

CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi

Petition No. 210/MP/2017

Subject	:	Petition seeking revision of the quoted transmission tariff payable in terms of the Transmission Services Agreement (TSA) for various events occurring after the Bid due date.
Date of Hearing	:	9.11.2021
Coram	:	Shri P. K. Pujari, Chairperson Shri I.S Jha, Member 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 Ms. Swapna Seshadri, Advocate, NTPC Ms. Ritu Apurva, Advocate, NTPC Shri Jai Dhanani, Advocate, NTPC Shri Sriranga Subanna, Advocate, BESCOM Ms. Sumana Naganand, Advocate, BESCOM Ms. Medha M. Puranik, Advocate, BESCOM

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for BESCOM sought time to file reply on the additional submissions made by the Petitioner. The Commission observed that being a matter of 2017, it would like to hear the Petitioner and NTPC who are ready for arguments and would give an opportunity to BESCOM to present its case later. Accordingly, the Commission directed the Petitioner and NTPC to present their arguments.

3. Learned senior counsel for the Petitioner made detailed submissions referring to the written submissions filed in the matter. He submitted that the instant petition has been filed for revision of the transmission tariff payable to the Petitioner in terms of the Transmission Service Agreement (TSA) dated 14.5.2013 in view of the increased cost paid as per the order of the District Magistrate (DM) for accessing the land for laying towers, and *force majeure* and “change in law” events after the bid due date. The Commission in order dated 27.6.2016 and 24.1.2019 in Petition No. 236/MP/2015 and Petition No. 248/MP/2016 has already decided the deemed COD of Element 1, Element 2 and Element 3 as 4.8.2015, 19.9.2016 and 13.7.2016 respectively. Referring to APTEL’s judgement dated 20.10.2020 in



Appeal No. 208 of 2019 in the matter of Bhopal Dhule Transmission Company Limited Vs. CERC and Ors, he submitted that the principles laid down in the said judgement regarding “change in law” and *force majeure* needs to be applied in the instant case. He submitted that the Petitioner is entitled to revision of transmission tariff because of the additional expenditure on account of IDC and IDEC due to extended construction period and delay in commissioning of Elements 2 and 3 which were beyond the control of the Petitioner. Reliance was placed on Hon’ble Supreme Court judgment in Dhanrajamal Gobindram v. Shamji Kalidas & Co. on the issue of *force majeure* events. He further submitted that the orders of DM are a “change in law” event and the additional requirement of payment of compensation to the landowners falls under the ambit of “change in law”. He submitted that the law in relation to “change in law” and the powers of the Commission to review tariff of projects which have been awarded on competitive bidding basis has been settled by the Hon’ble Supreme Court in the case of Energy Watchdog vs. CERC. He further submitted that the information sought in the Record of Proceedings (RoP) dated 3.9.2021 was filed by the Petitioner vide affidavit dated 5.10.2021

4. Learned counsel for NTPC made detailed submissions referring to the reply filed by NTPC and requested that the submissions made in the reply may be considered. She submitted that the transmission tariff for all three elements for the period of mismatch has already been paid by NTPC in terms of the order dated 6.11.2018 in Petition No. 261/MP/2017. The Petitioner is claiming recovery of additional cost both under “change in law” and *force majeure*. She submitted that the Petitioner has filed multiple proceedings before the Commission claiming relief of extension of SCOD due to *force majeure* events and revision of transmission tariff. The Petitioner has also been successful in getting such relief from the Commission and is now seeking double recovery on the very same grounds by filing the present petition. She further submitted that the only relief available for *force majeure* events under the TSA is extension of SCOD without having to pay liquidated damages and an increase or enhancement in tariff cannot be claimed for *force majeure* events. She also submitted the details of the various petitions filed by the Petitioner and orders obtained from this Commission where the Petitioner has already been granted the reliefs sought by it.

5. Learned counsel for NTPC submitted that the order of DM dated 23.1.2015 only determined the compensation as per the provisions of the Indian Telegraph Act, 1885 and decided that the payment would be in two instalments of 65% and 35% respectively. This does not lead to the conclusion that the order of DM is “change in law”. She submitted that in case of tariff adoption under Section 63 of the Electricity Act, 2003, there is no concept of additional IDC and IDEC. If the project gets delayed, the Petitioner is required to pay liquidated damages which may be waived if the delay is held to be because of *force majeure* reasons. But, the additional IDC claimed by the Petitioner due to delay is not to be compensated to the Petitioner.

6. On the request of learned counsel for BESCO, the Commission granted time upto 22.11.2021 to file reply on the additional submissions made by the Petitioner and the Petitioner to file rejoinder, if any, by 6.12.2021. The Commission further observed that no further extension of time will be allowed and directed the parties to comply with the specified timeline.



7. The Commission further directed to list the matter for arguments of BESCO and the counter arguments of the Petitioner, for which a separate notice will be issued to the parties

By order of the Commission

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(V. Sreenivas)
Deputy Chief (Law)

