

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 43/MP/2016**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of order: 21<sup>st</sup> September, 2016**

**In the matter of**

Petition under Section 79 (1) (f) read with Section 79 (1) (c) of the Electricity Act, 2003.

**And**

**In the matter of**

RAPP Transmission Company Limited  
C-2, 2nd Floor, The Mira Corporate Suites”1 & 2 Ishwar Nagar,  
Okhla Crossing, Mathura Road,  
New Delhi-110065

..... **Petitioner**

**Vs**

1. Power Grid Corporation of India Limited  
Central Transmission Utility,  
B-9 Qutab Institutional Area, Katwaria Sarai,  
New Delhi-110 016
2. U.P. Power corporation Limited  
14th Floor, Shakti Bhawan Extension Building,  
14, Ashok Marg, Lucknow-226 001 U.P
3. AD Hydro Power Limited  
Bhilwara Towers,  
A-12, Sector-1, Noida-201301, U.P
4. Haryana Power Purchase Centre  
Shakti Bhawan, Energy Exchange,  
Room No 302, 2<sup>nd</sup> Floor, Sector 06,  
Panchkula- 134109

5. Punjab State Power Corporation Ltd.  
D-3 Shakti Vihar, PSPCL Patiala -147001
6. Himachal Sorang Power Pvt. Limited  
Ashirwad Building, D-7, Sector- I,  
Lane-1, 2nd Floor, New Shimla,  
Shimla- 171009, Himachal Pradesh
7. Adani Power Limited  
4<sup>th</sup>Floor, Achalaraj, Opposite to mayor's Banglow,  
Law Garden, Ahemdabad, Gujarat-380006
8. Jaipur Vidyut Vitran Nigam Limited  
Shed No. 5/5, Vidyut Bhawan,  
Janpath, Jyoti Nagar, Jaipur-302 005
9. Ajmer Vidyut Vitran Nigam Limited  
Shed No.5/5, Vidhyut Bhawan, Janpath,  
Jyoti Nagar, Jaipur-302 005
10. Jodhpur Vidyut Vitran Nigam Limited,  
Shed No.5/5, Vidhyut Bhawan,  
Janpath, Jyoti Nagar, Jaipur-302 005
11. Lanco Anpara Power Limited  
Plot No 397, Udyog Vihar, Phase 3,  
Gurgaon-122016 (Haryana)
12. Lanco Green Power Pvt. Limited  
Plot No. 397, Udyog Vihar, Phase-III,  
Gurgaon-122016 (Haryana).
13. Power Development Department, Govt. of J&K,  
Srinagar, Bemina Complex Srinagar-190018.
14. North Central Railway  
Allahabad, DRM office, Nawab Yusuf Road,  
Allahabad-211 001
15. Jaiprakash Power Ventures Limited  
A Block, Sector-128, Noida-201304 (Uttar Pradesh)
16. BSES Yamuna Power Limited  
2nd Floor, B Block, Shakti Kiran Building,  
Near Karkadooma Court, New Delhi-110092

17. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019
18. Tata Power Delhi Distribution Limited  
33 KV S/station Building, Hudson Lane,  
Kingsway Camp, New Delhi-110009
19. New Delhi Municipal Corporation  
Room No.-1706, Palika Kendra, Sansad Marg,  
New Delhi-110001
20. UTC-Chandigarh  
Div-11, Opposite Transport Nagar,  
Industrial Ph-I, Chandigarh-160011
21. PTC (Budhil), PTC India Limited  
2nd Floor, NBCC Tower,  
15, Bhikaji Cama Place, New Delhi- 110 066
22. PTC (Everest), PTC India Limited  
2nd Floor, NBCC Tower, 15, Bhikaji Cama Place,  
New Delhi-110 066
23. Uttaranchal Power Corporation Limited, Urja Bhawan,  
Kanwali Road, Near Balli Wali Chowk,  
Dehradun-248001
24. Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla-171 001
25. Power Grid Corporation of India Limited  
HVDC Dadri, "Saudamini" Plot No-2,  
Sector-29, Gurgaon 122 001 (Haryana)
26. Power Grid Corporation of India Limited  
HVDC Rihand, "Saudamini" Plot No-2,  
Sector-29, Gurgaon 122 001 (Haryana)
27. Rajasthan Atomic Power Project  
7 & 8 Unit, Nuclear Power Corporation of India Limited  
Rawatbhata, P.O. Anushakti, Via Kota,  
Rajasthan-323 303

.....Respondents

**The following were present:**

Shri Sitesh Mukherjee, Advocate, RAPP  
Shri Gautam Chawla, Advocate, RAPP  
Shri Deep Rao, Advocate, RAPP  
Shri Pulkit Sharma, Advocate, RAPP  
Shri T.A.N Reddy, RAPP  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri Aryaman Saxena, PGCIL  
Ms. Manju Gupta, PGCIL  
Shri Sandeep Sarwate, NPCIL  
Shri Sanjay Patidar, NPCIL

**ORDER**

M/s Sterlite Grid Limited (SGL) was selected based on the international tariff based competitive bidding to execute transmission system “Part ATS of RAPP U-7 & 8 in Rajasthan” (hereinafter referred to as “Transmission system”) on ‘Build, Own, Operate and Maintain’ (BOOM) basis and to provide transmission service to the Long term Transmission Customers of the project, comprising the RAPP- Shujalpur 400 kV D/C transmission line.

2. Letter of Intent (LOI) was issued by PFC Consulting Limited as the Bid Process Coordinator (BPC) to SGL on 17.9.2013. SGL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent and acquired the RAPP Transmission Company Limited (RTCL) as its fully owned subsidiary. RTCL entered into the Transmission Service Agreement with Long Term Transmission Agreement on 22.12.2015. RTCL approached the Commission for grant of transmission licence in Petition No. 67/TL/2014 and adoption of tariff of the transmission system in Petition No. 66/TT/2014. The Commission in its order dated 23.7.2014 in Petition No. 66/TT/2013 has adopted the tariff of the transmission system and in order dated 31.7.2014 in

Petition No. 67/TL/2014 has granted licence to RTCL for inter-State transmission of electricity.

**Case of the Petitioner:**

3. The petitioner has submitted that the following facts have led to filing of this petition:

- (a) The scheduled date of commercial operation of the transmission system was February 2016. However, the petitioner declared the commercial operation of the transmission line on 26.12.2015.
- (b) As per the Government of India, Ministry of Power's order dated 15.7.2015 titled "Policy for Incentivizing Early Commissioning of Transmission Projects" ("**MOP Order**"), the petitioner is entitled to the payment of monthly transmission charges from the date of commercial operations ("**COD**") even if it is in advance of the scheduled date of commercial operation ("**SCOD**") under the TSA.
- (c) As per Schedule 3 of the TSA, no other transmission elements were pre-required before the commissioning of the project. Therefore, since there are no pre-required elements named in the TSA, the TSA in effect allows for the petitioner to be paid transmission charges as soon as it commissions the project.

- (d) As per Article 6.2.1 of the TSA, an element of the project is required to be declared to have achieved COD seventy two hours following the connection of the element with the inter-connection facilities or seven days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP. The petitioner has met the requirement of CoD prescribed in the TSA.
- (e) Based on a combined reading of the definition of COD, Article 6.1.2 and Schedule-3 of the TSA, it is amply clear that the Petitioner is entitled to declare COD as soon as the Project is completed as there are no pre-required elements specified under Schedule 3.
- (f) The Project was intended to be connected with bays at either end to be constructed by the Nuclear Power Corporation of India Limited (**NPCIL**) and by Power Grid Corporation of India Limited (**PGCIL**). However, no bays were ready as on 26.12.2015. PGCIL completed its bays only by February, 2016 and NPCIL is yet to commission its bays.
- (g) The petitioner vide its letter dated 20.7.2015 informed PGCIL and NPCIL that the Project would be ready for charging by 15.11.2015 and requested PGCIL and NPCIL to make the inter-connecting elements ready in all respects for charging and making the Project operational. The said letter dated 20.0.2015 was also endorsed to the Commission, CTU, CEA, Western Regional Load Dispatch Centre and Northern Regional Load Dispatch Centre.

- (h) The petitioner vide its letter dated 30.7.2015 informed the LTTC's including the Lead LTTC, namely, U.P. Power Corporation Limited that in light of the MOP Order, the petitioner intended to commission its transmission element before February, 2016 so as to avail of its entitlement under the MOP order to receive transmission charges from the date of actual COD which would be prior to February, 2016.
- (i) LTTCs did not object to the petitioner's proposal to advance the date of SCOD of the project to a date before February, 2016. Accordingly, the petitioner proceeded to hasten construction activity on the Project.
- (j) The petitioner regularly apprised the LTTCs of the construction progress of the Project. However, at no stage did any of the LTTCs raise any objection to the RTCL's proposal made vide letter dated 30.5.2015 to commission the Project in advance of the SCOD.
- (k) PGCIL, vide its letters dated 18.8.2015 and 4.11.2015 acknowledged that the petitioner was going to commission the Project ahead of schedule. PGCIL specifically informed RTCL that PGCIL was making all efforts to make the 400 KV Bays at Shujalpur ready for commissioning by December, 2015 to match the completion of the Project. In response, the petitioner vide its letter dated 6.11.2015 reiterated the fact that construction activities were in full swing and RTCL was expected to commission the Project by the end of November, 2015.

- (l) The Project was ready to be commissioned well in advance of the SCOD of February, 2016. Accordingly, CEA vide its letter dated 18.12.2015 accorded its approval under Regulation 43 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 for energization of the Project.
- (m) The petitioner vide its letter dated 18.12.2015 informed all the stakeholders that it had declared deemed COD on 26.12.2015 and would be entitled to the incentive as per the order of Ministry of Power with effect from 26.12.2015.
- (n) The petitioner is entitled to receive transmission charges as set out in the TSA 2015 with effect from 26.12.2015. The transmission charges became due and payable on a monthly basis for the period starting from 26.12.2015. The petitioner vide its letters dated 25.9.2015 and 13.11.2015 submitted the details of YTC to POSOCO for the period from October, 2015 to December, 2015 and January, 2016 to March, 2016 respectively. However, the RTCL has not received any transmission charges as on date.
- (o) Non-payment of transmission charges to the petitioner is in violation of the MoP Order and the terms of the TSA 2013, the TSA 2015 and the RSA. It is also contrary to the provisions and objective of the Competitive Bidding Guidelines and the National Electricity Policy and the Electricity Act, 2003.

The MoP, vide its letter dated 3.2.2016, has appreciated the effort of the RTCL in completing and commissioning the Project two months ahead of February, 2016.

4. Against the above background, the petitioner has made the following prayers to:

“(a) Direct the CTU to disburse payment of transmission charges to the RAPPTCL for the period starting from 26.12.2015 under the Transmission Services Agreement dated 22.12.2015 and the Revenue Sharing Agreement dated 23.12.2015 read with Transmission Services Agreement dated 24.07.2013 and Order dated 15.07.2015 issued by the Ministry of Power entitled "Policy for Incentivizing Early Commissioning of Transmission Projects".

(b) Pass such other orders that this Hon'ble Commission deems fit in the interest of justice.”

5. The petition was admitted on 31.3.2016 and notices were issued to the respondents to file their replies. None of the LTTCs has filed reply to the petition.

6. Nuclear Power Corporation of India Limited (NPCIL) vide its affidavit dated 18.4.2016 has submitted that the associated transmission system for RAPP-7&8 (2X700 MW) was approved in the 29<sup>th</sup> Standing Committee meeting of the transmission planning for NR held on 29.10.2010 with commissioning schedule of December 2016. NPCIL has further submitted that in the 31<sup>st</sup> meeting of the Standing Committee held on 2.1.2013, the construction schedule for RAPP-Shujalpur 400 kV double circuit lines was delinked with RAPP-7&8 generation to strengthen West-North inter-connection of the regional grids. In the said meeting, RRVPNL had opined that RAPP Kota area was already experiencing high voltage and addition of new lines without generator would further aggravate the high voltage problem at RAPP site to which PGCIL clarified that 50 MVAR line reactors had been proposed at both ends of 400 kV RAPP-Sujalpur D/C

line and the line would be adequately compensated. It was decided that line reactor at Shujalpur and bays for termination of line at Shujalpur end would be taken up by PGCIL and reactor and bays at the termination of line at RAPP end would be in the scope of NPCIL. NPCIL has submitted that the construction of 400 kV switchyard bays was taken up by NPCIL on priority basis and erection of the bus bars and equipment in the 400 kV bays have been completed in the month of February 2016. NPCIL has further submitted that there was no agreement between NPCIL and RAPP Transmission Company to prepone the scheduled completion date of bay works for charging the RAPP-Shujalpur lines.

7. Power Grid Corporation of India Ltd. (PGCIL) in its reply dated 27.5.2016 has submitted as under:

(a) As per the TSA entered into on 24.7.2013 with LTTCs, PGCIL had been entrusted with the construction of bays at the Shujalpur end of the subject transmission line. Similarly, the bays at the generating station end of the line were being constructed by NPCIL. The petitioner vide its letter dated 20.7.2015 informed NPCIL to make the sub-station ready in all respect like installation of Wave Trap, PLCC, Line Reactor and other equipment required for successful charging off line and making operational of the same by November, 2015.

(b) The petitioner vide its letter dated 30.7.2015 citing the Ministry of Power order dated 15.7.2015 informed PGCIL that it was intending to connect its element 400 kV D/C RAPP to Shujalpur line by 30.11.2015. In response, the petitioner was informed by PGCIL that PGCIL would make its best efforts for the same, to the

extent feasible. The petitioner was further informed that coordination with M/s NPCIL for preponement of bays at RAPP end also shall be taken up to arrive on a mutually agreed date among NPCIL, PGCIL and RAPP Transmission company Ltd. PGCIL further informed the petitioner that the availability of line bays at both ends in a matching time frame is a pre-requisite for the charging and utilization of the above line.

(c) PGCIL had sought the petitioner to coordinate a mutually acceptable date of early commissioning with NPCIL, PGCIL and RAPP. However, no information was received from the petitioner in this regard. Therefore, requirement of deciding a mutually agreed date with CTU and LTTCs and the Generator, as required in the TSA, for shifting of COD was not met. PGCIL went ahead on the basis of the scheduled COD as per the TSA and the said bays at Shujalpur end were ready as of February 2016 as per the Scheduled COD prescribed in Schedule 3 of the TSA.

(d) The issue of payment of transmission charges for the subject transmission line on and from the date of its deemed COD was discussed in the first meeting of Validation Committee for the period 1.4.2016 to 30.6.2016 for implementation of the Sharing Regulations held on 16.3.2016. In the said meeting, it was categorically recorded that there was no power flow on the petitioner's transmission line, and that the transmission charges can only be disbursed pursuant to the completion/installation of switchyard at RAPP end and subsequent power flow. The transmission capacity of RAPP-Shujalpur 400 kV

transmission line has not been included in the YTC of Q1 of 2016-17 on account of non-completion of the bay at RAPP end.

(e) PGCIL commissioned its bays at Shujalpur end as per the scheduled COD. Early commissioning or preponement of scheduled COD to December 2015 from February 2016 should be mutually agreed between the parties. Since the issue of non-inclusion of the RAPP-Shujalpur 400 kV transmission line was decided in the Validation Committee, the disbursement of the transmission charges to the petitioner is beyond control of PGCIL.

8. The petitioner in its rejoinder dated 20.6.2016 to the reply of PGCIL has submitted as under:

(a) The Project is designed to be connected to bays at the Shujalpur end to be commissioned by PGCIL and bays at the Rajasthan Atomic Power Project ("RAPP") to be commissioned by NPCIL. PGCIL commissioned the bays at the Shujalpur end in February, 2016 while NPCIL has still not commissioned the bays at the RAPP end. In fact, NPCIL has stated in its affidavit dated 18.4.2016 that the said bays would not be commissioned before October, 2016 which is 8 months later than the SCOD and approximately 10 months later than the COD of the Project. The petitioner should not be left at the mercy of NPCIL and PGCIL for their contractual and legal entitlement to receive transmission charges in accordance with the MoP Order. Such conduct of NPCIL and PGCIL in delaying the commissioning of the Project's interconnecting elements in disregard to the MoP Order amounts to NPCIL and PGCIL taking advantage of their own wrong.

(b) Reply filed by PGCIL is wrong and misconceived as it proceeds on the premise that the petitioner is entitled to receive transmission charges only from the date on which both inter-connecting elements of the Project are commissioned. If PGCIL's view is to be accepted, the MoP Order could hardly if at all be implemented. Such a position not only renders the MoP Order a nullity but is also contrary to the express provisions of the TSA. MoP Order was issued with the objective of incentivizing early commissioning of transmission projects. MoP Order nowhere provides that the incentive contemplated thereunder is subject to the mutual agreement of parties to commission a transmission line prior to SCOD. PGCIL nowhere in its reply has denied the validity or applicability of the MoP Order in respect of the petitioner, the LTTCs and PGCIL.

(c) If the implementation of the MoP Order were contingent on the mutual agreement between parties it would undoubtedly be set to naught as parties such as NPCIL who have unduly delayed the commissioning of an interconnecting element would never agree to advance the SCOD. Therefore, MoP Order is squarely applicable to CTU, PGCIL, NPCIL and all LTTCs, and their consent is not required to render the MoP Order enforceable against them. It is a settled principle of law that a party cannot be permitted to take undue and unfair advantage of its own wrong to gain a favourable interpretation of law. It is a sound principle that who prevents a thing from being done shall not avail himself of the non-performance so occasioned. Therefore, the petitioner is entitled to receive transmission charges with effect from the date of the commissioning of the transmission line i.e. 26.12.2015 onwards.

(d) The petitioner as a licensee under Section 14 of the Electricity Act, 2003 is not vested with the power to plan and co-ordinate the commissioning of transmission elements connected to its Project. The petitioner is not empowered under the TSA and the Transmission License Regulations to either (i) plan/coordinate the commissioning of inter-connecting elements, or (ii) exercise any control over NPCIL or PGCIL in commissioning the interconnecting bays. The petitioner undertook its best efforts to commission the Project before February 2016, and is now being penalized without any fault on its part.

(e) Central Transmission Utility has the statutory imperative under the Act to plan and co-ordinate the establishment and operation of transmission systems in the country. The MoP Order, being statutory in nature, is applicable to PGCIL and it ought to have taken steps to facilitate the early commissioning of the Project. However, it is apparent from the record that no such steps were taken. Under the extant regulatory framework and the contracts, the petitioner is neither responsible nor empowered to effectuate "mutual agreement" between NPCIL and PGCIL for early commissioning of the Project's interconnecting elements.

(f) Since, PGCIL has itself admitted and accepted the applicability of the MoP Order, therefore, the TSA stands amended by virtue of the MoP Order and the petitioner is entitled to receive transmission charges from the date of its actual COD i.e. 26.12.2015.

(g) All the LTTCs including PGCIL agreed to the advancement of the SCOD from February, 2016 to the actual COD under the TSA as contemplated in the MoP

Order by consciously choosing not to object to such advancement. In the absence of any objections, the petitioner hastened the commissioning of the Project and achieved COD with effect from 26.12.2015. Even at this point none of the parties objected to the early commissioning of the Project. Indeed, NPCIL and PGCIL have for the first time objected to the petitioner's entitlement to receive transmission charges for the first time after the captioned petition was filed. Therefore, the said objections are nothing but an afterthought to disentitle the petitioner from receiving transmission charges.

(h) The observations of the Validation Committee that the petitioner would not be entitled to receive transmission charges until NPCIL commissions the bays at the RAPP end and the Project is in regular service are baseless because they are contrary to the express terms of the TSA which provides that the petitioner would be entitled to receive transmission charges from February, 2016 onwards, which date stands amended to the actual COD by virtue of the MoP Order. The petitioner has satisfied all the requirements to achieve COD under the TSA and is squarely covered by the MoP Order. In these circumstances, the Validation Committee's observations ought to be disregarded and the MoP Order be given effect to.

(i) The tariff receivable by the petitioner in accordance with the MoP Order and the TSA ought not to be conditional on the completion of bays by NPCIL and PGCIL. As per Schedule 3 of the TSA, the developer can be paid transmission charges for transmission elements commissioned before February, 2016 only after the

pre-required elements had been commissioned. In the present case, since there are no pre-required elements named in the TSA, the TSA in effect allows the petitioner to be paid transmission charges as soon as it commissions the Project. The Validation Committee's observations in effect render the express provisions of the TSA and the MoP Order otiose.

### **Analysis and Decision:**

9. We have considered the submissions of the petitioner, NPCIL and PGCIL. The following issues arise for our consideration in this petition:

- (a) Whether the petitioner is entitled for declaration of COD as 26.12.2015 as per MoP Policy and payment of transmission charges from that date?
- (b) If answer to (a) above is in the negative, what will be date of commercial operation of the transmission system of the petitioner in accordance with the provisions of the TSA?
- (c) If the transmission line after declaration of COD in accordance with the TSA is not utilized for transmission of power to the LTTCs, who shall be held liable for payment of transmission charges?

### **Issue No. 1**

10. The petitioner has submitted that the scope of work awarded to the petitioner based on the tariff based competitive bidding includes the transmission system RAPP-Shujalpur 400 kV D/C Twin Moose ACSR transmission line. The SCOD of the said

transmission line is 24 months from the effective date (12.3.2014) which comes to February 2016. The petitioner commissioned the transmission line on 26.12.2015 which is about 2 months prior to SCOD. The petitioner has submitted that it has commissioned the transmission line prior to SCOD in order to avail the Ministry of Power, Government of India Policy dated 15.7.2015 which provides that the Transmission Service Provider is entitled for incentive of payment of transmission charges from the date of actual COD if it takes place before the SCOD. Since the petitioner has achieved COD on 26.12.2015, it is entitled to receive transmission charges from the said date onwards. According to the petitioner, denial of transmission charges from that date is against the MoP Policy Guidelines and the provisions of the TSA. Both PGCIL and NPCIL have denied that the petitioner is entitled for transmission charges with effect from 26.12.2015.

11. We have considered the submission of the petitioner and respondents. The issue regarding payment of transmission charges to the TSP prior to SCOD on account of early commissioning of the transmission system in the light of the Policy issued by MoP was deliberated in detail in Petition No. 284/ADP/2015 and the Commission vide order dated 28.1.2016 observed as under:

“29. We have noted the submission of the petitioner. The Policy for incentivizing early commissioning of Transmission Projects issued by Ministry of Power vide its letter dated 15.7.2015 is extracted as under:

“The undersigned is directed to say that the Hon`ble Minister of State (IC) for Power has approved the Policy for incentivizing early commissioning of Transmission projects w.e.f.12.6.2015 as given below:

1.1 For transmission system strengthening schemes under Tariff Based Competitive Bidding (TBCB) and also for such schemes awarded to PGCIL

under compressed time schedule on cost plus basis, the developer shall get the following incentive for early commissioning of transmission project(s)

- (i) Entitlement of the transmission charges from the actual date of Commercial Operation (COD) prior to the original scheduled COD. However, the number of years of applicability of tariff would remain unchanged i.e. for 25/35 years, as the case may be.

Note: The above incentive will be applicable for the transmission project(s)/element(s) which are under implementation/yet to be bid out under TBCB/yet to be assigned to CTU (PGCIL) under compressed time schedule.

Thus, the Policy provides for grant of incentive in the form of admissibility of the transmission charges from the date of actual COD which takes place before the scheduled COD. In our view, the above Policy needs to be read in the context of the TSA. Commercial Operation Date has been defined in the TSA as “the date as per Article 6.2; provided that the COD shall not be a date prior to the Scheduled COD mentioned in the TSA, unless mutually agreed to by all parties. Scheduled COD has been defined as under:

‘Scheduled COD’ in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 3 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 3 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties.

Scheduled COD has been given in Schedule 3 of the TSA with overall SCOD as 40 months from the effective date and certain elements have been pre-required for declaring the COD. At the end of the Schedule 3, the following has been mentioned:

“The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.”

Article 6.2.1 of the TSA provides as under:

“6.2.1 An Element of the Project shall be declared to have achieved COD seventy (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of determent, if any, pursuant to Article 6.1.2:

Provided that the Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to achieve COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

From the above provisions, it emerges that certain elements can be considered for grant of transmission charges on completion of their successful commissioning on or before its Scheduled COD only after the successful commissioning of the pre-required elements. Therefore, the commissioning of the elements of the transmission system for the purpose of incentive should take into account the pre-required commissioning of the elements as per scheduled COD. Further there may be upstream or downstream assets which are executed by PGCIL on cost plus basis or by any other transmission licensee through competitive bidding. Since the SCOD of the transmission elements mentioned in Schedule 3 have been decided matching with the commissioning of the upstream or downstream assets, that is a requirement of matching commissioning of these upstream or downstream assets with the commissioning of the transmission system in case of early commissioning for the purpose of availing incentives as per the Policy direction of Ministry of Power. If the matching commissioning does not take place, then the transmission assets which have commissioned before the SCOD for the purpose of availing incentive will remain unutilized and in the absence of the assets being put into service, it will not be appropriate to load the DICs with the transmission charges. It is, therefore, directed that the petitioner should realistically forecast early commissioning of the element, liaise with the developer of the upstream and downstream assets and mutually decide the COD of the transmission assets matching with the COD of the upstream or downstream assets so that both can be benefited by the Policy of the Govt. for incentivizing the early commissioning of the transmission assets. In case of an element which can be put to use without the commissioning of the pre-required asset, the same can be commissioned, if the CEA certifies that the commissioning of the asset will be in the interest of the safety and security of the grid and the asset can be put to useful service after its commissioning.”

12. As per the decision quoted above, since the SCOD of the transmission elements mentioned in Schedule 3 of the TSA have been decided matching with the commissioning of the upstream or downstream assets, there is a requirement of matching the commissioning of the transmission system developed by the TSP with the commissioning of the upstream/downstream transmission assets in case of early commissioning for the purpose of availing incentives as per the Policy of MoP. Therefore, the TSP claiming commissioning of its transmission system earlier than the SCOD is required to consult the LTTCs and the developers of the upstream and downstream assets in order to arrive at a mutually accepted date of COD. Unilateral decision on the part of the TSP to advance the commissioning of its transmission assets

without arriving at a mutually accepted date of COD will result in non-utilization of the transmission assets.

13. Let us consider the case of the petitioner in the light of the above decision. Schedule 2 of the TSA captures the project description and scope of the project as under:

“For evacuation of power from RAPP-5 to 8 (1840 MW), RAPP-5&6 (440 MW) and RAPP-7 & 8 (2X700MW), following composite system was evolved and was planned to be developed in a phased manner matching with generation development.

For RAPP-5&6 generation with following transmission systems have been commissioned and are in operation.

Transmission system for RAPP 5&6

- (i) RAPP-Kankroli 400 kV D/C
- (ii) RAPP-Kota 400 kV D/C

For RAPP-7 & 8 following was discussed during the 29<sup>th</sup> standing committee and Connectivity and Long term Open Access meeting held on 29.12.2010.

Transmission system for RAPP-7&8

- (i) RAPP-Jaipur 400 kV D/C with one circuit via Kota
- (ii) RAPP-Sujalpur 400 kV D/C

Element (i) of transmission system for RAPP-7&8 is being taken up by CTU while element (ii) is proposed under Tariff Based Competitive Bidding. Sujalpur is a 400/220 kV sub-station established through Loop in Loop out of Bina-Nagda 400 kV D/C. The proposed RAPP-Sujalpur 400 kV D/C in addition to providing a path for evacuation of RAPP-7 & 8 would also act as a inter-regional link between Northern and Western Region. The link would help in evacuation of power from the complex even in case of any grid constraints in Northern Region.

Transmission system for RAPP 7&8, including RAPP-Sujalpur 400 kV D/C was discussed and agreed in the 29<sup>th</sup> Standing Committee Meeting for Northern Region and during Connectivity and Long term Open Access meeting held on 29.12.2010. The system was also approved in 19<sup>th</sup> NPRC (Special) meeting held on 4.1.2011.

As per the information, the RAPP generation is now expected by September 2016. However, after the grid collapse of July 2012, it is observed that strengthening of West-North inter-connections needs to be taken up on priority. It is therefore, proposed that 400 kV, RAPP-Shujapur D/C line may be de-linked with the RAPP 7&8 generation and

be implemented at the earliest. This would also require establishment of 400 kV switchyard at RAPP 7&8 matching with the commissioning of above line.

The line would be a Twin moose conductor line. The bays at RAPP and Shujalpur would be carried out by the owners of the sub-station, i.e. M/s NPCIL and POWERGRID respectively.”

14. NPCIL has submitted that in the 31<sup>st</sup> meeting of the Standing Committee held on 2.1.2013, the construction schedule for RAPP-Shujalpur 400 kV D/C line was delinked with RAPP-7 and 8 generation to strengthen West-North inter-connection of the regional grids. Relevant portion of the 31<sup>st</sup> meeting of the Standing Committee held on 2.1.2013 is extracted as under:

**“3. Delinking of RAPP- Shujalpur 400 kV D/C line with RAPP 7&8 generation RAPP**

Director (SP&PA), CEA stated that RAPP- Shujalpur 400 kV D/c line was approved as the associated transmission system of RAPP-7&8 in the 29th SCM held on 29/12/10.

After the grid collapse of July 2012, it was observed that strengthening of West – North interconnections are required to be taken up on priority. As such it is proposed to delink RAPP-Shujalpur 400 kV D/C line from RAPP 7&8 generation for its early implementation.

RRVNL informed that RAPP/Kota area already experiences high voltages and addition of lines without generator may further aggravate the high voltage problem.

POWERGRID informed that 50 MVAR line reactors have been proposed at both ends of 400kV RAPP-Shujalpur D/c and the line would be adequately compensated.

The line reactors at Shujalpur and bays for termination of the line at Shujalpur end would be taken up by POWERGRID while reactor and bays for termination of line at RAPP end are in the scope of M/s NPCIL.

NPCIL informed that the bays and 125 MVAR bus reactors at RAPP generation switchyard would be available by June'15 and RAPP generation is now expected by February, 2016.

Member (PS), CEA stated that the above line is being implemented under Tariff Based Competitive Bidding and likely to be commissioned by Feb 2016.”

15. From the provisions of the TSA and the minutes of the Standing Committee as

quoted above, it is apparent that the execution of the RAPP-Shujalpur 400 kV D/C line was delinked from RAPP-7&8 generation for strengthening of the North-West Interconnection in the light of the grid collapse of July, 2012. In other words, 400 kV D/C RAPP-Shujalpur line no more remained a dedicated transmission line of RAPP generation, but became a part of system strengthening for West-North Interconnection. In the said meeting, it was decided that the line reactor at Shujalpur and bays for termination of the line at Shujalpur end would be taken up by PGCIL while reactor and bays for termination of line at RAPP end would be within the scope of NPCIL. It is noted that in the said meeting dated 2.1.2013, NPCIL informed that the bays and 125 MVAR bus reactors at RAPP generation switchyard would be available by June, 2015, even though RAPP generation was expected by February, 2016. Member (PS) in the said meeting also informed all participants that the RAPP-Shujalpur 40 kV D/C line was being implemented through tariff based competitive bidding and was likely to be commissioned by February, 2016. Therefore, in the 31<sup>st</sup> meeting of the Standing Committee held on 2.1.2013, it was planned with the involvement of RRVPNL, PGCIL and NPCIL that 400 kV D/C line, the reactor and bays for termination at Shujalpur end and the reactor and bays for termination of line at RAPP end would be commissioned with the SCOD of February, 2016. Accordingly, the timeline for achieving the SCOD of 400 kV D/C RAPP-Shujalpur transmission line was indicated as February, 2016 in the bid documents.

16. The petitioner was awarded the bid for execution of 400 kV D/C RAPP-Shujalpur transmission line on the basis of tariff based competitive bidding. The SCOD of the transmission assets of the petitioner as per the TSA is February, 2016 matching with

the bays executed by PGCIL at Shujalpur and 400 kV Switchyard bay at RAPP and executed by NPCIL. The petitioner expedited the execution of the transmission assets and was expecting to commission it by November, 2015 in order to avail the benefit of MoP Policy dated 15.7.2015. The petitioner, vide its letter dated 20.7.2015, informed NPCIL, with copy to PGCIL for making the transmission line operational by November 2015. The said letter is extracted as under:

"The above said transmission line is under construction in full swing and in advance stage of completion and will be ready for Charging by 15<sup>th</sup> Nov 2015. Since, the said transmission line is emanating from the NPCIL Substation connected through the RAPP generation unit 5 to 8.

In view of above, we request you to kindly make the substation ready in all respect like installation of Wave Trap, PLCC, Line Reactor and other equipment required for successful charging of line and making operational of the same by Nov' 15."

17. The petitioner has submitted that it addressed a letter dated 30.7.2015 to all LTTCs including the lead LTTC namely, UP Power Corporation Limited, conveying its intention to commission the transmission element before February, 2016 in order to avail of its entitlement under the MoP letter to receive the transmission charges from the date of actual COD which would be prior to the SCOD. The petitioner has submitted that the LTTCs did not object to the petitioner's proposal to advance the SCOD to a date prior to February, 2016 and accordingly, the petitioner went ahead with its construction activities.

18. NPCIL does not appear to have responded to the request of the petitioner. However, PGCIL vide its letter dated 18.8.2015 informed the petitioner as under:

"The 400kV bays at RAPP end are being provided by ' NPCIL and bays at Shujalpur end are being provided by POWERGRID. Implementation of 400kV bays by POWERGRID at

Shujalpur has been planned with the time frame of Feb,'16 in line with commissioning schedule of associated lines.

**However, in view of your request for preponement of readiness of bays, we would make our best efforts for the same, to the extent feasible. Further, coordination with M/s NPCIL for preponement of bays at RAPP end also may be taken up to arrive on a mutually agreed date among NPCIL, POWERGRID and RAPP Transmission company Ltd.** It may be noted that the availability of line bays at both ends in a matching time frame is a pre requisite for the charging & utilization of the above line."

19. PGCIL in the letter dated 18.8.2015 has indicated that commissioning of 400 kV bays at Shujalpur was made in the timeframe of February, 2016 in line with the commissioning schedule of the associated lines being executed by the petitioner. Though, PGCIL assured the petitioner to make best efforts for preponement of the readiness of the bays to the extent feasible, it advised the petitioner to coordinate with NPCIL to arrive at a mutually agreed date. PGCIL has clearly emphasized that availability of line bays at both ends in a matching timeframe is a pre-requisite for changing and utilization of the transmission line. According to PGCIL, since no information was received from the petitioner in this regard, the requirement of deciding a mutually agreed date with CTU and the LTTCs and the Generator, as required in the TSA, for shifting of COD was not met and accordingly, PGCIL went ahead on the basis of the scheduled COD as per the TSA and commissioned the bays on 4.2.2016 and 28.2.2016. NPCIL did not respond to the letter of the petitioner. However, NPCIL in its affidavit has submitted that there was no agreement between NPCIL and the petitioner to prepone the schedule completion date of bay works.

20. The above discussion leads us to the conclusion that even though the petitioner had initiated action to consult PGCIL, NPCIL and LTTCs to advance the date of COD

prior to the Scheduled COD, such efforts did not result in any decision regarding “mutually accepted date of COD prior to SCOD”. The petitioner has submitted that the LTTCs, PGCIL and NPCIL agreed to the advancement of SCOD from February, 2016 to December, 2015 by consciously choosing not to approve such advancement. We are unable to agree with the petitioner. Except for writing the letters to LTTCs, PGCIL and NPCIL, the petitioner does not appear to have taken any concrete steps to bring them to agree to the preponement of SCOD from February, 2016 to December, 2016 and to execute the associated bays matching with the timeline of the commissioning of the RAPP-Shujalpur transmission line without arriving at a matching accepted date of COD, the petitioner obtained approval of CEA in terms of Regulation 43 of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 for energization of the transmission lines vide letter dated 18.12.2015. Immediately, thereafter, the petitioner vide letter dated 18.12.2015 intimated all relevant stakeholders that it had declared deemed COD w.e.f 26.12.2015 as per Article 6.1.1 of the TSA. In our view, the COD of the transmission assets cannot be unilaterally declared with effect from 26.12.2015 prior to the SCOD of February, 2016 when the developers of the upstream and downstream transmission lines and LTTCs have not agreed to any date prior to SCOD.

## **Issue No. 2**

21. As already discussed, SCOD of the transmission line executed by the petitioner was February, 2016. It may be observed from the extract the TSA quoted in para 13 above that the bays at RAPP and Shujalpur was required to be executed by the owners of the sub-station, i.e. NPCIL and PGCIL respectively. It has been further mentioned

that the delinking of the RAPP 7 & 8 generation would require the establishment of 400 kV Switchyard at RAPP 7 & 8 matching with the commissioning of the RAPP Switchyard-400 kV D/C line. Therefore, the transmission line and the bays executed by NPCIL and PGCIL were to be commissioned with SCOD as February, 2016. While PGCIL has executed the bays 4.2.2016 and 28.2.2016, NPCIL has not executed the bays matching with the timeline. As a result, while the transmission line is connected at one end and is idly charged, it cannot be put to any service on account of the non-commissioning of the bays by NPCIL in the matching timeframe.

22. Article 6.2.1 and 6.2.2 of the TSA deals with the commercial operation of the asset executed by the petitioner. The said provisions are extracted as under:-

“6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Elements(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.”

As per the above provisions, an element of the project shall be declared to have achieved COD 72 hours following the connection of the element with the interconnection Facilities or 7 days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the

TSP. Further as per Article 6.1.1 of the TSA, date of interconnection shall not be prior to SCOD unless it is agreed by LTTCs. We have already come to the conclusion that neither LTTCs nor the developers of upstream/downstream assets have agreed to a date prior to the SCOD for commissioning of the transmission line. In the present case, the transmission line has been interconnected with the bay of PGCIL at Shujalpur in February, 2016. However, the bay of NPCIL has not been commissioned on account of which the petitioner is prevented from putting the assets into regular use. However, considering the provisions of the TSA, we held that the assets of the petitioner shall be deemed to have achieved COD from the date of SCOD. As SCOD has been indicated as February, 2016 without indication of any specific date, we held that the COD shall be taken as 1.3.2016 as per the Annexure to the order dated 23.7.2014 in Petition No. 66/TT/2013 which is the commencement on the first contract year as per the TSA.

### **Issue No. 3**

23. The next question is who shall bear the transmission charges of RAPP-Shujalpur Transmission Line from the date of SCOD till the associated bays at NPCIL end is commissioned. In the present case, it was decided in the 31<sup>st</sup> meeting of Standing Committee held on 2.1.2013 that commissioning of RAPP 7 & 8 generation would be delinked from the commissioning of the bays at RAPP end and the bays would be commissioned matching with the SCOD of RAPP-Shujalpur transmission line. Development of the bays at RAPP end was entrusted to NPCIL. Therefore, it was the responsibility of NPCIL to develop the bays by February, 2016. Non-commissioning of the bays by NPCIL has rendered the RAPP-Shujalpur transmission line unutilized which

was developed as the interconnection line between Northern and Western Regions. Therefore, the petitioner is entitled for the transmission charges from SCOD of the transmission line i.e. 1.3.2016 till bays to be developed by NPCIL are ready and the asset covered under the present petition is put into actual use. NPCIL would be liable to pay the transmission charges from 1.3.2016 till the bays are commissioned. After the commission of the bays being implemented by NPCIL, the transmission line will be used for North-West inter-connection and would be included in PoC calculation and the transmission charges shall be payable as per the provisions of the Sharing Regulations. As per Regulation 11 of the Sharing Regulations, CTU is responsible for raising the bills, collection and disbursement of transmission charges to ISTS transmission licensee. Accordingly, CTU is directed to raise the bills on NPCIL from 1.3.2016. However, NPCIL shall directly pay to the petitioner under intimation to CTU in order to avoid double deduction of TDS. If NPCIL fails to pay the charges within a period of one month from the date of issue of this order, it shall be liable to pay the late payment surcharge in terms of Article 10.8.1 of the TSA.

24. A related issue arises as to how recovery of transmission charges of transmission licensee shall be made when the transmission system under TBCB is ready as on its scheduled COD as per the provisions of the TSA but cannot be made operational or put to use due to non-availability/ delay in upstream/ downstream system. In our view, ISTS licensee executing the project under TBCB should enter into Implementation Agreement with CTU, STU, inter-State transmission licensee, or the concerned LTTC, as the case may be, who are responsible for executing the upstream/ downstream transmission system and clearly provide the liability for payment of

transmission charges in case of the transmission line or upstream/downstream transmission assets. In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.

25. Petition No 43/MP/2016 is disposed of with the above.

**sd/-**  
**(Dr. M. K. Iyer)**  
**Member**

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

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

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