

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 236/MP/2015

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K.Iyer, Member

Date of Hearing: 06.1.2016

Date of Order: 27.6.2016

In the matter of

Petition to recover transmission charges from the date of completion of first element of the Transmission Project.

And

In the matter of

Kudgi Transmission Limited
Building No. 3, Second Floor, Sudeep Plaza,
MLU sector 11, Pocket-4, Dwarka, New Delhi-110 075

..... **Petitioner**

Vs

1. Bangalore Electricity Supply Company Ltd.
K.R. Circle
Bangalore-560 001

2. Chamundeshwari Electricity Supply Corporation Ltd.
No. 927, L.J. Avenue
New Kantharaj Urs Road
Saraswathipuram
Mysore-570 009

3. Hubli Electricity Supply Company Ltd.
Navanagar, Hubli-587 117

4. Mangalore Electricity Supply Company Ltd.
Paradigm Plaza
A.B. Shetty Circle

Mangalore-575 001

5. Gulbarga Electricity Supply Company Ltd.
Station Road
Gulbarga-585 101

6. Power Company of Karnataka Ltd.
Cauvery Bhavan
K.G. Road
Bangalore-560 001

7. Kerala State Electricity Board Ltd.
Vydyuthi Bhavanam,
Pattom, Thiruvanthapuram,
Kerala-695 004

8. Tamil Nadu Generation and Distribution Corporation Ltd.
10th Floor, NPKRR Maaligai, 144, Anna Salai,
Chennai-600 002

9. Southern Power Distribution Company of Andhra Pradesh Ltd.
D. No. : 19-13-65/A, Srinivasapuram,
Tiruchanoor Road,
Tirupati-517 503

10. Eastern Power Distribution Company of Andhra Pradesh Ltd.
P&T Colony, Seethammadhara,
Vishakhapatnam-530 013

11. Southern Power Distribution Company of Telangana Ltd.
(Formerly Central Power Distribution Company of A.P. Ltd.)
6-1-50, Mint Compound,
Hyderabad- 500 063

12. Northern Power Distribution Company of Telangana Ltd.
H. No.: 2-5-31/2,
Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda,
Warangal-506 001

13. NTPC Ltd.
NTPC Bhawan,
SCOPE Complex, Institutional Area, Lodhi Road,
New Delhi-110 003

14. Power Grid Corporation of India Ltd.
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110 016

15. Power System Operation Corporation Limited
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110 016

16. Central Electricity Authority
Sewa Bhawan,
Sector 1, R.K. Puram,
Delhi-110 066

Parties Present:

Shri Gopal Jain, Senior Advocate for the petitioner
Shri Alok Shankar, Advocate for the petitioner
Shri K Sethuraman, KTL
Shri R. Suraj, KTL
Shri Rajender, KTL
Shri S.S. Barpanda, POSOCO
Shri Patanjali Dikshit
Shri Nishant Gupta, NTPC
Shri Ajay Dua, NTPC
Shri VK Jain, NTPC
Ms. Jayantika Singh, POSOCO
Shri Aryaman Saxena, PGCIL
Shri BS Rajput, NTPC

ORDER

L&T Infrastructure Development Projects Limited (LTIDPL) was selected based on the international tariff based competitive bidding to execute the following transmission system on build, own, operate and maintain basis and to provide transmission service to the Long term Transmission Customers of the project:

(a) 2 Nos 400 kV D/C transmission line Kudgi TPS to Narendra (New);

- (b) 765 kV D/C transmission line Narendra (New) to Madhugiri;
- (c) 400 kV D/C transmission line Madhugiri to Bidadi.

2. Letter of Intent (LOI) was issued by the REC Transmission Projects Company Limited as the Bid Process Coordinator (BPC) to LTIDPL on 30.8.2013. LTIDPL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent and acquired the Kudgi Transmission Limited (KTL) as its fully owned subsidiary. KTL entered into the Transmission Service Agreement with Long Term Transmission Agreement on 14.5.2013. KTL approached the Commission for grant of transmission licence in Petition No. 191/TL/2013 and adoption of tariff of the transmission system in Petition No. 190/TT/2013. The Commission in its order dated 8.1.2014 in Petition No. 190/TT/2013 has adopted the tariff of the transmission system and in order dated 7.1.2014 in Petition No. 191/TL/2013 has granted licence to KTL 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 petitioner achieved the financial closure of the project on 24.2.2014, issued the Notice to Proceed (NTP) on 28.11.2014 was issued by the petitioner and entered into Engineering Procurement and Construction Contract (EPC Contract) with LRIDPL on 21.2.2014.

(b) The effective date of the transmission system was 30.8.2013. The first element of the project was scheduled to be commissioned within 18 months from

the effective date and the other two elements within 24 months of the effective date. Therefore, the scheduled SCOD of the first element was 28.2.2015.

(c) Due to law and order problem and Right of Way (ROW) issues, the petitioner completed the first element of the project, namely 2 nos 400 kV D/C transmission line Kudgi TPS to Narendra (New) on 27.3.2015. The petitioner vide its letter dated 6.4.2015 informed LTTCs, CEA, NTPC and CTU regarding completion of the first element.

(d) Since the project was proposed to be developed as evacuation facility for KTPC's Kudgi TPS (3X800MW Phase-I), the following inter-connection facilities were required to be developed prior to the commissioning of the first element of the project:

S. No.	Name of the Agency Responsible	Inter-connection facility
1	NTPC Kudgi Power Plant (3 x 800MW)	400 kV Bays allotted to KTL for connecting Element- 1
2	Power Grid Corporation of India Limited ("PGCIL")	Narendra (New) 765/400kV Pooling station - Respective Bays allotted to KTL for connecting Element- 1
3	PGCIL	1 no. Multi Circuit Tower for terminating 2 circuits (second 400kV D/C line) of Element -1

(e) Even though entire scope of work for the first element was completed on 27.3.2015, the element cannot be tested and charged due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL.

(f) On 27.1.2015, the petitioner made an application to Electrical Inspectorate, Central Electrical Authority ("CEA") for conducting the inspection of

the transmission line. However, the CEA expressed its inability to inspect the line in the absence of charging facility at both the ends. The petitioner could not declare the COD of the first element despite completing the line in March, 2015.

(g) Subsequently, on 24.4.2015, CEA reviewed the progress of transmission lines associated with Kudgi generating station. After reviewing the status of the Narendra sub-station, transmission lines associated thereto and the Kudgi generating station, CEA directed NTPC and PGCIL to ensure completion of 400 kV bays at Narendra sub-station and Kudgi switchyard by June 2015 so that KTL could charge its Kudgi-Narendra (New) 400 kV 2 x D/C line by June 2015. However, NTPC and PGCIL did not comply with the directions of the CEA.

(h) On 10.7.2015, CEA convened a meeting to review the progress of the generating station and associated transmission lines and advised NTPC and PGCIL to complete the 400 kV bays and Narendra (New)-Narendra 400 kV transmission line by July 2015 and August 2015 respectively and advised Chief Engineer (EI), CEA to inspect the Kudgi STPS-Narendra (New) 400 kV 2x D/C transmission lines of the petitioner at the earliest.

(i) Pursuant to the directions of the CEA, the first element was inspected and declared as ready for charging on 28.7.2015. As per the provisions of TSA, the petitioner was entitled to declaration of commercial operation in the event the charging of line is delayed beyond its control. As per Article 6.2 of the TSA, an element is deemed to be completed 7 days after the TSP declares the facility

ready for charging. Therefore, in terms of the TSA, the petitioner declared the transmission line to be under commercial operation from 4.8.2015 which was notified by the petitioner to all Long Term Transmission Customers vide its letter dated 6.8.2015.

(j) As per Article 10.1 of the TSA, the petitioner is entitled to tariff from the date of commercial operation of the element of the project. The petitioner, after declaring the COD of the first element, raised bills for transmission charges. However, POSOCO, vide its letter dated 25.8.2015 refused to consider the Yearly Transmission Charge (YTC) under the POC mechanism on the ground that the petition filed by the petitioner is pending before the Commission and YTC would be considered after direction of the Commission or actual power flow. Subsequently, the petitioner withdrew the petition. The petitioner vide its letter dated 1.9.2015 requested POSOCO that YTC payable to it be included in the POC mechanism.

(k) The issue of recovery of YTC due and payable to the petitioner was discussed in the meeting of Validation Committee for the application period from 1.10.2015 to 31.12.2015 in accordance with the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (Sharing Regulations). However, the discussions remained inconclusive and the Committee decided that the issue should be adjudicated by the Commission.

(l) The Sharing Regulations does not determine the rights and obligation of a transmission licence in relation to the YTC. Sharing Regulations have been notified to determine the liability of the Designated ISTS customers in relation to sharing of the transmission charge. It does not re-determine the transmission tariff of a licensee or determine the date from which the same would be payable.

(m) Since YTC is not affected by the Sharing Regulations, the same cannot be cited to deny the petitioner its rightful entitlement. The right of the petitioner to recover Transmission Charges emanates from the TSA and is not affected by any other Regulations. It is settled position of law that the one of the primary duties of courts and tribunals is to ensure sanctity of contract which is a basic tenet of rule of law. The courts are required to give effect to the bargain arrived at between the parties and incorporated in the contract entered into between the parties.

(n) TSA is a model agreement which has been approved by the Ministry of Power and it specifically entitles the petitioner to declare COD even without actual charging. Therefore, the contention of POSOCO that transmission charges cannot be recovered till the time there is actual load flow is without basis and is neither supported by any regulation nor by any of the provisions of the TSA.

(o) As per the provisions of the Sharing Regulations, the generating station is liable to transmission charges in the event transmission line is ready and the generating station is delayed. Therefore, in terms of Sharing Regulations, the

liability of the beneficiary or the generating station to pay the transmission charge to an ISTS licensee is not linked to utilisation of the line, but instead to the commissioning of the line.

4. Against the above background, the petitioner has made the following prayers to:
 - (a) Declare that the Petitioner is entitled to recover transmission Charges from the date of completion of the first element of the transmission project;
 - (b) Direct CTU as the nodal agency for the purpose of billing collection and disbursement of ISTS charges to pay to the transmission tariff associated with the first element from the date of commercial operation; and
 - (c) Direct CTU/ POSOCO that revenue recovery is appropriately covered in the tariff computations to be submitted to the commission for approval.

5. The matter was heard on 19.11.2015 and notices were issued to the respondents to file their replies. The petitioner was directed to file the information, namely (i) efforts made by PGCIL in matching commissioning of its bays with COD of Kudgi TPS-Narendra line (executed by KTL) and the reasons for mismatch between commissioning of the Kudgi TPS-Narendra line and bays at two ends of the line and (ii) Whether KTL coordinated with generator so that associated bays at generator end are commissioned matching with transmission line. PGCIL was also directed to file the information regarding (i) reasons for mismatch between commissioning schedules of transmission line and associated bay at Narendra, and (ii) single line diagram of all the assets mentioned in the petition. NTPC was directed to submit the start date of connectivity as per the connectivity application made by it to CTU and the reasons for delay in synchronizing the transmission line with the switchyard of Kudgi TPS.

6. POSOCO, vide its affidavit dated 14.12.2015, has submitted that in the meeting of Validation Committee held on 30.9.2015, it was clarified that the transmission line which was actually under operation would be considered in PoC and the petitioner's line being a dedicated line, the charges for the same would be collected from NTPC under the Sharing Regulations. In the said meeting, the representative of NTPC stated that 400 kV Kudgi-New Narendra sub-station D/C transmission lines are not dedicated lines and the transmission line is not in regular service due to which the approval of the Commission is required before the declaration of COD. The representative of CTU informed that the transmission line in question is the connectivity line of NTPC Kudgi. POSOCO also submitted that first of circuit of 400 kV Narendra (New) Kudgi NTPC line was charged on 17.11.2015. As per the provisions of the Connectivity Regulations and the Sharing Regulations, in case the transmission line is taken to be a dedicated line, then the charges shall have to be paid by NTPC and in the event of CTU designating the line to be an ISTS line, then the charges have to be included under the PoC mechanism.

7. NTPC, vide its affidavit dated 14.12.2015, has submitted as under:

(a) The Associated Transmission System (ATS) for Kudgi STPP to be implemented as ISTS was approved in 33rd Standing Committee Meeting on Power System Planning in Southern Region and 13th LTA meeting.

(b) As per Petition No.201/TT/2015 filed by PGCIL, the sub-station at New Narendra is scheduled to be commissioned in December, 2015. Since, OPGW termination took place only in the month of August, 2015, the claim of petitioner

that transmission line was ready on 27.3.2015 without getting terminated at either end and without OPGW is not correct.

(c) The line was inspected by CEA on 21.7.2015. CEA vide its letter dated 28.7.2015 has accorded the approval for energisation of only one double circuit of transmission line (line A). However, contrary to the above, the petitioner, vide its letter dated 4.8.2015 declared deemed DOCO of the complete element (both D/C lines i.e. line A and line B) from 4.8.2015. As per the minutes of meeting held by CEA on 14.10.2015, multi circuit tower readiness was not available till 15.11.2015. Therefore, even at first instance, the deemed COD of line B claimed by the petitioner is not correct and is misleading.

(d) On 22.7.2015, CEA carried out inspection of NTPC Kudgi STPP. CEA vide its letter dated 24.8.2015 accorded approval for energisation of 11 nos. 220 kV bays and 4 no. 400 kV bays including bay required for the petitioner's line 1 bay termination at NTPC Kudgi STPP. Therefore, NTPC made ready the inter-connection facilities in the month of July, 2015 as committed in the meeting held at CEA on 10.7.2015. Moreover, NTPC vide its letter dated 9.9.2015 addressed to BESCOM, informed that deemed COD of the line, which is not in regular service, is to be approved by the Commission. However, no reply was received from the petitioner in this regard. As per judgment of Hon`ble Appellate Tribunal for Electricity in Appeal No. 123 of 2011, the transmission line cannot be declared commercial unless it is test charged from both ends and put to regular use. Since, the petitioner had not charged its first element, the actual COD of first element

cannot be before 16.11.2015. The COD of balance three nos. 400 kV lines can be declared as and when they are charged. However, as per Article 10.1 of the TSA, the petitioner is entitled for the transmission charges from the date of the commercial operation of the first element.

(e) As per the 33rd Standing Committee Meeting on Power System Planning in Southern Region and 13th LTA meeting, these lines are part of ISTS. The New Narendra (PGCIL's sub-station) is well connected with NEW grid through New Narendra-Kolhapur 400 kV D/C lines at one end and through existing 400 kV grid sub-station at old Narendra sub-station in Southern Region. Kudgi STPP switchyard is also inter-connected through KPTCL's 220 kV intra State network. Kudgi station is connected to New-Narendra on one side and Baghewadi sub-station in the Karnataka intra-State network on the other side. Since, power can flow in any direction as per the law of physics depending upon the lowest impedance path, these lines are not dedicated lines as claimed by the petitioner. Accordingly, the associated transmission lines emanating from Kudgi STPP to New Narendra (PGCIL sub-station) are ISTS lines and a part of meshed network planned for evacuation of power to States of Southern Region from Kudgi STPP. Accordingly, the transmission charges for the first element should be recovered through POC mechanism as generator would already be paying the transmission charges as per the provisions of the Connectivity Regulations.

(f) With regard to the information called vide ROP for the hearing dated 19.11.2015, NTPC has submitted as under:

(i) NTPC made an application for grant of connectivity to CTU on 27.1.2011 which was granted by CTU on 23.12.2011.

(ii) The delay in synchronizing the transmission line with the switchyard of Kudgi STPP was due to order of National Green Tribunal (NGT) dated 13.3.2014 (direction to MOEF to keep in abeyance the Environment Clearance and directing NTPC to maintain status quo), agitation and local unrest during 2014. There was a delay in getting start up power through 220 kV network of KPTCL. The startup power for Kudgi STPP was to be drawn through 220 kV network of KPTCL. However, the line was not available for drawl of startup power. In the review meetings held in CEA on 24.4.2015 and 10.7.2015 regarding Transmission system associated with Kudgi STPP, it was decided that start up power for Kudgi STPP would be drawn through the petitioner`s 400 kV transmission lines and associated bays of PGCIL at New Narendra sub-station. Therefore, the delay was beyond the control of the generator.

(iii) NTPC Kudgi STPP was ready to draw start up power in July 2015 itself. However, 400 kV PGCIL New-narendra sub-station was charged for the first time through PGCIL Kolhapur-New Narendra line on 15.11.2015. Subsequently, the petitioner`s first element and Kudgi 400 kV switchyard could be charged on 16.11.2015. Accordingly, SRLDC vide its letter dated 20.11.2015 informed regarding grant of start up of power under DSM mechanism.

(iv) As per clause (7) of Regulation 8 of the Connectivity Regulations and Sharing Regulations, the generator is liable to pay the transmission charges for drawl of start-up of power. Therefore, the charges payable by NTPC would correspond to the charges determined by the Commission for the relevant node under PoC mechanism and the same shall be adjusted in the pooled account in the next quarter. The charges of beneficiaries would be reduced to the extent payment made by the generator. Therefore, as per the provisions of the TSA, the transmission charges for the first elements of the petitioner required to be included in the PoC charges.

(v) NTPC is not a signatory to the Transmission Service Agreement which governs the liability of payment by different entities.

(iv) Since, NTPC was ready to draw startup power from July, 2015 onwards and was not able to draw till November 2015 due to non-availability of PGCIL`s sub-station at New-Narendra, it is not liable to pay transmission charges to the petitioner till November, 2015 as per Sharing Regulations and due to mismatch in the commissioning schedules for the petitioner`s lines (February, 2015) and PGCIL`s sub-station (December, 2015).

(v) As per the provisions of TSA and Sharing Regulations, the transmission charges are payable only from the date of commercial

operation of the transmission lines and not from the date of completion/deemed COD as claimed by the petitioner. Since the terminal ends required for the transmission line 2/3/4 are not ready for both the utilities i.e. NTPC and PGCIL, liability of payment (if any) towards IDC/transmission charges to the petitioner before actual/approved COD of the lines should not be passed on exclusively to NTPC.

8. PGCIL, vide its affidavit dated 14.12.2015, has submitted as under:

(i) With regard to efforts made by PGCIL in matching commissioning of its bays with COD of Kudgi TPS- Narendra line (executed by KTL) and the reasons for mismatch between commissioning of the Kudgi TPS-Narendra line and bays at two ends of the line, PGCIL has submitted that PGCIL had planned implementation schedule of the associated bays matching with the commissioning of Kudgi TPS-Narendra 400 kV 2XD/C lines. Narendra (new) sub-station was being implemented as a part of Southern Region Strengthening Scheme XVII with completion schedule of March 2015. However, implementation of Narendra (new) sub-station was delayed due to delay in acquisition of land for establishment of sub-station by Karnataka Industrial Areas Development Board (KIADB).The land was handed over by KIADB in 2012 but could actually be acquired only in February 2014.i.e. with a delay of more than a year. However, the 4 nos. of bay works for implementation of Kudgi TPS-Narendra (new) 400 kV 2XD/C lines was included under separate project for evacuation of power from Kudgi TPS of NTPC which could be commenced only on acquisition of land for establishment of Narendra (New) sub-station. The progress of works was

affected due to agitation/resistance by affected land owners of NTPC's Kudgi Thermal Power Station which was beyond the control of PGCIL. PGCIL implemented these bays on fast-track basis and completed these bays in September 2015.

(b) With regard to reasons for mismatch between commissioning schedules of transmission line and associated bay at Narendra, PGCIL has submitted that the scheduled date of commercial operation of the petitioner's line was February 2015. However, the scheduled date of commercial operation of associated bays at New Narendra sub-station was December, 2015, PGCIL has submitted that 4 Nos. bays of Kudgi TPS-Narendra (new) 400 kV 2XD/C line were being executed by PGCIL under project "sub-station extension works associated with transmission system required for evacuation of power from Kudgi TPS of NTPC Ltd". The project also included other bays and reactors at Kudgi, Madhugiri and Bidai sub-station associated with other TBCB lines namely, Narendra (new)-Madhugiri 765 kV D/C line (charged at 400 kV) and Madhugiri-Bidadi 400 kV D/C line, which were scheduled for completion in December, 2015. Investment approval for the project was accorded with commissioning schedule of December, 15 matching with overall commissioning schedule of lines covered under scope of the petitioner.

(c) The completion schedule of total project i.e. December 2015 was indicated in the investment approval. As a practice, in the internal L-2 schedule for the project, 4 nos. line bays for termination of Kudgi TPS-Narendra (new) 400

kV 2XD/C lines at 400 kV Narendra (new) sub-station from Kudgi TPS was kept matching with the expected schedule(February 2015) of Kudgi TPS-narendra 400 kV 2X D/C lines. PGCIL awarded these 4 bays as a separate package with matching completion schedule with the petitioner's lines by February, 2015. Therefore, at the project planning stage, there was no mis-match between the completion schedule of line to be constructed by the petitioner and terminal bays to be constructed by PGCIL.

9. PGCIL, vide Record of Proceedings for the hearing dated 6.1.2016, was directed to submit (i) date of commissioning of multi-circuit tower associated with line-B of 400 kV D/C Kudgi TPS Narendra (New) transmission line which was under the scope of PGCIL, and (ii) CEA charging and RLDC certificates for bays at Narendra (New) associated with Kudgi TPS Narendra (New) D/C lines. NTPC was directed to submit RLDC certificate for the bays at NTPC end associated with Kudgi TPS-Narendra (New) D/C lines.

10. NTPC, vide its affidavit dated 21.1.2016, has submitted that KPTCL intended to draw 200-300 MW power by utilizing the 400 kV Kolhapur-Narendra (New) D/C and 400/220 kV Kudgi switchyard. The 400 kV Kudgi switchyard is inter-connected through 2 nos. of 400/220 kV ICTs of 1000 MVA capacity. There are 6 nos. 220 kV lines emanating from 220 kV switchyard connected at different 220 kV sub-stations of the petitioner's network i.e at Bagewadi, Bijapur and Vajarmattu. NTPC has submitted that the matter was discussed in 28th SRPC meeting held at Goa on 10.10.2015 in which the representative of NTPC stated that KPTCL/Southern Region beneficiaries would be able to draw power from NEW grid forming the part of meshed network from

February 2016 onwards till the COD of Unit#1 of Kudgi STPP utilizing NTPC Kudgi Switchyard as a pooling sub-station. In such a situation, the transmission charges for Narendra (new) sub-station-Kudgi transmission lines of the petitioner have to be necessarily included under PoC mechanism and the transmission charges for these lines/sub-stations are to be borne by the beneficiaries of the grid/transmission lines. It would not be fair that the lines are used by KPTCL for drawl of its share but the transmission charges are entirely paid by the generator. SRLDC vide its letter dated 20.1.2016 certified that the following elements have successfully completed trial operation:

Name of the Elements	Completion
Bays of 400 kV Narendra Line-1	18.11.2015
400 kV Bus-2	18.11.2015
125 MVAR Bus Reactor-1 and Bays	18.11.2015
120 MVAR Station Transformer and Bays	18.11.2015

11. PGCIL, vide its affidavit dated 18.2.2016, has placed on record the details of the transmission system identified for evacuation of power from the generating station, implementation schedule, revised schedule of completion of the system for evacuation of power and delay in implementation of bays due to land acquisition and agitation by land owners, etc. PGCIL has submitted that during the meeting with Chief Engineer I/C(PSPM) held on 24.4.2015, the representative of PGCIL informed that sub-station for termination of Kudgi-Narendra (New) D/C line of the petitioner would be ready by 30.6.2015. In the said meeting, NTPC, PGCIL and the petitioner agreed for postponement of commercial operation date of Kudgi-Narendra (New) 400 kV 2X D/C line to 30.6.2015 based upon the progress made by NTPC and PGCIL in this regard. In the meeting with CEA held on 10.7.2015, the representative of PGCIL informed about

the progress of work of the transmission line. PGCIL has submitted that due to RoW issues and delay in handling over of land by KIADB, it could not complete its scope of work.

12. With regard to date of commissioning of multi-circuit tower associated with line-B of 400 kV D/C Kudgi TPS- Narendra (New) transmission line, PGCIL has submitted that since the multi-circuit tower associated with the Kudgi sub-station was commercially operational along with the Kudgi sub-station on 11.12.2015, the date of commissioning of each element of the transmission system is the date when the entire system was tried, tested and charged under the Commission's Regulations and accordingly, certificate for commercial operation is obtained from CEA. With regard to CEA charging and RLDC certificates for bays at Narendra (New) associated with Kudgi TPS-Narendra (New) D/C lines, PGCIL has submitted that CEA clearance certificate along with the trial operation notification is issued by RLDC.

Analysis and decision:

13. We heard the learned counsels and representatives of the parties. We have considered the pleadings of the parties, including reply filed on behalf of the respondents and the documents available on record. In our view, the following issues arise for our consideration:

- (a) Whether the petitioner is entitled to recover transmission charges from the date of completion of the first element of the transmission project?
- (b) Who shall pay the transmission charges from the actual COD or deemed COD till the assets are put to use?

(c) Whether the claim of PGCIL regarding land acquisition and RoW problems shall fall under Force majeure conditions?

(d) What should be payment of charges for startup power by NTPC.

The issues have been dealt within the succeeding paragraphs.

Issue No. 1: whether the petitioner is entitled to recover transmission charges from the date of completion of the first element of the transmission project?

14. The petitioner has submitted that the scope of work awarded to the petitioner based on the international tariff based competitive bidding comprising the following elements:

S.No	Scope of work	construction Period
1.	2 Nos 400 kV D/C transmission Line Kudgi TPS to Narendra (New)	18 months from the effective date
2.	765 KV D/C transmission line Narendra (New) to Madhugiri	28 months from the effective date
3.	400 KV D/C transmission line Madhugiri to Bidadi	28 months from the effective date

15. The petitioner has submitted that the scheduled commercial operation date for the first element was on 28.2.2015 which was actually completed on 27.3.2015. However, due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL, the element could not be tested and charged.

16. The inter-connection facilities required to be developed by NTPC and PGCIL prior to the commissioning of the first element of the transmission project are as under:

S. No.	Name of the Agency	Interconnection facility
1	NTPC Kudgi Power Plant (3 x 800MW)	400 kV Bays allotted to KTL for connecting element 1

2	Power Grid Corporation of India Limited ("PGCIL")	Narendra (New) 765/400 kV Pooling station-Respective bays allotted to KTL for connecting Element 1
3	PGCIL	1 no. Multi Circuit Tower for terminating 2 circuits (second 400 kV D/C line) of element 1

17. PGCIL, vide its affidavit dated 14.12.2015, has contended that it had planned the implementation schedule of the associated bays matching with the commissioning of Kudgi TPS-Narendra 400 kV 2x D/C transmission lines and Narendra (new) sub-station was being implemented as a part of Southern Region Strengthening Scheme XVII with completion schedule of March 2015. However, implementation of Narendra (new) sub-station got delayed due to late hand over of land for establishment of sub-station by Karnataka Industrial Areas Development Board (KIADB). According to PGCIL, though the land was handed over in 2012 but it could actually be acquired only in February 2014.i.e. with a delay of more than a year. However, the works of 4 no. of bay for implementation of Kudgi TPS-Narendra (new) 400 kV 2x D/C transmission line was included under separate project for evacuation of power from Kudgi TPS of NTPC Limited which could be commenced only on acquisition of land for establishment of Narendra (New) sub-station. PGCIL has further submitted that due to agitation/resistance by affected land owners of NTPC's Kudgi Thermal Power Station, the progress of works was affected which was beyond its control. PGCIL has submitted that as per the investment approval, the project was to be completed in December, 2015. However, it has completed these bays in September 2015. As a practice, in the internal L-2 schedule for the project, 4 nos. line bays for termination of Kudgi TPS-Narendra (new) 400 kV 2XD/C lines at 400 kV Narendra (new) sub-station from Kudgi

TPS was kept matching with the expected schedule(February, 2015) of Kudgi TPS-Narendra 400 kV 2X D/C lines. PGCIL has contended that since PGCIL awarded the contract of these 4 bays as a separate package with matching completion schedule with the petitioner's transmission lines by February 2015 at the project planning stage, there was no mis-match between the completion schedule of transmission line to be constructed by the petitioner and terminal bays to be constructed by PGCIL.

18. NTPC vide its affidavit dated 21.1.2016 has submitted that since, the line termination at NTPC gantry was completed in the month of May 2015 only, whereas Kudgi STPP bay gantry were ready in the month of April 2015. NTPC has submitted that since OPGW termination took place only in the month of August 2015, the claim of petitioner that transmission line was ready on 27.3.2015 without getting terminated at either end and without OPGW is not correct. NTPC has submitted the readiness of various interconnecting circuit elements as under:

a)	400 kV D/C Kolhapur-Narendra (new) line; Line charged on 15.11.2015 (PGCIL scope).
b)	400 kV Narendra (new) sub-station; Line charged on 15.11.2015 (PGCIL scope).
c)	400 kV Narendra (new) sub-station-Kudgi line ; One ckt. charged on 16.11.2015 (KTL Scope)
d)	Kudgi Switchyard
	(i) 400 kV switchyard already charged on 16.11.2015
	(ii) 400/220 kV ICT to be ready for charging tentatively in February 2016 (NTPC scope)
e)	220 kV KPTCL network: One no. 220 kV single circuit line is already terminated at 220 kV switchyard at Kudgi. Balance circuits of 220 kV of KPTCL scope are under construction.

19. SRLDC, vide letter dated 20.1.2016, has certified that the following elements have successfully completed trial operation on the dates mentioned against each:

Name of the Elements	Date of Completion
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Bays of 400 kV Narendra line-1	18.11.2015
400 kV Bus-2	18.11.2015
125 MVAR Bus Reactor-1 and Bays	18.11.2015
120 MVAR station Transformer and Bays	18.11.2015

20. CEA vide its letter dated 28.7.2015 approved the energisation of 400 kV Kudgi TPS- Narendra (New) transmission line (Line-A) terminating one ends at Super Thermal Power Station, Kudgi of NTPC and at other end at 400 kV GIS Narendra (New) sub-station of PGCIL. With regard to Line-B, CEA suggested that once erection of multi-circuit tower at location No.MC1, which was in the scope of PGCIL, was completed, the compliance of item No.1 of Regulation 12 of inspection report of 400 kV D/C Kudgi TPS-Narendra (New) Transmission Line(Line B) would be submitted to obtain approval in respect of the Line-B. It is noted that on 22.7.2015, CEA carried out inspection of NTPC Kudgi STPP and accorded approval vide letter dated 24.08.2015 for energisation of 11 No. 220 kV bays and 4 No. 400 kV bays including bay required for KTL line-I bay termination at NTPC Kudgi STPP.

21. NTPC, vide its letter dated 9.9.2015 addressed to BESCO, has stated that since deemed COD of the transmission line which is not in regular service is required to be approved by the Commission as per its Regulations, the transmission line cannot be declared commercial unless it is test charged from either of the ends. NTPC has contended that the line 1 was test charged only on 16.11.2015 and other three lines of the first element were yet to be test charged. However, the transmission charges are applicable from COD as per clause 10.1 of the TSA and not from the date of completion as prayed by the petitioner. NTPC has submitted that startup power for Kudgi STPP would be drawn through 400 kV Kudgi Transmission Ltd (KTL) and the associated bays

of PGCIL at New Narendra sub-station. NTPC Kudgi STPP was ready to draw startup power in the month of July, 2015. However, 400 kV PGCIL New-Narendra sub-station was charged for the first time through PGCIL Kolhapur-Narendra line on 15.11.2015. Subsequently, the line-1 of the petitioner and Kudgi 400 kV switchyard could be charged only on 16.11.2015.

22. PGCIL, vide its affidavit dated 18.2.2016, has submitted that the Investment Approval for the project was accorded in February 2014 with commissioning schedule of December 2015, matching with the overall commissioning schedule of transmission lines under KTL. PGCIL has submitted in the review meeting conducted by the Chief Engineer, CEA on 24.4.2015 to ascertain the progress of transmission system associated with Kudgi STPS and associated bays at PGCIL's sub-stations, the petitioner informed that Kudgi TPS-Narendra (New) 400 KV 2x D/C line was scheduled to be completed by February 2015 and is almost ready to commission whereas the representative of NTPC informed that Kudgi STPS generation project has been delayed and first unit of Kudgi STPS is scheduled for commissioning in March 2016 and start-up power would be required by June, 2015. In the said meeting dated 24.4.2015, it was agreed that NTPC, KTL and PGCIL shall postpone the COD to 30.6.2015.

23. POSOCO has submitted that the first circuit was charged on 17.11.2015. According to POSOCO, in case the transmission line is taken to be a dedicated line then the charges shall have to be paid by NTPC in terms of the provisions of the Connectivity Regulations and the Sharing Regulations and in case, CTU designating

the line to be an ISTS line, then the charges have to be included under the POC mechanism.

24. PGCIL has stated that since the multi-circuit tower associated with the Kudgi sub-station was commercially operational along with the Kudgi sub-station on 11.12.2015, the date of commissioning of each element of the transmission system is the date when the entire system was tried, tested and charged under the relevant Regulations and accordingly certificate for commercial operation is obtained from CEA.

25. NTPC has submitted the status of elements covered in the petition as under:

	Line -1	Line -2	Line -3	Line -4
PGCIL's sub-station at New-Narendra (bay status)	Ready in November 2015.	Ready in November, 2015	Not ready (Non-availability of Multi Circuit Tower)	Not ready (Non-availability of Multi Circuit Tower)
KTL Lines	27.3.2015- Claimed completion 28.7.2015- CEA Clearance 4.8.2015- Deemed COD OPGW termination in August, 2015	27.3.2015- Claimed completion 28.07.2015- CEA Clearance 4.8.2015- Deemed COD OPGW termination in August, 2015	27.3.2015- Claimed completion 28.07.2015- CEA Clearance 4.8.2015- Deemed COD OPGW termination in August, 2015	27.3.2015- Claimed completion 28.7.2015- CEA Clearance 4.8.2015- Deemed COD OPGW termination in August, 2015
NTPC Kudgi STPP Switchyard(bay status)	22.7.2015-Inspection by CEA 24.8.2015-CEA clearance 16.11.2015-Charged after PGCIL S/S was made ready 21.11.2015- Commencement of drawl of startup power by Kudgi STPP	Readiness by December,2015	Readiness by Janaury,2016	Readiness by Janaury,2016

26. We have considered the submissions of the petitioner and the respondents.

Article 2 of the TSA defines the Effective Date as under:

“2.1 Effective Date

This agreement shall be effective from later of the dates of the following events:

- (a) The agreement is executed and delivered by the Parties; and
- (b) The selected Bidder has acquired for the Acquisition Price. one hundred percent (100%) of the equity shareholding of REC Transmission Projects Company Ltd. in Kudgi Transmission Limited along with all its related assets and liabilities as per the provisions of the Share Purchase Agreement and
- (c) The Selected Bidder on behalf of the TSP, has provided the Contract Performance Guarantee, as per terms of Article 3.1 of this agreement.

As per the said provisions, the TSA would be effective from the date of execution of TSA, successful bidder acquired the TSP as its fully owned subsidiary and successful bidder provided Contract Performance Guarantee whichever is later. It is noted that the TSA was entered into between the parties on **14.5.2013**. LTIDPL acquired KTL as its fully owned subsidiary on 30.8.2013. Therefore, the effective date for implementation of the project is 30.8.2013. According to the petitioner, the scheduled commercial operation date of the first element of the transmission system was on 28.2.2015 and the petitioner completed its entire work for the first element on 27.3.2015 . However due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL, the transmission asset could not be tested and charged.

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.”

27. Scheduled COD has been given in Schedule 3 of the TSA with overall SCOD as 28 months from the effective date. As per schedule 3 of the TSA, the first element of the

project was contemplated to be completed within a period of 18 months and other two elements were contemplated to be completed within a period of 28 months. Therefore, the Scheduled COD of the project was 28.2.2015 and 31.12.2015. However, the petitioner completed the entire scope of work for the first element on 27.3.2015 and due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL, it could not test and charge the same.

28. Article 4.3 of the TSA provides for the time for commencement and completion of the project as under:

“(a) The TSP shall take all necessary steps to commence work on the project from the effective date of the agreement and shall achieve Scheduled COD of the project in accordance with the time schedule specified in Schedule 3 of this Agreement.

(b) The COD of each element of the project shall occur not later than the Scheduled COD or within such extended time to which the TSP shall be entitled under Article 4.4 hereto.”

29. Article 6.2.1 and Article 6.2.2 of the TSA which deal with the commercial operation of the project provides 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 elements 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.”

30. The commissioning details of various elements considered are as under:

S.No	Name of element	Implement agency	COD
1	Kudgi TPS-Narendra(New) 400 kV 2xD/C lines	KTL	4.8.2015 (Deemed COD) Line-A charged on 16.11.2015
2	NTPC Kudgi STPP Switchyard	NTPC	24.8.2015 (Got CEA clearance) 16.11.2015 Charged after PGCIL sub-station ready.
3	Kudgi TPS stage-I (Unit I)	NTPC	May 2016 (Anticipated)
3	400 kV Narendra (New) sub-station	POWERGRID	Charged on 15.11.2015
4	400 kV D/C Kolhapur-Narendra (New) line	POWERGRID	Charged on 15.11.2015

31. It is noted that CEA vide its letter dated 28.7.2015 approved the energisation of 400 kV D/C Kudgi TPS-Narendra (New) Transmission line-A belonging to Kudgi Transmission Limited. Relevant portion of the said letter is extracted as under:

“...Therefore, the approval for energisation is hereby accorded to 400 kV D/C Kudgi TPS-Narendra (New) Transmission line (Line-A) (Line length:09.0 kms) belonging to M/s Kudgi Transmission Limited terminating one ends at Super Thermal Power State, Kudgi of M/s NTPC and other ends at 400 kV GIS Narendra (New) sub-station of M/s PGCIL subject to consistent compliance of relevant provisionis of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010 by M/s Kugd Transmission Limited.

Once the erection of multi-circuit tower at location No.MC 1 which is in the scope of M/s PGCIL is completed, the compliance of item No.1 of regulation 12 of our inspection report in respect of 400 kV D/C Kudgi TPS-Narendra (New) Transmission Line(Line B) shall be submitted to this office to obtain the approval in respect of the Line-B”.

32. From the above letter, it emerges that the petitioner was ready to charge Line-A in terms of Article 6.2 of the TSA, but could not charge the same due to non-availability of required interconnection facility. It is noted that as per the provision of the TSA, there is no pre-required element for COD of the instant line. Therefore, we consider deemed COD of the 400 kV D/C Kudgi TPS –Narendra (New) Transmission line-A from 4.8.2015 in terms of the provisions of the 6.2.2 of the TSA i.e., 7 days after the energisation of the transmission lines. It is further noted from the letter of CEA that the Line-B was ready in all respects other than Multi circuit tower. However, due to non-

availability of multi-circuit tower, Line-B (400 kV D/C Kudgi TPS-Narendra (New) Transmission line) could not be charged. Since, the multi circuit tower is within the scope of PGCIL, we allow deemed COD of 400 kV D/C Kudgi TPS-Narendra (New) Transmission line-B from 4.8.2015 as there is no pre required element for COD of the instant line.

33. NTPC has contended that deemed COD is to be approved by the Commission in terms of the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014. Relevant portion of the 2014 Tariff Regulations provides as under:

“These regulations shall not apply for determination of tariff in case of the following:

(a) Generating stations or inter-State transmission systems whose tariff has been discovered through tariff based competitive bidding in accordance with the guidelines issued by the Central Government and adopted by the Commission under Section 63 of the Act.”

As per the above provisions, 2014 Tariff Regulations are not applicable for determination of tariff in case of the inter-State transmission system whose tariff has been discovered through tariff based competitive bidding guidelines issued by Central Government, Ministry of Power. It is noted that the petitioner has been selected based on the international tariff based competitive bidding guidelines and its tariff has been adopted by the Commission under Section 63 of the Electricity Act, 2003. NTPC's contention that deemed COD of the petitioner should be approved by the Commission under 2014 Tariff Regulations cannot be accepted.

Issue No. 2: Who shall pay the transmission charges from the actual COD or deemed COD till the assets are put to use?

34. PGCIL, vide affidavit dated 18.2.2016, has stated that Kudgi-Narendra (New) is the connectivity line for NTPC. PGCIL has further submitted that its bays at Narendra (New) were ready in the month of August, 2015 and were charged in the month of November, 2015. PGCIL has submitted that since Kudgi-Narendra (New) transmission line belongs to PGCIL, the non-charging of bays at Narendra (New) till November, 2015 is attributable to PGCIL. NTPC, vide its affidavits dated 14.12.2015 and 21.1.2016, has submitted that till COD of the Kudgi STPP Unit-1, these lines could be utilized for drawl of power by Karnataka/Southern Region through inter-connection of Kudgi switchyard with KPTCL network at Baghewadi. Therefore, the transmission charges for this element should be recovered through PoC mechanism as generator would already be paying the transmission charges as per the Fourth Amendment of Connectivity Regulations.

35. We have considered the submission of the respondents and have perused the minutes of 33rd meeting of Standing Committee on Power System Planning of Southern Region dated 15.11.2011, 13th meeting of SR constituents regarding LTA and Connectivity application dated 25.11.2011 and 28th meeting of SRPC dated 10.10.2015. In our view, the arrangement of KPTCL drawing 200-300 MW by utilizing the 400 kV Kolhapur-Narendra (new) D/C line and 400/220 kV Kudgi Switchyard was not envisaged as inter-State system for evacuation of power from Kudgi at the time of planning the connectivity system of Kudgi STPP. The proposal of KPTCL is agreed in principle during TCC of 28th meeting of SRPC held on 10.10.2015. The Kudgi-Narendra (new) D/C lines were planned as connectivity lines of Kudgi STPP by CTU.

36. In a similar case, the Commission vide order dated 29.4.2015 in Petition No.105/TT/2012 had observed as under:

“14.The 230 kV BHAVINI-Sirucheri D/C line and 230 kV BHAVINI-Arani D/C line are being utilized for drawing commissioning power for BHAVINI PFBR apart from transmission of power from Sirucheri to Arani and vice versa

“17It is observed that BHAVINI switchyard is connected to Arani and Sirucheri and it will cause power to flow from Sirucheri to Arani and vice-versa in view of the nature of electrical system...These assets were planned for evacuation of power from BHAVINI. In the absence of commissioning of BHAVINI, these assets could not be put to regular use for supply of power to the constituents of the Southern Region. Therefore, till the unit of BHAVINI is commissioned, the transmission charges of Assets-I and II shall be borne by BHAVINI in accordance with Regulation 8(6) of the Central Electricity Regulatory Commission (Sharing of Transmission Charges) Regulations, 2010.”

37. Similarly, in the present case, the power may flow from Narandra-Kudgi and then through 220 kV of KPTCL or vis-a versa till commissioning of Kudgi –STPP. Since, the Kudgi-Narendra transmission line has been built as connectivity line for Kudgi STPP, the charges should be paid by NTPC as decided in para 42 below. As we have concluded in issue No.1 that the petitioner would be entitled to recover transmission charges from 4.8.2015, we proceed to decide who is entitled to pay the same.

38. Clause (5) of Regulation 8 of the Sharing Regulations as amended from time to time provides as under:

“(5) Where the Approved Withdrawal or Approved Injection in case of a DIC is not materializing either partly or fully for any reason whatsoever, the concerned DIC shall be obliged to pay the transmission charges allocated under these regulations:

Provided that in case the commissioning of a generating station or unit thereof is delayed, the generator shall be liable to pay Withdrawal Charges corresponding to its Long term Access from the date the Long Term Access granted by CTU becomes effective. The Withdrawal Charges shall be at the average withdrawal rate of the target region:

Provided further that where the operationalization of LTA is contingent upon commissioning of several transmission lines or elements and only some of the transmission lines or elements have been declared commercial, the generator shall pay

the transmission charges for LTA operationalised corresponding to the transmission system commissioned:

Provided also that where the construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line shall be payable by the generator as provided in the Regulation 8 (8) of the Connectivity Regulations:

Provided also that during the period when a generating station draws start-up power or injects infirm power before commencement of LTA, withdrawal or injection charges corresponding to the actual injection or withdrawal shall be payable by the generating station and such amount shall be adjusted in the next quarter, from the ISTS transmission charges to be recovered through PoC mechanism from all DICs:"

As per the above provisions, where construction of dedicated transmission line has been taken up by the CTU or the transmission licensee, the transmission charges for such dedicated transmission line are required to be paid by the generator in terms of Regulation 8 (8) of the Connectivity Regulations.

39. The Commission, vide order dated 5.8.2015 in Petition No.11/SM/2014, had observed as under:

"21 we direct STUs to expedite downstream system in a time bound manner so that the transmission system already commissioned is put to use. PGCIL is at liberty to approach the Commission for invoking Regulation 3(12) (c) of the 2009 Tariff Regulations or Regulation 4(3) (ii) of 2014 Tariff Regulations, as the case may be, for COD of the completed assets. Concerned STU, who had requested for provision of downstream line bays in the various meetings of Standing Committee/RPC, shall bear the transmission charges till completion of downstream system."

40. Further, with regard to deemed COD, the Commission in order dated 22.3.2016 in Petition 4/ADP/2016 had observed as under:

"34 In the event the inter-connection facilities are not ready by SCOD or by revised SCOD (as may be revised by the petitioner and the LTTCs for the purpose of availing incentive as per MOP Policy) on account of non-readiness of the upstream or downstream transmission assets while the petitioner's transmission system is ready for commissioning, the COD of the transmission assets of the petitioner may be declared in accordance with the provisions of Article 6.2 of the TSA (to be known as „deemed COD“) and the LTTCs/developers of the upstream and downstream assets shall be liable to pay the transmission charges from the deemed COD till the transmission assets are put into actual use".

41. The petitioner and NTPC have placed on record the CEA inspection certificate dated 28.7.2015, 23.9.2015 and RLDC's charging certificates dated 20.11.2015 and 20.01.2016. Accordingly, the date of commercial operation of the transmission assets has been considered as under:

S.No	Utility Name	Assets details	COD considered
1	KTL	KTL lines	4.8.2015
2	NTPC	NTPC Kudgi STPP switchyard	24.8.2015
3	PGCIL	Powergrid sub-station at New-Narendra	15.11.2015

42. It is noted that 400 kV D/C Kudgi TPS-Narendra (New) transmission line is connectivity line for NTPC Kudgi STPP and obtained clearance from CEA on 28.7.2015. However, NTPC Kudgi STPP switchyard obtained clearance from CEA on 24.8.2015 and charged the switchyard on 16.11.2015, after PGCIL's sub-station was made ready. 400 kV Narendra (new) sub-station pertaining to PGCIL was charged on 15.11.2015. In view of the above, the transmission charges shall be payable by NTPC and PGCIL in the following manner:

- (a) It is noted that the petitioner completed its entire scope of the work on 27.3.2015. However, due to non-availability of inter-connection facility required to be developed by NTPC and PGCIL at each end, it could not commission the transmission line. Therefore, the transmission charges for the period from 4.8.2015 to 23.8.2015 shall be shared by both NTPC and PGCIL in the ratio of 50:50.

(b) CEA vide its letter dated 24.8.2015 accorded the approval for energisation of 11 no. bays of 220 kV and 4 No. bays of 400 kV and 60-60 MVA, 400 kV station transformer and associated equipment at Kudgi STPP of NTPC. From the letter of CEA, it is observed that the bays pertaining to NTPC was ready in the month of August, 2015. However, PGCIL Narendra (New) sub-station was charged through PGCIL Kolhapur-New Narendra line from 15.11.2015. Subsequently, 400 kV Kudgi Switchyard was charged on 16.11.2015. Therefore, the petitioner's transmission line could not be utilized due to non-completion of elements under the scope of PGCIL. Accordingly, PGCIL shall pay the transmission charges to the petitioner for the period from 24.8.2015 to 15.11.2015.

(c) As per Regulation 8(5) of the Sharing Regulations, the charges for connectivity line of NTPC are required to be paid by NTPC till date of COD of first unit of Kudgi or date of start of LTA, whichever is earlier. Accordingly, from the period 16.11.2015, NTPC shall pay the transmission charges to the petitioner in terms of the Regulation 8 (5) of the Sharing Regulations.

(d) As per Regulation 11 of the Sharing Regulations, CTU is responsible for raising the bills of transmission charges to ISTS transmission licensees. Accordingly, CTU is directed to raise the bills to PGCIL and NTPC for the period from 4.8.2015 to 23.8.2015 in the ratio of 50:50 and to PGCIL for the period from 24.8.2015 to 15.11.2015 and to NTPC from

16.11.2015. After collecting the transmission charges, CTU shall disburse the same to the petitioner immediately.

Issue No.3: Whether the PGCIL`s claim regarding land acquisition and RoW problems shall fall under Force majeure conditions?

43. PGCIL has contended that Narendra (New) sub-station, with completion schedule of March 2015, was delayed due to delay in handling of land for establishment of sub-station by Karnataka Industrial Areas development Board (KIADB). The land was handed over in 2012. However, it could be acquired only in February 2014 i.e. with a delay of more than one year. PGCIL has submitted that the progress of the work was severely affected due to agitation/resistance by affected land owners of NTPC's Kudgi Thermal Power station. According to PGCIL, on 5.7.2014, a large group of farmers/villagers staged a protest opposing the plant, and a sub-inspector along with a few police personnel and farmers were injured in firing. Therefore, around 3000 workers left the project site including the Kudgi GIS work site. Till end of August 2014, situation was grim and only in the first week of September 2014 normalcy restored and work was resumed. Therefore, the construction work at Kudgi GIS station was severely affected for almost two months due to above reasons.

44. PGCIL has contended that during the meeting with CEA held on 10.7.2015, the representative of PGCIL informed that, it could not complete its scope of work due to RoW issues and delay in handling over land by KIDAB which is beyond its control. The relevant portion of minutes of meeting held on 10.7.2015 is extracted as under:

"4..... that the work of 400 kV D/C (Quad) Narendra (New) -Narendra Transmission Line has come close to completion but due to severe RoW constraints at 5 nos.

locations near Kudgi area, the work is stuck up for its completion. POWERGRID further informed they are trying their best to resolve the RoW issues to complete the line at the earliest possible time. POWERGRID also informed that despite the initial delays in handing over of land by K1ADB (land handed over in Feb '14), the work for creation of Narendra (New) Substation has been taken up fast and is almost ready and presently testing of GIS system is in progress and the entire GIS bays are expected to be ready by end July'15. He further informed that RoW issues at 5 locations are expected to get resolved with intervention from District Administration by mid July'15 and also sought assistance of NTPC as locations falls near Kudgi STPS stated that the 400 kV D/C (Quad) Narendra (New)-Narendra Transmission Line shall be ready by August 15."

45. In our view, the issues raised by PGCIL are not relevant at this stage. The delay cannot be construed as a reason for not paying the transmission charges to the petitioner. The issues raised by PGCIL shall be dealt with while determination of tariff of PGCIL's assets in accordance with the law.

Issue No. 4: What should be payment of charges for startup power by NTPC

46. NTPC vide affidavit dated 14.12.2015 has contended that the charges payable by NTPC would correspond to the charges determined by the Commission for the relevant node under PoC mechanism and the same shall be adjusted in the pooled account in the next quarter. Therefore, the charges of beneficiaries would be reduced to the extent payment is made by the generator. Accordingly, the transmission charges as per the TSA for the first element of the petitioner are required to be included in the PoC charges. NTPC has submitted that as per provisions of the 4th amendment of Connectivity Regulations, it is required to pay the transmission charges corresponding to KTL's Line-1 only for drawl of startup power from 21.11.2015 onwards till commissioning of Unit-1 of Kudgi STPP. These charges would correspond to charges of relevant node as approved by the Commission. According to NTPC, the transmission charges for first element need to be included and recovered through POC mechanism

as the transmission charges are payable only from COD of the transmission lines and not from the date of completion/deemed COD as claimed by the petitioner in accordance with Transmission Service Agreement and Sharing Regulations.

47. We have considered the submission of NTPC. In our view, NTPC is liable to pay transmission charges for the connectivity line as decided in preceding para in terms of Regulation 8 (5) of the Sharing Regulations. In addition to this, NTPC shall be liable to pay nodal charges for use of ISTS [other than Kudgi-Narendra (New)] towards drawl of startup power as per rates prescribed under Sharing Regulations.

48. Petition No. 236/MP/2015 is disposed of with the above directions.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson