

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 333/MP/2019**

**Coram:**

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

**Date of Order: 11<sup>th</sup> March, 2023**

**And  
In the matter of**

Revision and increase of tariff adopted due to Force Majeure and Change in Law Events resulting in the delay in the commercial operation of Nagapattinam-Salem-Madhugiri transmission system.

**And  
In the matter of**

Petition under Section 63 and Sections 79 (1) (c) and (d) of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for allowing time overrun and cost overrun and the approval of increase in tariff adopted for Nagapattinam-Salem-Madhugiri Transmission System on account of Force Majeure and Change in Law events.

**And  
In the matter of**

POWERGRID NM Transmission Limited,  
(Previously known as Nagapattinam- Madhugiri  
Transmission Company Limited)  
'Saudamini', Plot No. 2, Sector 29,  
Gurgaon-122 001.

**...Petitioner**

Vs

1. IL & FS Tamil Nadu Power Company Limited,  
'D' Block, Naveen Pseudium, 4<sup>th</sup> Floor,  
103, Nelson Manickkam Road,  
Aminjikarai- 600 029, Chennai

2. Tamil Nadu Generation and Distribution Corporation Limited,  
NPKRR Maaligai, 800,  
Anna Salai-600 002,  
Chennai.

3. Chief Engineer (PSPM)  
Central Electricity Authority  
PSPM Division, Sewa Bhawan  
Rama Krishna Puram,  
New Delhi-110 066

4. Chief Operating Officer,  
Central Transmission Utility of India Limited,  
Saudamini, Plot No.2, Sector-29,  
Gurgaon-122001

....Respondents

**The following were present:**

Shri M. G. Ramachandran, Sr. Advocate, PGNMTL  
Shri Shubham Arya, Advocate, PGNMTL  
Ms. Poorva Saigal, Advocate, PGNMTL  
Ms. Shikha Sood, Advocate, PGNMTL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Hemant Singh, Advocate, ITPCL  
Shri Lakshyajit Singh Bagdwal, Advocate, ITPCL  
Shri Mridul Chakravarty, Advocate, ITPCL  
Shri Burra Vamsi Rama Mohan, PGNMTL  
Shri V. C. Sekhar, PGNMTL  
Shri Prashant Kumar, PGNMTL  
Shri Arjun Malhotra, PGNMTL  
Ms. Supriya Singh, PGNMTL  
Shri Sunil Thomas, PGNMTL  
Dr. R. Kathiravan, TANGEDCO  
Ms. R. Ramalakshmi, TANGEDCO  
Shri R. Srinivasan, TANGEDCO

**ORDER**

The present Petition has been filed by the Petitioner, POWERGRID NM Transmission Limited (PNMTL), under Section 63, Section 79(1)(c) and Section 79(1)(d) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking extension of time from Scheduled Commercial Operation Date ('SCoD') to actual Commercial Operation Date ('CoD') and increase in quoted levelized tariff under Article 11 and Article 12 of the Transmission Service Agreement dated 2.2.2012 (in short 'TSA'), which has adversely affected the construction of the 'Transmission System associated with IPPs of Nagapattinam/ Cuddalore Area: Package-A' (in short, 'the Project'). The Petitioner has made the following prayers:

*“(a) Admit and entertain the present petition under Section 63 read with Section 79 (1) (c) and (d) of the Electricity Act, 2003 for the due consideration of the time overrun and cost overrun in the execution and completion of the transmission project awarded to the Petitioner consisting of two transmission elements, namely(I)765 KV D/C Nagapattinam – Salem Line; and(II)765 KV S/C Salem – Madhugiri Line on account of prayed force majeure and Change in Law events that have occurred subsequent to submission of the bid and award of the project.*

*(b) Condone the delay of 308 days for execution of the 765 KV D/C Nagapattinam – Salem Line i.e. till 23.10.2016 when it was commissioned and 1133 days for the 765 KV S/C Salem – Madhugiri Line of the transmission project i.e. till 26.01.2019 when the same was commissioned as being on account of Force Majeure Events within the scope of the provisions of Article 11 and Change in Law events under Article 12 of the Transmission Service Agreement dated 2.2.2012 read with the Orders dated 9.5.2013, 20.6.2013 and 16.4.2014 passed by the Commission in Application Nos. 121/MP/2012 and 122/MP/2012;*

*(c) Grant an extension of Scheduled Commercial Operation Date of 765 KV D/C Nagapattinam – Salem Line upto 23.10.2016, 765 KV S/C Salem – Madhugiri Line upto 26.01.2019 and the Project upto 26.01.2019 i.e. the actual commercial operation date of the last element of the Project and waive any penalties or any other consequences thereof under the TSA dated 02.02.2012;*

*(d) Declare that the Petitioner shall be entitled to increase in quoted Levelized tariff by 10.45% i.e. 10.314 Crores per annum due to escalation of cost over and above base project cost by 10.45% from Feb.’12 to April’14 due to delay in grant of License/ adoption of Transmission Charges and clearance to commence the project owing to the Force Majeure Events to the above transmission project as more fully set out above.*

*(e) Declare that the Petitioner shall be entitled to further increase in quoted Levelized tariff by Rs. 48.151 Crores Per annum on account of Change in Law claim of Rs. 455.49 Crores during execution of the project as more fully set out above.*

*(f) Allow the Petitioner to recover the carrying cost in regard to increased tariff applicable for the past period up to the date of the Order.*

*(g) Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.”*

**Background of the case:**

2. The Petitioner is a fully owned subsidiary of Power Grid Corporation of India Limited (‘PGCIL’), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A’ on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

Sl.	Name of the Transmission Element	SCOD in months from
-----	----------------------------------	---------------------

No.		Effective Date
1	Nagapattinam Pooling Station-Salem 765 kV D/C line	36 months
2.	Salem-Madhugiri 765 kV S/C line	36 months

3. The Petitioner was incorporated as a Special Purpose Vehicle ('SPV') by Bid Process Coordinator (in short, 'BPC'), namely, PFC Consulting Limited (in short 'PFCCL') for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. PGCIL participated in the competitive bidding process conducted by PFCCL and on emerging as the successful bidder, Letter of Intent (LOI) was issued by PFCCL to PGCIL on 6.3.2012. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL on 29.3.2012. PGCIL also furnished the Contract Performance Guarantee of Rs. 45 crore on the same date and accordingly, the TSA dated 2.2.2012 entered into between the Petitioner and the LTTC became effective from 29.3.2012. The Commission in its order dated 20.6.2013 in Petition No.121/TL/2012 granted transmission licence to the Petitioner for inter-State transmission of electricity and vide order dated 9.5.2013 in Petition No.122/ADP/2012 adopted the transmission charges of the Petitioner.

4. During pendency of the Petitions for grant of licence and adoption of transmission charges, PGCIL filed Petition No. 143/MP/2012 raising apprehension regarding execution of the generation project of ITPCL and seeking issue of appropriate direction with regard to whether or not to implement transmission system associated with IPP projects in Nagapattinam/Cuddalore Area. Subsequently, the Petitioner filed IA No. 5/2013 in Petition No.121/TL/2012 seeking a direction for execution of the project with time and cost over- run and for extension of period of 36

months from the date of grant of transmission licence. The Commission while disposing of the IA No.5/2013 directed the Petitioner to first try to resolve the issues in consultation with ITPCL in terms of TSA and in case of non-resolution of issues to approach the Commission in accordance with law. The Commission while granting the licence vide order dated 14.4.2014 in Petition No. 121/TL/2014, directed the Petitioner to go ahead with execution of the project. As regards the extension of time for execution of the project, the Commission observed that the Petitioner is required to execute the project within 36 months from the effective date and is required to obtain the transmission licence within 6 months from the effective date in terms of Article 3.1.3 of the TSA. In other words, the Petitioner is required to implement the project within 30 months from the date of grant of transmission licence.

5. Element 1 was completed in all respect and was also put to use on 23.10.2016, with a delay of 308 days with reference to the revised Scheduled CoD. Element 2 was completed on 26.1.2019 with a delay of 1133 days from the revised SCoD. The entire transmission system within the scope of work had been put to use by 26.1.2021.

6. The Petitioner had sought for the actual CoD for Element 1 to be allowed as on 23.10.2016. The Commission vide order dated 26.3.2018 in Petition No. 62/MP/2017 had not approved the same, *inter-alia*, holding that since there is no provision in the RfQ/RfP and TSA regarding apportionment of transmission charges between different elements of the transmission system being executed through TBCB route, and no certificate of CEA is available to the effect that commissioning of Nagapattinam-Salem transmission line is in the interest of the power system and safety & security of the grid. Moreover, the orders of the Commission dated 26.11.2015 and dated 28.1.2016 in Petition No. 122/MP/2015 and Petition No.

284/ADP/2015 respectively are not applicable to the instant Petition. Subsequently, the Petitioner had filed Review Petition No. 19/RP/2018 seeking review of the said order dated 26.3.2018 which was rejected by the Commission in order dated 8.1.2020. Aggrieved by the said decision dated 26.3.2018, the Petitioner, on 18.2.2020, has filed an Appeal being No. 166 in APTEL, which is pending for adjudication.

7. As per the TSA, the Project was to be completed and commissioned by 36 months from the effective date of the TSA. However, as per the Petitioner, implementation of the Project was affected due to various Force Majeure and Change in Law events encountered during the construction of the Project and its elements that led to delay in achieving the Commercial Operation date.

### **Submissions by the Petitioner**

8. The Petitioner has submitted that Force Majeure events and Change in Law events which have affected the implementation of the Transmission Project/Lines are as under:

#### **A. Force Majeure Events:**

The details of completion of Project and delays are as follows:

Sl. No	Name of Transmission element.	Schedule of CoD in months from effective date.	Revised SCoD as per CERC order dated 16.4.2014	Actual CoD	Delay w.r.t. Revised SCoD
1	Nagapattinam Pooling station-Salem 765 kV D/C line.	36 months.	20.12.2015	23.10.2016	308
2.	Salem-Madhugiri 765 kV S/C line.	36 months	20.12.2015	26.1.2019	1133

**a. The transmission line-wise summary of delay due to Force Majeure events is as under:**

**i) 765kV D/C Nagapattinam Pooling Station – Salem Line:**

Sr. No	Force Majeure events	Time period		No. of days
		From	To	
1	Court Case for location No. 50/3, 51/1 and 51/2 of D/C Line	28.03.15	20.06.16	451
2	Court Case for location No. 13/1 and 14/0 of D/C Line	26.08.15	08.03.16	196
3	Court Case for location No. 61/0,61/1,61/3,61/4 and 61/5 of D/C Line	10.09.15	14.06.16	279
4	Court Case for location No. 58/4, 59/0,59/1, 59/2, 59/3, 59/4, 62/0 and 63/0 of D/C Line	19.10.15	03.03.16	137
5	Unprecedented heavy rain in the State of Tamil Nadu & Karnataka	09.11.15	15.01.16	68
6	Court Case for location No. 01/01 of D/C Line	10.07.16	23.09.16	76
7	Public Agitation on sharing of Cauvery Water	06.09.16	08.10.16	33
	<b>Net concurrent delay for DC Line</b>			<b>561</b>

**ii) 765kV S/C Salem – Madhugiri transmission line:-**

Sl. No.	Force Majeure events	Time period		No. of days
		From	To	
1	Notification of Tali Reserve Forest as Wild Life Sanctuary	04.03.15	02.09.18	1279
2	Court Case for location No. 30/0 of S/C Line	03.06.15	02.12.16	549
3	Court Case for Location No. 16/3 and 17/3 of S/C Line	27.08.15	26.06.16	305
4	Unprecedented heavy rain in the State of Tamil Nadu and Karnataka	09.11.15	15.01.16	68
5	Court Case for location No. 13/0 of S/C Line	16.11.15	06.08.16	265
6	Court Case for location No.102A/6 & 102A/7 of S/C Line	30.12.15	04.05.17	492
7	Court Case for location No.49/4 of S/C Line	27.01.16	22.10.16	270
8	Court Case for location No.33/3 & 33/4 of S/C Line	28.04.16	20.01.17	268
9	Public Agitation on sharing Cauvery Water	06.09.16	08.10.16	33
10	Court case for location no.118/0 & 119/0 of S/C Line	11.11.16	10.08.18	638
11	Delay in demarcation of land towards land compensation	27.02.17	24.01.19	697
12	Severe ROW problems faced in the State of Karnataka	01.05.17	28.12.18	607

13	Enactment of GST	01.07.17	28.09.17	90
	<b>Net Con-current Delay for SC Line</b>			<b>1423</b>

## **B. Cost Over Run:**

### **B1. Cost overrun due to delay in grant of transmission licence/ adoption of the tariff and clearance to commence the project:**

9. The Petitioner has submitted that PGCIL as the successful bidder fulfilled and/or caused to be fulfilled all the conditions of the RfP documents within the stipulated time. However, there was unprecedented delay in granting transmission licence for reasons beyond the control of the Petitioner due to issue of environmental clearance to the generating company. The Empowered Committee on Transmission in its meeting held on 15.6.2012 recognized that compensation owing to the environmental clearance issue of the generator needs to be addressed. The Commission in its order dated 16.4.2014 had also observed that the Petitioner cannot be made to suffer on account of the reasons beyond its control. Accordingly, the following claim under Force Majeure and Change in Law during the intervening period from the date of submission of bid i.e. February, 2012 upto 16.4.2014 has been furnished as under:

Cost Components	Base (% of Total Project Cost)	Changes due to Indices- April'14	\$ Impact- April'14	Safeguard Duty	Excise Duty	Service Tax	Total- April.'14	(% of Total Project Cost)- April.'14	% Difference (April'14 Vs. Feb.'12)
Tower Parts	24.84	7.53%			1.81%		9.48%	27.20	2.35
Conductor	20.94	5.05%			1.81%		6.95%	22.39	1.46
Earth wire	0.37	6.57%			1.81%		8.50%	0.40	0.03
Insulators	3.73	0.00%	23.29%	30.00%			60.28%	5.98	2.25
Hardware fittings	2.72	5.46%			1.81%		7.37%	2.92	0.20
Con & earth access.	0.98	5.93%			1.81%		7.85%	1.06	0.08
Tower erection	2.43	20.39%				1.87%	22.64%	2.98	0.55
Civil works	9.74	18.06%				1.87%	20.27%	11.71	1.97
Stringing	1.24	20.39%				1.87%	22.64%	1.52	0.28
F&I etc.	3.45	37.12%					37.12%	4.72	1.28
<b>Sub Total- Hard cost</b>	<b>70.43</b>							<b>80.88</b>	<b>10.45</b>
Crop compensation	3.00							3.00	0.00



Additional	0.00							0.00	0.00
IEDC	3.52							3.52	0.00
Contingencies	2.11							2.11	0.00
Price variation	12.68							12.68	0.00
Market correction factor	0.00							0.00	0.00
IDC	8.26							8.26	0.00
Interest rate impact	0.00							0.00	0.00
Additional equity	0.00							0.00	0.00
Interest on acquisition price	0.00							0.00	0.00
<b>Sub Total- Other Heads</b>	<b>29.57</b>							<b>29.57</b>	<b>0.00</b>
<b>TOTAL PROJECT COST (Subtotal-A+B)</b>	<b>100.00</b>							<b>110.45</b>	<b>10.45</b>

10. The Petitioner has submitted that cost escalation of 10.45% in hard cost for the period from February 2012 to April 2014 over the base Project cost has been claimed towards delay in the commencement of the Project due to the reasons mentioned above and accordingly, the corresponding increase in quoted tariff by 10.45% for the above variation has been claimed.

**B2. Cost over-run due to Change in Law and Force Majeure Events during execution of the project:**

11. The Petitioner has submitted that cost of the Project was further escalated by Rs. 455.49 crore after the Commission's order dated 16.4.2014 due to the following Change in Law events during execution of the Project:

- (a) Increase in Excise Duty;
- (b) Enactment of GST Laws, 2017;
- (c) Unprecedented increase in cost of compensatory afforestation of lines and NPV due to Notification of Tali reserve forest as Wild Life Sanctuary;
- (d) Notifications dated 14.1.2015 and dated 2.2.2017 issued towards enhancement of tree compensation as per orders passed by Deputy Commissioner/ District Collector;

- (e) Notification dated 18.8.2017 by the Government of Karnataka for payment of land compensation in the State of Karnataka
- (f) Land compensation in Tamil Nadu as per the judgment of Hon'ble High Court of Madras dated 12.4.2019 in WP No. 16460 of 2018.
- (g) Increase in the deposit amount paid to various Railway Divisions as per the deposit notes for crossing of Railway crossing of lines.
- (h) Increase in the cost of IDC and IEDC due to delay in completion of the lines due to various Force Majeure and Change in Law events as detailed above.

12. The break-up of the claim of Rs. 455.49 crore towards Change in Law events furnished by the Petitioner is as under:

Sl. No.	Description	Amount (Rs. Crore)
1	Notifications towards increase in tree compensation	196.45
2	Notification for land compensation for tower footing and under line corridor in Karnataka	120.5
3	Increase in cost of CA of line and NPV in regard to Forest Areas /Wild Life Sanctuary	8.33
4	Increase in the deposit amount paid to various Railway Divisions as per the deposit notes for crossing of Railway crossing of lines.	1.33
5	Land compensation in Tamil Nadu (Provision as per Judgment of Hon'ble High Court of Madras dated 12.04.2019 against WP No. 16460 of 2018).	34.5
6	Excise duty and GST impact	0.97
7	IDC due to above Change in Law and Force Majeure	52.85
8	IEDC due to above Change in Law and Force Majeure	40.56
<b>Total claim on cost for increase in Tariff</b>		<b>455.49</b>

13. Accordingly, the Petitioner has submitted the details of increase in tariff sought (vide submission dated 20.10.2021) as follows:

S. No.	Description	Increase in levellized tariff due to change in Law (Rs. in crore)	Final levellized Tariff (Rs. in crore)
--------	-------------	---	--