CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

Petition No. 239/MP/2021

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

Date of Order: 8th February, 2022

In the matter of:

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework and Article 11 and Article 12 of the Transmission Service Agreement dated 28.6.2017 executed between Goa Tamnar Transmission Project Limited and its Long-Term Transmission Customers *inter alia* claiming compensation due to change in law events and force majeure events, extension of the scheduled commissioning date of the transmission project on account of force majeure events adversely impacting its implementation and seeking appropriate directions.

And

In the matter of

Goa Tamnar Transmission Project Limited,

F-1, Mira Corporate Suits, 1 & 2, Mathura Road, Ishwar Nagar, New Delhi – 110065

.....Petitioner

Vs

1. Maharashtra State Electricity Distribution Company Limited,

Hongkong Bank Building, M.G. Road, Fort, Mumbai-400001.

2. Gujarat Urja Vikas Nigam Limited,

Race Course, Baroda-390007.

3. M.P. Power Management Company Limited,

Shakti Bhawan, Jabalpur Madhya Pradesh- 482008.

4. Chhattisgarh State Power Distribution Company Limited,

Vidyut Sewa Bhawan, Daganiya, Raipur-492013.

5. Goa Electricity Department,

Vidyut Bhawan, 3rd Floor, Panaji-403001, Goa.

6. DNH Power Distribution Corporation Limited,

Vidyut Bhawan, Near 66 kV Amli S/S, Besides Secretariat, Silvasa, Dadar Nagar Haveli-396230.

7. Electricity Department, Daman & Diu,

Vidyut Bhawan, Kanchigam, Ringanwada, Vapi, Daman-396215.

8. PFC Consulting Limited,

First Floor, Urjanidhi, 1, Barakhamba Lane, Connaught Place, New Delhi- 110001.

9. Central Electricity Authority,

Seva Bhawan, R.K. Puram, New Delhi- 110066.

10. Central Transmission Utility of India Limited,

Saudamini, Plot No.2, Sector 29, Near IFFCO Chowk, Gurgaon – 122 001.

11. Power Grid Corporation of India Limited,

B-9, Qutub Institutional Area, Katwaria Sarai, New Delhi -110016.

...Respondents

Parties Present:

Shri Sanjay Sen, Sr. Advocate, GTTPL
Shri Deep Rao, Advocate, GTTPL
Ms. Parichita Chowdhury, Advocate, GTTPL
Ms. Harneet Kaur, Advocate, GTTPL
Shri TAN Reddy, GTTPL
Shri Balaji Sivan, GTTPL
Shri Gaurav Kumar, GTTPL
Shri Harshit Gupta, GTTPL

<u>ORDER</u>

The Petitioner, Goa Tamnar Transmission Project Limited ('GTTPL'), has filed the present Petition *inter alia*, seeking compensation due to various force majeure

and change in law events occurring during the implementation of its transmission project and seeking extension of Scheduled Commercial Operation Date (SCOD) of the project in view of the delay caused by various force majeure events. The Petitioner has made the following prayers:

- "(a) admit and allow the present Petition;
- (b) list the present Petition for an urgent hearing;
- (c) hold and declare that the Petitioner was impacted by the Force Majeure events described in the Petition and is therefore, entitled to relief in accordance with Article 11 of the TSA;
- (d) hold and declare that the Project's SCOD stands extended by 8 months in terms of the MOP's Office Memorandum dated 27.07.2020 and the MOP's Letter dated 12.06.2021;
- (e) grant leave to the Petitioner to place on record additional submissions and documents for determination by this Commission of the actual delay caused due to the Force Majeure Events, post commissioning of the Project;
- (f) direct that no Liquidated Damages may be imposed on the Petitioner for the delays caused in Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise;
- (g) grant the Petitioner appropriate Force Majeure relief in terms of Article 11 of the TSA;
- (h) hold and declare that the Petitioner was impacted by the Change in Law events described in the Petition and is therefore entitled to relief in accordance with Article 12 of the TSA;
- (i) grant leave to the Petitioner to place on record additional submissions and documents for determination of the actual cost impact of the Change in Law Events:
- (j) grant the Petitioner appropriate Change in Law relief in terms of Article 12 of the TSA;
- (k) grant the Petitioner in-principle approval in relation to prayers at (c) and (h) hereinabove as an interim measure;
- (I) direct that the Petitioner is entitled to recover Interest During Construction incurred in respect of the periods of delay that were caused due to the unforeseen and uncontrollable events as described in the Petition;

- (m) hold and declare that the recommendations of the CEC to divert the route for the NN Line if approved by the Hon'ble Supreme Court, will constitute a change in law event in terms of Article 12 of the TSA and that the Petitioner will be entitled to claim compensatory relief in terms of Article 12 of the TSA;
- (n) hold and declare that the delay caused due to the pending decision of the Hon'ble Supreme Court on the route for the NN Line constitutes a Force Majeure event in terms of Article 11 of the TSA and the Petitioner is entitled to relief in terms of the said provision;
- (o) permit the amendment of the transmission license of the Petitioner, together with all related contractual documents, to the effect that the NN Line stands excluded from the scope of work of the Petitioner, in terms of Section 18 of the Act;
- (p) grant permission to transfer/assign the scope of work in relation to the NN Line in favour of SGL29 or one of its wholly owned subsidiaries under Section 17(3) of the Act;
- (q) grant a fresh transmission license to SGL29 or one of its wholly owned subsidiaries for constructing, commissioning, operating and recovering the transmission charges in respect of the NN Line;
- (r) direct the LTTCs to enter into an amended transmission service agreement, modified in terms of the prayers at (o) to (q);
- (s) In alternate to the prayers at (o) to (r), provide guidance on the course of action that should be adopted by the Petitioner in view of the delay caused in implementation of the NN Line;
- (t) exercise regulatory powers to grant appropriate relief to the Petitioner in the facts of the present case, including by way of condoning any inadvertent errors or delays by the Petitioner, if any."
- 2. GTTPL is a fully owned subsidiary of Sterlite Grid 5 Limited (in short, 'SGL') which was selected as a successful bidder through the international tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') to establish the transmission system for "Additional 400 kV feed to Goa and Additional System for power evacuation from generation projects pooled at Raigarh (Tamnar) Pool" (hereinafter referred to as "the

Transmission System" or "the Project") on Build, Own, Operate and Maintain (BOOM) basis consisting of the following elements:

S.No.	ditional 400 kV feed to Goa Name of the Transmission Element	Completion Target			
1.	LILO of one ckt. of Narendra (existing)-Narendra				
	(New) 400 kV D/c quad line at Xeldem				
2	Xeldem-Mapusa 400 kV D/c (quad) line 38 months				
3.	Establishment of 2X500 MVA, 400/220 kV substation at Xeldem	38 months			
	400 kV				
	 ICTs: 2X500 MVA, 400/220 kV 				
	 ICT bays: 2 nos. 				
	 Line bays: 4 nos. [2 nos. for Xeldem-Mapusa 				
	400 kV D/c (quad) line & 2 nos. for LILO of one				
	ckt of Narendra (existing)-Narendra (New) 400				
	kV D/c quad line at Xeldem]				
	 Bus Reactor: 1X125 MVAR 				
	Bus Reactor Bay: 1 no.				
	 Space for 2X500 MVA, 400/220 kV ICTs 				
	(future)				
	Space for ICT bays (future): 2 nos.				
	Space for Line bays along with Line reactors				
	(future): 4 nos.				
	 1X63 MVAR switchable line reactor along with 500 Ohms NGR and its auxiliaries [for 				
	Narendra (existing)-Xeldem 400 kV line formed				
	after LILO of one ckt of Narendra (existing) –				
	Narendra (New) 400 kV D/c quad line at				
	Xeldem]				
	 1X80 MVAR switchable line reactor along with 				
	500 Ohms NGR and its auxiliaries [for				
	Narendra (New) -Xeldem 400 kV (quad) line				
	formed after LILO of one ckt of Narendra				
	(existing)-Narendra (New) 400 kV D/c quad line				
	at Xeldem]				
	220 kV				
	 Inter-connection with Xeldem (existing) 				
	substation through 220 kV D/c line with HTLS				
	conductor (ampacity equivalent to twin moose				
	conductor)				
	• ICT bays: 2 nos.				
	• Line bays: 6 nos. (2 nos. for New Xeldem (400				
	kV)-Xeldem (GED) 220 kV D/c line, 2 nos. for				
	New Xeldem (400 kV)-Verna (GED) 220 kV D/c line and 2 nos. for LILO of 2 nd Circuit of				
	Ambewadi-Ponda 220 kV D/C line at New				
	Xeldem (400 kV)				
	 Space for ICT bays (future): 2 nos. 				
	 Space for Line bays (future): 6 nos. 				

Note:

- 1. Narendra (existing)-Narendra (New) 400 kV D/c (quad) line: 178 KM is without Line Reactor at both ends. After LILO of this line at Xeldem S/s (considering LILO length as 120 KM), the length of modified sections i.e. Narendra (existing)-Xeldem 400 kV (quad) line: 120 KM (approx.) and Narendra (New)-Xeldem 400 kV (quad) line: 298 KM (approx.) Accordingly, POWERGRID to provide 1X80 MVAR, 420 kV fixed line reactor along with 500 Ohm NGR and its auxiliaries at its Narendra (New) S/s [for Narendra (new)-Xeldem 400 kV (quad) line].
- 2. POWERGRID to provide 2 nos. of 400 kV line bays at its Mapusa s/s for Xeldem Mapusa 400 kV D/c (quad) line.
- 3. GED to provide 2 nos. of 220 kV line bays of adequate rating required for the interconnection at Xeldem existing sub-station.

 a) Additional System for Power Evacuation from Generation Projects pooled at Raigarh (Tamnar) Pool 					
S.No.	Name of the Transmission Element			Completion Target	
1.	Dharamjaygarh			B-Raigarh	40 months
	(Tamnar) Pool 76	65 kV D/	'c line		

Note: POWERGRID to provide 2 nos of 765 kV line bays at Dharamjaygarh Pool Section B and Raigarh (Tamnar) Pool."

- 3. The Petitioner, GTTPL was incorporated as a special purpose vehicle by PFC Consulting Limited (PFCCL) as part of Tariff Based Competitive Bidding process for implementing the Project on BOOM basis. SGL participated in the competitive bidding process conducted by PFCCL and upon emerging as the successful bidder, Letter of Intent (LoI) was issued by PFCCL to SGL on 30.11.2017. In accordance with the bidding documents, SGL acquired 100% of the shareholding in GTTPL by executing a Share Purchase Agreement with PFCCL on 14.3.2018. GTTPL entered into the Transmission Service Agreement (TSA) with LTTCs on 28.6.2017. The Commission in its order dated 13.7.2018 in Petition No. 95/TL/2018 granted transmission licence to GTTPL for inter-State transmission of electricity.
- 4. As per the TSA, overall SCOD for the transmission system was 44 months from the effective date. However, due to the following force majeure events (as

claimed by the Petitioner), the Petitioner could not declare commercial operation of the Project and has accordingly sought extension of the SCOD:

S.No	Event	Elements Impacted	Delay caused (as on the date of filing the present petition, as applicable)
1.	Delay in receiving Forest clearance in the State of Karnataka	LILO of one ckt. of Narendra (existing)- Narendra (New) 400 kV D/c quad line at Xeldem (NN Line)	706 days
2.	Delay in grant of Wildlife clearance in the State of Karnataka	NN Line	706 days
3.	Delay in receiving Forest clearance in the State of Goa	NN Line XM Line (including delay in tree cutting permission)	888 days 874 days
		Xeldem Substation XX Line	1014 days 476 days
4.	Delay in grant of Wildlife clearance in the State of Goa	NN Line	335 days
5.	Delay in tree cutting permission in the State of Goa	XX Line	363 days (time lapsed since the date of application)
6.	Delay in receiving Forest clearance in the State of Chhattisgarh	DT Line	837 days
7.	Delay in receiving tree cutting permission in the State of Chhattisgarh	DT Line	837 days (time lapsed since the date of application)
8.	Delay in conversion of land in Goa	Xeldem Sub-station	301 days
9.	Outbreak of the COVID-19 pandemic (first and second wave), delay in manpower remobilisation and delay in delivery of essential construction equipment	All elements	To be assessed

5. The Petitioner has submitted that due to the following change in law events, the cost of construction of the transmission system has been escalated:

S.No	Change in Law Claim	Amount incurred/ estimated to be incurred till date (Rs. in crore)
1.	Increase in CA rates applicable in the State of Karnataka	20.85 (approx.)

2.	Increase in rates applicable for compensatory afforestation, plantation of medicinal trees, felling of trees and pillar post costs in the State of Chhattisgarh	3.60 (approx.)
3.	Additional expenditure towards securing RoW	15.49 (approx.)
4.	Expenses on account of COVID-19 and consequent restrictions imposed by Central and State Governments	To be assessed
	Total (estimated impact till date)	39.94 (approx.)

Hearing Dated 21.1.2022

- 6. During the course of hearing on 24.1.2022, learned senior counsel for the Petitioner mainly submitted the following:
 - (a) The implementation of the Project has been considerably delayed (visà-vis SCOD for the Project that was 13.11.2021) owing to various force majeure events including delay in obtaining forest clearance and wildlife clearance in the States of Karnataka and Goa and delay in conversion of land in the State of Goa.
 - (b) In respect of one of the elements, namely, LILO of one ckt. of Narendra (existing) Narendra (New) 400 kV D/c quad line at Xeldem (in short, 'the NN Line'), which is crossing 48.3 ha of forest land in North Division of Goa, the Petitioner had submitted a proposal of diversion of forest land before the concerned Nodal Officer, Goa on 24.8.2018. However, the Petitioner is yet to receive such forest clearance.
 - (c) Further, in the matter of dispute arising out of the grant of wildlife clearance to the NN Line, the Central Empowered Committee ('CEC') vide its report dated 23.4.2021 to the Hon'ble Supreme Court has recommended the re-alignment of the route. In case, such recommendations of CEC are accepted by the Hon'ble Supreme Court, the Petitioner will be required to construct the NN Line on recommended route after obtaining fresh forest and wildlife clearances.
 - (d) Similarly, there has been a considerable delay in conversion of land for construction of Xeldem sub-station in Goa. The issuance of 'Conversion Land' for the sub-station land has been kept on hold on the pretext that the said land

falls under the purview of the order of the Hon'ble Supreme Court dated 4.2.2015 in Civil Appeal No. 12234-12235 of 2018. Accordingly, the Petitioner has not been able to construct the Xeldem sub-station.

- (e) The Petitioner has also prayed for compensation due to various Change in Law events, namely, increase in rates applicable for compensatory afforestation, additional expenditure incurred in respect of payment of compensation for RoW in the State of Goa and additional expenditure attributable to the spread of Covid-19 pandemic.
- (f) In view of the CEC recommendations and severe impact of other force majeure events and Change in Law events on the Project, various reservations and concerns have been raised by the lenders including feasibility of the Project, the Petitioner's capacity to repay loan on time and expected cash flow from Project. Therefore, the Petitioner has prayed for in-principle approval and declaratory relief in relation to various force majeure and Change in Law events as narrated in the Petition, which will provide comfort to the lenders and will ensure adequate funding for implementation and timely completion of the Project.

Analysis and Decision

- 7. We have considered the submissions of the Petitioner and perused the documents available on record. According to the Petitioner, the Project has been affected due to the following force majeure events:
 - a) Delay in grant of forest and wildlife clearances for LILO of one ckt. of Narendra (existing)- Narendra (New) 400 kV D/c quad line at Xeldem ('NN Line') in the State of Karnataka;
 - b) Delay in grant of forest and wildlife clearances for NN Line in the State of Goa;
 - c) Delay in grant of forest clearance for AX Line in the State of Goa;
 - d) Delay in grant of forest clearance for establishment of the Xeldem substation in the State of Goa;
 - e) Delay in grant of forest clearance for establishment of XX Line in Goa;

- f) Delay in grant of forest clearance and tree cutting permission for establishment of DT Line in the State of Chhattisgarh;
- g) Delay in conversion of land for construction of Xeldem sub-station in Goa; and
- h) Outbreak of Covid-19 pandemic.
- 8. The Petitioner has submitted that the cost of construction of the Project has escalated due to the following change in law events:
 - (a) Increase in rates applicable for compensatory afforestation leading to additional expenditure;
 - (b) Increase in rates applicable for compensatory afforestation in the State of Chhattisgarh;
 - (c) Additional expenditure incurred in respect of payment of compensation for Right of Way in the State of Goa; and
 - (d) Additional expenditure attributable to the spread of Covid-19 pandemic.
- 9. During the course of hearing, the learned senior counsel submitted that inprinciple approval/ declaration of various force majeure events at this stage is
 necessary for giving comfort to the lenders and for the Petitioner to draw necessary
 finances for implementation of the Project. The learned senior counsel submitted that
 in case the Commission decides not to admit the matter, liberty may be granted to
 the Petitioner to approach this Commission at an appropriate stage.
- 10. As regards change in law events, it is noticed that the Ministry of Power, Government of India has notified the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as 'the Change in Law Rules'), the relevant provisions of which are extracted as under:
 - "2(c) "change in law", in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the

determination of tariff under section 62 or section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes —

(i)
(ii)
(iii)

- 3. Adjustment in tariff on change in law— (1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.
- (2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.
- (3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.
- (4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.
- (5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated -
 - (a) where the agreement lays down any formula, in accordance with such formula; or
 - (b) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;
- (6) The recovery of the impacted amount, in case of the fixed amount shall be
 - (a) in case of generation project, within a period of one-hundred eighty months; or
 - (b) in case of recurring impact, until the impact persists.
- (7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

- (8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).
- (9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount."
- 11. As per the above-quoted provisions, on occurrence of a change in law, the affected party, in the present case the Petitioner, and other party, in the present case the Respondents/ Procurers, are required to settle the change in law claims among themselves and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules. Accordingly, the Petitioner may approach the procurers for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.
- 12. It is observed that the Petitioner has also claimed that various elements of the Project are affected by force majeure events and such events are still continuing. The Petitioner has approached the Commission for declaration of these events as force majeure events and requested for extension of SCOD of the Project, in advance. It is also clear that the Petitioner is unable to quantify and confirm the likely COD of the Project. Since the Project has not been completed by the Petitioner till date and there is uncertainty about the likely COD, it would not be appropriate to take any view on extension of SCOD at this stage. Accordingly, the Petitioner is granted liberty to approach the Commission to seek the appropriate relief for force majeure events, after completion of the Project.

- 13. Having said so, we note that the Petitioner apprehends likelihood of change/ re-alignment in route of the NN Line in the State of Goa in terms of recommendations of the CEC constituted by the Hon'ble Supreme court. In case the recommendations of the CEC are accepted by the Hon'ble Supreme Court and the Petitioner is required to re-route the NN Line, the Petitioner is granted liberty to approach the Commission with change in scope of work along with its impact as per provisions of the TSA.
- 14. The Petitioner has also submitted that it is facing issues in construction of Xeldem sub-station 'Conversion Land' for the sub-station land has been kept on hold on the pretext that the said land falls under the purview of the order of the Hon'ble Supreme Court dated 4.2.2015 in Civil Appeal No. 12234-12235 of 2018 and, accordingly, the work of construction of the Xeldem sub-station is yet to begin. The Petitioner is granted liberty to approach the Commission once the relevant authorities take a final view.
- 15. During the course of hearing, the Commission observed that the Petitioner has also prayed for reliefs such as (a) the amendment to the existing transmission licence of the Petitioner for exclusion of the NN Line from its scope of works in terms of Section 18 of the Act, (b) to transfer/ assign the scope of work in relation to the NN Line in favour of SGL29 or one its wholly owned subsidiary under Section 17(3) of the Act and (c) to grant a transmission licence to SGL29 or one of its wholly owned subsidiary for constructing, commissioning, operating and recovering the transmission charges in respect of the NN Line. In response, learned senior counsel for the Petitioner submitted that the Petitioner is aware of the fact that amendment/ grant of transmission licence would require a separate procedure to be followed as

per the provisions of the Act and that the Petitioner might require to desegregate such reliefs and pursue via separate Petition. However, learned senior counsel clarified that aforesaid reliefs are consequential reliefs to the principal issue of recognition of force majeure events, which have led to considerable delays in implementation of the NN Line.

- 16. In our view and as submitted by the learned counsel of the Petitioner, these prayers of the Petitioner being consequential to declaration that the Project is affected by force majeure events, no view can be taken at this stage.
- 17. Except for the claimed force majeure events in respect of the NN Line for which liberty has been given as per paragraph 13, we have directed the Petitioner to approach the Commission only after completion/ implementation of the Project. It is, therefore, imperative that no precipitative actions be taken against the Petitioner as the subsistence of TSA in the interregnum is vital to the completion/ implementation of the Project. The Petitioner is directed to apprise the LTTCs regarding status of the pending litigations before the Hon`ble Supreme Court at regular interval with respect to the NN Line and Xeldem sub-station. Meanwhile, the Petitioner shall make sincere endeavours to complete the Project at the earliest.
- 18. This order disposes of Petition No. 239/MP/2021 at the stage of admission.

Sd/-(P. K. Singh) Member sd/-(Arun Goyal) Member

sd/-(I. S. Jha) Member