

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.210/MP/2023

Subject : Petition under Sections 63, 79(1) (c), 79(1)(d) and 79(1)(f) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking appropriate orders and directions concerning Section 63 transmission licensees to address issues relating to recovery of tariff, including the likely under-recovery of tariff, where the scheduled commercial operation date of transmission projects has been extended by the competent authority on account of uncontrollable events.

Petitioner : Electric Power Transmission Association (EPTA) and 6 Ors.

Respondents : Central Transmission Utility of India Limited and 38 Ors.

Date of Hearing : **8.4.2025**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, EPTA
Shri Deep Rao Palepu, Advocate, EPTA
Ms. Shikha Sood, Advocate, EPTA
Shri Ravi Sharma, Advocate, MPPMCL
Shri Aryan Chanda, Advocate, MPPMCL
Shri Shubham Arya, Advocate, CTUIL
Ms. Pallavi Saigal, Advocate, CTUIL
Shri Rishabh Saxena, Advocate, CTUIL
Ms. Tanya Singh, Advocate, CTUIL
Shri Anand Ganesan, Advocate, Karnataka ESCOMs
Ms. Ritu Apurva, Advocate, Karnataka ESCOMs
Ms. Swapna Seshadri, Advocate, Karnataka ESCOMs
Shri Karthikeyan, Advocate, Karnataka ESCOMs
Ms. Nishtha Goel, Advocate, MSEDCL
Shri Vyom Chaturvedi, Advocate, MSEDCL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL

Record of Proceedings

During the course of the hearing, the learned counsel for the Respondent, Karnataka ESCOMs, mainly submitted as under:

- (a) The present Petition is not maintainable at the instance of an Association. An association is possessive of an independent legal entity, which is distinct from its members, and as such, an Association is a third party to any agreement

entered into by the transmission licensee with its beneficiaries. No *inter-se* rights and obligations of the parties to the agreement can be interfered with at the instance of a third party. In this regard, reliance was placed on the APTEL's judgement in *Punjab State Power Corporation Limited v. Biomass Power Producers Association* in Appeal No. 65 of 2016 and Appeal No, 284 of 2016.

- (b) A general Petition seeking the exercise of Regulatory Powers to interfere with contractual rights and obligations of the parties cannot be allowed. The Petitioners cannot seek any general order from this Commission in the exercise of regulatory powers in the present Petition. The adjudication sought herein is not amenable to collective redress, as the contractual framework envisages that individual parties must independently pursue their respective remedies, if any, arising under the TSAs.
 - (c) The regulatory powers of this Commission do not extend to revision or re-writing of the contractual terms mutually agreed upon by the parties. The reliefs sought by the Petitioners, in effect, amount to an invitation to override the express stipulations contained in the TSAs, which is impermissible in law.
 - (d) The order passed in Petition No. 87/MP/2022 (Fatehgarh-Bhadla Transmission Limited case) was specific to the facts of that case, and it cannot, in a uniform manner, be applied to all transmission licensees without examining the facts of each case.
2. The learned counsel for the Respondent, MPPMCL, mainly submitted as under:
- (a) The Petitioners, in the present case, are effectively attempting to challenge the established legal position regarding the operating period that results from an extension of the Scheduled Commercial Operations Date (SCOD). This includes questioning the under-recovery of tariffs for such extended operating periods, as outlined in the Transmission Service Agreement (TSA). The APTEL, in its order dated 3.12.2021, passed in Appeal No. 129 of 2020 (NRSS XXXI case), had explicitly rejected the reliefs now being sought by the Petitioners. In doing so, the APTEL upheld the findings of this Commission as stated in its order dated 15.1.2020, in Petition No. 7/RP/2019. APTEL has firmly established that the TSA only addresses the extension of the SCOD in the event of Force Majeure occurrences. There are no other provisions within the TSA that grant the Transmission Service Provider (TSP) the right to seek compensation for the additional years of the shifted operating period resulting from such an extension of the SCOD.
 - (b) Model TSA issued in year 2008 was on the basis of policy decision and Tariff based Competitive Bidding Guidelines, 2006. It is settled and trite law that Courts/Tribunals must refrain their self from interference in Government policy decision making. Since the policy decision of issuing the model TSA of 2008 was the basis, the facts and circumstances of that time cannot be compared with the Policy decision made while issuing the model TSA of 2021. Further, the Policy decision of Govt cannot be challenged in a retrospective effect.
 - (c) The Transmission licensees who are party to TSA signed prior to model TSA issued in year 2021, have already made their claims related to extension of

SOCD due to force majeure events and most of the Transmission Licensees who have individually approached this Commission since, 2008-09 (year of opening the Transmission Business to Private sector) have willingly not claimed to get compensated for the additional years of the shifted Operating Period resulting from an extension of SCOD therefore, such claims cannot be claimed after passing of decree in all such main Petitions and claims of which have attained the finality. Therefore, the present Petition is also barred in terms of Order 2 Rule 2 of CPC.

(d) The Petitioners, through the present Petition, are seeking directions and relief that this Commission may rewrite the Provisions of TSA signed based upon Model TSA of 2008 while incorporating the beneficial provisions of the model TSA of 2021, which is impermissible in contracts/agreements executed between the parties.

(e) The underlying claims are intrinsically contractual in nature, and the Doctrine of Privity of Contract precludes the association from espousing or enforcing rights that are individual and specific to each contracting party.

3. Learned counsel for the Respondent, MSEDCL, adopted the submissions made by the learned counsel for the Respondents, Karnataka ESCOMs & MPPMCL.

4. In response, learned senior counsel for the Petitioners submitted that the Petitioner does not seek a rewriting or alteration of the contractual terms per se. Rather, the prayers are advanced for an authoritative interpretation of the disputed issue, which already stands settled by the Commission in Petition No. 87/MP/2022 (*Fatehgarh-Bhadla Transmission Limited v. Adani Renewable Energy Park Rajasthan Limited & Ors.*). Learned senior counsel further submitted that the present matter hinges upon the construction and application of the provisions contained in the Standard Bidding Documents (SBDs), which form the foundational framework of the contractual arrangement. Learned senior counsel further emphasised that the Petitioner's invocation of the Commission's jurisdiction is rooted not in contractual realignment but in the clarification of a legal position already delineated by the Commission in a precedent governing similarly situated facts.

5. Considering the submissions made by the learned senior counsel and counsels for the parties, the Commission permitted the parties to file their respective written submissions, if any, within ten days with a copy to the other side.

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

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)