

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 266/MP/2022**

Subject : Petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Article 4, 11, 12 and 16 of the Transmission Service Agreement dated 13.1.2016 seeking extension of the Scheduled Commercial Operation Date and account of occurrences of Force Majeure Events and Change in Law events which were beyond the control of the Petitioner.

Date of Hearing : 3.11.2022

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

Petitioner : NRSS XXXVI Transmission Limited

Respondents : Uttar Pradesh Power Corp. Ltd. and 13 Ors.

Parties Present : Shri Venkatesh, Advocate, NRSS  
Shri V. M. Kannan, Advocate, NRSS  
Shri Mohit Mansharamani, Advocate, NRSS  
Ms. Lakshita, NRSS  
Shri V. C. Sekhar, PGCIL  
Shri Prashant Kumar, PGCIL  
Shri Ajay Upadhyay, CTUIL  
Shri Yogeshwar, CTUIL

**Record of Proceedings**

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking extension of the Scheduled Commercial Operation Date (SCOD) on account of occurrence of force majeure events and Change in Law events which were beyond the control of the Petitioner. The learned counsel for the Petitioner mainly submitted as under:

(a) The completion of the Element 2 & Element 3 of the Petitioner's Project has been delayed on account of various force majeure and Change in Law events and the said elements are still under construction/implementation.

(b) In the meantime, the original successful bidder, namely, Essel Infraproject Ltd. defaulted in debt repayment and consequently, the lender having exercised its substitution rights, the Commission vide its order dated 8.3.2022 in Petition No. 267/MP/2021 permitted the transfer of 100% shareholding as held by Essel Infra or its affiliates in the Petitioner licensee in favour of the lender's nominee, namely, Resurgent Power Ventures Pte. Ltd. (RPVPL) and accordingly, RPVPL acquired 100% shareholding of the Petitioner Company on 14.3.2022.

(c) Post the takeover of the Petitioner licence by RPVPL, implementation of Element 2 has been taken upon expeditious basis. EPC and conductor supply contracts were placed immediately after the acquisition and all major material and equipment required for completion have been ordered and received on site. The said element is expected to commission by March, 2023. For Element 3, while the major EPC contractor has been appointed and mobilized on site, delivery of conductor required for transmission line is expected by January, 2023. Also, Stage-I forest approval and working permission from Forest Department and approval from Animal Husbandry Department, Uttarakhand for tower erection at Rishikesh for Element 3 are still pending. In this regard, an element-wise progress chart was circulated and referred to.

(d) In a similar matter, the Commission, vide order dated 7.2.2021 in Petition No. 334/MP/2020 (Warora Kurnool Transmission Ltd. v. TANGEDCO Ltd.), keeping in view that the force majeure events were still continuing and there was uncertainty about the likely COD, granted a liberty to the Petitioner therein to approach the Commission after completion of the project to take a view on the delay due to force majeure and extension of SCOD. In the meantime, the Commission, however, also directed the LTTCs not to take any precipitative actions against the Petitioner as the subsistence of the TSA in the interregnum was vital to the completion of the project therein.

(e) Similar approach may also be adopted in the present case. Although unlike the above case, the LTTCs in the present case have not proceed with/issued any communication with regard to invocation/encashment of the Bank Guarantee as given by the Petitioner under the TSA, LTTCs have rejected the force majeure notices issued by the Petitioner. Accordingly, interim protection may also be given to the Petitioner in the present case by restraining the LTTCs from taking any coercive action including invocation/encashment of Bank Guarantee till such time the Petitioner approaches the Commission seeking the various reliefs including extension of SCOD on account of the force majeure and Change in Law events after the completion of the Project.

(f) Similar prayer had also been made by the Petitioner in Petition No.267/MP/2021, wherein the Commission in order dated 8.3.2022 observed that the Petitioner had already filed a Petition on the above subject matter which was at the diary stage being Diary No. 575 of 2020 since it had not rectified the defects therein and that it would be more appropriate to consider such relief under the said petition which would enable the Commission to look into the current status of the project, anticipated COD as per RPVPL and force majeure events being faced by licensee, etc.

2. The representative of the Respondent No.14, PGCIL submitted that in the present Petition, the Petitioner has alleged the delays in implementation of its elements on account of certain delay on the part of PGCIL, which is contested by PGCIL and accordingly, PGCIL may be permitted to file its reply to the above extent. The representative also added that for some of its interconnecting facilities (to the Elements of the Petitioner), PGCIL is also seeking approval of the commercial operation under Regulation 5(2) of Tariff Regulations, 2019 in the tariff petitions filed/to be filed by PGCIL. The representative of CTUIL added that if the presence of CTUIL is required at all then the Petitioner may be asked to implead CTUIL separately from PGCIL.

3. After hearing the learned counsel for the Petitioner and the representative of the Respondent, PGCIL, the Commission noted that the construction/implementation of Element 2 & Element 3 of the Petitioner's Project is still underway and many of the alleged force majeure and/or Change in Law events as cited by the Petitioner are still continuing and thus, the likely COD of the Project remains uncertain. The Commission also noted the reliance placed by the Petitioner on the order(s) passed by the Commission in the case(s) involving similar background and the prayer for the grant of interim protection till such time it approaches the Commission seeking reliefs for force majeure and/or Change in Law events including extension in SCOD after completion of the project.

4. The Commission directed the Petitioner to file the progress of Project as on date, including the progress achieved post take-over by RPVPL, the expected COD of these Elements, the course of actions/activities and associated timelines, etc., on affidavit, within two weeks.

5. Subject to the above, the Commission reserved the order in the Petition.

**By order of the Commission**

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