

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 158/MP/2021 along
with I.A. No. 61/2021**

Coram:

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

Date of Order: 01.8.2022

In the matter of

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework and Article 11, Article 12 and Article 16.3 of the Transmission Service Agreement dated 23.04.2019 executed between Lakadia-Vadodara Transmission Project Limited and its Long-Term Transmission Customers inter alia claiming compensation due to Change in Law events, extension to the scheduled commissioning date of the transmission project on account of the Force Majeure events adversely impacting its implementation and declaratory relief with respect to the Petitioner's scope of work.

And in the matter of

Lakadia-Vadodara Transmission Project Limited
F-1, Mira Corporate Suites,
1 & 2, Ishwar Nagar, Mathura Road,
New Delhi – 110065

....Petitioner

Vs

1. Adani Green Energy MP Limited
Adani House, 4th Floor, South Wing,
Shantigram, S.G. Highway,
Ahmedabad – 382421

2. Adani Green Energy Limited
Adani House, 4th Floor, South Wing,
Ahmedabad – 382421

3. Netra Wind Private Limited
B-504, Delphi Building,
Orchard Avenue, Sector-5,
Hiranandani Gardens, Powai,
Mumbai- 400076



4. WRSS XXI (A) Transco Limited
C 105, Anand Niketan,
South Delhi
Delhi - 110021

5. PFC Consulting Limited
First Floor, Urjanidhi, 1, Barakhamba Lane,
Connaught Place,
New Delhi- 110001

6. Central Electricity Authority,
Seva Bhawan, R.K. Puram,
New Delhi- 110066

7. Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk,
Gurgaon - 122001, India

8. Power Grid Corporation of India Limited
B-9, Qutub Institutional Area,
Katwaria Sarai,
New Delhi – 110016

....Respondents

Parties Present: Shri Sanjay Sen, Sr. Advocate, LVTPL
Shri Deep Rao, Advocate, LVTPL
Ms. Parichita Chowdhury, Advocate, LVTPL
Ms. Harneet Kaur, Advocate, LVTPL
Shri TAN Reddy, LVTPL
Shri Balaji Sivan, LVTPL
Shri Gaurav Kumar, LVTPL
Shri Venkatesh, Advocate, PGCIL
Shri Ashutosh K Srivastava, Advocate, PGCIL
Shri Tushar Srivastava, Advocate, PGCIL
Ms. IsnainMuzamil, Advocate, PGCIL
Shri V. C. Shekhar, PGCIL
Shri Prashant Kumar, PGCIL
Ms. Supriya Singh, PGCIL
Shri Arjun Malhotra, PGCIL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Soumay Singh, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL



ORDER

The Petitioner, Lakadia-Vadodara Transmission Project Limited (“LVTPL”) is *inter alia* claiming for compensation due to various force majeure and change in law events during the implementation of its transmission project and seeking an extension to the scheduled commercial operation date (“SCOD”) of the said project in view of the delay caused by various force majeure events, in terms of Article 11 and 12 of the Transmission Service Agreement (“TSA”) dated 23.04.2019.

2. The Petitioner also filed 61/IA/2021 after filing the instant Petition. After filing the instant petition and 61/IA/2021, the Petitioner filed 73/IA/ 2021 seeking to file amended petition and amended 61/IA/2021 which was allowed by the Commission vide Order in ROP for hearing held on 30.9.2021. Accordingly, the amended petition is considered hereon in the instant Order.

3. The Petitioner has made the following prayers in Petition No. 158/MP/2021:

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- a) *admit and allow the present Petition;*
- b) *list the present Petition for an urgent hearing;*
- c) *hold and declare that the Petitioner was impacted by the Force Majeure events described in the Petition and is therefore, entitled to relief in accordance with Article 11 of the TSA;*
- d) *hold and declare that the Project’s SCOD stands extended by 8 months in terms of the MOP’s Office Memorandum dated 27.07.2020 and the MOP’s Letter dated 12.06.2021;*
- e) *grant leave to the Petitioner to place on record additional submissions and documents for determination by this Hon’ble Commission of the actual delay caused due to the Force Majeure Events, post commissioning of the Project;*



- f) *direct that no Liquidated Damages may be imposed on the Petitioner for the delays caused in Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise;*
 - g) *grant the Petitioner appropriate Force Majeure relief in terms of Article 11 of the TSA;*
 - h) *hold and declare that the Petitioner was impacted by the Change in Law events described in the Petition and is therefore entitled to relief in accordance with Article 12 of the TSA;*
 - i) *grant leave to the Petitioner to place on record additional submissions and documents for determination of the actual cost impact of the Change in Law Events;*
 - j) *grant the Petitioner appropriate Change in Law relief in terms of Article 12 of the TSA;*
 - k) *grant the Petitioner in-principle approval in relation to prayers at (c) and (h) hereinabove as an interim measure;*
 - l) *direct that the Petitioner is entitled to recover Interest During Construction incurred in respect of the periods of delay that were caused due to the unforeseen and uncontrollable events as described in the Petition;*
 - m) *declare that the extra bays at Vadodara S/s do not fall within the scope of work of the Petitioner under the TSA and the scope of work for the Petitioner is limited the scope under Schedule 2 of the TSA, Article 1.2 of the RFP and the transmission license of the Petitioner;*
 - n) *set aside the minutes of the CEA meeting held on 16.03.2021;*
 - o) *declare that in case the Petitioner is directed to implement two extra bays at the Vadodara S/s, it shall be entitled to claim reimbursement of the additional expenditure incurred through an increase in tariff, as the said event will constitute a change in law event under Article 12 of the TSA; and*
 - p) *exercise regulatory powers to grant appropriate relief to the Petitioner in the facts of this case, including by way of condoning any inadvertent errors or delays by the Petitioner, if any;*
 - q) *pass such other order(s) and/ or direction(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case.*
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4. The Petitioner has made following prayers vide IA/61/2021:

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- (a) *admit and allow the present Application;*
- (b) *list the present Applicant for urgent hearing;*



- (c) *grant in-principle approval to the force majeure events described at Paras 38-95E of the Petition;*
- (d) *hold and declare that the Project's SCOD stands extended by 8 months in terms of the MOP's Office Memorandum dated 27.07.2020 and the MOP's Letter dated 12.06.2021;*
- (e) *grant in-principle approval to the change in law events described at Paras 99-117D of the Petition;*
- (f) *grant liberty to the Applicant to place on record relevant details and documents in relation to the final time and cost overrun caused due to the said force majeure and change in law events;*
- (g) *declare that the extra bays at Vadodara S/s do not fall within the scope of work of the Applicant under the TSA and the scope of work for the Applicant is limited to the scope under Schedule 2 of the TSA, Article 1.2 of the RFP and the transmission license of the Applicant;*
- (h) *In the alternative, in case the Applicant is directed to implement two extra bays at the Vadodara S/s, declare that the fresh requirement to implement the two extra bays at the Vadodara S/s is a change in law event under Article 12 of the TSA, entitling the Applicant to seek reimbursement of the additional expenditure incurred through an increase in tariff;*
- (i) *grant the Applicant ad interim/ ex-parte relief in terms of the prayers hereinabove; and*
- (j) *pass such other order(s) and/ or direction(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case."*

5. The Petition was heard on 11.11.2021. The relevant extracts of RoP for hearing dated 11.11.2021 are as follows:

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 2. *The learned senior counsel for the Petitioner submitted that the present Petition has been filed, inter alia, seeking compensation due to various force majeure and change in law events occurring during the implementation of its transmission project and seeking an extension to the Scheduled Commercial Operation Date ('SCOD') of the project in view of delay caused by various force majeure events, in terms of Article 11 and Article 12 of the Transmission Service Agreement dated 23.4.2019....*

...
 (b) *The Petitioner has filed IA No. 61/2021, inter alia, seeking in-principle approval of the various force majeure and change in law events and seeking declaration regarding scope of work of the Petitioner under the TSA.*

(c) *Regarding the scope of work, as per Clause 1.2 of the Request for Proposal (RfP) and Schedule 2 of the TSA, the Petitioner was required to implement only two 765 kV bays each at Lakadia sub-station and Vadodara sub-station for Lakadia-Vadodara 765 kV D/c transmission line. However, the Respondent, PGCIL vide its various e-mails/ letters to the*



Petitioner insisted that as per the annexure to clarification on RfP and TSA dated 30.5.2019, the Petitioner is required to provide three bays in each diameter of the transmission line. The Central Electricity Authority in the minutes of the meeting held on 16.3.2021 has suggested that the implementation of the extra bays is required at Vadodara sub-station as per the provisions of the RfP.

(d) Accordingly, the Petitioner has sought declaration as to its scope of work and in case the Petitioner is directed to implement the extra bays, it shall be entitled to claim reimbursement of the additional expenditure by way of an increased tariff, said event being a Change in Law event.

(e) The Petitioner has sought condonation of delay under various force majeure events. In addition, the Petitioner has sought condonation of 166 days of delay on account of delay in conducting the bidding process and transfer of the Special Purpose Vehicle (Petitioner company) to the selected bidder, namely, Sterlite Grid Limited. Thus, the Commission may consider granting extension for the aforesaid period at this stage. 3. After hearing the learned senior counsel for the Petitioner, the Commission observed that since the project of the Petitioner is still under implementation and is yet to achieve the commercial operation, the consideration of the Petitioner's request for extension of SCOD on account of force majeure events at this stage may be premature as there are uncertainties regarding likely COD of the project, quantification of extension, events of force majeure (their overlapping or occurrence of new events etc.) as already noted in RoP for the hearing dated 30.9.2021.

4. In response, the learned senior counsel for the Petitioner submitted that while certain reliefs/ prayers regarding determination of impact of various events may be considered by the Commission only after COD of its project, the Commission may consider the prayers of the Petitioner for in-principle declaration of force majeure events and change in law events at this stage. The learned senior counsel requested that the extent to which various prayers are to be considered by the Commission in the present case may be decided by the Commission after admission of the matter.

5. However, for the reasons already noted above, the Commission decided to admit the present Petition and IA only to the extent of the Petitioner's prayers relating to the in-principle declaration of the Change in Law events and its scope of work under RfP and TSA. For the remaining prayers, the Petitioner may approach the Commission after completion of its project.

6. In view of the above, the Commission ordered as under:

(a) Admit. (b) The Petitioner to serve copy of the Petition on the Respondents immediately, if not already served and the Respondents to file their reply on the prayers (h) and (m) only as detailed in the amended petition if any."

6. As per above, the Commission directed that since the project of the Petitioner is still under implementation and is yet to achieve the commercial operation, the consideration of the Petitioner's request for extension of SCOD on account of force majeure events at this stage may be premature as there are uncertainties regarding likely COD of the project,



quantification of extension, events of force majeure (their overlapping or occurrence of new events etc.) as already noted in RoP for the hearing dated 30.9.2021. It is observed that there is an issue raised by Petitioner with respect to scope of work. We observe that it is necessary to adjudicate the dispute regarding scope of work at this stage before COD of the project. Hence the Petition has been admitted only to the extent of the Petitioner's prayers relating to the scope of work under RfP and TSA and consequential change in Law, if any, and respondents were also directed to file their responses limited to these aspects only. Accordingly, the prayers (m) to (q) as noted at Paragraph 3 of this Order have been adjudicated upon in the instant Order. The petitioner is at liberty to file its claims under Force Majeure and Change in Law after COD of its project in accordance with law.

Submissions by the Petitioner

7. The Petitioner has submitted as follows:

a) The Petitioner is a special purpose vehicle ("SPV"), originally set up as a wholly owned subsidiary of PFC Consulting Limited ("PFCCL"), Respondent No. 5, with the objective of establishing the *"Transmission System for WRSS-21 (Part-B) Transmission System Strengthening for relieving over loadings observed in Gujarat Intra-state system due to RE injections in Bhuj PS"* ("Project") and to act as a Transmission Service Provider ("TSP") after being acquired by a successful bidder. The Petitioner is a transmission licensee under Section 14 of the Electricity Act, 2003 ("Act"). The Petitioner was granted a transmission license by the Central Electricity Regulatory Commission ("Commission") vide its Order dated 04.03.2020 in Petition No. 445/TL/2019. The Petitioner is now a wholly owned subsidiary of Sterlite Grid 18 Limited ("Sterlite").

b) Respondent No. 1, Adani Green Energy MP Limited is the Lead Long-Term Transmission Customer ("Lead LTTC"), who is permitted to represent all the Long-Term Transmission Customers ("LTTCs") and discharge their rights and obligations.



c) MoP vide its Notification dated 01.02.2019 notified PFCCL (Respondent No. 5) as the BPC for the purpose of selection of a bidder as the TSP to establish the Project through the TBCB process. The Project consists of the following elements [*Ref: Schedule 2 of the TSA*]:

S. No.	Name of the Transmission Element	SCOD
(i)	Lakadia–Vadodara 765 kV D/c line (“LV Line”)	31.12.2020
(ii)	330 MVAR switchable line reactors at both ends of Lakadia – Vadodara 765 kV D/c line along with 500 ohms NGR at both ends of Lakadia – Vadodara 765 kV D/c line (330 MVAR line reactor - 4 nos. & 765 kV Reactor bay - 4 nos.) (“Reactors”)	31.12.2020
(iii)	2 nos. of 765 kV bays each at Lakadia and Vadodara S/s for Lakadia – Vadodara 765 kV D/c line (765 kV line bay - 4 nos.) (“765 kV Bays”)	31.12.2020

The SCOD of the Project is 31.12.2020 (“Project SCOD”)

Note:

(a) *As per MoM of 3rd ECT held on 21.12.2018, it was decided that the scheme is to be implemented by December, 2020.*

(b) *POWERGRID to provide space for 2 nos. of 765kV line bays and space for 2 nos. of 330MVAR switchable line reactors and reactor bays at Vadodara (GIS) for Lakadia – Vadodara (GIS) 765kV D/c line.*

(c) *Developer of Lakadia S/s to provide space for 2 nos. of 765kV line bays and space for 2 nos. of 330MVAR switchable line reactors and reactor bays at Lakadia for Lakadia – Vadodara (GIS) 765kV D/c line.*

d) The BPC issued the Request for Qualification (“RFQ”) on 17.01.2019 for shortlisting bidders and calling them for participation in the next stage of bidding i.e., Request for Proposal (“RFP”). On 18.03.2019, RFP was issued to the shortlisted bidders, including Sterlite. Pursuant to being selected as the successful bidder for the implementation of the Project, Sterlite was issued the Letter of Intent (“LOI”) on 31.07.2019.

e) The Commission vide its orders dated 04.03.2020 and 05.03.2020 in Petition No. 445/TL/2019 and Petition No. 444/AT/2019 respectively, granted the transmission license to the Petitioner and adopted the competitively discovered levelized tariff.



f) The Petitioner has faced several uncontrollable impediments and challenges in the form of force majeure and change in law events.

g) PGCIL, Respondent No. 8 vide its emails dated 22.10.2020 and 28.10.2020, and letters dated 12.11.2020 and 24.11.2020 to the Petitioner has insisted that while the Petitioner is planning to install 2 nos. of bays at the Vadodara S/s, as per the SLD drawing titled "Bay allocation for Vadodara GIS -Lakadia PS 765 kV D/C Line at 765 kV Vadodara GIS Substation" attached as Annex-A to the Clarifications on RFP & TSA dated 30.05.2019 ("Clarification 1"), the Petitioner is required to provide 3 Nos. bays in each diameter of the line.

h) As per Article 1.2 of the RFP and Schedule 2 of the TSA, the Petitioner is inter alia required to implement 2 nos. of 765 kV bays each at the Lakadia S/s and Vadodara S/s for the LV Line, as part of the Project. The said provision and schedule also state that PGCIL is to provide space for 2 nos. of 765 kV line bays and space for 2 nos. of 330 MVAr switchable line reactors and reactor bays at Vadodara (GIS) for the LV Line.

i) Annex-A to Clarification 1 relied upon by PGCIL was issued in response to the queries raised by the bidders only to indicate the bay position, and not the scope of work. Such document cannot be relied upon to add to the express scope of work of the Petitioner under the RFP and TSA. The response of the BPC to the queries at S. No. 88 and 108 of Clarification 1 clarifies the same. To confirm its understanding on the scope of work, in its queries submitted before the BPC on 02.06.2019, Sterlite asked the BPC to confirm that reference to Annex-A is to be limited for understanding the take-off gantry location and orientation, and the number of bays under the scope shall be as per the RFP only. Along with this query, a drawing marking the 2 extra nos. of bays as 'Not in Scope' was also provided to the BPC for its confirmation. However, the BPC in its Clarification dated 14.06.2019 ("Clarification 2"), at S.No. 9 reiterated that the plan layout indicating the tentative position for line bay has been provided to the bidders.



j) On the same date i.e., 14.06.2019, the BPC has issued Amendment No. 2 to the RFP and TSA (“Amendment No. 2”) amending the scope of work to also include 1 no. 110 MVAR spare reactor. However, no amendment was made to increase the number of bays to be implemented at the Vadodara S/s.

k) The Petitioner vide its email dated 26.10.2020 informed PGCIL that the Petitioner is constructing two nos. of line bays at the Vadodara S/s, in line with the scope of work under the RFP and TSA, and that the additional scope of work mentioned by PGCIL is not within its scope of work.

l) PGCIL vide its letter dated 12.11.2020, sought intervention of the Central Electricity Authority (CEA) to resolve the issues in relation to the scope of work of the Petitioner.

m) In the CEA Meeting held on 16.03.2021, conducted with PGCIL, CTU, PFCCL and the Petitioner, it was deliberated if the implementation of three nos. of bays in each diameter where the D/c line would terminate is within the scope of the Petitioner. Sterlite clarified to the CEA vide its letter dated 02.04.2021 that the two extra nos. of bays at the Vadodara S/s are not within its scope of work as per the RFP and the TSA.

n) The minutes of the CEA meeting held on 16.03.2021, that were issued on 18.06.2021, did not completely record the stand of the Petitioner on the issue of additional scope of work. Further, the CEA in the said meeting erroneously suggested that the implementation of the two extra nos. of bays is required at the Vadodara S/s as per the RFP provisions. Therefore, the Petitioner vide its letter dated 05.07.2021 to the CEA reiterated its stand on each point raised by the stakeholders involved.

o) It was categorically pointed out that as per the scope of work under the RFP and TSA, 2 nos. of line bays are made with one Main bay & Tie bay in each diameter to comply with functional requirement of one and a half breaker switching scheme. The Petitioner pointed out that if such extra bays were required to be implemented for future use, the same should have been set out in the scope of work.

