

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 33/RP/2016

In
Petition No.173/TT/2013
And
Petition No. 111/TT/2015

Coram:

**Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member**

Date of Order : 28.02.2018

In the matter of:

Review of order dated 15.6.2016 in Petition No. 173/TT/2013 and 111/TT/2015.

And in the matter of:

Essar Power Transmission Company Limited (EPTCL),
Tower-2, 5th Floor, Equinox Business Park,
Off Bandra Kurla Complex, LBS Marg,
Kurla (W), Mumbai-400 070

..... Review Petitioner

Vs

1. Essar Power M.P Limited,
Prakash Deep Building, 10th Floor,
7, Tolstoy Marg, New Delhi-110 001
2. Power Grid Corporation of India Limited,
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-110 016
3. National Load Despatch Centre,
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-110 016



4. Western Region Power Committee,
F-3, MIDC Area, Marol, Opp. SEEPZ, Central Road,
Andheri (East), Mumbai-400 093
5. Essar Steel India Limited,
27th KM on Surat-Hazira Road,
Hazira-394 270, District-Surat
6. Government of Madhya Pradesh,
Energy Department, Mantralaya,
Vallabh Bhavan, Bhopal-462 004

....Respondents

For Review Petitioner : Shri Sudhir Nandarjog, Senior Advocate for EPTCL
Shri Gautam Chawla, Advocate for EPTCL
Shri Vishal Binod, Advocate for EPTCL
Shri Sandeep Sahay, EPTCL
Shri Sachidanand, EPTCL
Ms. Shruti Verma, EPTCL

For respondents : None

ORDER

This review petition has been filed by Essar Power Transmission Company Limited (EPTCL) seeking review of the order dated 15.6.2016 in Petition No. 173/TT/2013 and 111/TT/2015, wherein the trued-up tariff for 2012-13 and 2013-14 for combined assets of LILO of 400 kV S/C Vindhyachal-Korba transmission line, 400 kV D/C Gandhar-Hazira Transmission line, 400/220 kV GIS Sub-station at Hazira and associated bays and 400 kV D/C Quad Moose Transmission line from Mahan Thermal Power Plant-Sipat Pooling Sub-station and associated bays (referred as Stage-I) was allowed as per the 2009 Tariff Regulations.



2. The Review Petitioner has submitted that disallowance of compensation paid to the landowners, non-condonation of time over-run, disallowance of IDC and IEDC, reduction in capital cost and disallowance of certain amount of O&M Expenses are errors apparent on the face of the record which are required to be modified. The Review Petitioner has submitted that only ₹6484 lakh was allowed as the annual transmission charges for the year 2013-14 against the Review Petitioner's claim of ₹11271 lakh which has gravely prejudiced its interest and has resulted in severe financial hardship. The Review Petitioner has prayed for modification of the order dated 15.6.2016.

3. The Review Petitioner has submitted that the Commission allowed provisionally annual transmission charges of ₹8959 lakh for the year 2013-14 vide order dated 12.9.2013 and final annual transmission charges by ₹6484 lakh vide order dated 15.6.2016. The final annual transmission charges allowed is lesser than the provisional annual transmission charges of ₹2500 lakh. The Review Petitioner has submitted that due to this 28% reduction in the tariff, it is unable to meet its financial obligations and has prayed to keep the order dated 15.6.2016 in abeyance till the disposal of the instant review petition.

4. Taking into consideration the submissions of the Review Petitioner, the Commission vide "Record of Proceedings" dated 20.9.2016 held that the Review Petitioner shall be entitled to recover the transmission charges determined in order dated 15.6.2016 till the issue of final order in the instant review petition.



Brief facts of the case

5. The Review Petitioner had applied for transmission licence for implementation of transmission system associated with Mahan Thermal Power Plant (MTPP) which was granted by the Commission vide order dated 10.4.2008 in Petition No. 157/2007. Thereafter, on the request of the Review Petitioner, an amendment to the Transmission Licence was made on 15.9.2009, in view of proposed expansion of MTPP and anticipated Right of Way issues.

6. The total project cost was approved as ₹85777 lakh by the Commission, while issuing the Transmission License vide order dated 10.4.2008 in Petition No.157/2007.As per the terms of the licence, the completion schedule of the transmission system was October, 2010 and the transmission system was to be executed through suitable packages to be awarded through competitive bidding.

7. The Review Petitioner filed Petition No. 173/TT/2013 for the determination of the transmission tariff for all the assets for which transmission license was granted to the Review Petitioner from anticipated COD of certain elements and actual COD of certain elements till 31.3.2014. Subsequently, the Review Petitioner filed Petition No. 111/TT/2015 for truing up of transmission tariff of the assets defined as Stage-I, which were commissioned in 2013-14 and amended the original petition to delink the Stage-II assets which were not commissioned upto 31.3.2014. The segregation of the transmission assets was defined as Stage-I and Stage-II depending on their COD. The details of the assets covered in Stage I and II are as under:-



Stage-I

I	Transmission Lines	Length (in km)
1	400 kV D/C (twin conductor) transmission line from Gandhar (NTPC) switchyard to Hazira	104.6
2	LILO of 400 kV S/C Vindhyachal-Korba transmission line of POWERGRID at Mahan	22.40
II	400/220 kV GIS Sub-station at Hazira	No. of bays
1	500 MVA Transformers	3
2	220 kV Bays at Hazira	2
3	400 kV bays (GIS) at Hazira and 400 kV S/S bays (AIS) Gandhar	7

Stage-II

I	Transmission Lines	Units (in km)
1	400 kV (Quad Moose Conductor) D/C transmission line from Mahan Thermal Power plant to Sipat Pooling Sub-station	336.70
II	Line Bays	Units (in No.)
1	400 kV line bays at Mahan and Sipat	6
III	Reactors	Units (in No.)
1	50 MVA line reactor at Sipat Pooling Sub-station	2
2	50 MVAR line reactors at Mahan TPP	2
3	80 MVAR bus reactor at Mahan TPP	1

8. The Review Petitioner had also submitted that due to revision in the scope of its transmission system, the estimated project cost was revised to ₹133510 lakh for the entire project as against the original approved project cost of ₹85777 lakh as per the order dated 10.4.2008 in Petition No. 157/2007 and the Board of Directors of the Review Petitioner had accorded its approval for implementation of the said transmission scheme during the meeting on 2.3.2009.

9. The Review Petitioner has submitted vide affidavit dated 19.10.2016, the details and current status of all court cases related to RoW issues, details and current status of court cases filed after COD seeking higher compensation, documents indicating techno commercial reasons due to which forest clearance proposal was revised and computation of monetary benefits which accrued to beneficiaries, document setting out



the computation of IDC and of IEDC paid from the date of investment approval upto COD, details of land owners alongwith details pertaining to crop and damage compensation paid to land owners, copy of certificate dated 15.9.2016 issued by a Government approved valuer, copies of letters dated 9.9.2016 and 21.9.2016 sent to District Administration of Surat and Bharuch districts and letters in response dated 13.9.2016 and 28.9.2016 from District Administration of Surat and Bharuch districts and copy of document containing the translated versions of 7/12 records.

10. The Review Petitioner has also submitted vide affidavit dated 25.11.2016 documents detailing quarter wise rate of interest applied in computation of IDC as submitted vide affidavit dated 19.10.2016 and documents to show the amount of LC interest actually paid alongwith copies of bank statements in support of bank/finance charges incurred.

11. The Review Petitioner vide affidavit dated 7.12.2016 has reiterated its submissions made in the original review petition and has further drawn support from the additional documents in support of its claims. The Review Petitioner has submitted that there are errors apparent on the face of record, which need to be corrected and the order dated 15.6.2016 in Petition No. 173/TT/2013 and 111/TT/2015 be modified accordingly.

12. Madhya Pradesh Power Management Company Limited (MPPMCL), Respondent No. 6, has filed reply vide affidavit dated 29.9.2016. MPPMCL has submitted that depreciation, interest on loan, return on equity, interest on working capital and capital costs have been correctly allowed in the order dated 15.6.2016 in Petition No.



173/TT/2013 and 111/TT/2015. MPPMCL has submitted that the Review Petitioner has not adopted the international bidding procedure and has deviated on many important aspects. MPPMCL has further submitted that the Review Petitioner has created spare capacity for evacuation of power from one of its group companies which has resulted in increase of Project cost by ₹47733 lakh and has also resulted in delay. MPPMCL has also submitted that documents now being presented were not on record of the original petition and such documents cannot be relied in review. Accordingly, the claims of Review Petitioner should be disallowed. The Review Petitioner has not filed rejoinder to the reply of MPPMCL.

13. The Review Petitioner has sought review of order dated 15.6.2016 on the following five grounds:-

- a. Disallowance of compensation of paid to the land owners.
- b. Disallowance of time over-run due to RoW issues, delay in obtaining statutory approval and forest clearance.
- c. Disallowance of IDC and IEDC
- d. Reduction in capital cost.
- e. Disallowance of portion of O&M Expenses.

14. The submission made by the Review Petitioner in support of the grounds on which the review is sought is discussed in the following paragraphs.



A. Compensation paid to land owners

- a) The Commission took note of the details of compensation paid, such as the land owner, village, survey number for the land parcels, purpose of payment and mode of payment. However, it was held that in the absence of any order or directions issued by District Magistrate/ any other authority/ State government determining compensation paid for procuring RoW, it was not possible to carry out the prudence check of the compensation paid by the Review Petitioner and increase in cost of ₹7673 lakh due to compensation paid for RoW clearances would be considered after the requisite orders/directions from the relevant authorities are provided by the Review Petitioner.
- b) The findings of the Commission for disallowing the RoW related costs is contrary to law, and the requirement imposed to submit “copy of the order or directions issued by the District Magistrate or any other authority or the State Government regarding the amount of compensation to be paid” is in effect a direction which is beyond the ambit of Indian Telegraph Act, 1885 (Telegraph Act). Under the Telegraph Act the compensation to the land owner can either be mutually agreed, or in case the parties fail to agree on compensation, then such a dispute pertaining to sufficiency of compensation may be referred to the District Judge who has the requisite territorial jurisdiction. The Review Petitioner has referred to Section 10 and 16 of the Telegraph Act in this connection.
- c) The compensation paid was reasonable as per the relevant market rates. As many as 70 cases pertaining to inadequacy of compensation paid by the Review



Petitioner are pending before the courts of various District Judges of the relevant districts under Section 16(3) of the Telegraph Act which demonstrates that the Review Petitioner has been prudent in paying compensation for obtaining RoW.

- d) The RoW compensation actually paid is less than the amount computed based on the guidelines for payment compensation issued by the Ministry of Power (MoP).

15. The Review Petitioner has submitted, vide affidavit dated 7.10.2016 and 19.10.2016, detailed documents consisting of copies of orders of the Minimum Support Price for Surat district and Bharuch District, copies of receipt cum agreement entered into with land owners alongwith details of payments made to land owners and the 7/12 extract of the land record pertaining to Gandhar-Hazira 400 kV transmission line, for the additional capitalisation claim and for LILO of Vindhyanchal-Korba 400 kV line at Mahan.

16. We have considered the submission of the Review Petitioner and the MPPMCL. The merits of the review on the issue of compensation to the land owners have been examined based on the documents placed on record by the Review Petitioner. The Commission in order dated 15.6.2016 observed that basis of deciding payment of compensation such as copy of the order or directions issued by the District Magistrate or any other authority or the State Government was not submitted by the Review Petitioner. In the absence of the relevant document(s), it was not possible to carry out prudence check of the compensation paid by the Review Petitioner. The Review Petitioner has sought review of the above finding on the ground that Sections 10 and 16



of the Telegraph Act does not either require or empower the District Magistrate or the State Government to determine the compensation payable. The Review Petitioner has submitted that the Telegraph Act does not provide for any determination of compensation by the District Magistrate, and the District Magistrate has only powers relating to enforcement of Section 10 of the Telegraph Act. The Review Petitioner has further submitted that even the District Judge is not required to determine compensation payable for procuring RoW in a routine manner but is required to do so only when there is a dispute with respect to the sufficiency of the compensation, and such dispute is referred to the District Judge by either of the disputing parties. Accordingly, the Review Petitioner has sought review of the above findings.

17. Section 10 of the Telegraph Act provides for full compensation against the damages. Section 16(3) of the Telegraph Act comes into operation in the event of dispute between the parties regarding sufficiency of compensation. Sections 10 and 16 of the Telegraph Act is extracted hereunder:-

“10 Power for telegraph authority to place and maintain telegraph lines and posts—The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and



(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

“16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority—

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

From the above, it emerges that the person exercising the power of the Telegraph Authority is required to pay full compensation to the persons for the damage suffered by them in exercise of these powers. Further, Clause (3) of Section 16 of the Telegraph Act empowers the District Judge to deal with dispute with regard to sufficiency of the compensation. The Review Petitioner has claimed a total amount of ₹7673 lakh as



costs incurred towards RoW for Stage-I of the Project and some of the cases are yet to be settled pending litigation. In our view, the 'full compensation' provided in Section 10 of the Telegraph Act do not allow the persons exercising the power of telegraph authority to fix any amount of compensation through mutual consultation with the land owners. The compensation has to be reasonable, keeping in view the fact that the expenditure incurred has to be recovered in tariff from the consumers. Since the public interest is involved, the compensation agreed by the Review Petitioner should be reasonable and should be relatable to the circle rates fixed by the District Magistrate in exercise of the power under Land Compensation Act. Therefore, it was the responsibility of the Review Petitioner to ensure the reasonableness of the compensation with reference to the circle rates fixed by the concerned District Magistrate. Since the Review Petitioner has accepted the claim of the land owners, the responsibility lies with the Review Petitioner to demonstrate the reasonableness of the compensation paid. The Commission's direction in order dated 15.6.2016 to produce the orders of the District Magistrate or any other authority or the State Government was to examine the reasonableness of compensation paid for the purpose of tariff determination. Therefore, we do not find any merit on the submission of the Review Petitioner on this ground and there is no error apparent in the order on this account.

18. The Review Petitioner is a licensee authorized by the Commission to implement the inter-State transmission system. Further, the tariff of the transmission system shall be determined in accordance with the 2009 Tariff Regulations. In accordance with the Regulation 7 of the 2009 Tariff Regulations, the Commission is mandated to determine



the capital cost of the project after prudence check. While carrying out the prudence check, the Commission has to keep in mind the reasonableness of the cost and the consumer interest. Since the Review Petitioner has not produced the certificate of District Magistrate or any other authority or the State Government, the admissibility of compensation has been considered after prudence check of the following:-

- 1) Auditor Certificate for compensation payment.
- 2) Verification of payment with land records.
- 3) Report of Government valuer with regard to:
 - a. Valuation of the land based on applicable market rates,
 - b. Valuation of the land based on relevant Jantri Rates; and
 - c. Compensation towards damage to the crops.
- 4) Guidelines of the MoP for compensation.
- 5) Consideration of agricultural land as per report of Government valuer.
- 6) Consideration of situation of land (tower and line area) as followed by MSETCL.
- 7) Escalation/appreciation of the land price due to delay.

19. The Review Petitioner has submitted the Auditors' Certificate in support of the compensation paid, Report of valuer and details of the land owners i.e. 7/12 and 8-A certificate of the affected land. Further, the Review Petitioner has submitted the computation of compensation for diminution of land as per the guidelines of MoP, Government of India. The claim as per the Auditors' Certificate dated 25.7.2016 is as under:-



(₹ in lakh)	
Particulars	Capital Cost
Cost due to ROW of LILO line	77
Cost due to ROW of Gandhar-Hazira line	7340
Additional Capitalization of ROW	256
Total	7673

20. The above claims have been considered for prudence check in the succeeding paras.

Verification of the payment with land records

21. The Review Petitioner was directed vide RoP dated 4.10.2016 to submit the additional information of land compensation, crop compensation, damage compensation along with the land owner's name as per 7/12 and 8-A certificate. The Review Petitioner was also directed to submit 7/12 and 8-A certificate to verify beneficiaries name, basis of claim and criteria for verification and payment. In support of the claim, the Review Petitioner has submitted list of the beneficiaries in support of land and crop damages vide affidavit dated 7.10.2016 and 19.10.2016. The list of 3277 beneficiaries (P/60 to P/144 of the affidavit dated 19.10.2016) and 3508 beneficiaries (P/145 to P/245 of affidavit dated 19.10.2016) along with the compensation have been submitted by the Review Petitioner.

22. We have made a random check of the compensation paid in different talukas as a matter of prudence. The recipients of the compensation have been verified with the land documents 7/12 and 8/A certificates. The type of land/crop for which the compensation claimed by the Review Petitioner has been reconciled with the land documents (7/12 and 8/A). Further, name of the land owner as per receipt has been verified with name



indicated in land documents .It is noted that the documentary proof submitted by the Review Petitioner in support of the amount paid as per payment receipt are matching with the land documents submitted by the land owners mentioned in the 7/12 and 8/A documents.

23. The Review Petitioner, vide affidavit dated 19.10.2016, has submitted the assessment made by the Government valuer which provides the valuation of the land based on applicable market rates, valuation of the land based on relevant Jantri Rates and compensation towards damage to the crops. The details of the valuation worked by the Government valuer, Rock Consultant & Valuer as per Para 4 of the Report submitted that total ROW compensation payable for 400kV Gandhar-Hazira line and as per market value of land is ₹11360 lakh and ₹8615 lakh.

24. The Review Petitioner has submitted the compensation based on land value and as per the guidelines of MoP and they are as follows:-

Taluka	Tower land area (Sq.mtr)	Stringing land area (Sq.mtr)	Jantri Rate (₹/ Sq.mtr)	85% Land value of tower area (in ₹)	15% Land value of stringing area (in ₹)
Olpad	19907	1613408	1350	22843283.00	392058144.00
Hansot	3101	387924	202	532442.00	14104917.00
Ankleshwar	19221	1659967	300	4901355.00	89638218.00
Bharuch	6252	575413	816	4336387.00	84516661.00
Jhagadiya	7765	283274.44	295	1946991.00	15041873.00
Total				34560457.00	595359813.00

Taluka	No. of Towers	Area of crop Damaged (tower+ Stringing) (Hectare)	Crop Damaged	Production (ton/ hectare)	Rate/ ton (in ₹)	Value of Crop Damaged (tower+ Stringing) (in ₹)
Olpad	97	195.6	Sugarcane	93.645	2200	40297248.00
Hansot	20	42.97	Sugarcane	93.645	2200	8852654.00
Ankleshwar	50	104.61	Sugarcane	93.645	2200	21551779.00



Ankleshwar	32	65.23	Banana	70.61	10000	46060377.00
Bharuch	-	0.63	Sugarcane	93.65	2200	128805.00
Bharuch	9	21.23	Banana	70.612	10000	14990844.00
Bharuch	17	37.56	Cotton	70.612	40500	815391.00
Jhagadiya	19	34.77	Banana	0.536	10000	24551368.00
Total of compensation towards cost of crop damaged by installation of tower and stringing						157248467.00

The petitioner has considered land rate as per the Government approved and notified Jantri rates and crop prices as per minimum support price of Government notified by the District Agriculture Officer.

25. It is observed that the valuer has considered the compensation on two counts i.e. land compensation and crop compensation. The crop compensation is quantifiable and measurable which can be ascertained based on the rates of district agriculture officer. With regard to land compensation, it is observed that the valuer has worked out the cost of land and affected area and then applied the formula specified by MoP. MoP, in its guidelines dated 15.10.2015, provide a methodology for compensation towards "damages". This methodology provides for working out the compensation against diminution of land based on 85% land value for tower base area and 15% of land value in the width of Right of Way corridor. The extract of the said guideline is as under:

"2. The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards "damages" as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for subtransmission and distribution lines below 66 KV:-

(i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/ Guideline value/ Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure;

(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate Guideline value Stamp Act rates;



(iii) In areas where land owner/owners have been offered accepted alternate mode of compensation by concerned corporation Municipality under Transfer Development Rights (TDR) policy of State, the licensee Utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation/ Municipality/Local Body or the State Government.

(iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

3. Necessary action may kindly be taken accordingly. These guidelines may not only facilitate an early resolution of RoW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

4. All the States/UTs etc. are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject."

26. On perusal of the guidelines, it is noticed that the guidelines provides same formula for tower base, for all towers irrespective of the situation of land. However, the situation of land plays an important role in deciding damages. MoP guidelines provides for consideration of categorization/type of land in different places for RoW. We have to consider the categorization based on the situation/location of land. We observe that above said guideline have to be adopted by States/UTs.

Computation of compensation

27. The diminution of land depends on the following factors:-

- a) Type (urban or agricultural or Government owned) or situation of land where tower location is proposed (middle of the land or at the side of land or at the border of the farm land);
- b) Degree of the land affected whether line passes over small part of land or from the centre of the land area or from the border of the land area.



28. We have noticed that the Maharashtra Transmission Corporation Limited (MTCL) has submitted the practice followed by them as part of suggestion to MoP. The compensation of land on tower location has been adopted commensurate with the use of land. In this regard, MSETCL's letter, as given in the appendix to above said MoP guidelines has been perused. The relevant portion of the letter regarding type of land is as under:-

Land Classification	Type of Land	Compensation to be paid
A	Non-cultivable agriculture land	25%
B	Cultivable agriculture land	50%
C	Fruit bearing agriculture land	60%
D	Non-agriculture land	65%

29. In view of above, the amount claimed by the Review Petitioner has been further rationalized. The Review Petitioner's claim of ₹7673 lakh is within the value as per Jantri Rate i.e. ₹8615 lakh. Therefore, we have also considered the Review Petitioner's claim for the purpose of the further rationalization by considering the following aspects:-

- a) Consideration of agricultural land
- b) Situation of land (tower and line area)
- c) Escalation/appreciation of the land price.

30. The Review Petitioner has submitted the Government valuer report which indicates that the transmission lines are passing through both agriculture and industrialized areas. According to the submission of the Review Petitioner, the lines are passing through Olpad (39%), Hansot (9%), Ankleshwar (33%), Jhagadiya (7%) and Bharuch (12%) talukas. As per the report of the Government valuer, all talukas are urban and industrial area except Hansot (9%). We have considered the classification



considered by the MTCL for tower location which provides the maximum compensation for non-agriculture land i.e. urban or industrial as 65% and cultivable agriculture land 50%. The Review Petitioner has not submitted the percentage of the agriculture and industrial area covered in each taluka. Since the Review Petitioner has submitted that all talukas except Hansot (9%) is covered under urban and industrial area, the compensation can be rationalized as under:-

(Amount in ₹)					
Taluka	Tower land area (Sq.mtr)	stringing land area (Sq.mtr)	Jantri Rate (₹/Sq.Mtr) ⁴	65% Land value of tower area (in ₹) ¹	15% Land value for stringing area ³
Olpad	19907	1613408	1350	17468393.00	326715120.00
Hansot	3101	387924	202	313201.00	0 ²
Ankleshwar	19221	1659967	300	3748095.00	74698515.00
Bharuch	6252	575413	816	3316060.80	70430551.20
Jhagadiya	7764.67	283274.44	295	1488875.50	12534894.00
Total				26334625.00	484379080.00

¹ Land compensation to tower area is considered as 65% taking into account the situation of land except Hansot where it is considered as 50%

² Land value across stringing area is not considered as there is no substantial damage for the agricultural land.

³ Calculation of area is verified as submitted by the Review Petitioner. 15% of land value is worked out based on Jantri rate and area

⁴ Jantri rate represents market rate, therefore, we have considered the Jantri rate.

31. As discussed earlier, provisions of Telegraph Act provide for minimization of the damages which the transmission licensee shall have to exercise before considering compensation of damages. The situation of land plays an important role in minimization of damages. The Review Petitioner should have made efforts to minimize compensation as envisaged under the Telegraph Act. If the entire area is covered by agriculture and barren land, the damages can be reduced significantly. Since the line passes through



area dominated by urban/industrial zone, it is believed that the Review Petitioner could have managed to reduce about 20-30% of damages. (Maharashtra has considered this reduction to the extent of 35% for urban area for tower location and no land compensation for stringing area). Taking into consideration that the area under consideration is dominated by urban and industrial area and as discussed above, we have considered 30% rationalization in stringing area on account of line passing through non-urban and industrial area. Accordingly, the compensation worked out above has been revised as under:-

(Amount in ₹)				
Taluka	(Tower land compensation) 65% Land value of tower area	(Land beneath the tower line) 15% land value for stringing area*	Crop compensation	Total
Olpad	17468393.00	228700584.00	40297248.00	286466225.00
Hansot	313201.00	0	8852654.00	9165855.00
Ankleshwar	3748095.00	52288961.00	67612156.00	123649212.00
Bharuch	3316061.00	49301386.00	15935040.00	68552487.00
Jhagadiya	1488875.00	8774425.80	24551368.00	34814669.00
	26334625.00	339065356.00	157248466.00	522648447.00

*30% rationalization is considered against the avoidable damages or possible the length of line unaffected by ROW.

32. The schedule COD of the transmission system was 15.7.2011 as per the investment approval. As per affidavit dated 1.8.2013 (as submitted in the impugned order), the Review Petitioner has submitted that Letter of Award was issued on 15.7.2009. However, the Review Petitioner has considered Jantri rate of 2011. If the Review Petitioner had executed the transmission as per the timeline envisaged in the license, the Review Petitioner would have saved escalation in land price. Therefore, due to delay in addressing the RoW issues, the Review Petitioner is not entitled for



reimbursement of expenditure which is attributable to the negligence/inefficiency of the Review Petitioner.

33. The Resolution dated 18.4.2011 issued by the Government of Gujarat provides for the following:-

“(1) Before implementation of New Jantri 2011, Jantri (ASR) 2006 dated 1.4.2008 was in implementation. In that reference in new Jantri 2011, the assessment of land and immovable property are increased and it is held that 50% reduction relief will be given in it.”

From the above stipulation, it can be inferred that there is increase in Jantri rate by 50% over a period from 1.4.2008 to 31.3.2011 (3 years), which works out to escalation of 17.3% per annum in Jantri rate.

34. We have considered the revised Jantri rate of 17.30% escalation rate after taking into account all practical aspects. The compensation granted has been worked out as under:-

(Amount in ₹)				
Taluka	(Tower land compensation) 65% Land value of tower area	(Land beneath the tower line) 15% land value for stringing area*	Crop Compensation	Total
Olpad	14446361	189135383	4,02,97,248	243878992
Hansot	259017	0	88,52,654	9111671
Ankleshwar	3099675	43242970	67612156	113954801
Bharuch	2742382	40772246	15935040	59449668
Jhagadiya	1231300	7256450	2,45,51,368	33039118
	21778735	280407050	157248466	459434250

*escalation of 17.30% reduced for one year only.

35. The crop compensation worked out by the Government valuer based on market rate of the relevant year as specified by District Agriculture Officer is in order. Therefore,



₹157248467 have been considered as crop compensation. Accordingly, aggregate compensation has been worked out as under:-

(Amount in ₹)		
Compensation against damage to land	Compensation against damage to crop	Total
302185784	157248466	459434250

B. Disallowance of time over-run in the execution of the Project

36. The Review Petitioner has submitted that time over-run due to delay in grant of approval under Section 164 of the Electricity Act, 2003 (the Act) delay in grant of forest clearance and RoW issues was disallowed in the order dated 15.6.2016. The Review Petitioner has submitted that the time over-run was due to reasons not attributable to it and non-consideration of the materials submitted amounts to apparent error which needs to be corrected.

37. The Review Petitioner has submitted in order dated 10.4.2008 in Petition No. 157/2007, the project was proposed to be commissioned by October, 2010, i.e., approximately after 29 months from the date of issuance of the transmission licence by the Commission. The Review Petitioner has submitted that in order dated 15.6.2016, the Commission considered the stipulated period for execution of the transmission lines as 24 months which is an error. We have gone through the order dated 15.6.2016, October, 2010 has been considered as the completion schedule as was noted in the order dated 10.4.2008. However, the 24 months in order dated 15.6.2016 being a typographic error is rectified as 29 months.



Time over-run due to delay in grant of approval under Section 164 of the Act

38. The Review Petitioner has further submitted that the time over-run in execution of Stage-I of the Project is attributable to the delay in grant of approval under Section 164 of the Act (Section 164 Approval) by the MoP. However, the delay due to Section 164 approval was not condoned, except for two months. According to the Review Petitioner, the Commission has omitted to consider the settled position of law that grant of Section 164 Approval is a *sine qua non* for the execution of a transmission project, and therefore the Review Petitioner could not have awarded the EPC contract for the execution of the Project before such approval was obtained. The Review Petitioner has submitted that due to delay in grant of Section 164 Approval, the award of contract was delayed. The delay in publication of notice in two local daily newspapers was not a delay, as two months is a reasonable period for finalizing the transmission line. The Review Petitioner has submitted that Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 139 of 2013, held that delay in grant of Section 164 Approval is to be considered as a *force majeure* event and cannot be attributed to the project developer. The Review Petitioner has further submitted that the findings in order dated 15.6.2016 is contrary to the Commission's findings in Petition No. 73/MP/2014 and in Petition No. 296 of 2010. The Review Petitioner has submitted that the period allowable for the construction and commissioning of the Project may be considered from the date of grant of Section 164 Approval, in line with the judgment of the APTEL and earlier orders of the Commission.



Delay in grant of forest clearance

39. The Review Petitioner has submitted that the delay in execution of Stage-I of the Project is also attributable to the delay in grant of forest clearance for the laying of the 400 kV D/C Gandhar-Hazira transmission line. However, in order dated 15.6.2016, it was held that the forest clearance was granted 25 months after submission of the revised proposal by the Review Petitioner and that the revised proposal was submitted 32 months after the grant of the transmission licence. According to the Review Petitioner, the Commission has not condoned the delay in execution of the Project caused due to delay in grant of forest clearance. The Review Petitioner has submitted as follows:-

a. Contrary to the information on record, the date of submission of the revised proposal for forest clearance was considered as 30.12.2011, whereas the revised forest proposal was submitted to the relevant authorities in the month of January, 2010. The revised proposal was sent only with respect to the protected forest land and no changes were made to the forest clearance proposal for the reserved forest land. Further, the letter dated 30.12.2011 sent by the Forest and Environment Department, Government of Gujarat to the Chief Conservator of Forests, MoEF, Western Region recommending grant of approval to the forest clearance proposal for the Project was considered as the Review Petitioner's revised application for forest clearance approval. According to the Review Petitioner, the Commission arrived at the finding that the Review Petitioner submitted its revised forest clearance proposal 32 months after the issuance of the transmission licence and on the basis of mistaken assumption, which was contrary



to the record. The Review Petitioner has submitted that the process of grant of forest clearance is an on-going process and the revision in the proposal in respect of protected forest land was sought on the basis of joint-survey of the protected forest area and was primarily intended to reduce the protected forest area covered under the forest clearance proposal. The application for grant of forest clearance was made in the month of March 2009 and clearance was finally granted on 6.2.2013; therefore, the delay in grant of forest clearance was of 47 months. Even if the time period for grant of forest clearance is considered from the date of submission of revised forest clearance proposal, there was a delay of approximately 37 months in grant of forest proposal.

b. In order dated 15.6.2016, it was mistakenly referred to a letter dated 12.9.2013 to record that the Review Petitioner has stated that the forest clearance approval was obtained in about 14 months. No such averments were made by the Review Petitioner in the said submissions dated 12.9.2013. Further, the said submissions do not even relate to the issue of delay in grant of forest clearance, but relate to publication of public notices in relation to the Review Petitioner's tariff petition. The Review Petitioner has submitted that in the said order it has been recorded that the Review Petitioner had requested for acceptance of its revised proposal on 12.1.2010, and in the same paragraph, mistakenly a conflicting statement is made that the Review Petitioner submitted its revised proposal on 30.12.2011.

c. The aforesaid finding suffers from an error apparent from the face of the record. It was wrongly concluded in order dated 15.6.2016, that the revised proposal for



forest clearance was made 32 months after the issuance of the transmission license, whereas the forest proposal was submitted within 10 months of grant of transmission licence and the revised forest clearance proposal was submitted within 20 months after duly liasioning with the concerned forest officials and conducting the requisite joint-surveys.

d. The findings of the Commission in order dated 15.6.2016 are also contrary to settled position of law that any delay in grant of forest clearance is a force majeure event. Hence, the finding that the delay in grant of forest clearance was within the control of the Review Petitioner and hence it is attributable to the Review Petitioner be appropriately modified.

40. As regards the time over-run due to delay in obtaining the forest clearance, the Commission in the impugned order has held as under:-

“45. ...On 12.1.2010, the petitioner wrote letter to Conservator of Forests, Forest Department, Baruch requesting for cancellation of its earlier proposal dated 16.4.2009 regarding Diversion of Protected Forest land 1.1040 Ha and to accept its new proposal for diversion of protected forest land area 0.7912 Ha. The petitioner has submitted the reason for cancellation of its earlier proposal in the above mentioned letter as change in the route of 400 kV D/C transmission line from Hazira (Surat) to Jhanor (Bharuch) due to some techno-commercial problem. After that the petitioner applied for forest clearance to MoEF on 30.12.2011 and MoEF has granted Stage-1 Forest Clearance on 20.3.2012 and Stage-2 Forest Clearance on 6.2.2013. If we consider the revised proposal that was sent to the forest department in the month of January, 2011, then it took about 25 months to get the forest clearance.

46. As per the Forest (Conservation) Amendment Rules, 2004 notified by MoEF dated 3.2.2004, the timeline for forest approval after submission of proposal is 210 days by State Government and 90 days by Forest Advisory Committee of Central Government i.e. total 300 days. It is observed that the petitioner has approached the forest authority for forest clearance with the revised proposal after 32 months of grant of transmission licence by the Commission and it took 25 months to get the forest clearance. The petitioner has given the reason for cancellation of its earlier proposal in the above mentioned letter as change of the route of 400 kV D/C transmission line from Hazira (Surat) to Jhanor (Bharuch) due to some techno-commercial problem. We noticed that if the petitioner had applied in time for forest



clearance immediately after grant of licence, there could have been saving of about 32 months and the asset could have been completed in time even after allowing 25 months taken in forest clearance.

47. In the light of above, it cannot be held that delay in getting forest clearance and delay in getting clearance under Section 164 was not within the control of the petitioner. As such, the delay due to forest clearance or delay in getting approval under Section 164 cannot be condoned.”

Delay on account of RoW issues

41. The Review Petitioner has submitted that the delay in execution and commissioning of Stage-I of the Project is attributable to the RoW related issues pertaining to the laying of the 400 kV D/C Gandhar-Hazira transmission line. It was observed in the impugned order that details of only one court case was submitted and in the absence of the details of other cases, it is unable to take any decision on this issue. However, all material and relevant facts pertaining to the RoW issues were submitted vide affidavit dated 17.12.2015 filed in I.A. No. 38/IA/2015. The details of one of the case filed by Shri Prakash Modi was presented for illustrative purposes, with the bona fide belief that the details pertaining to the said litigation would be sufficient for adjudication on the issue of delay due to RoW issues, as the said litigation had the most significant impact on the execution of the Project. The dispute with Shri Prakash Modi stalled the project execution work for more than two years in one of the locations. Stage-I of the Project was commissioned within two months of the resolution of the dispute. The details of the other RoW related cases were not placed on record earlier. It appears that exhaustive evidence was required in support of the Review Petitioner’s contentions pertaining to delay in execution of the Project due to RoW related issues.



The list of 112 cases relating to the RoW issues during the project execution phase in different courts against the Review Petitioner is submitted.

a. The resistance from the farmers/landowners can be demonstrated by the cases pertaining to sufficiency of RoW compensation. It faced resistance from various land owners/farmers from the time it commenced preparations for construction of towers, and it faced severe RoW problems and the project execution work had to be carried out with the help of local administration and with adequate police protection. The Review Petitioner has submitted an indicative list of select, region wise, RoW related issues which severely impacted the execution of the Project, which were also submitted during the tariff determination process, which are as under:-

Date	Event
13.6.2011	The Review Petitioner approached the District Collector, Bharuch by way of its letter dated 13.6.2011, seeking police protection at location 45A/1, Village: Suklatirth, P.S: Nabipar, District: Bharuch.
3.10.2012	Sabotage by landowners/farmers at location survey 170 of village Amboli. As a result of this, three (03) towers were uprooted after stringing work was complete. FIR was lodged in the Ankelshwar City Police Station being FIR/39/12 under section 427 of IPC. The Company faced heavy resistance for repair work of the three uprooted towers, and consequently company requested SP Bharuch for police protection vide letter dated 29.10.2012 to rebuild the towers and work could be completed under police protection.
25.10.2012	The Review Petitioner approached the District Collector, Surat by way of its letter dated 25.10.2012, seeking police protection in location 14A/5 Jafarbad, location 16B/4 Bhatgam village & location 12A/3 nathan village, Taluka Olpad, District Surat.
5.1.2013	At the time of laying of the transmission lines, the employees of the Review Petitioner were manhandled by landowners/farmers, and threats of life were made to the employees as well as contractors. Therefore, FIR had to be lodged by the Review Petitioner against one Shri Lakhman Bhai Rama Bhai Jallu of Surat district. He was already paid ₹15,00,000 as compensation on 30.6.12, but he demanded an additional amount of ₹15,00,000 as compensation.
13.3.2013	On 7.3.2013, farmers/land owners at Village- Takarma, Olpad taluka, cut and damaged a leg (stub) of a transmission tower at location 17A/0. The Review Petitioner approached Olpad police station for police protection for repairing the aforesaid stub of the tower by way of its letter dated 13.3.2013. Police protection



	was duly granted by the SP, Surat, and repair work was carried out under police protection.
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b. Its submissions in respect of the duration and period of delay caused due to RoW related issues have been inadvertently and incorrectly recorded in the order dated 15.6.2016 as 10 months from 5.4.2012 to 31.1.2013, whereas, as per the affidavit dated 17.12.2015 filed in I.A. No. 38/IA/2015, it had submitted specific, area-wise tables that there has been a delay of approximately two years due to RoW related issues.

c. The findings in the order dated 15.6.2016 is contrary to the previous orders wherein it was consistently held that delay in execution of transmission projects on account of RoW related issues cannot be attributed to the transmission licensee and ought to be condoned. The Commission in Petition No. 412/TT/2014 condoned a delay of more than 42 months caused due to RoW related issues.

Analysis and Decision

42. We have considered the submissions of the Review Petitioner. The actual commissioning of the Stage-I project is 1.4.2013 against the scheduled completion date of 1.11.2010 on account (a) delay due to RoW issues (b) Delay in getting forest clearance and (c) delay in getting approval under Section 164 of the Act. The chronology of events as submitted by the Review Petitioner in original petition is as under:-

Date	Description
21.12.2006	Board approval for the project for ₹1000 crore.
30.7.2007	9 th Meeting of WR constituents approving the scheme



22.11.2007	Application for Transmission Licence made to CERC
10.12.2007	Application made to MoP for approval under Section 68
10.4.2008 / 29.4.2008	Transmission Licence granted by the Commission
26.5.2008	Application made to MoP for approval under Section 164/Approval under Section 68 received
May and July 2008	Bids invited for various packages
2.3.2009	Board approval for the project for revised cost of ₹1335 crore
23.3.2009	Applied for forest clearance
6.4.2009	Confirmatory letter to CEA for route finalization
July, 2009	Approval under Section 164 received
15.7.2009	EPC contract awarded
15.9.2009	Amendment of Transmission Licence
January, 2010	Revised application made for forest clearance
18.2.2013	Forest clearance received
1.4.2013	Stage-1 assets commissioned

43. It is observed that the Investment Approval was granted by the Board of Directors of the Review Petitioner on 21.12.2006 with schedule commissioning of project in October, 2010 matching with commissioning of the Mahan Generating station. As such, the Review Petitioner had about 46 months in commissioning of the project from the date of Investment Approval.

44. The Review Petitioner applied for transmission licence on 22.11.2007, i.e. about 11 months after the Investment Approval and was granted transmission licence on 29.4.2008 i.e. about 16 months after the Investment Approval. Hence, the Review Petitioner had 30 months for the execution of project including getting approval under Section 68 and 164 of the Act and getting forest clearance etc. Considering 24 months time for the execution of project as per the EPC Contract, it transpires that about 6 months time was scheduled for inviting EPC bids and placing order, getting approval under Sections 68 and 164 of the Act and in getting forest clearance. In our view, the



estimate time of 6 months was insufficient for getting above approvals and to carry out competitive bidding process etc. The Review Petitioner should have carried out activities in a planned manner keeping in view time required for approvals and placement of contracts.

45. In our view, seeking approval under Section 164 of the Act, making application for Forest Clearance and finalization of EPC contract are three distinct activities and can be undertaken simultaneously. The tentative or otherwise, transmission line route alignment is essential for all the three activities stated above. The Review Petitioner made application for forest clearance on 23.3.2009 and gave letter of route finalization to CEA on 6.4.2009. In January, 2010 revised application was made for the forest clearance. Thereafter, it took about 37 months in getting the forest clearance in February, 2013. We find that the Review Petitioner applied for forest clearance only after finalization of transmission line route and scope of scheme in March, 2009.

46. We have examined the impact of delay in application for forest clearance after about two years and three months of initial investment approval in December, 2006. The Review Petitioner has submitted that the route alignment including acquiring maps, walk over survey route etc. after the grant of transmission licence was started in May, 2008. The transmission line under consideration was part of a dedicated line of Essar and therefore, the grant of transmission licence was not a necessary condition for applying for forest clearance. We observe that the Review Petitioner could have applied for forest clearance on obtaining Section 68 approval but it did not apply for same in May, 2008 and applied for forest clearance only in 23.3.2009. The Review



Petitioner made application for approval under Section 68 to MoP in December, 2007 i.e. after one year of initial Investment Approval in December, 2006. In our view, such an application should have been made earlier, i.e. maximum within six months of initial Board approval. Considering that in the instant case, it took 37 months for forest clearance, if the Review Petitioner would have applied for forest clearance in December, 2007, the forest clearance would have been obtained by February, 2011 and line could have been commissioned by April, 2011 as the Review Petitioner has taken only two months to commission line after obtaining forest clearance.

47. If we consider the delay from date of finalization of the EPC contract as January, 2008 then considering 24 months construction period as per Letter of Intent and 10 months delay due to Right of Way problems due to court cases etc., the work could have been completed in 34 months i.e. by October, 2010. In the light of above, delay of 5 months from November, 2010 to 31.3.2011 out of 29 months is held not attributable to the Review Petitioner and is condoned.

48. With regard to Section 164 approval, the Review Petitioner applied to MoP on 10.3.2008. The Review Petitioner vide letters dated 21.4.2008 and 30.4.2008 informed MoP that it was granted transmission licence and requested to accord Section 164 approval. The Review Petitioner has obtained approval in July, 2009 and entire process took about 16 months in getting approval under Section 164 of the Act. The Review Petitioner has taken plea that the EPC Contract was delayed due to delay in obtaining approval under Sections 68 and 164 of the Act. The EPC Contract was awarded on



15.7.2009. It is observed that the Review Petitioner has awarded EPC Contract after obtaining approval under Section 164 of the Act.

49. The Review Petitioner's main contention is that the delay in getting approval under Section 164 of the Act is *force majeure* and as per position of law that grant of Section 164 approval is a *sine qua non* for the execution of a transmission project. The Review Petitioner has cited the precedence of the Appellate Tribunal for Electricity in North Karanpura Transmission co. Ltd. Vs. Central Electricity Regulatory Commission and Ors. Appeal No. 139 of 2013 dated 2.12.2013 where the Tribunal has categorically held that a delay in grant of Section 164 approval is to be considered as a *force majeure* event and cannot be attributed to the project developer. The Review Petitioner has stated that the approval under Section 164 of the Act is necessary for execution of the project as it authorizes the Review Petitioner to enter into the premise for the installation of the lines. It is observed that although Section 68 is necessary for execution of a line, Section 164 approval is not a mandatory requirement. Section 164 approval authorizes a person to execute a line with payment of compensation but without obtaining express 'consent' of affected parties under Works of Licensees Rules, 2007.

50. It is observed that there is a process of approval under Section 164 of the Act as per establishment procedure and which requires time for detailed survey by the Review Petitioner, examination of the proposal by Government instrumentality (CEA) and compliance of queries by the Review Petitioner. Hence, the entire time taken in approval under Section 164 cannot be considered as a 'delay'. Therefore, while deciding the timeline of the project, as prudent practice, any developer will build in the



certain time required for such approval/clearance. It may be pertinent to note that as per the tariff based competitive bidding guidelines, the timeline given for obtaining clearance/permission, is six months. Therefore, we are of the view that as prudent practice, the timeline for about 6 months is to be reasonably factored in by the Review Petitioner towards obtaining approvals. The time required to obtain approval upto 6 months cannot be considered as delay. After grant of transmission licence in April, 2008, the Review Petitioner applied for approval under Section 164 of the Act on 26.5.2008. But after finalization of the line route and communicating of same to CEA on 6.4.2009, MoP issued the approval under Section 164 within 2 months. Thus, the delay in grant of approval under Section 164 is attributable to the delay in route finalization by the Review Petitioner. In the light of above, delay in grant of approval under Section 164 is not condonable.

51. As discussed above in preceding paragraph, the delay in grant of approval under Section 164 of the Act is not condoned. Further, it is observed that the major delay of 24 months (out of 29 months) is attributable to the delay in application of forest clearance. If this delay had not occurred, the ROW problem due to court cases would have occurred earlier and as such the line could have commissioned by April, 2011. In the light of the above, the delay of 5 months starting from November, 2010 to 31.3.2011 out of 29 months is not attributable to the Review Petitioner and is therefore condoned.



C. Disallowance of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC)

52. The Review Petitioner has submitted entire claim of ₹6282 lakh and ₹535 lakh on account of IDC and IEDC respectively for Stage-I of the Project has been disallowed as the time over-run in commissioning and execution of Stage-I of the project has not been condoned. The Review Petitioner has submitted that the time over-run was on account of delay in obtaining statutory clearances, severe RoW issues and delay in getting forest clearance which was beyond the control of the Review Petitioner. The IDC was claimed for the actual period of construction of 24 months, i.e., from the date of drawl till the date of actual COD, which was from 31.3.2011 till 31.3.2013. As such, the IDC claimed should have been allowed. An amount of ₹535 lakh was claimed as IEDC. However, it was recorded in order dated 15.6.2016 that the claim towards IEDC is ₹459 and the same was disallowed without providing any reasoning. The Review Petitioner has reiterated that the delay in the project is squarely due to delay in grant of statutory approvals and as a responsible and prudent licensee, the usage of funds was phased and deferred to minimize the accrual of IDC and IEDC. The Review Petitioner has further submitted that no IDC and IEDC were made prior to obtaining the requisite approvals. The IDC and IEDC claimed are for 25 months as envisaged, and in consonance with the investment approval. The Review Petitioner has prayed to allow the IDC and IEDC claimed be allowed as the same have accrued for the period of time over-run due to statutory clearances.

53. Consequent to the condonation of the time over-run of 5 months as above, the IDC and IEDC shall be worked out and allowed in due course by a separate order.



Reduction in capital cost on account of appointment of EPC contractor

54. The Review Petitioner has submitted that in order dated 15.6.2016, the Commission held that the execution of the Project through an EPC contract was contrary to the terms and conditions of transmission licence dated 10.4.2008, which resulted in increase in cost of the transmission assets and accordingly reduced the award cost by 12%. The Review Petitioner has submitted that the aforesaid findings are not in conformity with the directions in order dated 10.4.2008. The Review Petitioner has further submitted that in the said order dated 10.4.2008 it was specified that the contract should be awarded through competitive bidding, and it was not specified whether the bidding has to be conducted on a domestic basis or on international basis and there was no mention of international competitive bidding in the order. It was further directed that the contract for the execution of the transmission system should be awarded through suitable packages and not for the entire system as a whole. The Review Petitioner was not prohibited from engaging an EPC contractor but was merely provided for the mode of award of contracts for the execution of the Project. The Review Petitioner has submitted that reduction in capital cost is an error apparent on the face of the record and hence the capital costs deducted on account of the said erroneous findings be allowed.

55. The Commission in the impugned order has held as under:-

“32. At this stage, the Commission intends to clarify that as per the terms and conditions of grant of licence, the petitioner was required to adopt international competitive bidding for awarding the contract for execution of the project. The petitioner has deviated from the said directions in the following respects:

- (a) The petitioner did not itself carry out the competitive bidding but assigned the work to its sister concern.



- (b) EPIL carried out the competitive bidding not for the entire system but for different elements of the transmission system as packages.
- (c) It is not clear whether bidding process followed by EPIL is in the nature of domestic competitive bidding or international competitive bidding. The purpose of asking the petitioner to resort to international competitive bidding for implementation of the project is to ensure that the project is implemented in the best competitive price prevailing in the market. The rationale of the petitioner to engage EPIL to carry out the bidding is not understood. Moreover, breaking the project into different packages cannot be said to bring down the cost of the project. We express our serious displeasure about the way the petitioner has tried to implement the project which is not in conformity with the direction of the Commission while granting the licence.

33. We have considered the submissions of the petitioner regarding the capital cost. The submissions and the claim made by the petitioner are analysed hereunder:

(a) ...

(b) The petitioner was directed to execute the work through suitable package and to award the contract for these packages through ICB. The petitioner has submitted that it has followed the process of ICB in awarding the packages but no documentary evidence has been submitted to establish that the NITs were published in any international newspaper/trade journals or sent to all embassies/consulates for wide international publication and invite attention of all possible international manufacturers/suppliers. The petitioner has only submitted the copies of NITs published in the national dailies. The petitioner has invited bids for different packages but has not awarded contracts to any of them. EPC contract was awarded to its own sister concern, EPIL which did not participate in the bidding process. ICB for various packages were evaluated techno-commercially and finally awarded to parties by EPC contractor. The petitioner has built in margin cost which was approximately 12%. The petitioner has not followed the directions issued by the Commission in order dated 10.4.2008, wherein it was clearly stated that the construction of transmission assets shall be executed through suitable packages. The petitioner has awarded the work through EPC contract contrary to the above said directions and it resulted in increase in awarded cost of the instant assets by 12%. It is to clarify that the bid received from individual supplier/contractor would have factored the margin as per prevailing market practices. The charging of 12% margin over and above price recovered would have double impact on price. We are of the view that this increase in the awarded cost should not be passed on to the beneficiaries and accordingly, we have reduced the cost by 12% from the awarded cost claimed by the petitioner."

56. We have considered the submissions of the Review Petitioner. The Review Petitioner has contended that there was no direction regarding the mode of execution of the project. The Review Petitioner in its tariff petition has submitted that NIT was floated



for ICB. However, it was noticed from the details submitted that ICB route was not followed by the Review Petitioner. The Review Petitioner has selected their group company for EPC contract. As the instant project is a capital intensive project, we are of the view that in order to safeguard the interest of the consumer, the Review Petitioner should have adopted the prudent utility practice of inviting international competitive bidding. Therefore, we do not find any merit for reviewing the impugned order on this count and accordingly it is rejected.

Disallowance of administrative and specialist expenses

57. The Review Petitioner has submitted that the additional administrative and specialist costs of ₹1800 lakh, incurred on account of additional work like (a) increase in length of LILO of 400 kV Vindhyachal-Korba S/C transmission line, (b) increase in the length of 400 kV D/C Gandhar-Hazira transmission line, (c) Hazira creek piling work, and (iv) Narmada river location piling work was disallowed in order dated 15.6.2016. The Review Petitioner has submitted that the additional work i.e. creek piling and Narmada river piling work were not envisaged and were beyond the normal scope of work. Further, this additional work was of specialized nature and it required specialized mobilization of machinery and manpower. The Review Petitioner has further submitted that though its submissions were recorded no finding or decision was given. The Review Petitioner has submitted that it is an apparent error as no finding was made on the Review Petitioner's claim of ₹1800 lakh towards administrative and specialist expenses. The Review Petitioner has submitted that the claim needs to be considered and allowed and the impugned order be modified accordingly.



58. We have considered the submissions of the Review Petitioner. The Review Petitioner vide affidavit dated 3.7.2015 (part of earlier petition) had submitted that the expenditure of ₹1800 lakh was incurred towards administrative and specialist expenses have been added to meet mobilization of machine and man power. The Review Petitioner has submitted that the expenditure of ₹1800 lakh is related with creek piling and Narmada River piling work as these were unexpected work items and were also beyond the normal scope of work. The Review Petitioner would have considered this expenditure as part of creek piling work. However, as the cost of creek piling and river crossing has already been allowed in the capital cost, in the impugned order, the cost of the expenditure of ₹1800 lakh related with creek piling and Narmada River crossing is allowed for the purpose of tariff.

Disallowance of certain O&M Expenses

59. The Review Petitioner has submitted that the O&M Expenses was allowed for the “LILO of 400 kV S/C Vindhyachal-Korba transmission line” considering it as a single circuit (twin conductor) transmission line, whereas the said transmission element is a double circuit (twin conductor) transmission line.

60. We have considered the submissions of the Review Petitioner. We are of the view that the O&M Expenses for the LILO of 400 kV S/C Vindhyachal-Korba transmission line should have been allowed considering it as a double circuit (twin conductor) line and allowing the O&M Expense on the basis of single circuit (twin conductor) is an apparent mistake. This error is corrected. The O&M Expenses are allowed for the LILO



of 400 kV S/C Vindhyachal-Korba transmission line considering it as the D/C line as per the 2009 Tariff Regulations. Accordingly, the allowable O&M Expenses for the assets covered in Stage-I as per Regulation 19(g) of the 2009 Tariff Regulations, 2009, are as under:-

(₹ in lakh)	
Element	2013-14
104.60 km 400 kV (twin conductor) D/C transmission line from Gandhar (NTPC) switchyard to Hazira (₹0.783lakh/km)	81.9018
22.40 km LILO of 400 kV Vindhyanchal-Korba S/C transmission line of POWERGRID at Mahan(₹0.783lakh/km)	17.5392
4 nos. 400 kV bays (₹65.46lakh/bay)	261.8400
2 nos. 220 kV bays (₹45.82lakh/bay)	91.6400
Total	452.9210

61. Based on the findings in this order, the revision of tariff in respect of the instant assets shall be undertaken in due course by a separate order.

62. Review Petition No. 33/RP/2016 is disposed of in terms of above.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

