

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

**Petition No.99/2003**

**In the matter of**

Request for issuing directions to Powergrid Corporation of India Ltd. (POWERGRID) in respect of Right of Way and Forest Clearance permit to be considered as conditions precedent of POWERGRID (CTU) in the implementation of BINA-NAGDA-DEHGAM 400 kV transmission line under IPTC route for which the Consortium of Tenaga Nasional Berhad (TNB), Malaysia and Kalpataru Power Transmission Limited (KALPATARU) named TNB-KPTL Consortium has applied for issue of transmission licence to Bina - Dehgam Transmission Company Limited

Consortium of M/s Tenaga Nasional Berhad (TNB), Malaysia  
and M/s Kalpataru Power Transmisson Ltd (KALPATARU)      **...Petitioner**

Vs

Powergrid Corporation of India Ltd      **....Respondent**

**The following were present**

1. Shi K.V. Mani, TNB Kalpataru Consortium
2. Mr. Dafo Amenudin, TNB Kalpataru Consortium
3. Shri Sreesanthan, TNB Kalpataru Consortium
4. Mr. Colin Shilling, TNB Kalpataru Consortium
5. Mr. Mohd. Azren, TNB Kalpataru Consortium
6. Mr. Mohd. Ali, TNB Kalpataru Consortium
7. Mr. Mofatraj Munot, TNB Kalpataru Consortium
8. Shri Kuljit Singh, TNB Kalpataru Consortium
9. Shri A. Jain, AGM, PGCIL
10. Shri B.A. Chandhan, PGCIL
11. Shri Prashant Sharma, PGCIL
12. Shri V.M. Kaul, PGCIL
13. Shri Pawan Singh, PGCIL
14. Shri Akhil Kumar, PGCIL
15. Shri M. Krishnakumar, PGCIL
16. Shri D.K. Sarkar, PGCIL

17. Shri V.K. Sharma, PGCIL
18. Shri Vijay Kumar, PGCIL
19. Shri S. Garg, DGM, PGCIL
20. Shri N.R. Garg, PGCIL
21. Shri Yogesh Agarwal, KPTL

**ORDER**  
**(DATE OF HEARING : 30.1.2004)**

In this petition, the petitioner seeks a direction to the respondent as the Central Transmission Utility to accept the responsibility to obtain right of way and forest clearance as the conditions precedent for implementation of Bina-Nagda-Dehgam transmission lines by the petitioner. Another direction sought is to include right of way and the forest clearance related disputes causing delay in the date of commercial operation as force majeure conditions.

2. According to the petitioner, pursuant to the guidelines for private sector participation in transmission sector issued by Ministry of Power under its letter dated 31.1.2000, the respondent in its capacity as the Central Transmission Utility had identified 400 kV D/C Bina-Nagda-Dehgam transmission lines in the States of Madhya Pradesh, Rajasthan and Gujarat to be implemented by a private company, called the Independent Power Transmission Company (IPTC) on Build-Own-Operate-Transfer basis, for a period of thirty years from the date of commercial operation. The respondent had invited bids in February 2001 wherein the petitioner had participated. The petitioner was qualified since, according to the petition, the petitioner met all the qualifying requirements. The respondent is said to have issued Request for Proposal during January 2002. The petitioner submitted its proposal consisting of the techno-commercial

and the price bids on 31<sup>st</sup> October 2002, assuming the date of commercial operation of the transmission lines to be 1st July 2006. Meanwhile, the Commission in its order dated 27.3.2002 in petition No 111/2000 had decided that obtaining forest clearance for the projects to be undertaken through IPTC route was the responsibility of the respondent, as the Central Transmission Utility. According to the petitioner, the bids were submitted by it in keeping with the provisions of Ministry of Power guidelines dated 31.1.2000 and the Commission's order dated 27.3.2002.

3. The Electricity Act, 2003 (hereinafter referred to as "the Act") has come into force on 10<sup>th</sup> June 2003. According to Section 14 of the Act, no person can undertake inter-state transmission of electricity without a licence from the Commission. As per section 15 of the Act, any person desirous of obtaining in transmission licence is required to make an application before the Commission. The petitioner has separately submitted an application for grant of transmission licence in favour of Bina Dehgam Transmission Co Ltd, a shell company floated by the respondent. It has been stated that the petitioner would acquire the shell company after grant of licence by the Commission. According to the petitioner, the respondent during the course of discussions, has been taking a view that the right of way and the forest clearance in connection with the implementation of the transmission lines would be obtained by the petitioner, for which the respondent would render the necessary assistance. The petitioner has submitted that in accordance with Ministry of Power guidelines dated 31.1.2000 the respondent is to secure access rights for construction of the transmission lines and the petitioner should be responsible for their maintenance for which the costs would be borne by the petitioner. Similarly, according to

petitioner, the forest clearance should also be obtained by the respondent in terms of the Commission's order dated 27.3.2002. It is to be noted that the Commission in its subsequent notification dated 2.6.2003 issued after review of order dated 27.3.2002, among others, has decided that the responsibility for obtaining right of way and the forest clearance rested with the Independent Power Transmission Company. Therefore, the petitioner has sought relaxation of the terms and conditions under the powers available to the Commission in the notification dated 2.6.2003. Accordingly the petitioner has sought the directions as noticed about.

4. The respondent has not filed any reply to the petition.

5. We heard Shri Mani on behalf of the petitioner. He pressed for the reliefs prayed for in the petition.

6. Shri Ashwani Jain appeared for the respondent. Shri Jain submitted that that the responsibility for obtaining right of way and the forest clearance should be of the petitioner in terms of the bid documents in response to which the petitioner had submitted its proposals. He denied that in terms of the guidelines issued by Ministry of Power on 31.1.2000 the responsibility to obtain right of way was given to the respondent. He further submitted that in accordance with the Commission's notification dated 2.6.2003, it was the condition precedent of the petitioner to obtain right of way and the forest clearance. Shri Jain referred to the difficulties likely to be faced by the respondent in case the right of way and the forest clearance were to be obtained by the respondent. He further

submitted that even if the right of way and forest clearance were obtained by the respondent in the name of the shell company, these clearances could not be transferred in favour of the petitioner, who is to finally implement the transmission lines, because of the conditions laid down by the State Governments and the Forest authorities at the Centre. Therefore, according to Shri Jain, the clearances would have to be obtained by the petitioner in its own name. He reiterated that the necessary assistance in this regard would be rendered by the respondent. He also opposed the prayer for considering the delays on account of right of way and forest clearance as the force majeure condition.

7. We have considered the submissions of the parties. First of all, we deal with the prayer for a direction to the respondent to include in the scope of force majeure conditions the delays on account of right of way and forest clearance. At this stage we are not inclined to interfere or give any direction to include the right of way or forest clearance related disputes causing delay in the date of commercial operation as force majeure condition. In our opinion, these are the matter falling within the domain of the contracting parties, to be considered and decided by them. The representative of the petitioner did not point out any provision of law under which such a direction could be given by the Commission. Therefore, we reject the prayer made in this behalf. We, however, grant liberty to the parties to approach the Commission at an appropriate stage for a relief in accordance with law in case of any dispute on account of delay in obtaining right of way or the forest clearance.

8. At the hearing Shri Mani had stated that in view of the difficulties pointed out by Shri Jain, a power of attorney could be executed in favour of the respondent for taking necessary steps on behalf of the petitioner to get the right of way and the forest clearance. He further stated that the cost involved for obtaining the right of way and the forest clearance could be borne by the petitioner itself. Shri Jain agreed to take up the cases with the concerned authorities for obtaining the right of way and the forest clearances at the risk and cost of the petitioner and without any legal or binding obligation on the part of the respondent.

9. In view of the position stated in the preceding paragraph, we direct the parties to take necessary action in terms of the statements recorded. The petition stands disposed of accordingly.

Sd/-  
**(K.N. SINHA)**  
**MEMBER**

Sd/-  
**(ASHOK BASU)**  
**CHAIRMAN**

**New Delhi, dated the 5<sup>th</sup> February, 2004**