

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 238/MP/2017

- Subject** : Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 seeking extension of the scheduled COD and increase in transmission charges due to unforeseen and uncontrollable events post award of ERSS-VI Transmission Scheme implemented by Darbhanga-Motihari Transmission Co. Ltd. under Tariff Based Competitive Bidding guidelines.
- Petitioner** : Darbhanga-Motihari Transmission Company Ltd. (DMTCL)
- Respondents** : Bihar State Power Transmission Co. Ltd. & Ors.

Petition No. 195/MP/2017

- Subject** : Petition under Section 61, 63 and 79 of Electricity Act, 2003 to be read with the other laid down statutory framework for seeking extension in Project scheduled commercial operation date and increase in transmission charges due to unforeseen and uncontrollable events post award of NRSS XXXI (B) Transmission Scheme under Tariff Based Competitive Bidding guidelines of Transmission Projects
- Petitioner** : NRSS XXXI (B) Transmission limited. (NRSS)
- Respondent** : U.P Power Corporation Limited and Ors
- Date of Hearing** : 8.2.2022
- Coram** : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member
- Parties Present** : Shri Sajjan Poovaya, Senior Advocate, DMTCL & NRSS
Shri Vishrov Mukerjee, Advocate, DMTCL & NRSS
Shri Rohit Venkat V, Advocate, DMTCL & NRSS
Shri Yashaswi Kant, Advocate, DMTCL & NRSS
Ms. Juhi Senguttuvan, Advocate, DMTCL & NRSS
Ms. Swapna Seshadri, Advocate, PGCIL



Shri Aditya H. Dubey, Advocate, PGCIL
Ms. Ranjana Roy Gawai, Advocate, TPDDL
Ms. Vasudha Sen, Advocate, TPDDL
Shri Shikher Upadhyay, Advocate, TPDDL
Shri V.C. Sekhar, PGCIL
Shri Prashant Kumar, PGCIL
Ms. Supriya Singh, PGCIL
Shri Arjun Malhotra, PGCIL
Shri B.K Saxena , UPPCL
Shri Anurag Bansal, TPDDL
Ms. Shefali Sobti, TPDDL
Shri Umang Anand, BSPTCL
Shri Avinash P. Rao, DMTCL & NRSS
Shri Vijayanand Semletty, DMTCL & NRSS
Shri Neeraj Kumar Verma, DMTCL & NRSS

Record of proceedings

Cases were called out for virtual hearing.

2. Learned senior counsel appearing on behalf of the Petitioners submitted that APTEL vide judgment dated 3.12.2021 in Appeal No.129 of 2020 and Appeal No. 276 of 2021 filed in Petition No. 195/MP/2017 (filed by NRSS-XXXIB) and Petition No. 238/MP/2017 (filed by DMTCL) respectively has remanded back the said petitions for reconsideration. APTEL in judgement dated 3.12.2021 considered six issues, out of which the first three issues pertaining to IDC and IEDC, change of gantry coordinates and compensation towards loss of first year tariff are common to NRSS-XXXIB and DMTCL. The issues 4 to 6 pertain specifically to DMTCL and they are regarding tariff for the period of mismatch in COD of the transmission assets of DMTCL and PGCIL, claims regarding increase in number of power line crossings and additional cost due to ground improvement work at Motihari Sub-station.

3. Learned senior counsel made the following submissions:

- a. Four of the six issues have been decided in favour of the Petitioners. Issue no.3, pertaining to compensation towards loss of first year tariff was declined by APTEL. APTEL directed the Commission to examine Issue no. 6 regarding additional cost due to ground improvement work at Motihari Sub-station in the light of the Commission's order dated 28.4.2016 in Petition No. 409/TT/2014-PGCIL vs MPPMCL & Ors. and pass an order. Accordingly, submissions are made w.r.t. issue no.6.
- b. APTEL held that the Petitioner is entitled to be fully compensated for IDC and IEDC for the period from SCOD to actual COD on account of Change in Law and *force majeure* events. Petitioners moved clarification applications before the APTEL on the aspect of carrying cost by way of an I.A. No. 2098 & 2099



of 2021 in Appeal No. 129 of 2020 and Appeal No. 276 of 2021 respectively and APTEL vide its order dated 22.1.2022 directed Commission to consider the consequential carrying cost also.

- c. Auditor certificate demonstrating that the amount of Rs 69.60 crore and Rs. 3.15 crore were incurred by DMTCL towards IDC and on account of increase in line length due to change in gallantry coordinates respectively has been placed on record. Documents to show that DMTCL paid Rs 55 lakh to PGCIL towards IDC and IEDC in terms of order dated 1.9.2017 in Petition No. 209/TT/2016 has been filed. Auditor certificate reflecting an expenditure of Rs 1.84 crore incurred due to increase in number of power line crossings has also been filed.
- d. The Commission in order dated 28.4.2016 in Petition No. 409/TT/2014 (PGCIL vs MPPMCL & Ors.) allowed the additional cost towards the ground improvement works of the sub-station as a *force majeure* event and beyond the control of PGCIL. APTEL directed the Commission to examine the additional cost towards ground improvement work at Motihari sub-station due to geotechnical surprise as a *force majeure* event in the light of the Commission's order dated 28.4.2016. Additional expenditure of approximately Rs. 7.32 crore was incurred towards sub-station ground improvement for which the Auditor certificate has been placed on record.

4. In response to the query of the Commission as to how the ground improvement at Motihari Sub-station was a geo-technical surprise, the learned senior counsel for the Petitioner submitted that at the time of soil investigation of Motihari Sub-station land, it was discovered that the soil is prone to liquefaction. The consequences of liquefaction included bearing failure, lateral spreading and settlement. This factor along with very low safe bearing capacity of soil required ground improvement measures to be undertaken before start of any construction work. The Petitioner also took expert advice and some of the industry experts advised for ground improvement measures before commencing the foundation work. Thus, in line with good engineering practices and for the safety of sub-station foundations, DMTCL undertook ground improvement measures. He further submitted that DMTCL had diligently sent updates to Long Term Transmission Customer (LTTC) and CEA about the ground improvement works.

5. In response to query of the Commission regarding when the soil investigation was conducted, learned senior counsel submitted that it was conducted after acquiring the land for the sub-station. As it was not known at the time of submission of the bid, it is a 'geotechnical surprise' and a *force majeure* and beyond the control of DMTCL. He further submitted that the chronological order of additional activities performed by the Petitioner for the ground improvement after acquiring of land at Motihari sub-station has also been submitted. Accordingly, he requested to allow the additional cost towards ground improvement work.



6. The learned counsel appearing for PGCIL submitted that the Commission in order dated 1.9.2017 in Petition No. 209/TT/2016 held that DMTCL would bear the IDC and IEDC for the period of mismatch between COD of the transmission assets of DMTCL and PGCIL. DMTCL did not challenge the order dated 1.9.2017 and, therefore, the same has attained finality. She submitted that APTEL placing reliance on its judgment dated 3.12.2021 in Appeal No. 17 of 2019, NRSS XXXI (B) Transmission Company Limited vs. CERC & Ors., held that DMTCL is entitled to seek recovery of amounts paid by it to PGCIL along with interest pursuant to its order dated 1.9.2017 passed in Petition No. 209/TT/2016 from the PoC mechanism and not from PGCIL. The learned counsel for PGCIL requested to grant liberty to approach the APTEL for filing a clarification application in this regard.

7. In response, the learned senior counsel for DMTCL submitted that PGCIL should have filed an appeal against the judgement dated 3.12.2021 in Appeal No. 276 of 2021 on the said issue or moved a clarification application before the APTEL. He submitted that once the judgement of the APTEL has been passed, the same needs to be implemented.

8. The learned counsel appearing on behalf of UPPCL sought time to file its reply in Petition No. 195/MP/2017.

9. The Commission directed NRSS and DMTCL to submit details of IDC and IEDC from scheduled COD to actual COD along with the basis for arriving at the same and additional cost on account of change in the gantry coordinates and DMTCL to submit the additional cost on account of increase in number of power line crossings and ground improvement work at Motihari Sub-station along with documentary proof and Auditor Certificate by 25.2.2022. The Commission further directed DMTCL to submit the chronology of events from the date of bidding to COD of the Motihari Sub-station.

10. The Commission directed the Respondents, including UPPCL, to file their reply by 7.3.2022 and the Petitioner to file their rejoinder, if any, by 21.3.2022. The Commission further directed the parties to comply with the directions within the timeline specified and observed that no further extension of time shall be granted. The Commission also observed that if no reply is filed by the Respondents the matter will be disposed on the basis of the material on record.

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

By order of the Commission

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(V. Sreenivas)
Joint Chief (Legal)

