

CENTRAL ELECTRICITY REGULATORY COMMISSION

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Minutes of the Meeting of the Commission held on 24th May, 2022 to discuss various directions issued under Section 107 of the Electricity Act, 2003 by the Ministry of Power, Government of India

1.0 The following were present:

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| 1. Shri P. K. Pujari, Chairperson | In Chair |
| 2. Shri I. S. Jha, Member | |
| 3. Shri Arun Goyal, Member | |
| 4. Shri P. K. Singh, Member | |
| 5. Shri Harpreet Singh Pruthi, Secretary | |
| 6. Dr. Sushanta K. Chatterjee, Chief (RA) | |
| 7. Shri Proteek Kr Chakraborty, Chief (Finance) | |
| 8. Shri V. Sreenivas, Jt. Chief (Legal) | |

2.0 Item No.1: Sharing of transmission charges under force majeure condition

2.1 Direction by the Ministry of Power, Government of India vide letter No. 23/12/2016-R&R dated 15.1.2021 under Section 107 of the Electricity Act, 2003.

2.2.1 Status

- The Hon'ble Supreme Court of India in judgment dated 3.3.2016 in Civil Appeal No. 9193 of 2012 (PGCIL Vs. PSPCL) held that the beneficiaries cannot be made liable to pay the transmission charges before operationalisation of the transmission line/elements. The relevant portion of the judgement dated 3.3.2016 is as follows:

*"13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and **the beneficiaries could not have been made liable to pay the tariff before transmission line was operational**, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs."*

- In view of the above judgement dated 3.3.2016, the transmission charges of an element of ISTS cannot be included for determination of transmission charges of DICs on its COD independent of the readiness of associated generation or upstream or downstream transmission elements.
- The relationship between a transmission licensee and its beneficiaries are governed by the provisions of the TSA between them. The TSA provides for relief for the beneficiaries in case of delay in COD of the

transmission elements to the beneficiaries. The Commission in order dated 26.4.2022 in Petition No.60/TT/2017 held that there is no provision in the TSA to relieve a transmission licensee from any other obligation on account of *force majeure*. The rights and obligations of any other entity unconnected with the TSA cannot be affected by operations of the said agreement. The relevant portion of the order dated 26.4.2022 in Petition No.60/TT/2017 (paragraph 39) is as follows:

*“39. As a consequence of the delay in obtaining forest clearance being declared as an event of force majeure, SCOD of the associated transmission lines of NTL were extended to the actual COD and NTL was spared from paying the liquidated damages. The Petition No. 195/MP/2017 was filed by NTL for reliefs under TSA that included extension of SCOD on account of force majeure events. The Commission, based upon submission of the parties therein, extended SCOD of the associated transmission lines in terms of provisions of Article 11 of TSA. It cannot be a case of NTL that once SCOD of the associated transmission lines is extended, it is exonerated from all other liabilities whatsoever arising under applicable regulations or orders of the Commission or Orders of the Hon’ble Supreme Court. In other words, extension of SCOD of the associated transmission lines of NTL by the Commission, being only in respect of TSA, protects NTL from liabilities under TSA and, in no way, protects it from payment such as IDC and IEDC of the transmission assets of the Petitioner PGCIL arising due to matching of the COD. **It is pertinent to note that irrespective of extension of SCOD of the associated transmission lines by the Commission, NTL is required to continue to discharge other liabilities viz. related to financial institutions, implications of taxation such as GST and various obligations including contractual obligations. There is no provision in TSA to relieve NTL from any other obligation on account of force majeure including the liability for IDC and IEDC of the bays of PGCIL on account of delay in COD of the transmission lines of NTL. TSA is an agreement signed between NTL and LTTCs and operates within the contours of what has been agreed to in that agreement. Rights and obligations of any other entity, such as PGCIL, unconnected with the TSA cannot be affected by operations of the said agreement. Therefore, extension of SCOD of the transmission lines of NTL because of condonation of delay as per provisions of TSA cannot affect the rights of PGCIL.**”*

- It would also be unfair not to compensate the affected party which has come on time. In the absence of a provision for compensation to such an affected party (which could be a generating station or an upstream/downstream transmission licensee), the viability of the project would be put to risk for no fault of its own. In the same Order 26.4.2022 in Petition No.60/TT/2017, the Commission has further held in paragraph 68 as under:

68. Further, there is clear fallacy in NTL’s contentions. Suppose, for the sake of argument, it is assumed that NTL is not liable to pay IDC and IEDC. Then the question arises as to who will bear such charges due to Powergrid. This liability of IDC and IEDC cannot be

capitalised as the transmission assets have not been put to use and the beneficiaries have not reaped any benefits. At the same time, PGCIL cannot be denied IDC and IEDC as it has done its part and made the transmission assets ready for use and, therefore, cannot be made to suffer on account of delay on the part of NTL. The IDC and IEDC payable by NTL to PGCIL cannot be passed on and loaded on the LTTCs/beneficiaries as there is no provision in TSA under which such recoveries can be made.

- The Commission would like to reiterate its position in regard to mismatch as already conveyed to the Ministry of Power vide its statutory advice dated 22.6.2020 under Section 79(2) of the Electricity Act, 2003, on “Development of transmission capacity in an efficient and economical manner under TBCB route” regarding “delay in implementation of associated transmission lines leading to mismatch between the COD of transmission line and associated upstream/ downstream transmission system or the generating station”. The relevant extract is quoted below:

“4.2.3 Therefore,

- (i) In case the proposed transmission line in the bid is to be terminated at existing substation(s), the end coordinates may be fixed upfront before award.*
- (ii) In case of new substation where coordinates are not fixed before award, bidding may be made in packages containing both transmission line and sub-station so that mismatching is avoided and both transmission line and sub-station are executed and put to use together. For example, if the scope of the construction comprises of a substation and associated transmission line, both the substation and the transmission line may be included in the same package.*

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4.8.1 Due to various uncertainties involved with execution of transmission projects such as issues of ROW, land acquisition and forest clearance, mismatch with upstream and downstream transmission system cannot be fully avoided.

4.8.2 Therefore, a suitable provision in the bidding documents may be incorporated providing for a window of three months for declaration of deemed COD. If the transmission licensee under TBCB route is ready to declare COD but downstream/ upstream assets are not ready for interconnection, the transmission licensee would be free to declare the deemed COD after three months as per the provisions of TSA.”

- The Commission would like to add that the bidding guidelines issued by the Ministry of Power under section 63 of the Act should address the aforesaid issues. The guidelines could also make a provision for suitable provision for compensation to the affected parties due to mismatch between the COD of transmission line and associated upstream/ downstream transmission system or the generating station,

so that the bidders can suitably take such factors into consideration while placing their bids.

3.0 Item No.2: Revised Coal Stocking norms for Coal based Thermal Power Plants

3.1 Direction by the Ministry of Power, Government of India vide letter No. FU-40/2020-FSC (Vol-V) dated 22.2.2022 under Section 107 of the Electricity Act, 2003.

3.2 Status

- The Commission has issued a Staff Paper on the “Methodology for Computing ‘Deterrent Charges’ for maintaining lower coal stock by coal based thermal generating stations” and has also issued a Public Notice dated 13.5.2022 seeking comments and suggestions from the stakeholders on the Staff Paper by 27.5.2022.

4.0 Item No.3: Price cap in Power Exchange

4.1 Direction by the Ministry of Power, Government of India vide letter No. 23/16/2020-R&R dated 26.3.2022 under Section 107 of the Electricity Act, 2003.

4.2 Status

- The Commission initiated suo-motu proceedings in Petition No. 4/SM/2022 and issued order dated 1.4.2022. The relevant portion of the order dated 1.4.2022 in *Suo-motu* Petition No. 4/SM/2022 is extracted hereunder:

“6. In view of the fact that higher price has not led to commensurate increase in supply and such position is likely to remain for some time in coming days due to supply constraints and in view of the fact that 99% of the supply bids (for the days for which data has been analysed) have been in the range of Rs.12/kWh and only 1% of the supply bids have been higher than Rs.12/kWh, the Commission in exercise of powers under Regulation 51 (1) of PMR 2021 directs the power exchanges until further orders, to re-design, with immediate effect, the bidding software in such a way that members can submit their bids in the price range of Rs.0/kWh to Rs.12/kWh for DAM and RTM. The Commission is of the view that this price moderation will be in keeping with the present market realities and shall not have any significant impact on the volume transacted and safeguard the consumer interests.”

5.0 Item No. 4: Price cap in all the transactions on Power Exchange Price

5.1 Direction by the Ministry of Power, Government of India vide letter No. 23/16/2020-R&R dated 29.4.2022 under Section 107 of the Electricity Act, 2003.

5.1 **Status**

- The Commission initiated suo-motu proceedings in Petition No. 5/SM/2022 and issued order dated 6.5.2022. The relevant portion of the order dated 6.5.2022 in suo-motu Petition No. 5/SM/2022 is extracted hereunder:

“14. In exercise of the aforesaid powers under Regulation 51(1) of the PMR 2021 and in view of the analysis of price trends in the preceding paras and in order to balance the interests of investors in terms of reasonable return and protecting consumer interests, the Commission hereby directs the Power Exchanges, from the date of this Order till 30th June 2022, to redesign, with immediate effect, their software in such a way that members can quote price in the range of Rs.0/kWh to Rs.12/kWh in DAM (including GDAM), RTM, Intra-day, Day Ahead Contingency and Term-Ahead (including GTAM) Contracts. The contracts which have already been transacted till the date of issuance of this Order shall be delivered and settled as per the earlier terms and conditions. Application of the price ceiling for a limited period is based on the belief of the Commission that intervention in the market should not be prolonged unless absolutely necessary in public interest as in the existing circumstances prevailing in the country.”

6.0 **Item No.5: Blending of imported coal with domestic coal to mitigate the domestic coal shortage**

6.1 Direction by the Ministry of Power, Government of India vide letter No. 23/13/2021-R&R (Pt-1) dated 18.5.2022 under Section 107 of the Electricity Act, 2003 regarding blending of imported coal with domestic coal to mitigate the domestic coal shortage.

6.2 The relevant extract from the aforesaid letter dated 18.5.2022 is as follows:

“7. Hence, in order to address the above issue, in exercise of the powers conferred under Section 107 of the Electricity Act, 2003, in the public interest, Central Electricity Regulatory Commission is hereby directed to immediately allow higher amount of blending of up to 30% with imported coal in compliance with decision of Ministry of Power, subject to technical feasibility, without beneficiaries' consultation for the period up to 31st March, 2023 to maintain resource adequacy and 24X7 supply to consumers.”

6.3 **Status**

- The Commission after deliberations has directed the staff to float a Staff Paper inviting comments from the stakeholders on the issues raised in the directions dated 18.5.2022.

**sd/-
(P. K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I. S. Jha)
Member**

**sd/-
(P.K. Pujari)
Chairperson**