

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 164/MP/2021

Subject : Petition under Section 79 of the Electricity Act, 2003 read with statutory framework for tariff based competitive bidding for transmission services, the relevant provisions of the Transmission Service Agreement dated 20.9.2016 and the applicable laws for inter alia seeking extension of Scheduled Commercial Operation Date of Transmission Project from 31.7.2020 till 31.12.2020, without any adverse consequences, in accordance with the relevant provisions of the Transmission Service Agreement dated 20.9.2016 and particularly the Ministry of Power's Circular dated 27.7.2020 which mandated grant of 5 months' time extension for under construction ISTS projects affected on account of COVID-19 pandemic.

Date of Hearing : 22.9.2022

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

Petitioner : Kohima Mariani Transmission Ltd. (KMTL)

Respondents : Assam Electricity Grid Corporation Ltd. (ASEGCL) and 7 Ors.

Parties Present : Ms. Aparajita Upadhyay, Advocate, KMTL
Shri Shubham Arya, Advocate, PGCIL
Shri Ravi Nair, Advocate, PGCIL
Shri Yogesh Dalal, KMTL
Shri V. C. Sekhar, PGCIL

Record of Proceedings

At the outset, the learned counsel for the Petitioner submitted that Respondent No.1, ASEGCL has circulated the letter seeking adjournment of the Petition to file reply to the amended Petition and the Commission may take a view in this regard. The learned counsel further submitted as under:

- (a) The present petition has been filed for (i) extension of Scheduled Commercial Operation Date (SCOD) of the project based on the factors beyond the control of the Petitioner, and (ii) relief on account of Change in Law events.
- (b) Delay in commissioning of the project was on account of the force majeure events viz. (i) outbreak of Covid-19 pandemic in March, 2020, (ii) delay in provision of interconnection facilities by PGCIL at Mariani and Imphal sub-station, and (iii) delay in downstream system i.e. transmission line connecting Element 1 to 220/33 kV existing Zhadima substation which was to be developed by the Department of Power, Government of Nagaland.
- (c) The SCOD of the project was 31.7.2020 whereas it achieved the commercial operation on 31.12.2020.

(d) In order to off-set the adverse implication of Covid-19 pandemic, the Ministry of Power (MoP) vide its circular dated 27.7.2020 has held that all inter-State transmission projects, which were under construction as on the date of lock-down i.e. 25th March, 2020 shall get an extension of five months in respect of SCOD. Thus, the entire delay in achieving the COD of the Petitioner's project is squarely covered by the aforesaid order of Ministry of Power.

(e) In addition, the Petitioner has sought for the Change in Law reliefs on account of the Change in Law events viz. (i) promulgation of GST Laws, (ii) introduction of land compensation, and (iii) increase in unit rate of tree/crop rate.

(f) The enactment of Integrated Goods and Services Tax Act, 2017 and the Central Goods and Services Act, 2017 by the Govt. of India has led to the increase in the recurring/non-recurring expenditure of the Petitioner during the implementation of project in construction phase and the promulgation of such GST Laws, after the cut-off date i.e. 18.11.2016, amounts to Change in Law under Article 12 of the TSA.

(g) Pursuant to the cut-off date, the Governments of Assam, Manipur and Nagaland have published the separate notifications by way of which the MoP Guidelines for payment of land compensation were adopted in the respective State. The said notifications have significantly affected the amount incurred by the Petitioner towards the land compensation. In this regard, the reference was made to the notifications dated 10.3.2017 of Government of Assam, dated 16.2.2019 & 3.4.2019 of Deputy Commissioner - Kohima & Wokha, Nagaland and dated 28.3.2018 of Govt. of Manipur.

(h) Similarly, after the cut-off date, there has also been revision in the unit price for tree/crop compensation by the concerned/competent local authorities of the above States. In this regard, the reference was made to the letters/notifications of (i) Agricultural Officer, Manipur dated 20.3.2019, (ii) Deputy Commissioner, Kohima dated 16.2.2019, (iii) Deputy Commissioner, Wokha dated 3.4.2019 & 21.5.2019, (iv) Deputy Commissioner, Jorhat dated 30.6.2018, (v) Deputy Commissioner, Golagaht dated 9.11.2020.

(i) The Petitioner may be given an opportunity of another oral hearing in the event Respondents/LTTCs contest the claims of the Petitioner in their reply/written submissions.

3. The learned counsel for the Respondent, PGCIL submitted that the Respondent has already filed its reply on the limited aspect of the allegation by the Petitioner that there has been delay in commissioning of PGCIL's assets, namely, the interconnection facilities (2 Nos. of line bays) at Imphal and New Mariani substations. The learned counsel submitted that PGCIL has also filed Petition No. 45/TT/2022 for approval of transmission tariff under Project – "Powergrid works associated with North Eastern Region Strengthening Scheme-VI" for the tariff period 2019-24 wherein above two assets are covered and the PGCIL has given the justification for the time-over run in commissioning of assets including 2 Nos. of 400 kV line bays at New Mariani S/s therein. The learned counsel added that the delay in commissioning of PGCIL's assets is also covered by MoP's notification dated 27.7.2020 allowing the extension of SCOD by 5 months keeping in view the outbreak of Covid-19 pandemic. The learned counsel also submitted that insofar as 2 Nos. of bays at Imphal S/s is concerned, PGCIL has contended that the delay was in fact on the part of the

Petitioner to commission its Imphal-New Kohima 400 kV D/c line (Element 2) and accordingly, PGCIL has sought approval of COD of the said bays by invoking the provisions of Regulation 5(2) of the Tariff Regulations, 2019. The learned counsel submitted that in Petition No. 45/TT/2022, the Petitioner herein has also been made party but has not filed reply therein on the above aspect and accordingly, the Petitioner and PGCIL may be asked to file their reply and rejoinder respectively in the said Petition.

4. After hearing the learned counsel for the parties, the Commission ordered as under:

(a) The Petitioner to file the following details/additional information on affidavit within two weeks with copy to the Respondents:

(i) Details of Change in Law claims in the following tabular manner:

Change in Law event	Cut-off date	Applicable position/Rate/ Charge etc. as on cut-off date along with documentary proof	Change in Law date	Change in Law Notice	Applicable position/Rate/ Charge etc. after the Change in Law along with documentary proof	Concerned Indian Government Instrumentality	Total Impact in Rs.

(ii) Clarify as to whether the competent State/district authorities were awarding the land compensation of any manner for the construction of transmission lines prior to their adoption of the MoP Guidelines by State notifications in case of States of Assam & Manipur and prior to the issuance of orders of DC, Kohima & Wokha in case of State of Nagaland.

(iii) Copy of intimation of actual COD to the LTTCs for the project and the date from where the Petitioner is claiming the tariff for the elements

(b) The Respondents are at liberty to file their reply/written submissions, if any, within two weeks with copy to the Petitioner, who may file its rejoinder/ written submissions within two weeks thereafter.

(c) As regards the submissions of PGCIL and the Petitioner relating to Petition No.45/TT/2022, the parties may raise their concerned issue /request in the said Petition.

5. Subject to the above, the Commission reserved the matter for order.

By order of the Commission
Sd/-

(T.D. Pant)
Joint Chief (Law)