

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 187/MP/2022

- Subject : Petition under Section 79 of the Electricity Act, 2003 along with statutory framework and the Transmission Service Agreement dated 23.10.2019 executed between Jam Khambaliya Transco Ltd. and Powerica Limited and the Long-Term Access Agreement dated 17.10.2019 executed between Power Grid Corporation of India Ltd. and Powerica Ltd. seeking directions to JKTL/ CTU/ PGCIL not to raise invoices for transmission charges till the SCOD of the Petitioner's Project.
- Date of Hearing : 5.7.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Powerica Limited
- Respondents : Central Transmission Utility of India Limited and 4 Ors.
- Parties Present : Shri Venkatesh, Advocate, Powerica
Shri Ashutosh K Srivastava, Advocate, Powerica
Shri Nihal Bhardwaj, Advocate, Powerica
Ms. Poonam Verma, Advocate, JKTL
Shri Saunak Rajguru, Advocate, JKTL
Ms. Sakshi Kapoor, Advocate, JKTL
Shri Praveen Arora, Powerica
Shri Pradeep Gupta, Powerica
Shri V. Srinivas, CTUIL
Shri Bhasker L Wagh, CTUIL
Shri Pratyush Singh, CTUIL
Shri Lashit Sharma, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking quashing of bilateral bill dated 2.6.2022 erroneously issued by CTUIL claiming the transmission charges from the Petitioner for the billing period of April, 2022 and direction to CTUIL/PGCIL not to raise any invoice upon the Petitioner towards transmission charges as the Petitioner's Project has been exempted from levy of transmission charges. Learned counsel mainly submitted the following:

- (a) The Petitioner is setting-up 50.6 MW Wind Power Project ('the Project') at Jam Khambhaliya in the State of Gujarat and has entered into a Power Purchase



Agreement ('PPA') with SECI dated 17.10.2019. As per the PPA, the Scheduled Commercial Operation Date ('SCOD') of the Project was 22.7.2020. However, on account of various force majeure events, the SCOD has been subsequently been revised to 5.9.2022.

(b) For the purpose of evacuation of power from the Project, the Petitioner obtained Long Term Access (LTA) and entered into LTA agreement with CTUIL dated 17.10.2019. The Petitioner also entered into Transmission Service Agreement (TSA) with Respondent No.2, Jam Khambaliya Transco Limited ('JKTL') – Transmission Service Provide ('TSP') – in respect of Jam Khambaliya Pooling station and interconnection of Jam Khambaliya Pooling Station for providing connectivity to RE Projects (1500 MW) in Dwarka (Gujarat) ('Transmission System').

(c) JKTL vide its letter dated 20.4.2022 proceed to declare 12.4.2022 as the deemed COD of its Transmission System pursuant to which a bilateral bill/invoice of dated 2.6.2022 for Rs. 2.1 crore has been raised by CTUIL on the Petitioner. However, the CTUIL operationalized the part Long Term Access (24.3 MWs out 50.6 MW) only from 7.5.2022. Therefore, there cannot be any bill raised for the transmission charges to be levied upon the Petitioner for the month of April, 2022 and the said bill/invoice is liable to set aside.

(d) As per Clause 6 of LTA agreement, the liability to pay transmission charges arises from the commencement date of LTA as requested by the Petitioner or from the date of commissioning of part / full transmission system identified for LTA to affect the desired transfer of power on long term basis, whichever is later. Undisputedly, in the present case, the part-LTA has been operational only from 7.5.2022, which comes subsequent to the deemed COD declaration by JKTL, therefore, there cannot be transmission charges levied for the month of April, 2022.

(e) Even otherwise, JKTL has erroneously declared the deemed COD of the elements of the transmission systems without completing the LILO of Bhachau - EPGL 400 kV D/C (triple) line at Lakadia PS as a part of common strengthening system required for the transmission system. This is evident from the fact that JKTL had initiated the unplanned shutdown of the Transmission System from 17.5.2022 to 31.5.2022 without any prior confirmation to complete the Transmission System. The said element was also a pre-requisite for LTA to the Petitioner under the LTA agreement.

(f) Moreover, through bilateral bill dated 2.6.2022, the CTUIL/JKTL has arbitrarily loaded the transmission charges for the entire 1500 MW transmission system on the Petitioner instead of the allocated capacity of 50.6 MW of the Petitioner and or to the extent of part commissioned capacity of 24.3 MW. However, in terms of the LTA agreement and TSA, CTUIL could not have raised a bill for more than the allocated project capacity i.e., 50.6 MW (3.37% of the total capacity of 1500 MW.)

(g) Further, the definition of the 'Scheduled COD' given under the TSA executed between the Petitioner and JKTL states that scheduled COD of the element and the Project shall mean the date as given under the Schedule 3 of the TSA or such date, which can be mutually decided among the parties.

(h) In the present case, JKTL had to commission the transmission system by March 2021, which could not be commissioned due to force majeure events as

stated by JKTL. The Petitioner and JKTL agreed to the date of 30.09.2021 for the commissioning of transmission system, which was later extended up to November 2021 by CTUIL. After November 2021, no force majeure notice was issued by JKTL and to the surprise of the Petitioner, JKTL abruptly declared deemed COD in April, 2022 without the parties agreeing on the date of commissioning.

(i) The facts of the present case can be distinguished from the order passed by the Commission in Petition No. 525/MP/2020 as in the present case, the Petitioner has duly issued force majeure notices to JKTL in terms of the provisions of TSA.

(j) In the above circumstances, the Petitioner has also prayed for interim direction to CTUIL/JKTL to not to take any coercive and precipitative action against the Petitioner including new bills being issued by them for the period of May and onwards along with applicability of any penalties, interest, etc. under TSA and the LTA agreement, including but not limited to encashment of any letter of credit and /or payment security. Alternatively, the Commission may at least consider a direction to the parties to maintain the status quo in the matter during the pendency of the Petition.

3. Learned counsel for the Respondent, JKTL accepted the notice and sought time to file reply in the matter. Learned counsel submitted that the Petitioner has not portrayed the correct factual background of the matter and no interim relief/prayer of the Petitioner ought to be considered prior to taking into the account the reply of the Respondent thereon.

4. The representative of the Respondent, CTUIL accepted the notice and sought time to file reply to the Petitioner. The representative of CTUIL further submitted that raising of the bills/invoices in terms of the extant regulatory framework cannot be counted as coercive measure or action against the Petitioner. The representative further added that CTUIL may not be restrained from raising the bills/invoices in ordinary course, however, CTUIL will not proceed to encash the bank guarantee of the Petitioner. Learned counsel for the Petitioner expressed the agreement to said submission made by the representative of the CTUIL.

5. After hearing the learned counsel for the Petitioner, JKTL and the representative of CTUIL, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) Since the implementation of "LILO of Bhachau -EPGL 400 kV D/C line at Lakadia PS" is under scope of WRSS XXI(A) Tranco Limited, the Petitioner to also implead WRSS XXI(A) Tranco Limited as party to the Petition and file revised memo of parties by within a week

(c) The Petitioner to serve copy of the Petition on the Respondents and the Respondents to file their reply within three weeks after serving copy of the same to the Petitioner, who may file its rejoinder within three weeks thereafter.

(d) The Petitioner to submit the status of balance part capacity of the Project to be commissioned on affidavit within two weeks.

(e) CTUIL to furnish the following details along with its reply:

(i) Status of LILO of Bachau- EPGCL at Lakadia and its relation w.r.t. LTA of the Petitioner.

(ii) Details of bills raised on the Petitioner and the details of ATS for which such bills have been raised to the Petitioner.

(iii) Schematic diagram of the transmission system through which LTA has been operationalised.

(f) JKTL to submit the schematic diagram of the transmission system clearly indicating the element-wise CoD/deemed CoD certificate of its instant transmission system along with all necessary documents thereof.

(g) The submission of CTUIL that during the pendency of the Petition, CTUIL will not proceed to encash the bank guarantee furnished by the Petitioner is taken on record.

(h) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

4. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**