

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 261/TT/2015

- Subject** : Petition for determination of transmission tariff from COD to 31.3.2019 for four assets under “Line Bays and Reactor provisions at POWERGRID Sub-stations associated with System Strengthening Common for Western Region and Northern Region” in Western Region.
- Coram** : Shri I.S Jha, Member
Shri A.K Goyal, Member
Shri P.K Singh, Member
- Date of hearing** : 1.8.2022
- Petitioner** : Power Grid Corporation of India Limited. (PGCIL)
- Respondents** : MB Power (Madhya Pradesh) Limited & 14 Ors.
- Parties Present** : Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Soumya Singh, Advocate, PGCIL
Shri Hemant Sahai, Advocate, MBPMPL
Shri Deep Rao Palepu, Advocate, JTCL
Shri Saahil Kaul, Advocate, JTCL
Shri Arjun Aggrawal, Advocate, JTCL
Ms. Molshree Bhatnagar, MBPMPL
Shri Abhishek Gupta, MBPMPL
Shri Anindya Khare, MPPMCL
Shri S.S Raju, PGCIL
Shri D.K Biswal, PGCIL
Shri Ved Rastogi, PGCIL
Shri A.K Verma, PGCIL
Shri Harleen Kaur, JTCL
Ms. Anisha Chopra, JTCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted the following:
 - a. Pursuant to the Commission’s direction in order dated 28.1.2020 in Petition No. 35/RP/2018 and Petition No.232/MP/2018, the instant petition is being reopened on the limited issue of re-determination of sharing of the transmission charges for the period of mismatch from the COD of Asset-I: 765 kV line bay



and 240 MVAR Switchable Line Reactor at Jabalpur Pooling Sub-station for 765 kV S/C Jabalpur Bina Circuit-III (IPTC) and Asset-II: 765 kV Line Bay and 240 MVAR Line Reactor (Non-switchable) at Bina Sub-station for 765 kV S/C Jabalpur-Bina Circuit III (IPTC) till the execution of 765 kV S/C Jabalpur-Bina TBCB line implemented by Jabalpur Transmission Company Ltd. (JTCL).

- b. The Petitioner had filed Petition No. 261/TT/2015 for determination of transmission tariff in respect of four assets associated with "System Strengthening Common for Western Region and Northern Region" in Western Region.
- c. The COD of Asset-I and Asset-II was sought under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations on account of non-readiness of associated transmission line viz. 765 kV S/C Jabalpur-Bina and 765 kV D/C Dharamjaygarh-Jabalpur transmission line of JTCL.
- d. Taking into consideration the mismatch between the bays and reactors of PGCIL and the transmission line of JTCL, the Commission vide order dated 27.5.2016 held that the transmission charges for Asset-I and Asset-II shall be borne by the LTTCs of JCTL till the execution of transmission lines.
- e. The Petitioner has impleaded all the LTTCs in the instant petition and some of the LTTCs have filed their reply. She submitted that the issue for determination before the Commission is whether the LTTCs of the TBCB licensee or the TBCB licensee on whose account the transmission line has been delayed is liable to pay the transmission charges for the period of mismatch.

3. Learned counsel for JTCL referring to his Note of Arguments made detailed submissions and the gist of submissions made by him is as follows:

- a. The associated TBCB line, namely, Jabalpur-Bina 765 kV S/C Transmission Line, was put to commercial use w.e.f. 1.7.2015 with time over-run of about 15 months. However, the Commission vide order dated 16.10.2015 in Petition No. 73/MP/2014 has condoned the entire time over-run on the grounds of *force majeure* and COD was extended from 31.3.2014 to 1.7.2015 without any liability. The said order dated 16.10.2015 has not been challenged by any party and has attained finality. Thus, no delay is attributable to JTCL.
- b. The *force majeure* events affecting JTCL and ~~purportedly delayed transmission assets of PGCIL~~ should be treated at par with any other *force majeure* event affecting PGCIL. Thus, any *force majeure* event affecting JTCL will equally be a *force majeure* event for PGCIL as well. Impact of the mis-match in COD ought to be treated as a *force majeure* event for PGCIL under the 2014 Tariff Regulations.
- c. Referring to Regulation 25, 8, 9, 11, 12 of the 2014 Tariff Regulations, he submitted that any adverse impact of such *force majeure* events affecting JTCL and in turn delaying PGCIL ought to be passed through as tariff to PGCIL's beneficiaries i.e., the PoC Pool.
- d. In terms of the order dated 16.10.2015, JTCL cannot be penalised to incur any additional cost by way of transmission charges or Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) to be paid to PGCIL.
- e. The principles laid down in the APTEL's Judgment dated 14.9.2020 in Appeal No. 17 of 2019, NRSS XXXI (B) Transmission Ltd. Vs. CERC & Ors. ('NRSS judgment') are relevant in the present proceedings. As per the NRSS



Judgment, no liability can be imposed on a delaying entity if the time over-run has been condoned by Commission and extended the COD on account of *force majeure* events.

- f. The NRSS Judgment applies to transmission licensees implementing projects under the Tariff Based Competitive Bidding (TBCB) regime under Section 63 of the Electricity Act, 2003 such as JTCL. APTEL in its judgment dated 14.9.2020 has settled that a transmission licensee (such as JTCL) affected by a *force majeure* event ought not be made liable on account of such *force majeure* event either under the TSA or otherwise.
- g. The principle laid down in the NRSS Judgment has been further affirmed by the Hon'ble APTEL in common judgment dated 3.1.2021 in Appeal Nos. 129 of 2020 and 276 of 2021.
- h. The Commission vide order dated 16.10.2015 in Petition No. 73/MP/2014 has already condoned the entire delay on the grounds of *force majeure* therefore, any cost over-run incurred by PGCIL on account of the delay caused by *force majeure* events suffered by JTCL ought to be socialized among PGCIL's LTTCs to ensure that no one entity is unreasonably burdened due to the impact of uncontrollable events.
- i. The Supreme Court's Judgment in Power Grid Corporation of India Limited Vs. Punjab State Power Corporation Limited, (2016) 4 SCC 797 is inapplicable to the present case since it does not consider the treatment of a downstream licensee's tariff in the event of a *force majeure* event.
- j. The Commission's order dated 26.4.2022 in Petition No. 60/TT/2017 is not applicable to the facts and circumstances of the present matter. The regulatory treatment for such a *force majeure* claims by PGCIL is provided under the 2014 Tariff Regulations which was also not considered in Petition No. 60/TT/2017.

4. Learned counsel for PGCIL submitted that the issue of COD of the transmission assets has already been settled by the Commission in the order dated 27.5.2016 in Petition No. 261/TT/2015. The Commission in the order dated 27.5.2016 has approved the COD of all the four assets. The approval of COD for Asset-I and Asset-II under Regulation 4(3) of the 2014 Tariff Regulations is a simple mechanism dealing with the levy of transmission charges in the case of mismatch between the upstream and downstream assets. If JTCL was aggrieved with the COD of the transmission assets, JTCL had all the remedies available under the law i.e. to file a review or an appeal, against the order dated 27.5.2016 in Petition No.261/TT/2015. JTCL cannot at this stage of the proceeding re-open the issue of COD and argue Petition No. 261/TT/2015 in a fresh manner. The issue of *force majeure* is matter of contract and JTCL is having a TSA with the LTTCs wherein there is a detailed *force majeure clause* under which the rights and obligations of the parties are governed. JTCL ought to have relied on the said TSA for invoking the *force majeure* clause. The regulatory regime provides for IDC and IDEC in case of mismatch between the upstream and downstream assets and the only issue for determination in the instant proceedings is to who will bear the liability of such IDC and IEDC. The judgment of Commission on the issue of mismatch along with the rejoinder has been placed on record

5. Learned counsel for MBMPL, Respondent No.10, submitted that the MBMPL is required to share the transmission charges only from the date when power from its generating station is evacuated through the transmission assets. As power was not evacuated during the period of mismatch in the COD of Asset-I and Asset-II of PGCIL



and JTCL's transmission line, it is not liable to bear the transmission charges. The issue is between PGCIL and JTCL and as a generator, MBMPL cannot be burdened with the cost. He further submitted that when there is a TSA between the transmission licensee and LTTC's, then provisions of such TSA needs to be invoked by the transmission license.

6. Learned counsel for JTCL requested the Commission to open the e-filing portal for uploading its Note of Arguments (NoA). The Commission directed the staff to allow JTCL to upload its NoA in the e-filing portal of the Commission.

7. The Commission further directed the parties to file its reply/comments, if any within 3 days to the NoA filed by JTCL. The Commission also directed to parties to comply with the directions within the specified time and observed no extension of time shall be granted.

8. Subject to above, the Commission reserved its order in the matter.

By order of the Commission

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

