

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 155/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: 4th of January, 2017

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

Patran Transmission Company Limited
Room No, 409, 4th Floor Skipper Corner
88 Nehru Place,
New Delhi-110019

....Petitioner

Vs

1. Haryana Power Purchase Centre
Shakti Bhawan, Energy Exchange
Room No 446, Top Floor,
Sector-6, Panchkula-134109
Haryana
2. Punjab State Power Corporation Limited
Shed No T-1-A, Thermal Design,
Near 22 No. Phatak,
Patiala, Punjab
3. Himachal Sorang Power Private Limited
D-7, Sector-1, Lane-1, 2nd Floor
New Shimla, Shimla-171009
Himachal Pradesh
4. Adani Power Limited
3th Floor, Achalraj
Opposite Mayors Bungalow
Law garden, Ahmedabad-380006, Gujarat

5. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath
Jaipur-302005
Rajasthan
6. Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata
Jaipur Road,
Ajmer, Rajasthan
7. Jodhpur Vidyut Vitran Nigam Ltd
400 kV, GSS Building,
Ajmer Road, Heerapur,
Jodhpur, Rajasthan
8. Lanco Anpara Limited
Plot No 397, Udyog Vihar
Phase-3, Gurgaon-122016
Haryana
9. Power Development Department
Govt. of Jammu & Kashmir
SLDC Building, 1st Floor
Gladani Power House
Narwal, Jammu
Jammu & Kashmir
10. Lanco Green Power Private Ltd
Plot No 397, Udyog Vihar
Phase- III, Gurgaon-122016, Haryana
11. North Central Railway
DRM Office
Nawab Yusuf Road
Allahabad, Uttar Pradesh
12. Ad Hydro Power Limited
Bhilwara Towers,
A-12, Sec-1
Noida-201301, Uttar Pradesh
13. Jaiprakash Power Ventures Limited
A Block, Sector-128, Noida-201304, Uttar Pradesh
14. BSES Yamuna Power Limited
2nd Floor, B Block

Shakti Kiran Building
(Near Karkardooma Court)
New Delhi

15. BSES Rajdhani Power Limited
BSES Bhawan, 2nd Floor
B Block, Behind Nehru Place Bus Terminal
Nehru Place
New Delhi-110019
16. Tata Power Delhi Distribution Limited
33 kV sub-station Building,
Hudson Lane, Kingsway Camp,
New Delhi-110019
17. New Delhi Municipal Corporation
Palika Kendra, Sansad Marg
New Delhi-110 001
18. Union Territory of Chandigarh
Div-11, Opposite Transport Nagar
Industrial Phase-1
Chandigarh
19. Power Grid Corporation of India Limited
B-9, Qutab Institutional Area
Katwaria Sarai, New Delhi-110016
20. Uttar Pradesh Power Corporation Limited
14th Floor, Shakti Bhawan
Ext Building, 14, Ashok Marg
Lucknow
Uttar Pradesh
21. PTC India Limited
2nd Floor, NBCC Tower
15, Bhikaji Cama Place
New Delhi-110066
22. Uttaranchal Power Corporation Limited
Urja Bhawan, Kanwali Road
Near Balli Wala Chowk
Dehradun, Uttarakhand
23. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Kumar House Complex

Building No. 11, Shimla,
Himachal Pradesh

24.PFC Consulting Ltd
First Floor, "Urjanidhi",
1, Barakhamba Lane, Connaught Place,
New Delhi-110 001

...Respondents

The following were present:

Shri Anand Ganeshan, Advocate for the petitioner
Ms. Swapna Seshadri, Advocate for the petitioner

ORDER

M/s Techno Electric and Engineering Company Limited (TEECL) was selected as the Transmission Services Provider based on the international tariff based competitive bidding to execute transmission system "Patran 400 kV sub-station" (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 (i) Creation of 2x500 MVA, 400/220 kV sub-station at Patran (ii) LILLO of both circuits of Patiala-Kaithal 400 kV D/C at Patran (Triple Snow Bird Conductor), (iii) 400 kV bays (iv) 220 k V bays and (v) Space for spare bays. Letter of Intent (LOI) was issued by PFC Consulting Limited as the Bid Process Coordinator (BPC) to TEECL on 17.9.2013. TEECL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent and acquired the Patran Transmission Company Limited (PTCL) as its fully owned subsidiary. PTCL entered into the Transmission Service Agreement with Long Term Transmission Agreement on 12.5.2014. PTCL approached the Commission for grant of transmission licence in Petition No. 321/TL/2013 and adoption of tariff of the transmission system in Petition No. 1/TT/2014. The Commission in its order dated 5.8.2014 in Petition No. 1/TT/2014 has adopted the

tariff of the transmission system and in order dated 14.7.2014 in Petition No. 321/TL/2013 has granted licence to PTCL for inter-State transmission of electricity.

2. The petitioner has filed the present petition under Section 79 (1) (c) and (f) of the Act seeking recovery of transmission charges from the date of commissioning of the transmission system. The petitioner has submitted that the following facts have led to filing of this petition:

(a) In terms of Schedule 3 of the TSA, the Scheduled Commercial Operation Date (SCOD) for the transmission system is 30 months from the effective date. Therefore, the effective date as provided in the TSA has a direct bearing on the time schedule within which the transmission system is to be constructed and commissioned by the petitioner;

(b) The scheduled date of commercial operation of the transmission system was February 11.11.2016. However, the petitioner declared the commercial operation of the transmission line on 22.6.2016.

(c) 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.

(d) As per Article 2.1 of the TSA, the effective date shall be later of the dates (i) when the agreement is executed and delivered by the parties; (ii) when the selected bidder has acquired 100% of the equity shareholding of PFC Consulting Limited in Patran Transmission Company and (iii) when the selected bidder has provided the Contract Performance Guarantee. Contract Performance Guarantee was provided by TEECL on 4.9.2013, Share Purchase Agreement was signed and Patran Transmission Company was acquired on 13.11.2013 and TSA was executed with the beneficiaries on 12.5.2014.

(e) Since the TSA was executed on 12.5.2014, the effective date has to be only 12.5.2014. Consequently, the SCOD is to be achieved by 11.11.2016 which is 30 months from the effective date i.e. from 12.5.2014.

(f) The petitioner vide its letter dated 19.4.2016 informed NRPC that the project is under advance stage of completion with 400 k V GIS and 220 k V GIS are under erection, testing and commissioning, and is expected to be commissioned in the month of May 2016. The petitioner also requested for shutdown of the Kaithal-Patiala transmission line from 15.5.2016 onwards for a period of 15 days.

(g) The issue of shutdown was discussed at the OCC meeting held on 22.4.2016. After extensive deliberations, shut down was approved without any reservation.

(h) The petitioner, vide its e-mail dated 27.4.2016 requested PSTCL to execute the work as per the TSA and give details of the 6 nos 220 kV circuits which would get connected at the 220 kV Patran sub-station in order to finalize the bay markings.

(i) NRLDC vide its letter dated 14.5.2016 issued code for shutdown to the petitioner for the period from 15.5.2016 to 29.5.2016 for 400 kV Patiala Kaithal Ckt-I and II. NRLDC requested the petitioner and PSTCL to expedite the downstream networks at Patran for best use of the subject sub-station to deliver the power to Punjab. PSPTCL vide its e-mails dated 16.6.2016 and 30.6.2016 informed the petitioner that its transmission system is expected to be completed by November 2016.

(j) The transmission system was completed in the month of June 2016 and the trial operation for LILO line and sub-station commenced on 2.6.2016 and 17.6.2016 respectively. NRLDC vide its letters dated 21.6.2016 and 22.6.2016 issued certificate of completion of trial operation of transmission elements. Accordingly, the petitioner vide its letter dated 22.6.2016 informed the CTU regarding COD of Patran 400/220 kV sub-station along with LILO.

(k) The petitioner vide its letter dated 27.6.2016 requested POSOCO for inclusion of the transmission charges in the POC mechanism. The Empowered Committee on Transmission in its agenda circulated on 15.7.2016 acknowledged that the transmission system has achieved COD on 21.6.2016. However,

POSOCO vide its letter dated 19.7.2016 informed the petitioner that YTC would be considered under POC mechanism only after obtaining directions from the Commission or after actual power flow through the line, along with flow through ICT to downstream network, whichever is earlier.

(l) As per Article 10.1 of the TSA, the petitioner is entitled to tariff from the date of commercial operation of the elements of the project. Therefore, the petitioner has approached the Commission to ensure recovery of transmission charges in terms of Article 10.1 of the TSA and MOP order dated 15.7.2015 with the following prayers:

- (a) Hold and declare that the petitioner is entitled to the recovery of the YTC from the date of commissioning and COD of the subject transmission system which is from 21.6.2016 in terms of Article 10.1 of the TSA;
- (b) Direct POSOCO to include the YTC of the subject transmission system in the POC effective from 21.6.2016;
- (c) Direct CTU to collect the YTC from various beneficiaries for payment of the petitioner;
- (d) Ensure recovery of transmission charges to the petitioner along with interest for the period of delay;
- (e) Award costs of the present proceedings; and
- (f) Pass such other further order(s) as the Hon`ble Commission may deem just in the facts of the present case.”

3. The petition was admitted on 6.10.2016 and notices were issued to the respondents to file their replies. None of the LTTCs has filed reply to the petition. PSPCL vide Record of Proceedings for the hearing dated 6.10.2016 was directed to

clarify the timeline of commissioning of the downstream asset to which the transmission line of the petitioner is to be constructed. CEA was requested to clarify whether the transmission assets of the petitioner could be utilized even in the absence of the downstream assets.

4. Punjab State Transmission Corporation Ltd. vide its affidavit dated 11.11.2016 submitted that downstream asset to which the transmission line of the petitioner is to be constructed is under execution and is expected to be commissioned by 31.12.2016.

5. CEA in its letter dated 1.12.2016 has submitted as under:

“(a) During 30th Standing Committee meeting held on 19.12.2011, PSTCL had requested to establish new 400/220 kV sub-station at Patran to cater to 5 number of existing 220 kV grid stations, namely Mansa, Rajla, Sangrur, Suram and Patran. In addition, 2 nos of 220 kV new sub-station were also coming up in the area, at Pasiona, Bangan and Kakarla. Accordingly, to meet the growing load a 2x500 MVA sub-station at Patran was proposed by LILO of Patiala-Katihah 400 kV D/C line. Considering that the location of sub-station was in a very fertile area of the Punjab, the sub-station was agreed as Gas Insulated sub-station.

(b) The 220 kV downstream system of Patran 400/220 kV S/s i.e LILO of 220 kV Patran-Kakran and Patran-Rajila Line at 400/220 kV Patran S/s is under implementation and as per the present status, available in PSPM Division of CEA, out of 37 locations, 22 towers have been erected but no stringing has been done so far as the forest case is pending. The target date of completion is on 31st December is on 31st December 2016.

(c) As on the date, the assets of the petitioner on 400 kV side is already integrated with the grid. However, the 400/220 kV Patran S/s of M/s Patran Transmission Limited cannot be utilized in the absence of downstream networks (220 kV outlets) which is under implementation by PSTCL.”

Analysis and Decision:

6. We have considered the submission of the petitioner, the respondents and CEA.

The following issues arise for our consideration in this petition:

(a) Whether the petitioner is entitled for recovery of transmission charges from the date of actual commissioning of the asset prior to Scheduled COD?

(b) 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?

7. The petitioner has submitted that in terms of the TSA, it is entitled to the transmission charges from the date of actual commissioning and COD of the Transmission System. The petitioner has further submitted that as per Article 10.1 of the TSA, the beneficiaries are required to pay the transmission charges to the petitioner from the date of the actual COD of each of the transmission elements and for the purpose of calculating the time lines for commissioning, the Scheduled COD is required.

8. We have considered the submission of the petitioner. 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 by the Commission 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)

(1) 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. 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.”

9. Further, as per Article 4.2.1 (b) of the TSA, LTTCs are required to arrange and to make available the inter-connection facilities to enable the TSP to connect the project. Further, as per Article 6.1.1 of the TSA, TSP is required to give 60 day`s notice to LTTCs before the intended date of connection which shall not be prior to SCOD or the extended SCOD or the date otherwise agreed by LTTCs. Article 6.1.1 extracted as under:

“6.1.1. The TSP shall give the RLDC(s), CTU/STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the project, which date shall not be earlier than its Scheduled COD or Schedule COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees.

10. As per the decision and provisions of the TSA quoted above, the TSP cannot connect its system prior to SCOD or extended SCOD unless the same is agreed to by LTTCs. Further, TSP is required to give notice to “any other agency as required” in terms of Article 6.1.1 of the TSA. Since the developers of the upstream and downstream transmission assets are concerned with providing interconnection facilities, the TSP is required to give notice to them regarding the date of connection.

11. 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. 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 transmission 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.

CEA vide letter dated 1.12.2016 has submitted that as on date, the assets of the petitioner on 400 kV side is already integrated with the grid. However, the 400/220 kV Patran sub-station of Patran Transmission Limited cannot be utilized in the absence of downstream networks (220 kV outlets) which is under implementation by PSTCL. Relevant portion of the said letter is extracted as under:

“(c) As on the date, the assets of the petitioner on 400 kV side is already integrated with the grid. However, the 400/220 kV Patran S/s of M/s Patran Transmission Limited cannot be utilized in the absence of downstream networks (220 kV outlets) which is under implementation by PSTCL.”

12. It is noticed that petitioner has not submitted that the developers of upstream and downstream transmission lines and LTTCs have come to an agreement to prepone the date of COD before the SCOD. In our view, the COD of the transmission assets cannot be unilaterally declared with effect from 21.6.2016 prior to the SCOD of 11.11.2016 when the developers of the upstream and downstream transmissions line and LTTCs have not agreed to any date prior to SCOD. Since the associated downstream is not available, the petitioner is not entitled to recover transmission charges prior to SCOD.

Issue No. 2: 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?

13. In the 3rd Validation Committee`s meeting held on 9.9.2016, the issue regarding inclusion of LILO of 400 kV D/C Patiala-Kaithal transmission line in POC was raised by the petitioner. The relevant portion of minutes of the said meeting held on 9.9.2016 is extracted as under:

“8. Other Issues:

A. Issue regarding the inclusion of LILO of 400kV D/C Patiala – Kaithal line: Agenda by NLDC

(i) Patran Transmission Company Ltd informed that LILO of both circuits of Patiala-Kaithal 400KV D/C at Patran and Creation of 400KV GIS Substation at Patran have been completed. These elements were energised on 02/06/2016 and 17/06/2016 respectively and as per the TSA guidelines, on completion of a trial run of 72 hrs, the Commercial operation was declared on 21/06/2016. Since then, both the elements have been achieving 100% availability as per TSA. Due to the above status of COD,

Availability of elements, the project has achieved its COD and needs to be considered for POC by Validation Committee. Relevant portions of TSA were shown to the Committee. (ii) PTCL made submissions to the Validation Committee that as per the tender document, they had 30 months to complete the project. Due to the delay in signing the TSA, the Effective Date and the Commissioning date needed to be rectified as 12/05/2014 & 11/11/2016 respectively as per the provisions of Article 2 of TSA. Under the petition no. 74/MP/2016 to CERC, PTCL have requested for this rectification for which the Orders are reserved. The LILO line is in active use, while in case of substation the downstream is not ready which is beyond the scope of their contract. On the basis of the above, PTCL requested the Validation committee for inclusion of assets of PTCL under the POC mechanism and start the Revenue cycle immediately as all the conditions of the TSA have been fully satisfied, elements – Substation is tested and charged while LILO line is tested, charged and already in use.” MW Values HVDC Name Setpoints To be considered in Basecase Mundra-Mahindergarh Pole-1 1250 Mundra-Mahindergarh Pole-2 1250 Talcher-Kolar Pole- 1 1000 Talcher-Kolar Pole- 2 1000 Rihand-Dadri Pole- 1 750 Rihand-Dadri Pole- 2 750 Balia-Bhiwadi Pole-1 500 Balia-Bhiwadi Pole-2 500 Bhadrawati_HVDC 1000 Vindhyachal_HVDC 250 Gajuwaka_HVDC 650 Pusauli HVDC 400 Chandrapur-Padghe Pole-1 750 Chandrapur-Padghe Pole-2 750 BNC-Agra Pole-1& Pole-2 500(towards NER) Representative of CERC informed that Patran Transmission Company Ltd. has filed a petition regarding scheduled date of commercial operation in CERC which is yet to be decided. It was clarified that since the order in the petition is awaited and that the downstream system is not ready the above mentioned transmission assets cannot be considered in PoC at present.

Perusal of the above minutes of meeting reveals that the petitioner informed that the LILO of both circuits of Patiala-Kaithal 400 kV D/C at Patran and 400 kV GIS sub-station at Patran have been completed and these elements were energised on 2.6.2016 and 17.6.2016 respectively. The petitioner further informed that the LILO line is in active use. However, in the case of sub-station, the downstream is not ready which is beyond the scope of its contract. Accordingly, the petitioner requested the Validation Committee for inclusion of assets in PoC and start for recovery of transmission charges.

15. The petitioner had filed Petition No. 74/MP/2016 seeking declaration with regard to the effective date of the transmission system being executed by it as per the provisions of the TSA. The Commission, after consideration of the submission of the petitioner, vide order dated 14.10.2016, held as under:

“9.-----We hold that as per Article 2.1 of the TSA, the effective date of the transmission system is 12.5.2014. In terms of schedule 3 of the TSA, SCOD for the transmission system is 30 months from the effective date and therefore, the effective date as provided in the TSA has a direct bearing on the time schedule within which the transmission system is required to be constructed and commissioned by the petitioner.

10. As per above, SCOD for the transmission system is 30 months from the effective date. We have already held that the effective date of the transmission system as per the Article 2.1 of the TSA works out to 12.5.2014. Considering a period of 30 months from the effective date, the SCOD of the transmission system works out as 11.11.2016. In other words, the petitioner is required to achieve the COD of the transmission assets by 11.11.2016 failing which the petitioner apart from losing the transmission charges shall be liable for paying the penalty in terms of the TSA. It is noted that the transmission scheme involves LILO of existing line Patiala-Kaithal 400 kV line at new 2x500 MVA and 400/220 kV sub-station at Patran. Therefore, both elements are required to be commissioned together by 11.11.2016.”

As per the decision quoted above, the effective date for the transmission system is 12.5.2014 and the date of schedule COD is 11.11.2016 as per Article 2.1 of the TSA. The petitioner has claimed that the elements in the scope of the petition were charged on 2.6.2016 and 21.6.2016 respectively which is prior to SCOD. Accordingly, we have already concluded in para 12 above that the petitioner is not entitled to transmission charges prior to SCOD.

16. The next question arises that who shall bear the transmission charges of the elements from the date of SCOD till the commissioning of downstream stream asset by PSPCL. The issue regarding payment of transmission charges from the date of SCOD was deliberated in Petition No. 43/MP/2016 and the Commission vide order dated 21.9.2016 laid down the principles for such cases and observed as under:

“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.”

As per the decision quoted above, if the downstream system of the elements in present case is not commissioned by the schedule date of commercial operation, the owner of the downstream system shall be liable to pay the transmission charges of the transmission system till the downstream system is commissioned. However, the Commission, vide order dated 19.4.2016 in Petition No. 100/TT/2014, observed as under:

"8.The petitioner has prayed for approval of COD under Regulation 4(3)(ii) of 2014 Tariff Regulations. Petitioner has submitted that the downstream system which is the associated 220 kV feeder connections was to be implemented by the RVPNL. The petitioner has made several correspondences to the RVPNL for making the associated 220 kV feeder connections available; however the downstream system was not implemented at the time of filing of this petition. The petitioner, vide its affidavit dated 9.3.2015, has submitted that out of the 6 nos. 220 kV feeders to be implemented by the RVPNL, two feeders have been commissioned.

9. Clause 3 (ii) of Regulation 4 of the 2014 Tariff Regulations provides as under:-

“in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.”

10. Further, the Commission in its order dated 5.8.2015 in Petition No. 11/SM/2014 in the matter of Non-compliance of Sections 38 and 39 of the Electricity Act, 2003 has stated that:-

“...20. Keeping in view the mismatch between commissioning of transmission system by an ISTS licensee and upstream/downstream system of STU, we are

of the view that ISTS transmission licensees and STUs should also sign such Implementation Agreement for development of ISTS and downstream system in coordinated way to avoid any mismatch. We direct staff of the Commission to examine this aspect and propose necessary changes required in the 2014 Tariff Regulations to enable an ISTS licensees and STUs to enter into Implementation Agreement.

21. Since, the process of amendment would take time, 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."

11. PSPCL submitted that the DOCO certificate given in the petition does not certify that the associated 220kV bays have been charged/commissioned. Hence, as per the certification given in the DOCO certificate, the 220kV bays are not certified to be commissioned. In absence of 220kV line bays, this entire substation/project becomes idle since the purpose of this new substation is to supply 220kV lines in Kotputli area.

12. The petitioner has already completed its work covered under their scope of work but the concerned STU has not completed their scope of work i.e. the implementation of associated 220 kV feeder connections. The petitioner in this matter has made regular correspondence which is evident from the copy of letters submitted to the RVPNL. Petitioner vide affidavit dated 1.2.2016 has submitted the status of 220KV feeders of Kotputli Sub-station. It is evident from the submission that commissioning of 220 KV feeders have been delayed.

13. In view of the above we are approving the COD of the Asset A & B (i) as 1.4.2014 and Asset B (ii) as 10.9.2014 under the Regulation 4 (3(ii)) of the 2014 Tariff Regulations. However, as regards the recovery of the transmission charges is concerned, the transmission charges is to be recovered from the concerned State Discoms in accordance with the transmission service agreements as set forth in forthcoming paragraph of this order. 14. Annual Fixed charges for 2014-19 tariff period are being determined in the succeeding paragraphs. "

In the light of the above, PSPCL shall be liable to bear transmission charges from SCOD/actual commissioning whichever is later till commissioning of downstream system post which the assets shall be considered under POC.

17. The petitioner is directed to provide YTC details of its assets to NLDC and CTU. NLDC shall provide the same to RPC for inclusion in RTAs. The assets shall be billed

along with bill 1 under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses), Regulations, 2010 as amended from time to time. ISTS licensees shall forward the details of YTC to be recovered as per formats provided under the Sharing Regulations to NLDC. ISTS licensees shall forward the details of entity along with YTC details from whom it needs to be recovered as per applicable order`s of the Commission to NLDC (only in cases of bilateral billing due to non-availability of upstream/downstream system). Based on the input received from respective licensees and the Commission`s order, NLDC shall provide details of billing pertaining to non-availability of upstream/downstream system to respective RPCs for incorporation in RTAs for all cases of bilateral billing. On this basis, CTU shall issue the bills. The process given in this para shall be applicable to all future cases of similar nature and all concerned shall duly comply with the same.

18. Petition No. 155/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