

**Central Electricity Regulatory Commission  
New Delhi**

**Coram:  
Shri Gireesh B.Pradhan, Chairperson  
Shri A.K.Singhal, Member  
Shri A.S.Bakshi, Member**

**Date of Order: 2.9.2015**

**Petition No. 19/MP/2013**

**In the matter of**

Application under Section 79 (1) (c) read with Section 19 of the Electricity Act, 2003 for revocation of licence and for vesting of the project in the Central Transmission Utility.

**And**

**In the matter of**

Power Grid Corporation of India Ltd.  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon-122 001

**Petitioner**

**Vs**

1. North Karanpura Transmission Company Ltd.  
North Dwarka Depot, Near Sector 8 Metro Station,  
Sector-21, Dwarka, New Delhi-110075

2. Reliance Power Transmission Limited  
'H' Block, 1<sup>st</sup> Floor,  
Dhirubai Ambani Knowledge City,  
Navi Mumbai-400710

3. Maharashtra State Electricity Distribution Co. Ltd.  
Prakashgad, Bandra (East),  
Mumbai-400051

4. Dakshin Gujarat Viz Company Limited  
Manavarachha Road, Kapodara,  
Surat-395006, Gujarat

5. Madhya Gujarat Viz Company Limited  
Sardar Patel Vidyut Bhavan, Race Course,  
Vadodara-390007, Gujarat

6. Paschim Gujarat Viz Company Limited  
Laxminagar, Nanmava Main Road,  
Rajkot-3600014-Gujarat
7. Gujarat Urja Vikas Nigam Ltd.  
Sardar Patel Vidyut Bhawan, Race Course,  
Vadodara-390007, Gujarat
8. Uttar Gujarat Viz Company Limited  
Vish Nagar Road, Mensana-384001
9. Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan, Vidyut Nagar, Rampur,  
Jabalpur (MP)-482008
10. MP Poorva Kheshtia Vidyut Vitaran Company Limited  
Block No.-7, Shakti Bhawan,  
Jabalpur, Madhya Pradesh
11. MP Pachim Kheshtia Vidyut Vitaran Company Limited  
GPH Compound, Polo Ground,  
Indore-452015, Madhya Pradesh
12. MP Madhya Kshetra Vidyut Vitaran Company Limited  
Bijli Nagar Colony, Nishtha Parisar,  
Govindpura, Bhopal-462023 (MP)
13. MP Audoyukik Kendra Vikas Nigam Limited  
Free Press House, Ist Floor,  
3/54 Press Complex, A.B. Road,  
Indore-452008- Madhya Pradesh
14. Chhattisgarh State Power Transmission Co. Ltd  
Vidyut Seva Bhawan Parisar, Danganiya,  
Raipur-492013- Chhattishgarh
15. Goa State Electricity Department  
Vidyut Bhawan, Panaji,  
Goa-403001
16. Daman and Diu Electricity Department  
Administration of Daman and Diu,  
Near Satya Narayan Temple,  
Nani Daman-396230
17. Electricity Department

Administration of Dadra Nagar Haveli,  
Dadra Nagar Haveli UI,  
Silvassa-396230

18. Heavy Water Projects  
Department of Atomic Energy,  
Heavy Water Board, Vikram Sarabhai Bhawan,  
Anushakti Nagar, Mumbai-400 094

19. Jindal Power Limited  
Tamnar, Raigarh, Chhattisgarh-496001

20. Torrent Power Limited  
Torrent House, Opposite Ashram Road,  
Ahmedabad-380009

21. PTC India Limited  
2<sup>nd</sup> Floor, NBCC Tower,  
15 Bhikaji Cama Place,  
New Delhi-110066

22. Adani Power Limited  
Adani House, Plot No. 83,  
Institutional Area Secotr-32  
Guargaon-122001, Haryana

23. Rajasthan Power Procurement Centre  
Room No. 24, Vidyut Bhawan, Janpath,  
Jyoti Nagar, Jaipur-302005, Rajasthan

24. Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House Industrial Area,  
Jodhpur-342003, Rajasthan

25. Jaipur Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Janpath, Jyoti Nagar,  
Jyoti Marg, Jaipur- 302 005, Rajasthan

26. Ajmer Vidyut Vitran Nigam Ltd.  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer-305001, Rajasthan

27. BSES Yamuna Power Ltd.  
2nd Floor, B Block,  
Shakti Kiran Building,  
Near Karkardooma Court, New Delhi

28. BSES Rajdhani Power Ltd.

BSE Bhawan, 2nd Floor,  
B-Block, Behind Nehru Place Bus Terminal,  
Nehru Place, New Delhi

29. North Delhi Rajdhani Power Limited  
CENNET Building, 33 kV Sub-station Building,  
Hudson Lines, Kingway Camp,  
Delhi-110009

30. New Delhi Municipal Committee  
Palika Kendra Building,  
Opposite Jantar Mantar,  
Parliament Street, New Delhi-110001

31. Uttarakhand Power Corporation Limited  
Urja Bhawan, Kanwali Road,  
Dehradun-248001

32. Uttar Pradesh Power Corporation Limited  
Shakti Bhawan, 14 Ashoka Road,  
Lucknow-226001, UP

33. Pashimachal Vidyut Vitaran Nigam Limited  
Victoria Park, PIME  
Meerut-25001, UP

34. Poorvanchal Vidyut Vitaran Nigam Limited  
Hydel Colony, Bhikaripur,  
Varanasi, UP

35. Dakshinanchal Vidyut Vitaran Nigam Limited,  
Gailan Road, Agra, UP

36. Madhyanchal Vidyut Vitaran Nigam Limited  
4A, Gokhale Road, Lucknow, UP

37. Kanpur Electricity Supply Company Limited  
14/71 Civil Lines, Kanpur-208001, UP

38. North Central Railway  
Chief Electrical Distribution Engineer,  
North Central Railway,  
Allahabad, UP

39. Uttar Haryana Bijili Vitran Nigam Limited  
Vidyut Sadan, C-16, Sector 6,

Panchkula, Haryana

40. Dakshin Haryana Bijli Vitran Nigam Limited  
Vidyut Sadan, Vidyut Nagar,  
Hisar-125005, Haryana

41. Punjab State Electricity Board  
The Mall, Ablowal,  
Patiala-147001, Punjab

42. Power Development Department, J&K  
Civil Secretariat, Jammu-180001

43. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Shimla-171004

44. Electricity Department  
UT Chandigarh,  
Sector-9, Chandigarh

.....Respondents

**Petition No. 20/MP/2013**

**And  
In the matter of**

Application under Section 79 (1) (c) read with Section 19 of the Electricity Act, 2003 for revocation of licence and for vesting of the project in the Central Transmission Utility.

**And  
In the matter of**

Power Grid Corporation of India Ltd.  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon-122 001

**Petitioner**

**Vs**

1. Talcher II Transmission Company Limited,  
12<sup>th</sup> Floor, Building No. 10 B, DLF Cyber City,  
Gurgaon - 122002

2. Reliance Power Transmission Limited  
'H' Block, 1<sup>st</sup> Floor,  
Dhirubai Ambani Knowledge City,  
Navi Mumbai – 400710

3. Tamil Nadu State Electricity Board  
N.P.K.R.R, Maaligai, Electricity Avenue,

Anna Salai, Chennai – 600 002 Tamil Nadu

4. Eastern Power Distribution Company of Andhra Pradesh Limited  
P&T Colony, Seethammadhara  
Visakhapatnam – 530 030 AP

5. Southern Power Distribution Company of Andhra Pradesh Limited  
Srinivasa Kalyana Mandapam backside,  
Tiruchanoor Road, Kesvayana Gunta, Tirupati – 517 501

6. Central Power Distribution Company of Andhra Pradesh Limited  
6 -1 - 50, Corporate Office, Mint Compound,  
Hyderabad – 500 004, AP

7. Northern Power Distribution Company of Andhra Pradesh Limited  
Opposite NIT Petrol Pump,  
Chaitanyapuri Colony, Kazipet, Warangal – 506 004 AP

8. Power Company of Karnataka Ltd.  
Vikas Soudha, Bangalore 560 001, Karnataka

9. Bangalore Electricity Supply Company Limited  
K.R. Circle, Bangalore – 560001, Karnataka

10. Gulbarga Electricity Supply Company Limited  
Station Main road, Gulbarga – 585 102 Karnataka

11. Hubli Electricity Supply Company Limited  
Navanagar, P. B. Road, Hubli – 580 025 Karnataka

12. Mangalore Electricity Supply Company Limited  
Corporate Office, Paradigm Plaza, AB Shetty Circle,  
Mangalore – 575 001 Karnataka

13. Chamundeshwari Electricity Supply Company Limited  
97, L.J. Avenue, New Kanthraj Urs Road,  
Saraswatipuram, Mysore – 570 009, Karnataka

14. Kerala State Electricity Board  
Vydyuthi Bhavanam, Pattaom,  
Thiruvananthapuram – 695004, Kerala

15. Puducherry Electricity Department  
137, Nethaji Subhash Chandra Bose Road,  
Puducherry - 605001

16. GRIDCO Limited  
Janpath, Bhubaneswar – 751 022, Orissa
17. Central Electricity Supply Unit (CESU)  
2<sup>nd</sup> Floor, IDCO Tower, Janpath,  
Bhubaneswar (Rupali Square), Orissa
18. Western Electricity Supply Company Limited (WESCO)  
BURLA, Sambalpur - 768 017, Orissa
19. Southern Electricity Supply Company Limited (SOUTHCO)  
Behrampur, Ganjam – 760 004, Orissa
20. Northern Electricity Supply Company Limited (NESCO)  
Januganj, Balasore – 756 019, Orissa

**Parties Present:**

Shri M.G. Ramachandran, Advocate, PGCIL  
Ms. Anushree Bardhan, Advocate, PGCIL  
Shri Ramji Srinivasan, Senior Advocate, NKTCL & TTCL  
Shri Buddy A. Ranganathan, Advocate, NKTCL & TTCL  
Shri Aditya Panda, Advocate, NKTCL  
Shri Shikhai Bhardwaj, NKTCL & TTCL  
Shri Malavika Prasad, Advocate, NKTCL & TTCL  
Shri L.N. Mishra, NKTCL & TTCL  
Shri Naveen Nagpal, NKTCL & TTCL  
Ms. Rupin Rawat, NKTCL & TTCL  
Shri Rajiv Srivastava, Advocate, UPPCL  
Shri V.T. Patel, GUVNL  
Shri Alok Shankar, Advocate, TPDDL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Alok Shankar, Advocate, TPDDL

**ORDER**

The petitioner, Power Grid Corporation of India, has filed these petitions under Section 79 (1) (c) read with Section 19 of the Electricity Act, 2003 (Act) for revocation of the transmission licences granted to the respondents, North Karanpura Transmission Company Ltd. (NKTCL) and Talcher-II Transmission Company Limited (TTCL). Since

the prayers in both petitions are common, both petitions are disposed of through a common order.

### **Background of the cases**

2. Rural Electrification Corporation Transmission Projects Company Limited (RECTPCL) was appointed as the Bid Process Coordinator for selection of the Transmission Service Providers in accordance with Tariff Based Competitive Bidding Guidelines for Transmission Service issued by the Central Government under section 63 of the Electricity Act, 2003 (the Act) in respect of the following projects:

(a) Transmission System-System Strengthening in Northern Region for import of power from North Karanpura and other projects outside the Northern Region and System Strengthening in Western Region for import of power from North Karanpura and other projects outside the Western Region and also for power evacuation from projects within Western Region;

(b) Transmission Systems-Augmentation of Talcher-II Transmission System

For this purpose, North Karanpura Transmission Company Limited (NKTCL) and Talcher Transmission Company Limited (TTCL) were incorporated as Special Purpose Vehicles by Rural Electrification Corporation Transmission Projects Company to initiate the work on the projects and subsequently to act as Transmission Service Provider (TSP) after being acquired by the successful bidders. Based on the tariff based competitive biddings, Reliance Transmission Company Limited (RTCL) emerged as the successful bidder and Letters of Intent were issued to RTCL on 18.12.2009. TTCL and



NKTCL were acquired by RTCL on 27.4.2010 and 20.5.2010 respectively as its fully owned subsidiaries. NKTCL and TTCL also entered into Transmission Service Agreements with the Long Term Transmission Customers (LTTC) of the projects on 10.9.2009 after these companies were acquired by RTCL, the TSAs were deemed to have been signed by RTCL. Thereafter TTCL approached the Commission for adoption of transmission charges and grant of transmission licence and the Commission vide order dated 4.11.2010 in Petition No. 145/2010 adopted the tariff and vide order dated 8.11.2010 in Petition No. 146/2010 granted transmission licence to TTCL valid for a period of 25 years to discharge the functions as the Transmission Service Provider. The Commission vide order 13.9.2011 in Petition No.170/2011 adopted the tariff and vide order dated 22.12.2010 in Petition No.171/2010 granted transmission licence to NKTCL to discharge the functions as the Transmission Service Provider.

3. It is pertinent to mention that approval under section 68 of the Act for laying the overhead lines was accorded by Ministry of Power, Government of India to NKTCL on 8.12.2008. Similarly, approval under section 68 of the Act was accorded in favour of TTCL on 8.12.2008. As per the terms and conditions of the said approval, the works on the transmission projects were required to start within three years from the date of approval. NKTCL and TTCL also applied to Ministry of Power Government of India for authorization under section 164 of the Act on 9.11.2010 and the authorizations under section 164 of the Act were issued by Ministry of Power on 11.8.2011.

4. During the pendency of their requests for authorization under section 164 of the Act, NKTCL and TTCL filed Petitions No. 169/2010 and 170/2010 respectively seeking

extension of the date of commercial operation of the projects and escalation of input/capital cost related to the projects on the grounds of existence of force majeure events on account of (a) absence of the requisite authorizations under section 164 of the Act, (b) the risk of lapse of permission granted under section 68 of the Act, (c) the non-designation of the Sponsoring Authority under the Project Import Regulations for the purpose of availing concessional customs duty, (e) increase in cost of inputs after submission of the bids, (f) on the ground of change in law on account of enhancement of Excise Duty by the Central Government by notification dated 26.2.2010 issued by Department of Revenue on certain components such as steel, zinc, and aluminum etc. Additionally, the delay in adoption of tariff was claimed as a force majeure event in case of NKTCL.

5. The Commission vide orders dated 9.5.2013 disposed of both the petitions holding as under:

(a) Time taken for authorisation under section 164 of the Act is not a force majeure event and therefore, the petitioner cannot be granted any relief on this account.

(b) There is no basis for the petitioner's claim that the project costing and the tariff were predicated on availability of concessional Customs Duty. Ministry of Power clarified that it was not obligated under any provision to undertake any step for appointment of Sponsoring Authority. Therefore, there is no force majeure on this account.

(c) The petitioner was selected based on tariff based competitive bidding. There is no provision in the TSA to allow for the increase in the capital cost on account of increase in the cost of the material such as steel, zinc, iron etc. used for construction. Any increase or decrease in the capital cost has to be on the petitioner's own account.

(d) Increase in Excise Duty from 8% to 10% notified by the Central Government on 26.2.2010 was allowed by invoking "Change in Law" clause under the TSA with the caveat that any increase in excise duty during the period when the project is delayed for no genuine and permissible reason would not be admissible.

(e) Alleged delay in adoption of the transmission charges by this Commission is not a ground for invoking the Force Majeure clause as adoption of the transmission charges by the Commission was not a condition precedent for commencement of construction by the petitioner, either in terms of RFP or the TSA.

(f) The authorisation under section 164 of the Act was issued on 11.8.2011 before the expiry of the approval under section 68 of the Act on 7.12.2011 and the petitioner had sufficient time for commencement of the work.

(g) For extension of time for execution of the project, the petitioner was directed to approach the LTTCs in this regard who were also directed to consider the request of the petitioner and convey their approval within one month.

6. Aggrieved by the orders dated 9.5.2013, NKTCL and TTCL preferred Appeal Nos. 139 of 2013 and 140 of 2013 before the Hon`ble Appellate Tribunal for Electricity (Appellate Tribunal) with the following prayers:

"(a) Quash and set aside the Hon`ble CERC order dated 9.5.2013 under Petition No. 169/MP/2011

(b) Extend the COD of the project by giving clear working period of 30, 36, 42 months and compensating for reduction of "Revenue Earning Years";

(c) Granting such escalation of Input/Capital Costs as pleaded by the Appellant;

(d) Pass such other order(s) and directions as this Hon`ble Tribunal deems fit and appropriate in the facts and circumstances of the present case."

7. The Hon`ble Appellate Tribunal vide a combined judgment dated 2.12.2013 held as under:

"33. The basic question which arises is this: "if it was possible to erect a long transmission line, traversing over several kilometers over lands of thousands of persons, under Section 12 of 1910 Act or Section 67 of 2003 Act, then why did the legislature chose to provide Section 51 in 1910 Act or Section 42 in 1948 Act or Section 164 in 2003 Act to give power of a telegraph authority to a licensee or Board or generating company?. As per the cardinal principle of interpretation, each word, each Section provided in any statue must have some purpose.

34. Close scrutiny of the Section 51 of 1910 Act or Section 164 of 2003 Act would reveal that the powers of a telegraph authority can be conferred only for laying transmission line and not for distribution lines or mains. The legislature recognised the need for transfer of power from one part of the country to other parts. This was possible only by laying strong transmission system in the country (national grid) in quickest possible manner. Getting prior consent of each every land owner would only delay the process. In the larger public interest the legislature passed the Section 51 of 1910 Act, Section 42 of 1948 Act and Section 164 of 2003 Act. The issue of compensation to land owners has been addressed in these enactments.

.....  
36. In the light of the above discussion, we are of the view that the power of Telegraph Authority under Section 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government's approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.

37. In view of the above, the impugned orders are set aside. Both the Appeals are allowed. However, there is no order as to costs."

8. Aggrieved by the Appellate Tribunal's judgment dated 2.12.2013, GUVNL and MSEDCL have filed appeals before Hon`ble Supreme Court which are presently pending.

9. During the period when Petition No.169/MP/2011 and 170/MP/2011 were under consideration of the Commission, the petitioner, Power Grid Corporation of India Limited, in its capacity as Central Transmission Utility, filed Petition Nos. 19/MP/2013 and 20/MP/2013 seeking identical prayers. For the sake of brevity, the prayers made in Petition No.19/MP/2013 are extracted as under:

"(a) Initiate proceedings for revocation of licence under Section 19 of the Electricity Act, 2003 against the NKTCL and Reliance Power Transmission Limited;

(b) Pass orders directing the implementation of the project covered by the Transmission Service Agreement entered into with NKTCL to the Central Transmission Utility in the discharge of its functions under Section 38 of the Electricity Act, 2003 under the regulated tariff regime, the applicable tariff regulations for determination of tariff based on capital cost;

(c) Hold that the inter se rights and obligations of NKTCL and beneficiaries including on the damages, liquidated damages shall be settled amongst them with no effect or implication to the Power Grid;

(d) Pass such further order or orders as this Hon`ble Commission may deem just and proper in the circumstances of the case. "

10. The petitioner has submitted that these projects are of great significance in the context of it being related to the evacuation of power generated from the identified generating projects. At the time of tariff based competitive bidding process, the time line for completion of the projects was stipulated to enable such evacuation of power from the generating projects. Any time over-run of the project would lead to mismatch of the

generating projects and the transmission line being not available to evacuate the power causing serious and significant losses to the intended beneficiaries of the transmission projects. NKTCL and TTCL have not taken steps to complete the projects so far and have alleged change in law and force majeure as reasons justifying the extension of COD as well as grant of escalation of input/capital cost related to the projects.

11. The petitioner has submitted that NKTCL and TTCL have acted in violation of the provisions of the Act, the TSAs and Transmission Licence Regulations. Article 13.1 of the TSA provides for the event of default on the part of TSP which includes the abandonment of the project for a continuous period of 12 months and failure to commission any element of the project even after four months from the Scheduled COD. The transmission lines required to be established and commissioned by NKTCL and TTCL are critical for evacuation and transfer of power from various power projects and there is urgency for the completion of these projects. However, the transmission lines are still at design stage. In terms of Section 40 (1) of the Act, NKTCL and TTCL are bound to build the inter-State transmission systems awarded to them on the terms and conditions contained in the bidding documents and the TSAs and to provide access to the inter-State transmission system. Since NKTCL and TTCL have failed to comply with the provisions of the Act and the TSAs, licenses granted to them are liable to be revoked under Sections 19 of the Act. The petitioner has submitted that CTU in discharge of its responsibility assigned under Section 38 of the Act has brought this fact to the notice of Commission for issuing directions to take over the transmissions projects awarded to NKTCL and TTCL and place the projects under the control of PGCIL/CTU for building the transmission lines and sub-stations based on tariff

admissible under the Commission`s tariff regulations and based on capital cost plus tariff determination.

12. The respondents have filed their replies. The respondents other than NKTCL and TTCL have supported the contention of the petitioner and have submitted that if NKTCL and TTCL are not able to execute transmission projects without any further delay, the Commission may assign the work to the CTU and proceedings for revocation of licenses should be initiated against them under Section 19 of the Act.

### **Reply of NKTCL and TTCL**

13. NKTCL and TTCL in their replies dated 7.9.2013 have submitted that they have taken adequate steps such as detailed survey, tower design, required tax registration, initiation of application for authorization under Section 164 etc. after taking over the Special Purpose Vehicle (SPV).

14. NKTCL and TTCL vide their letter dated 24.2.2014 requested the Commission to accord consent to the following amendments to the TSA, which upon the Commission's consent, would be formalized into addenda to the said TSA so that appropriate proceedings may be initiated for fresh adoption of tariff:

"(a) The COD of the project to be extended by a clear working period of 30, 36 and 42 months of each element of the project from the date of renewal/revival of approval under Section 68 of the Electricity Act, 2003 and issuance of project import certificate as per Project Import Regulations, 1986. Accordingly, the commencement date of Contract Year under Schedule 6 of Transmission Service Agreement shall be shifted to be aligned with extended COD of the project.

(b) Enhancement of the Transmission Charges of the project as quoted under schedule 6 of the TSA is required to compensate the increase in cost/expenses on account of force majeure, inter alia, due to the following factors:

- (i) Increase in Hard cost reflecting the price escalation in material and labour.
- (ii) Extraordinary increase in compensation for RoW near Gurgaon (PG) sub-station. Under the project scope, new Gurgaon GIS is to be connected to existing PGCIL sub-station by installing 400 kV Quadruple conductor multi circuit towers. Survey of this stretch shows that land around existing PGCIL sub-station has been acquired by several bid real estate developers namely Unitech Tata, Vipul etc. and heavy real estate development is underway (This issue has also been recorded in CERC Record of Proceedings for 10th September 2013 in Petition No. 19/MP/2013 and 20/MP/2013). In view of this, it is estimated that the RoW for about 4.6 km (2.25 km residential land, 2.35 km agriculture land) may have to be compensated at the prevailing market price of land.
- (iii) Increase in interest rate which has double impact in terms of increase in capital cost due to increased IDC as well as increase in interest outgo.

The cumulative effect of the above factors is resulting in an increase in Transmission charges of 156% calculated till the date of above said order, subject to further revision with reference to the commencement date of the project, as per Section 3 (1) above."

15. In response to the above submission of NKTCL and TTCL, the Long Terms Transmission Customers (LLTCs) have not filed any response except UPPCL. UPPCL in its reply dated 1.7.2014 has submitted that since NKTCL has not indicated the time line for execution of the project, Power Grid may be allowed to take over the project.

16. CEA, vide Record of Proceedings for the hearing dated 27.5.2014, was directed to submit a detailed report and present status of the projects of NKTCL and TTCL. NKTCL and TTCL were also directed to submit the following information:

- (a) Exact status of the implementation of the projects at the ground level.
- (b) Concrete steps taken for execution of the projects.
- (c) Clear and unambiguous roadmap for future implementation of the projects along with clear time lines.



(d) Revised cost of the projects.

(e) To hold a meeting with the LTTCs within a period of three weeks to resolve the issues and file the outcome of the meeting before 26.6.2014.

17. CEA in its letter dated 3.3.2014 submitted that NKTCL and TTCL are yet to start the construction work of the projects.

18. NKTCL and TTCL vide their affidavits dated 11.7.2014 have submitted that persistent refusal of the beneficiaries to accept the Force Majeure event is a direct cause for the projects not having taken off. The bankers withdrew the financial sanction after the Section 164 authorization was received and since the dispute is pending between NKTCL and TTCL and the beneficiaries in the Supreme Court of India. Therefore, the question of undertaking any part of the implementation of the project at the ground level could not have arisen. It has been further stated that only ground raised in the petition for the revocation of the transmission licences is the alleged non-implementation of the project. The said proceedings are infructuous since judgment of APTEL dated 2.12.2013 against Appeal No. 139/2013 and 140/2013 held that force majeure was made out.

19. NKTCL and TTCL vide Record of Proceedings for the hearing dated 22.7.2014 were directed to hold a meeting with the LTTCs to resolve the issues and file the outcome of the meeting by 14.8.2014. In response, NKTCL and TTCL vide their affidavits dated 27.8.2014 have submitted that pursuant to the direction of the Commission, on 7.7.2014, notices were issued to all the LTTCs to attend the meeting

on 11.8.2014. However, only one LTTC, namely GUVNL attended the meeting in which the representative of GUVNL stated that GUVNL has already conveyed its views in this regard by letter dated 21.8.2013.

## CEA Report

20. CEA in its report dated 1.7.2014 has submitted as under:

“The Following transmission system had been agreed as part of the evacuation system for North Karanpura:

- i. North Karanpura-Gaya 400 kV D/C (Quad)
- ii. North Karanpura-Ranchi 400 kV D/C (Quad)
- iii. Sipat/Koarba (poolin)-Seoni 765 kV S/C
- iv. Lucknow-Bareilly 765 kV S/C
- v. Bareilly-Meerut 765 kV S/C
- vi. Agra-Gurgaon (ITP)-Gurgaon (PG) 400 kV D/C (Quad)
- vii. 2x500 MVA 400/220 kV sub-station at Gurgaon (ITP)

In the 29<sup>th</sup> meeting of the Standing Committee of Northern Region it was decided that even if the North Karanpura generation project of NTPC was delayed, the elements (iv) to (vii) of North Karanpura transmission system would be held in providing a strong inter-connection between Eastern and Northern Region and therefore, the implementation of these elements is delinked from North Karanpura generation project. As such non-implementation/delay of the transmission lines which was to be utilized for evacuation of surplus power of the Eastern Region and Open Access Application in the Eastern Region, would affect transmission of power from the Eastern Region up to load centers in the Northern Region.

(b) With regard to Talcher II Augmentation System, CEA has submitted as under:

(i) The following transmission system had been agreed as part of evacuation system for Talcher II Augmentation System:

- Talcher II - Rourkela 400 kV D/C (Quad) line
- Talcher II - Behrampur 400 kV D/C (Quad) line
- Behrampur - Gazuwaka 400 kV D/C line
- Lucknow -Bareilly 765 kV S/C
- 2x315MVA 400/220 kV substation at Behrampur

(ii) Power from Talcher-II STPS (2000 MW) having SR constituents as its beneficiaries is evacuated through Talcher-Kolar bi-pole HVDC line. Talcher-II Augmentation scheme has been planned as a backup transmission system to cater to

pole outage of HVDC line. Uncertainly in commissioning of Talcher-II augmentation scheme will affect the reliability of evacuation of power from Talcher-II STPS to SR.

(iii) In the event of non-implementation/delay of Behrampur-Gazuwaka line evacuation of power from the East Coast Energy generation project (1320 MW), that is under construction would not be possible.”

21. CEA in its further report dated 17.11.2014 has stated that these schemes need to be implemented without any further delay and completed as early as possible. CEA has further submitted that the scheme is essential and may not be discontinued, despite the fact that no physical work has yet been started on these transmission lines, since authorization under Section 164 was obtained by the developer in August, 2011.

Relevant portion of CEA`s report is extracted as under:

“6. Impact, if any, in the event of discontinuing with the scheme: As stated above, the scheme is essential and may not be discontinued. Any discontinuation of the scheme would involve a re-run of the system planning and approval process and consequent additional delay in the execution /completion. Impact of this would be that situation of unreliable system operation and increased congestion in transmission system would get prolonged for the further period till the required system is put in place. It is recommended that the scheme may not be discontinued.”

22. The petitioner vide its affidavit dated 22.9.2014 has submitted that the non-implementation of the works by NKTCL and TTCL is causing serious and adverse impact on the operation and maintenance of the integrated national grid. The petitioner has submitted that the scheduled commercial operation date of NKTCL has expired on 20.11.2013 and the Respondent No.1 is delaying the implementation of the project even after the matter relating to the grant of the status of telegraph authority has been settled by Appellate Tribunal for Electricity in its judgment dated 2.12.2013 in Appeal Nos. 139 & 140 of 2013. The petitioner has submitted that the entire integrated grid system operated and maintained by the petitioner has been seriously affected on account of non-availability of the transmission systems awarded to NKTCL and TTCL. The

petitioner has submitted that under the facts and circumstances of the cases, there is willful and prolonged default on the part of NKTCL and TTCL which is against the public interest. The petitioner has submitted that the liability for willful misconduct or deliberate default need to be carved out from the liability caps or liquidated damages in a contract so that the parties have unlimited liability for resulting losses. The petitioner has submitted that there is an urgent need to decide the future course of action on the implementation of the transmission system and further the action to be taken against the NKTCL and TTCL and the selected bidder.

23. KSEBL vide its affidavit dated 8.12.2014 has submitted that the present inter-regional transmission system between NEW Grid and SR Grid may not be sufficient for evacuating the power tied up/proposed to be tied up by the distribution utilities of the SR from the generators located in the ER/SR regions. The commissioning of the proposed Talcher II transmission system has great significance for relieving the inter-regional transmission constraints between the NEW grid and SR grid. The delay in commissioning of Talcher II Transmission system will greatly affect the import capability from the NEW grid to SR grid and hamper the possibility of evacuating power from the surplus regions. KSEBL has submitted that considering the urgency and the need for the execution of the work of augmentation of Talcher II Transmission System, the implementation of the project may be entrusted to the Central Transmission Utility for building the transmission lines at the risk and cost of TTCL. PSPCL in its affidavit dated 11.10.2014 has submitted that non-execution of the lines by NKTCL causes direct financial impact on NRLDC beneficiaries. For the 765 kV Balia Lucknow line, the non-execution of Lucknow Bareilly-Meerut section by NKTCL implies that full charges of

Balia Lucknow line will be paid while the benefit for which this line was envisaged will not be availed. PSPCL has further submitted that 765 kV Ring Main for Delhi/NCR viz. Agra-Jhattikalan-Bhiwani-Meerut-Agra cannot be fully loaded or utilized due to non-completion of Lucknow-Bareilly Meerut 765 kV line of NKTCL. PSPCL has submitted that NR beneficiaries have suffered losses due to non-execution of lines by NKTCL and any further delay will only accentuate the losses. Moreover, the security and reliability of network is compromised which will lead to lower loading and lesser utilization of PGCIL system due to the gaping discontinuities resulting from non-execution of NKTCL works. PSPCL has submitted that the only practicable approach at this stage is to cut the delays and cut the losses by entrusting the works to PGCIL which were not executed by NKTCL. MSEDCL in its affidavit dated 20.9.2014 has submitted that the construction of these lines would result into evacuation of power from the Eastern Region to Western Region. Since till date no progress has been recorded, evacuation of power from Eastern Region to Western Region would commence very late than expected in bid and thus evacuation would get affected very badly denying the LTTCs economical power from CGSs. MSEDCL has submitted that the basic objectives/stipulations such as timely investments, efficient and coordinated actions for timely completion have not been followed/achieved by NKTCL which is a sufficient and strong ground for cancellation of the licence granted to NKTCL. MSEDCL has further submitted that since security and reliability of the system overrides any commercial considerations, first priority should be given to the timely execution of the project and if the project lies with NKTCL, there would be unending delays. MSEDCL has submitted that in case the

project is not executed by NKTCL, then the project should be taken up by PGCIL in order to meet its statutory obligations under section 38(2)(c) of the Act.

24. NKTCL and TTCL were directed vide ROP for the hearing dated 18.11.2014 to submit (a) status of Section 68 of the Electricity Act, 2003; and (b) comments on the report submitted by CEA.

25. NKTCL and TTCL in their affidavits dated 1.12.2014 have submitted that the Ministry of Power, Government of India, vide its letter dated 8.12.2008, had accorded approval to the project under Section 68 of the Electricity Act, 2003 which was valid only till 7.12.2011. The approval expired on 7.12.2011 during the pendency of proceedings under Petition No. 169/MP/2011 before the Commission to decide on force majeure affecting the project. Prior to expiry of the Section 68 approval, NKTCL applied to MoP to extend the same which was refused vide letter dated 27.10.2011. Since then the banks have withdrawn their sanction on 8.9.2011 due to delay in implementation of the project. NKTCL and TTCL have submitted that they are facing difficulties to achieve financial closure. After the judgment of Appellate Tribunal for Electricity treating the delay in Section 164 as force majeure, they approached LTTCs for extension of the time for execution of the projects and enhancement in the tariff of the transmission system. NKTCL and TTCL have submitted that MoP vide letter dated 20.2.2014, sought comments from Central Electricity Authority. NKTCL and TTCL vide letter dated 21.3.2014 to MOP furnished the information as was sought in its letter dated 20.2.2014. NKTCL and TTCL have submitted that no further communication has been received from MoP regarding extension of approval under Section 68 of Act.

26. During the hearing of the petition on 9.12.2014, the learned counsel for the petitioner submitted that there has been no physical progress in the construction of the transmission line. Learned counsel submitted that CEA in its report dated 17.11.2014 has opined that the scheme needs to be implemented without any further delay and should be completed as early as possible. He further submitted that NKTCL and TTCL have failed to initiate any work even after obtaining the permission under Section 164 of the Act. Therefore, the transmission licenses granted to NTKCL and TTCL are liable to be revoked under Section 19 of the Act.

27. Learned senior counsel for the NKTCL and TTCL submitted that the delay in grant of the permission under Section 164 of the Act resulting in a force majeure event could not be considered a default on the part of NKTCL and TTCL. Learned senior counsel submitted that the issue of force majeure was finally decided on 2.12.2012 by the Appellate Tribunal. Aggrieved by ATE judgment, GUVNL and MSEDCL have filed an appeal before Hon`ble Supreme Court which is still pending for disposal. There is no stay on the operation of the judgment of the Appellate Tribunal. Once it is held that the petitioner was prevented from executing the project due to force majeure, the present petition has become infructuous. Learned senior counsel referred to the letter issued by SBI and submitted that the bankers withdrew the financial sanction after the Section 164 authorization was received by NKTCL and TTCL due to delay in implementation of the project. Therefore, the question of undertaking any part of the implementation of the project at ground level could not have arisen and NKTCL and TTCL are facing difficulties to achieve financial closure. None of the provisions of the Act justifying the grounds for revocation of licence have been made out. Section 19 (1) (a) of the Act

requires that there be the existence of a willful and prolonged default on the part of the licensee in doing anything required under the Act or the rules or regulations made thereunder. The delay in grant of the permission under Section 164 of the Act, resulting in a force majeure event could not be considered a default on the part of NKTCL and TTCL which had been upheld by ATE. Since, the judgment is in the favour of NKTCL and TTCL, the implementation of the project may be allowed to be carried out under revised cost and extension of time line. After the judgment of Appellate Tribunal of Electricity treating the delay in Section 164 as force majeure, NKTCL and TTCL approached LTTCs for extension of the time for execution of the projects and enhancement of the tariff of the transmission system. However, the LTTCs have rejected the proposal of NKTCL and TTCL. The information sought by MOP was furnished vide letter dated 21.3.2014. No further communication has been received from MoP regarding extension of approval under Section 68 of the Act. Under Clause 11.7 of the Transmission Service Agreement, NKTCL and TTCL are not to be held responsible for the non implementation of the transmission line since the performance of their obligation was prevented and hindered due to force majeure events.

28. Learned counsel for UPPCL submitted that that the transmission project is essential and may not be discontinued. Considering the bad power situation being faced by the State of Uttar Pradesh, it is necessary that PGCIL may be allowed to take over the project in the interest of beneficiaries. Learned counsel for the Maharashtra State Electricity Distribution Company Limited submitted that the transmission charges should not be increased. Learned counsel for TANGEDCO submitted that there is no issue with



regard to the extension of time for execution of the project. However, as regards the cost, the additional burden of increase in cost on the beneficiaries is not agreeable.

29. Learned counsel for the petitioner submitted that NKTCL and TTCL are still not working in a definitive manner in regard to the implementation of the transmission projects. The LOIs of the transmission projects were issued on 18.12.2009 and the Commission granted licence to NKTCL and TTCL on 22.12.2010 and 8.11.2010, respectively. The permission under Section 164 of the Act was also obtained on 12.8.2011. The effective dates of the transmission project were May, 2010 and April, 2010, respectively i.e. date of acquisition of Special Purpose Vehicle. Despite the above, there has been no physical progress in the construction of the transmission lines. The TSA provides for the scheduled COD for the commissioning of the transmission elements. Therefore, from the date of obtaining shares in the Special Purpose Vehicle i.e. 20.5.2010, the respondents were under an obligation to obtain all clearances. Learned counsel further submitted that NKTCL and TTCL served notice of force majeure on 14.6.2011. In terms of Article 11.5 of the PPA, the notice of force majeure needs to be given within 7 days as a pre-condition. Accordingly, even as per NKTCL and TTCL`s force majeure condition could commence only on 7.6.2011. The authorization under Section 164 was issued on 11.8.2011. The period from 7.6.2011 till 11.8.2011 could alone at the most be a period to be considered as to whether there was a force majeure event or not. Events prior to the issue of notice on 14.6.2011 of the existence for force majeure and after 11.8.2011 when the permission under Section 164 was granted cannot be counted for determination of the impact of force majeure. Learned counsel submitted that Section 68 permission requires NKTCL and TTCL to

commence work of overhead line within three years. The licensees could have commenced the work immediately after the grant of Section 164 authorization which was within the period of three years and could have avoided the lapse of the section 68 approval. In any event, NKTCL and TTCL did not apply of Section 68 authorization till January, 2014. Learned counsel submitted that the contention of NKTCL and TTCL that in view of the non-grant of Section 164, the lenders withdrew the financing facilities cannot be a defence. NKTCL and TTCL should have approached the lenders with Section 164 authorization. In any event, the non-availability of funds on account of lender's withdrawal is a clear case for revocation under Section 19 of the Act. Learned counsel submitted that the case of NKTCL and TTCL is covered under section 19 of the Act and the Commission may consider the proceedings under section 19(3) of the Act for revocation of licences of NKTCL and TTCL.

30. NKTCL and TTCL in their written submissions have submitted that the entire substratum of the petitioner's case is that NKTCL and TTCL have not performed their obligations under the transmission licence/TSA. The Appellate Tribunal's in its judgment dated 2.12.2013 in Appeal Nos. 138 and 139 of 2013 have held that by virtue of force majeure, NKTCL and TTCL were not obliged to perform their obligations under the TSA. The petitioner's request to the Commission for revocation of licence is virtually to sit in appeal over the judgment of the Appellate Tribunal. Since, the judgment of the Tribunal has been challenged before the Supreme Court, the Commission may not consider the present petition and await the judgment of the Supreme Court in the pending appeals. NKTCL and TTCL have further submitted that the petitioner has not made out any case

for revocation of the licence and therefore, the petitions filed by the petitioner deserve to be dismissed.

**Analysis and Decision:**

31. We have considered the submissions of the parties. NKTCL and TTCL have challenged the locus of PGCIL to file these petitions for revocation of licence. Therefore, the first question for consideration is whether the petitions filed by PGCIL for revocation of the transmission licences of NKTCL and TTCL are maintainable. The petitioner has filed the petitions under section 79(1)(c) read with section 19 of the Act. Section 79(1)(c) provides that the Central Commission shall discharge the function to regulate inter-State transmission of electricity. Section 19 of the Act provides as under:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely: -

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –

(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence;

or

(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or

any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.”

Under sub-section (1) of section 19 of the Act, if the Commission is satisfied upon making an enquiry that public interest so requires, it may revoke the licence in any of the cases enumerated in clauses (a) to (d) of the said sub-section after giving a notice of not less than three months stating the grounds for revocation and considering the cause shown by the licensee. The Commission instead of revoking the licence may permit the licence to remain in force subject to such other terms and conditions as it thinks fit to impose and any further terms and conditions so imposed shall be binding upon the licensee as if they were contained in the licence.

32. The Commission has granted the licence to NKTCL and TTCL to implement the transmission projects as mentioned in the respective Transmission Service Agreements within stipulated timeframes. Progress of the execution of the transmission projects for which licences have been granted has to be brought to the notice of the Commission so

that the Commission can form an opinion after making a proper enquiry whether the licensees are executing the transmission system as per the terms and conditions of the licence or not. In the Commission's view, Central Transmission Utility is the best suited agency to discharge this responsibility. Under Section 38 (2) (b) of the Act, PGCILCTU is required to discharge all functions of planning and coordination relating to the inter-State transmission system with various agencies including the licensees. Further under Section 38 (2) (c), CTU has been vested with the responsibility to ensure development of an efficient, coordinated and economical system of inter-State transmission lines for smooth flow of electricity from the generating station to the load centres. If there is lag in the implementation of inter-State transmission system by any licensee which affects the development of efficient, coordinated and economical system of inter-State Transmission lines, CTU has a statutory responsibility to bring the same to the notice of the Commission which is not only the Licensing Authority but also is vested with the wide powers to regulate inter-State transmission of electricity. In our view, CTU has discharged its responsibility under section 38 of the Act by bringing to the notice of the Commission about the non-execution of the transmission systems by NKTCL and TTCL which is affecting the efficient, coordinated and economical development of the inter-State transmission system. The information submitted by the petitioner in the petitions has been considered as the material for making further enquiry as to whether the cases of NKTCL and TTCL fall within the scope of any of the clauses under sub-section (1) of section 19 and whether it is in public interest to revoke their licences. To that extent, the petitions have served the purpose of providing the basis to the Commission for making

enquiry about the fitness of these cases for revocation licences under section 19 of the Act.

33. NKTCL and TTCL have further submitted that the Appellate Tribunal in its judgement dated 2.12.2013 in Appeal Nos. 139 and 140 of 2013 has held that by virtue of the force majeure, NKTCL and TTCL were not obliged to perform their obligations under the TSA and PGCIL is virtually requesting the Commission to sit in appeal over the judgement of the Appellate Tribunal. NKTCL and TTCL have further submitted that since the Appellate Tribunal's judgement is pending in appeal in the Supreme Court, the Commission be pleased not to consider the present petition and await the judgement of the Supreme Court. We are unable to agree with NKTCL and TTCL that the judgement of the Hon'ble Supreme Court should be awaited before taking a decision on the petition. There is no stay on the judgement of the Appellate Tribunal. Therefore, the projects need to be implemented by sorting out the commercial issues as per the provisions of the TSA in terms of the judgement of the Appellate Tribunal. As regards the submission of NKTCL and TTCL that as per the judgement of the Appellate Tribunal, NKTCL and TTCL were not obliged to perform their obligations under TSA, we have carefully gone through the judgement of the Appellate Tribunal in Appeal Nos.138 and 139 of 2013 and did not notice any such finding as claimed by NKTCL and TTCL. The issue framed by the Appellate Tribunal in the said appeals is as under:

“Whether the authorisation under Section 164 of the 2003 Act by the appropriate government to a Transmission Licensee conferring powers of the Telegraph Authority under Indian Telegraph Act 1985 for laying a Transmission Line is a necessary requirement, and failure of the appropriate government to issue such authorisation would amount to force majeure?”

34. After examining the said issue in detail, the Appellate Tribunal gave the following findings:

“36. To sum up: In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government’s approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.

37. In view of the above, the impugned orders are set aside. Both the Appeals are allowed. However, there is no order as to costs.”

It is apparent from the above finding of the Appellate Tribunal that the delay in obtaining the Central Government approval in conferring power of the Telegraph Authority shall be construed as force majeure. The consequence of the above findings will be available to the licensees in terms of the TSA for the period that the force majeure condition existed. NKTCL and TTCL were granted section 164 approval conferring the power of Telegraph Authority on 11.8.2011 and the force majeure condition ceased to exist with effect from that date. Therefore, NKTCL and TTCL cannot take the shelter of the Appellate Tribunal’s judgement not to execute the projects. Nowhere the Appellate Tribunal has recorded the finding that NKTCL and TTCL shall not be obliged to execute the projects even after grant of section 164 approval since NKTCL and TTCL were pursuing the remedy before this Commission or Appellate Tribunal. Similarly, pendency of the civil appeals before the Hon’ble Supreme Court without any specific directions cannot be a ground for not executing the projects.

35. As already stated, the consequence of the force majeure event will accrue in terms of the TSA.

“11.6 Duty to perform and duty to mitigate

To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

11.7 Available relief for a Force Majeure Event

Subject to this Article 11, (a) no party shall be in breach of its obligations pursuant to this Agreement except to the extent the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event; (b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.”

As per the above provisions of the TSA, an Affected Party is under the contractual obligations to continue to perform its obligations as provided in the TSA to the extent not affected by Force Majeure event. After the grant of section 164 approval, the force majeure event on account of delay in grant the powers of Telegraph Authority by the Central Government ceased to exist and therefore, NKTCL and TTCL were under obligations under the TSA to execute the projects. The TSA further provides that every party shall be entitled to claim relief for a Force Majeure event affecting its performance in relation to its obligations under the TSA.

36. NKTCL and TTCL vide their letter dated 24.2.2014 have requested the Commission to accord consent to the following amendments to the TSA which would be formalized into addenda to the TSA so that appropriate proceedings may be initiated for fresh adoption of tariff:

- (a) The COD of the project should be extended by a clear working period of 30, 36 and 42 months of each element of the project from the date of renewal/revival of approval under Section 68 of the Electricity Act, 2003 and issuance of project import certificate as per Project Import Regulations, 1986.



(b) The commencement date of Contract Year under Schedule 6 of Transmission Service Agreement shall be shifted to be aligned with extended COD of the project.

(c) Transmission Charges of the project as quoted under schedule 6 of the TSA is required to compensate the increase in cost/expenses on account of force majeure, inter alia, due to the following factors:

- (i) Increase in Hard cost reflecting the price escalation in material and labour.
- (ii) Extraordinary increase in compensation for RoW near Gurgaon (PG) sub-station. Under the project scope, new Gurgaon GIS is to be connected to existing PGCIL sub-station by installing 400 kV Quadruple conductor multi circuit towers. It is estimated that the RoW for about 4.6 km (2.25 km residential land, 2.35 km agriculture land) may have to be compensated at the prevailing market price of land.
- (iii) Increase in interest rate which has double impact in terms of increase in capital cost due to increased IDC as well as increase in interest outgo.

(d) The cumulative effect of the above factors is resulting in an increase in Transmission charges of 156% calculated till the date of above said order,

subject to further revision with reference to the commencement date of the project.

37. NKTCL and TTCL have sought approval of the Commission for upfront revision of tariff on account of several factors which will be formalised through a process of fresh adoption of tariff. The above compensations claimed by NKTCL and TTCL are not acceptable to the Long Term Transmission Customers. The Commission does not intend to go into the claims of NKTCL and TTCL at this stage as without completion of the works on the projects, the exercise would be futile. Moreover, NKTCL and TTCL's efforts to link the CoD of the projects with the grant of section 68 approval and issue of Project Import Certificate as per Project Import Regulations only adds to the uncertainty of the commitment on the part of NKTCL and TTCL. It is also pertinent to mention that the prayer of NKTCL and TTCL for directions to the MoP for issue of Project Import Certificates has been rejected by the Commission in its order dated 9.5.2013. This issue has neither been raised by NKTCL and TTCL in the appeals nor any finding on this point has been rendered by the Appellate Tribunal.

38. Central Electricity Authority has clearly indicated that the projects awarded to NKTCL and TTCL are critical for transmission of power. With regard to transmission system for which licence has been granted to NKTCL, CEA has stated that non-implementation/delay of the transmission lines which are to be utilized for evacuation of surplus power of the Eastern Region and Open Access Applications in the Eastern Region, would affect transmission of power from the Eastern Region up to load centers in the Northern Region. As regards the transmission systems for which licence has

been granted to TTCL, CEA has stated that power from Talcher-II STPS (2000 MW) having SR constituents as its beneficiaries is evacuated through Talcher-Kolar bi-pole HVDC line. Talcher-II Augmentation scheme has been planned as a backup transmission system to cater to pole outage of HVDC line. Uncertainly in commissioning of Talcher-II augmentation scheme will affect the reliability of evacuation of power from Talcher-II STPS to SR. The respondent beneficiaries such as PSPCL, MSEDCL, KSEBL, TANGEDCO and UPPCL have also emphasised the necessity and criticality of these transmission lines. In our view, implementation of these strategically important projects cannot be held hostage to the contractual disputes between NKTCL/TTCL and the LTTCs. Public interest requires that there is finality and clarity with regard to implementation of these projects.

39. The Commission has therefore decided to give a final chance to NKTCL and TTCL to submit their firm commitment and action plan to implement the transmission projects within a period of 15 days from the date of issue of this order taking into consideration the following:

(a) Since transmission licences have been granted, tariff has been adopted and section 164 approvals have been granted, NKTCL and TTCL shall confirm that they would implement the projects within a period of 30 months counting from 1.10.2015.

(b) NKTCL and TTCL shall approach the MoP for issue of section 68 notification within a period of 15 days and if approached, MoP is requested to issue the

section 68 approval at the earliest keeping in view the timeline for implementation of the projects.

(c) NKTCL and TTCL shall be entitled to relief as per the TSAs on account of force majeure for the delay in grant of powers of Telegraph Authority by the Central Government as decided by the Appellate Tribunal for Electricity. The exact quantification of the relief will be done after execution of the projects and on production of documentary evidence with regard to cost escalation attributable to such force majeure events.

(d) There will be no upfront revision of tariff as it will be against the principle of discovery of tariff through competitive bidding. The affected party is required to be compensated for the force majeure event which can be worked out after the exact impact is known after the execution of the project.

(e) No petition for revision of tariff shall be entertained except in cases of force majeure events or change in law which are permitted under the TSA.

(f) The above affidavit shall be made without any conditions. In case any condition is attached, it will be presumed that NKTCL and TTCL are not interested to implement the projects.

40. In case NKTCL and TTCL find the above conditions not acceptable, the Commission would expect NKTCL and TTCL to make applications or submit consent on affidavit within a period of 15 days from the date of issue of this order for revocation of licences under sub-section (2) of section 19 of the Act. It is pertinent to note that

uncertainty in implementation of these projects which are already delayed will be against the interest of consumers and public interest requires that some other project developers implement the projects in accordance with the Transmission Licence Regulations and the Tariff Policy.

41. In the event, no reply is received from NKTCL and TTCL for implementation of the projects or no application/consent under sub-section (2) of section 19 is received within 15 days of the issue of this order or such longer period as the Commission may permit, it will be considered that NKTCL and TTCL are not interested to execute the projects and necessary action will be initiated for revocation of licence after following the procedure in terms of sub-section (3) of section 19 read with Regulation 20 of the Transmission Licence Regulations.

42. CTU has prayed for revocation of the licences of NKTCL and TTCL and for vesting the responsibility of development of the transmission system with the CTU in view of the criticality of the transmission lines. In view of our decision in paras 39 to 41 of this order, no direction is required to be issued on the prayers of CTU.

43. Petition Nos.19 of 2013 and 20 of 2013 are disposed of in terms of the above.

sd/-  
**(A.S. Bakshi)**  
Member

sd/-  
**(A.K.Singhal)**  
Member

sd/-  
**(Gireesh B.Pradhan)**  
Chairperson