

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 74/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of order: 14th October, 2016

In the matter of

Petition under Section 79 (1) (f) read with Section 79 (1) (c) of the Electricity Act, 2003.

And

In the matter of

Patran Transmission Company Limited
Room No, 409, 4th Floor Skipper Corner
88 Nehru Place,
New Delhi-110019

....Petitioner

Vs

1. Haryana Power Purchase Centre
Shakti Bhawan, Energy Exchange
Room No 446, Top Floor,
Sector-6, Panchkula-134109
Haryana
2. Punjab State Power Corporation Limited
Shed No T-1-A, Thermal Design,
Near 22 No. Phatak,
Patiala, Punjab
3. Himachal Sorang Power Private Limited
D-7, Sector-1, Lane-1, 2nd Floor
New Shimla, Shimla-171009
Himachal Pradesh
4. Adani Power Limited
3th Floor, Achalraj
Opposite Mayors Bungalow
Law garden, Ahmedabad-380006, Gujarat

5. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath
Jaipur-302005
Rajasthan
6. Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata
Jaipur Road,
Ajmer, Rajasthan
7. Jodhpur Vidyut Vitran Nigam Ltd
400 kV, GSS Building,
Ajmer Road, Heerapur,
Jodhpur, Rajasthan
8. Lanco Anpara Limited
Plot No 397, Udyog Vihar
Phase-3, Gurgaon-122016
Haryana
9. Power Development Department
Govt. of Jammu & Kashmir
SLDC Building, 1st Floor
Gladani Power House
Narwal, Jammu
Jammu & Kashmir
10. Lanco Green Power Private Ltd
Plot No 397, Udyog Vihar
Phase- III, Gurgaon-122016, Haryana
11. North Central Railway
DRM Office
Nawab Yusuf Road
Allahabad, Uttar Pradesh
12. Ad Hydro Power Limited
Bhilwara Towers,
A-12, Sec-1
Noida-201301, Uttar Pradesh
13. Jaiprakash Power Ventures Limited
A Block, Sector-128, Noida-201304, Uttar Pradesh
14. BSES Yamuna Power Limited
2nd Floor, B Block

Shakti Kiran Building
(Near Karkardooma Court)
New Delhi

15. BSES Rajdhani Power Limited
BSES Bhawan, 2nd Floor
B Block, Behind Nehru Place Bus Terminal
Nehru Place
New Delhi-110019
16. Tata Power Delhi Distribution Limited
33 kV sub-station Building,
Hudson Lane, Kingsway Camp,
New Delhi-110019
17. New Delhi Municipal Corporation
Palika Kendra, Sansad Marg
New Delhi-110 001
18. Union Territory of Chandigarh
Div-11, Opposite Transport Nagar
Industrial Phase-1
Chandigarh
19. Power Grid Corporation of India Limited
B-9, Qutab Institutional Area
Katwaria Sarai, New Delhi-110016
20. Uttar Pradesh Power Corporation Limited
14th Floor, Shakti Bhawan
Ext Building, 14, Ashok Marg
Lucknow
Uttar Pradesh
21. PTC India Limited
2nd Floor, NBCC Tower
15, Bhikaji Cama Place
New Delhi-110066
22. Uttaranchal Power Corporation Limited
Urja Bhawan, Kanwali Road
Near Balli Wala Chowk
Dehradun, Uttarakhand
23. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House Complex

Building No. 11, Shimla,
Himachal Pradesh

24. PFC Consulting Ltd
First Floor, "Urjanidhi",
1, Barakhamba Lane, Connaught Place,
New Delhi-110 001

...Respondents

The following were present:

Shri Anand Ganeshan, Advocate for the petitioner

ORDER

M/s Techno Electric and Engineering Company Limited (TEECL) was selected as the Transmission Services Provider based on the international tariff based competitive bidding to execute transmission system "Patran 400 kV sub-station" (hereinafter referred to as "Transmission system") on 'Build, Own, Operate and Maintain' (BOOM) basis and to provide transmission service to the Long term Transmission Customers of the project, comprising the (i) Creation of 2x500 MVA, 400/220 kV sub-station at Patran (ii) LILLO of both circuits of Patiala-Kaithal 400 kV D/C at Patran (Triple Snow Bird Conductor), (iii) 400 kV bays (iv) 220 kV bays and (v) Space for spare bays. Letter of Intent (LOI) was issued by PFC Consulting Limited as the Bid Process Coordinator (BPC) to TEECL on 17.9.2013. TEECL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent and acquired the Patran Transmission Company Limited (PTCL) as its fully owned subsidiary. PTCL entered into the Transmission Service Agreement with Long Term Transmission Agreement on 12.5.2014. PTCL approached the Commission for grant of transmission licence in Petition No. 321/TL/2013 and adoption of tariff of the transmission system in Petition No. 1/TT/2014. The Commission in its order dated 5.8.2014 in Petition No. 1/TT/2014 has adopted the

tariff of the transmission system and in order dated 14.7.2014 in Petition No. 321/TL/2013 has granted licence to PTCL for inter-State transmission of electricity.

2. The petitioner has filed the present petition under Section 79 (1) (c) and (f) of the Act seeking declaration with regard to the effective date of the transmission system being executed by it. The petitioner has submitted that the following facts have led to filing of this petition:

(a) In terms of Schedule 3 of the TSA, the Scheduled Commercial Operation Date (SCOD) for the transmission system is 30 months from the effective date. Therefore, the effective date as provided in the TSA has a direct bearing on the time schedule within which the transmission system is to be constructed and commissioned by the petitioner;

(b) In terms of Article 6.2 of the TSA, the tariff is leviable by the petitioner immediately after the project is declared for commercial operation. Article 6.4 of the TSA talks about liquidated damages in case of delay in the achievement of commercial operation of the project. Once the effective date is identified in terms of Article 2.1 of the TSA, all other rights and obligations including SCOD, the date beyond which liquidated damages become applicable subject to the other provisions of the PPA, etc. stands identified.

(c) As per Article 2.1 of the TSA, the effective date shall be later of the dates (i) when the agreement is executed and delivered by the parties; (ii) when the selected bidder has acquired 100% of the equity shareholding of PFC Consulting

Limited in Patran Transmission Company and (iii) when the selected bidder has provided the Contract Performance Guarantee. Contract Performance Guarantee was provided by TEECL on 4.9.2013, Share Purchase Agreement was signed and Patran Transmission Company was acquired on 13.11.2013 and TSA was executed with the beneficiaries on 12.5.2014.

(d) Since the TSA was executed on 12.5.2014, the effective date has to be only 12.5.2014. Consequently, the SCOD is to be achieved by 11.11.2014 which is 30 months from the effective date i.e. from 12.5.2014.

(e) The petitioner vide its letter dated 14.8.2015 informed the beneficiaries that the effective date in terms of TSA is 12.5.2014. However, no response was received from the beneficiaries in this regard.

(f) In the meeting held on 9.2.2016 with Member (PS), Central Electricity Authority (CEA) for review of the progress in the construction of the transmission system, CEA was informed that since the TSA was executed and delivered to the petitioner only on 12.5.2014, the effective date as per the TSA is 12.5.2014. Since no dispute was raised by the beneficiaries with regard to the effective date being 12.5.2014, CEA in the said meeting dated 9.2.2016 advised the petitioner to approach the Commission for re-fixation of SCOD.

(g) The delay in execution of TSA was on the part of BPC. Since the TSA was executed on 12.5.2014, the preliminary activities such as financial closure, etc. were commenced thereafter.

(h) Considering the timelines for completion of the transmission system from effective date of 12.5.2014, the SCOD of the transmission system works out to 11.11.2016. However, the petitioner is making efforts to complete the project prior to the SCOD. In terms of Article 10.1 of the TSA, the petitioner is entitled to the transmission charges from the date of actual commissioning and COD of the transmission system.

(i) Considering the effective date as 12.5.2014, the provisions of the TSA with regard to delay and liquidated damages etc. apply only after the expiry of the scheduled COD.

(j) In view of there being no response from the beneficiaries and the advice of the CEA, the present petition has been filed seeking the declaration of the SCOD as 11.11.2016 in terms of the TSA.

3. Against the above background, the petitioner has made the following prayers to:

“(a) Declare that the Scheduled COD under the Transmission Services Agreement entered into between the petitioner and the respondents is 12.5.2014, being the date when the agreement was executed by all the parties.

(b) Award costs of the present proceedings; and

(c) Pass such other further order(s) as the Hon`ble Commission may deem just in the facts of the present case.”

4. As the prayer in the petition involved interpretation of the provisions of the TSA, the Commission after hearing the petitioner decided to pass an appropriate order. Accordingly, no comments were invited from the LTTCs. However, copies of the RoP has been sent to the LTTCs.

Analysis and Decision:

5. The only issue that arises for our consideration is what should be the Scheduled COD of the transmission system as per the provisions of the TSA?

6. The petitioner has submitted that on 16.12.2013, the petitioner filed the petition for grant of transmission licence and by that time, the TSA was in the process of being executed. The petitioner has submitted that the TSA was executed by all the beneficiaries on 12.5.2014 and was forwarded to the petitioner by the BPC on the same day. The petitioner has submitted that after signing of the TSA, development of transmission system from the scratch, including the preliminary activity of achieving financial closure which was a pre-requisite, was started. The petitioner has submitted that in terms of Schedule 3 of the TSA, SCOD of the transmission system is 30 months from the effective date which is 12.5.2014. Accordingly, SCOD of the transmission system as per the TSA is 11.11.2016.

7. Effective date has been defined in Article 2.1 of the TSA as under:

"2 . EFFECTIVENESS AND TERMS OF AGREEMENT

2.1 Effective Date;

This Agreement shall be executed from later of the dates of the following events:

- a. The Agreement is executed and delivered by the parties; and
- b. The Selected Bidder has acquired for the Acquisition Price, one hundred percent (100%) of the equity shareholding of PFC Consulting Limited in Patran Transmission Company Limited along with all its related assets and liabilities as per the provisions of the Share Agreement, and

- c. The Selected Bidder, on behalf of the TSP, has provided the Contract Performance Guarantee, as per terms of Article 3.1 of this Agreement.”

As per the above provisions, effective date shall be reckoned from the date which is later of the three events, namely, (i) when the TSA is executed and delivered by the parties; (ii) when the SPV is acquired by the selected bidder by paying the acquisition price alongwith all related assets and liabilities; and (iii) when the selected bidder gives the contract performance guarantee in terms of Article 3.1 of the TSA. In respect of the transmission system, the three events have occurred on the dates as given under:

- (a) The TSA was executed by all the parties and forwarded by BPC to the petitioner on 12.5.2014.
- (b) M/s Techno Electric and Engineering Company Limited acquired hundred percent equity holding in the petitioner company on 13.11.2013 after execution of Share Purchase Agreement.
- (c) On 4.9.2013, TEECL, on behalf of the petitioner provided Contract Performance Guarantee.

In terms of the Article 2.1 of the TSA, the effective date is 12.5.2014 which is the date when the TSA was executed and delivered by the parties and the said date is later of the three events as mentioned in Article 2.1 of the TSA.

8. The petitioner, vide letter dated 14.8.2015 informed the beneficiaries that the effective date in terms of the Article 2.1 of TSA is 12.5.2014. However, no response was

received from the beneficiaries. In the meeting held on 9.2.2016 with CEA for review of the progress in the construction of the transmission system, the issue of effective date of the transmission system was discussed and CEA advised the petitioner to approach CERC for re-fixation of effective date and COD. Relevant portion of the minutes of the meeting held on 9.2.2016 is extracted as under:

“Regarding effective date, the representative of M/s PTCL stated that the effective date may be changed from 18.10.2013 to 12.5.2014 in line with Article 2.1 of TSA and as a result COD of the transmission project may be fixed as 12.11.2016. M/s PTCL was advised to take up with CERC for re-fixation of effective date and COD.”

9. In the minutes of the meeting, it has been mentioned that the petitioner requested for change of the effective date from 18.10.2013 to 12.5.2014 in terms of the TSA. It is not clear as to how the date of 18.10.2013 was assumed as the effective date by the petitioner which has been sought to be changed. It is noteworthy that none of the three events as per Article 2.1 of the TSA corresponds to 18.10.2013. It appears that the petitioner was under some mistaken impression that the effective date was 18.10.2013. Further, the petitioner has submitted that it wrote to the LTTCs to treat 12.5.2014 as the effective date. In our view, the petitioner and LTTCs have signed the TSA and the effective date has to be reckoned with effect from 15.5.2014, being the later of the three events mentioned in Article 2.1 of the TSA. There was no need to seek the concurrence of the LTTCs when the effective date of 12.5.2014 clearly emerges as per the provisions of the TSA. We hold that as per Article 2.1 of the TSA, the effective date of the transmission system is 12.5.2014. In terms of schedule 3 of the TSA, SCOD for the transmission system is 30 months from the effective date and therefore, the effective date as provided in the TSA has a direct bearing on the time

schedule within which the transmission system is required to be constructed and commissioned by the petitioner. Schedule 3 of the TSA is extracted as under:

“Schedule 3:

Schedule COD

All elements of the project are required to be commissioned progressively as per the Schedule given in the following table:

	Name of the Transmission element	Schedule COD in month from effective date	Percentage of quoted transmission charges recoverable on scheduled COD of the element of the project	Element which are pre-required for declaring the commercial operation (COD) of the respective element
1.	Creation of 2x500 MVA, 400/220 kV Substation at Patran	30 months	The Commissioning of the two elements are inter linked. Hence, complete commissioning is required for transmission charges recovery	The transmission scheme involves LILO of existing line Patiala-Kaithal 400 kV line at new substation. Hence, pre-requirement are commissioned together.
2.	LILO of both circuits of Patiala-Kaithal 400kV D/c at Patran (Triple snow Bird Conductor)	30 months		

The payment of Transmission Charges for any element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the elements which are pre-required for declaring the commercial operation of such element as mentioned in the above table.

Scheduled COD for overall Project: 30 months from the Effective Date.”

10. As per above, SCOD for the transmission system is 30 months from the effective date. We have already held that the effective date of the transmission system as per the Article 2.1 of the TSA works out to 12.5.2014. Considering a period of 30 months from the effective date, the SCOD of the transmission system works out as 11.11.2016. In other words, the petitioner is required to achieve the COD of the transmission assets by

11.11.2016 failing which the petitioner apart from losing the transmission charges shall be liable for paying the penalty in terms of the TSA. It is noted that the transmission scheme involves LILO of existing line Patiala-Kaithal 400 kV line at new 2x500 MVA and 400/220 kV sub-station at Patran. Therefore, both elements are required to be commissioned together by 11.11.2016.

11. The petitioner has submitted that the provisions of the TSA with regard to delay and liquidated damages, etc. apply after expiry of the SCOD. The petitioner has further stated that it is making efforts to complete the project prior to SCOD and in terms of Article 10.1 of the TSA, the petitioner is entitled to tariff for the actual COD. It is pertinent to mention that the petitioner has filed the Petition No. 155/MP/2016 seeking a direction that it is entitled to recovery of the transmission charges with effect from the date of commissioning and COD of the transmission system from 21.6.2016 in terms of the TSA and for a direction to POSOCO to include the transmission charges of the transmission system in the PoC effective from that date. This issue of payment of transmission charges from the date of actual COD prior to SCOD will be dealt with in Petition No. 155/MP/2016.

12. Petition No 74/MP/2016 is disposed of with the above.

sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson