

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 210/MP/2017

Subject : Petition seeking revision of the quoted transmission tariff payable to it in terms of the Transmission Services Agreement (TSA) for various events occurring after the Bid due date.

Date of Hearing : 13.1.2022

Coram : Shri P. K. Pujari, Chairperson
Shri I.S. Jha, 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 Shankar, Advocate, KTL
Shri Swapna Sheshadri, Advocate, NTPC
Shri Ritu Apurva, Advocate, NTPC
Shri Anand K. Ganesan, Advocate, NTPC
Shri Jai Dhanani, Advocate, NTPC
Shri P.G Suresh Kumar, KTL
Shri Kondamudi H. Sharma, KTL
Shri Rajeev Sharma, KTL
Shri Ojes Madappattu, KTL
Shri Prasanth, KTL

Record of Proceedings

Case was called out for virtual hearing.

2. Kudgi Transmission Ltd. (KTL) instant petition has filed the instant petition for revision of the transmission tariff payable to the Petitioner in terms of the Transmission Service Agreement (TSA) dated 14.5.2013 because 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.

3. Learned senior counsel for the Petitioner reiterated the submissions made during the hearing on 9.11.2021 and submitted that the Commission has approved the deemed COD of Element 1, Element 2 and Element 3 as 4.8.2015, 19.9.2016 and 13.7.2016 respectively in order dated 27.6.2016 in Petition No. 236/MP/2015 and order dated 24.1.2019 in Petition No. 248/MP/2016.



4. Referring to the written submissions, the learned senior counsel for the Petitioner made the following submissions:

a. The entitlement of a developer towards IDC and IEDC for extended construction period, due to *force majeure* conditions, was considered by the Commission in order dated 24.8.2016 in Petition No 32/MP/2014 (East North Interconnection Company Limited vs Jodhpur Vidyut Vitran Nigam Ltd & Ors) and by APTEL in Appeal No.129 of 2020 (NRSS XXXI (B) Transmission Limited v. CERC) and in judgement dated 20.10.2020 in Appeal No. 208 of 2019 (Bhopal Dhule Transmission Company Limited v. CERC and Ors). Accordingly, the consequential IDC and IEDC on account of *force majeure* events has to be considered and has to be allowed.

b. As regards “Change in Law” events, the orders of the District Collectors are ‘law’ as defined in the TSA, and the additional requirement of payment of compensation for land falls under the ambit of “Change in Law”.

c. As a result, the Petitioner is required to pay compensation amounting to Rs.158.47 crore which is much higher than Rs.38.53 crore which is beyond the scope of the original cost.

5. In response to the query of the Commission regarding which component the Petitioner is seeking due to “change in law” event, the learned senior counsel for the Petitioner submitted that the amount paid towards land compensation is being claimed under the head “change in law”. He further submitted that the quantum of land compensation is coupled with the fact that time is taken by the District Magistrate (DM) to assess the land compensation. Hence, there is a delay and the issue to be determined is whether such delay would be due to “change in law” event or ‘*force majeure*’ event. There is a delay of approximately 4-5 months and it may be considered as effect of “change in law” event.

6. The learned senior counsel for the Petitioner submitted that if the Commission decides to consider the present petition under Rule 3(8) of the Change in Law Rules notified by Ministry of Power, then the Petitioner will compute the compensation and share with the beneficiaries and the Commission.

7. Learned counsel for NTPC submitted that detailed submissions have already been made by NTPC during the hearing on 9.11.2021 and requested to consider the submissions in the reply. She submitted that the present matter cannot be considered under Rule 3(8) of the Change in Law Rules. She submitted that the Commission has already approved the deemed COD of the Elements and 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” events. Detailed arguments on whether events cited by the Petitioner constitutes “change in law” or “*force majeure*” events or not have already been made. As regards the judgements relied upon by Petitioner, she submitted that there is no dispute on the principles. However, the issue is whether the event cited by Petitioner is a “change in law” as per Article 12.1.1 of the TSA. She submitted that Section 64 of the Electricity Act, 2003 enables the licensee to enter or join any premises for laying down the transmission towers and transmission line. Therefore, such event cannot be termed as ‘Change in law’.



8. After hearing the parties, the Commission reserved order in the matter.

By order of the Commission

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

