 3.9.2021

Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Kudgi Transmission Ltd. (KTL)

Respondents : Bangalore Electricity Supply Company Ltd. (BESCOM) and Ors.

Parties Present : Shri M.G. Ramachandran, Senior Advocate, KTL
Shri Alok Shanker, Advocate, KTL
Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Aryaman Saxena, Advocate, PGCIL
Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Anand K Ganesan, Advocate, NTPC
Shri Ashwin Ramanathan, Advocate, NTPC
Shri Aditya Dubey, Advocate, NTPC

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the instant petition is filed for a declaration that the Petitioner is entitled to recover transmission charges for Assets-II and III from the date of declaration of commercial operation. Referring to the Note of Arguments, the learned senior counsel made the following submissions:

a. The project involves following details of the elements as below:

Sr. No.	Elements	Scope of work	Scheduled COD	Deemed COD	Date of charging
1	Element 1	2 Nos 400 (kV D/C TL) Kudgi TPS to Narendra (New)	28.2.2015	4.8.2015	6.11.2015
2	Element 2	765 kV D/C TL Narendra (New) to Madhugiri	31.12.2015	27.7.2016	24.8.2016
3	Element 3	400 kV D/C TL Madhugiri to Bidadi	31.12.2015	27.7.2016	24.8.2016



- b. The issue for consideration in the instant petition is the Petitioner's claim for transmission charges for the period from the deemed COD to the date of charging and who will bear the liability for the transmission charges for the intervening period.
- c. The Commission vide order dated 27.6.2016 in Petition No. 236/MP/2015 decided the deemed COD of Element 1 and vide order dated 24.1.2019 in Petition No. 248/MP/2016 decided the deemed COD of Elements-2 and 3.
- d. The Petitioner was only required to develop the transmission lines and was not required to develop any sub-station or any other inter-connection facility. In terms of Clause 4.2. (b) of the Transmission Service Agreement (TSA), it is the obligation of LTTCs to provide the interconnection facilities.
- e. In terms of Article 10.1 of the TSA, the Petitioner is entitled to receive tariff with effect from deemed COD.
- f. Despite the completion of the elements of the Petitioner, the same were not charged due to delay on the part of PGCIL in completing its scope of work.
- g. The Petitioner is aggrieved by the fact that despite completing all the works for each element and declaring commercial operation in terms of the TSA, the tariff payments in terms of the TSA did not commence from the COD.
- h. LTTCs do not dispute the fact of deemed COD and only contend that since delay in charging of the elements was on account of PGCIL, LTTCs are not liable to pay transmission charges from the date of deemed COD to the date of charging.
- i. As per the contract, the LTTCs are liable to pay transmission charges from the date of deemed COD to the date of charging of elements.

3. In response to a query of the Commission as to whether the deemed COD granted for Elements-2 and 3 was conditional, the learned senior counsel submitted that the deemed COD for those elements granted by the Commission in the order dated 24.1.2019 in Petition No. 248/MP/2016 was not conditional. He further submitted that the order dated 24.1.2019 passed in Petition No. 248/MP/2016 has not been placed on record as the same was passed after the filing of the instant petition. He submitted that the as per the provisions of TSA, 7 days' notice was been given by the Petitioner to the LTTCs and the deemed COD has been declared.

4. In response to another query of the Commission regarding the process followed by the Petitioner for declaring deemed COD, the learned senior counsel for the Petitioner submitted that notice to the CEA is given on readiness of the transmission line and the CEA carries out inspection of the transmission line. Thereafter, 7 days' notice is given to LTTCs and the LTTCs are required to arrange for interconnection facilities and if they do not arrange inter-connection facilities on expiry of 7 days' notice, the Petitioner is entitled to declare the deemed COD.

5. The learned counsel appearing on behalf of the PGCIL and CTU submitted that neither PGCIL nor CTU was a party to the proceedings in Petition No. 248/MP/2016. He submitted that as per Article 6 of TSA, a notice of 60 days i.e. on the date on which the Petitioner intends to connect the element of the project is required to be given to CTU/STU. However, in the instant case, no notice was given by the Petitioner and the mandatory provision of the notice was not followed by the Petitioner. For the purposes of notice and deemed COD, the learned counsel appearing on behalf of PGCIL and CTU relied on APTEL's judgement in Appeal No. 97 of 2016. He further referred to letters dated 25.7.2016, 9.8.2016 and CEA Energisation letter dated 4.7.2016 to show that the Petitioner was working on the



transmission line even after issue of the CEA Energisation letter. He submitted that no case of deemed COD has been made for Elements-2 and 3. Deemed COD may not be approved and the actual COD of Elements-2 and 3 should be considered and the Petitioner should be entitled to tariff only from the actual COD.

6. The learned counsel appearing on behalf of NTPC submitted that no relief has been sought against it for Element 2 or Element 3. As regards the Element-1, NTPC has complied with the order dated 27.6.2016 passed in Petition No. 236/MP/2015.

7. In response, learned senior counsel for the Petitioner submitted that PGCIL and CTU are misinterpreting the provisions of the TSA. The Petitioner has made out a case under provisions of Article 6.2 and not Article 6.1 of the TSA. As per Article 6.2.1 of TSA, notice was given to LTTCs and the same has been accepted by LTTCs and none of the LTTCs have challenged the charging of the transmission line.

8. The learned counsel appearing on behalf of PGCIL has submitted that he would like to make submissions on the interplay between article 6.1 and 6.2 of the TSA and further on height violation.

9. The Commission directed the Petitioner to file the following information on affidavit by 20.9.2021 with an advance copy to the Respondents:

- a. Notices issued under Article 6.1 of the TSA for each element.
- b. RLDC Charging Certificate certifying the actual date of charging of Elements 2 and 3.
- c. Proof of Intimation of deemed COD to LTTCs.
- d. Process followed by the Petitioner while declaring deemed COD.

10. The Commission directed PGCIL and CTU to file their written submissions by 24.9.2021 and the Petitioner to file its rejoinder, if any, by 4.10.2021. The Commission further directed the parties to comply with the above directions within the specified timeline and observed that no further extension of time will be allowed.

11. Subject to above, the Commission reserved the order in the matter.

By order of the Commission

sd/-
(V. Sreenivas)
Deputy Chief (Law)

