

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 169/TT/2020

Subject : Petition for determination of transmission tariff for 2019-24 period for one number of asset under “Sub-station works associated with additional inter-regional AC link for import of power into Southern Region i.e., Warora Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV Link” in Southern Region.

Date of Hearing : 6.1.2022

Coram : Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Power Grid Corporation of India Ltd.

Respondents : Karnataka Power Transmission Corporation Ltd.& 16 Others

Parties present : Ms. Swapna Seshadri, Advocate, PGCIL
Shri Aditya H. Dubey, Advocate, PGCIL
Shri Amit Kapur, Advocate, WKTL
Ms. Poonam Verma, Advocate, WKTL
Ms. Aparajita Upadhyay, Advocate, WKTL
Ms. Sakshi Kapoor, Advocate, WKTL
Shri Afak Pothiawala, Advocate, WKTL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri S. S. Raju, PGCIL
Shri D.K. Biswal, PGCIL
Shri Ved Prakash Rastogi, PGCIL
Shri A.K. Verma, PGCIL
Dr. R. Kathiravan, TANGEDCO
Shri R. Ramalakshmi, TANGEDCO
Shri R. Srinivasan, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.



2. Learned counsel for the Petitioner made the following submissions:
- a. Instant petition has been filed for truing up of transmission tariff of 2014-19 period and determination of transmission tariff of 2019-24 period in respect of 04 nos. of line bays (GIS) at (Hyderabad) Maheshwaram 765/400 kV Sub-station, 02 nos. of line bays at Warangal 400/220 kV Sub-station and balance items (PLCC, telecom equipment and line terminal equipment such as LA, CVT and Wave Trap) at Kurnool 765/400 kV Sub-station under “Sub-station works associated with additional inter-regional AC link for import of power into Southern Region i.e., Warora-Warangal and Chilakaluripeta-Hyderabad-Kurnool 765 kV Link” in Southern Region.
 - b. The Petitioner is seeking declaration of deemed COD for line bays at Hyderabad which is connecting Hyderabad-Maheshwaram 765 kV Sub-station at Warangal. The line is to be commissioned by the TBCB licensee, Warora-Kurnool Transmission Limited (WKTL) and the same has not yet been put into commercial operation and is expected to achieve COD in the current year.
 - c. The Petitioner has filed reply to the Technical Validation letter vide affidavit dated 15.9.2021 and rejoinders to the replies received from WKTL and TANGEDCO.
 - d. WKTL in its reply has admitted that delay on their part is owing to *force majeure* events.
 - e. Since the transmission line has not yet been put into commercial operation by TBCB licensee, the Petitioner has invoked provisions of Regulation 5(2) of the 2019 Tariff Regulations for declaration of deemed COD of its asset as 9.11.2019. The Petitioner satisfies all the conditions as contemplated under Regulation 5 of the 2019 Tariff Regulations for claiming deemed COD and has filed all the required documents as per the said Regulation.
 - f. WKTL also filed Petition No. 334/MP/2020 before the Commission seeking relief of *force majeure* issues in completion of the transmission line and the Commission vide order dated 7.2.2021 disposed of the said petition observing that WKTL may approach the Commission for relief of *force majeure* after completion of the transmission line. The Commission in the said order also directed the beneficiaries of the Petitioner for not to take any coercive steps against WKTL. This direction of the Commission does not mean that the Petitioner cannot claim deemed COD in respect of its assets.
 - g. In terms of Regulation 6(2)(b) of the 2019 Tariff Regulations, WKTL is liable to bear the transmission charges for the period of mismatch.
 - h. WKTL in its reply has not indicated any firm date for putting into commercial operation of asset under its scope which in turn entitles the Petitioner for grant of deemed COD under Regulation 5(2) of the 2019 Tariff Regulations.



i. Reliance placed by WKTL on the judgment dated 14.9.2020 of APTEL in Appeal No. 17 of 2019 in the matter of *NRSS XXXI (B) Transmission Ltd. v. CERC & Ors.* is misplaced. The APTEL in its judgment has referred to its earlier judgment dated 27.3.2018 in Appeal No. 390 of 2017 in the matter of PSPCL Vs. Patran Transmission Company Ltd. & Ors and Nuclear Power Corporation of India Ltd. Vs. CERC & Ors. judgment dated 18.1.2019 in Appeal No. 322 of 2016 wherein the principle of liability to pay transmission charges in the case of mismatch has been decided. Referring to judgment dated 6.4.2016 in Appeal No. 86 of 2015 in the matter of Western Region Transmission (Maharashtra) Pvt. Ltd. Vs. CERC & Ors, it was observed by the Tribunal that in the case of TSA entered into under TBCB route, force majeure can be compensated by way of extension of SCOD and not by granting additional costs.

j. WKTL's contention that PGCIL has voluntarily excluded the cost of PLCC, telecom equipment and line terminal equipment such as LA, CVT & Wave Trap at Kurnool 765/400 kV Sub-station, the same would not be considered in the present Petition is misconceived as the present petition has been filed for approval of deemed COD wherein the aforementioned equipment is to be deemed under utilization.

k. In response to the reply of TANGEDCO, it is submitted that if the transmission licensee succeeds in its case of *force majeure*, it may pass on the liability to its beneficiaries. However, the approval of deemed COD cannot be held back.

3. Learned counsel for TANGEDCO referred to his reply and made the following submissions:

a. WKTL should bear the transmission charges for the period of mismatch.

b. The Petitioner is duty bound to bring on record the details of transmission lines awarded and executed through TBCB route, pre-requisite as per the schedules under the TSA and status of each element.

c. The Petitioner has stated that reasons for item-wise cost variation between apportioned approved cost (FR) and estimated completion cost are given in Form-5. However, the Petitioner has failed to enclose the details of reasons for item-wise cost variation between apportioned approved cost (FR) and estimated completion cost in Form-5.

d. The Petitioner has not given the complete particulars of the actual amount withheld by it on account of balance and retention payment for the period 2019-2020, the reason for withholding and the name of contractors and the same is required to be given. Merely mentioning the amount or filing of Auditor's certificate does not entitle the Petitioner to the claim. The provisions of Regulation 24(2) of the 2019 Tariff Regulations are very clear. The Petitioner is required to prove the claim made by it. In absence of the justification, the Commission should restrict the claim of the Petitioner.



- e. According to the Petitioner, delay is attributable to WKTL and as such IDC and IEDC for the delayed period from SCOD to actual COD of the asset have to be recovered from the WKTL bilaterally. The amount of LD, if any, recovered from WKTL has to be deducted from the capital cost along with IDC and IEDC for the delayed period. As per the provision of Regulation 21(5) and Regulation 22(1) of the 2019 Tariff Regulations, IDC and IEDC corresponding to the delayed period can be allowed only if delay is due to uncontrollable factors.
- f. With regard to sharing of transmission charges, the submissions of TANGEDCO made in its reply may be considered.
4. In response to the submissions of TANGEDCO, learned counsel for the Petitioner submitted that all the details of TBCB licensee, transmission lines alongwith status and complete details of claims have been given in the petition.
5. Learned counsel for WKTL made the following submissions:
- a. Regulation 2(2) of the 2019 Tariff Regulations creates a bar for determination of transmission system whose tariff has been discovered through tariff based competitive bidding in accordance with the guidelines issued by the Central Government and adopted by the Commission under Section 63 of the Electricity Act, 2003 (the Act). The Commission can determine the transmission tariff of transmission system under Section 62 of the Act read with Section 79 of the Act.
- b. WKTL's asset has not been put under commercial operation on account of continuing *force majeure* events and the asset is expected to be put under commercial operation by October 2022.
- c. MoP vide letter dated 15.1.2021, issued directions to the Commission under Section 107 of the Act with regard to the Sharing Regulations by, inter-alia, enabling exemption from payment of the transmission charges to the transmission licensee in case COD of the transmission system is delayed on the grounds of force majeure. The said directions clearly state that TBCB licensee should not be required to pay transmission charges in case of default as it is already paying Liquidated Damages as per TSA. MoP in its aforesaid direction has further stated that requiring additional payments through Regulations is not in the spirit of Section 63 of the Act. Also, there is no provision in TSA for payment by the generating company to the transmission licensee in case of delay in COD of the generating station. It is not proper to levy the same through Regulations after TSA has been signed.
- d. Referring to the said directions of MoP, it is submitted that they are statutory in nature and, as such, no penalty can be levied upon WKTL.
- e. The judgment of APTEL dated 14.9.2020 in Appeal No. 17 of 2019 in the case of NRSS XXXI B Transmission Ltd. v. CERC and Ors. is binding and it cannot be brushed aside in the present case.



f. Cost of PLCC, telecom equipment and line terminal equipment such as LA, CVT & Wave Trap at Kurnool 765/400 kV Sub-station is not admissible in terms of the Commission's order dated 25.2.2021 in Petition No. 248/TT/2019.

g. Any additional liability upon WKTL will make the whole project unviable.

h. The Commission, vide order dated 25.2.2021 in Petition No. 248/TT/2019, directed that recovery of PGCIL's tariff shall be from PoC pool and directed the Petitioner to approach SCM/ RPC. A similar direction is also required to be given in the present case.

i. Alternatively, declaration of deemed COD may be kept in abeyance till WKTL's asset is put into commercial operation and in case deemed COD is being approved, then no financial liability should be imposed upon WKTL.

6. The Commission allowed the request of WKTL to upload its Note of Submissions and directed it to do so by 20.1.2022, reply submissions, if any, by the Petitioner and TANGEDCO by 27.1.2022. The Commission also allowed PGCIL to file Written submissions within 10 days.

7. On the request of the parties, the Commission directed to list the matter again for hearing for which a separate notice shall be issued to the parties. The Commission further directed the parties to adhere to the above timelines and that no extension of time shall be granted.

By order of the Commission

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

