

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 99/MP/2017**

**Coram:**

**Shri P.K. Pujari, Chairperson**

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

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

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

**Date of Order: 31<sup>st</sup> of May, 2018**

**In the matter of:**

Petition under Section 79(1)(f) read with Section 79(1)(c) & (d) of the Electricity Act, 2003 in relation to dispute arising under the Transmission Service Agreement dated 20.12.2013.

**And**

**In the matter of**

POWERGRID Unchahar Transmission Limited  
(A 100% wholly owned subsidiary of Power Grid Corporation of India Limited)

Registered office: B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi 110 016

**....Petitioner**

**Versus**

1. Chairman, Uttar Pradesh Power Corporation Limited (UPPCL)  
Import Export & Payment Circle, 14th Floor, Shakti Bhawan Extn. Building, 14, Ashok Marg, Lucknow
2. Chairman, Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)  
New Power House, Industrial Area,  
Jodhpur – 342 003
3. Chairman, Jaipur Vidyut Vitran Nigam Limited (JVVNL)  
Vidyut Bhawan, Janpath, Jaipur-302 005
4. Chairman, Ajmer Vidyut Vitran Nigam Limited (AVVNL)



- Vidyut Bhawan, Panchsheel Nagar, Makarwali Road  
Ajmer – 305004
5. Chairman & Managing Director, Himachal Pradesh State Electricity Board Limited (HPSEBL), Vidyut Bhawan, Kumar House Complex Building II, Shimla
  6. Executive Director (Comml.), Uttarakhand Power Corporation Limited (UPCL)  
Urja Bhawan, Kanwali Road, Near Balli Wala Chowk, Dehradun
  7. CEO & ED, Tata Power Delhi Distribution Limited (Formerly NDPL) (TPDDL)  
33 kV S/Station Building, NDPL House, Hudson Lane, Kingsway Camp, New Delhi-110019
  8. Chief Engineer, Haryana Power Purchase Centre, acting on behalf of UHBVNL and DHBVNL, (HPPC)  
Shakti Bhawan, Energy Exchange, Room No. 446, Top Floor, Sector- 06, Panchkula – 134109
  9. Principal Secretary (Power), Power Development Department, Government of Jammu & Kashmir (PDD)  
SLDC Building, 1st Floor Gladani Power House, Narwal, Jammu
  10. Superintending Engineer, Electricity Wing of Engineering Department, Union Territory of Chandigarh (EWEDUTC)  
Electricity OP Circle, UT Chandigarh
  11. NTPC Limited  
NTPC Bhawan, SCOPE Complex, Institutional Area Lodhi Road, New Delhi – 110003
  12. Power Grid Corporation of India Limited  
Saudamini, Plot No. 2, Sector – 29,  
Gurgaon 122 001
  13. National Load Despatch Centre, POSOCO  
B-9, Qutab Institutional Area, Kawtaria Sarai,  
New Delhi – 110016
  14. CEO, REC Transmission Projects Company Limited
- 



Core-4, SCOPE Complex, 7, Lodi Road,  
New Delhi 110 003

**Parties present:**

Shri Sitesh Mukherjee, Advocate, PUTL  
Shri Deep Rao, Advocate, PUTL  
Ms. Manju Gupta, PGCIL  
Ms. Supriya Singh, PGCIL  
Shri R. P.Padhi, PGCIL  
Shri Nishant Gupta, NTPC  
Shri Manoj Kumar Sharma, NTPC

**ORDER**

The Petitioner, Powergrid Unchahar Transmission Limited (PUTL) has filed the present petition for seeking a direction that the Petitioner is entitled for transmission charges from 1.10.2016 to 21.12.2016.

2. The Petitioner has submitted that the following facts have led to the filing of the present petition:

(a) REC Transmission Projects Company Limited (RECTPCL), the Bid Process Coordinator (BPC), undertook the process of Tariff Based Competitive Bidding for implementation of the ATS of Unchahar TPS with the following scope of works:

S. No	Transmission Line	Conductors per phase	Completion Target
1.	Unchahar-Fatehpur 400 kV D/c line	Twin Moose ACSR or Twin AAAC (equivalent to twin ACSR Conductor) and Transmission line design should be corresponding to 85°C conductor temperature operation	30 onths

(b) Unchahar Transmission Limited, a Special Purpose Vehicle, was incorporated by BPC on 17.12.2012 under the provisions of the Companies Act, 1956, to



undertake the implementation of the above mentioned scope of work with a completion target of 30 months from the effective date. Subsequent to the process of competitive bidding, Power Grid Corporation of India Limited (POWERGRID) was declared as the successful bidder to implement the project and to provide the transmission service.

(c) On 20.3.2014, POWERGRID as the successful bidder furnished the Contract Performance Guarantees (CPGs) for an aggregate value of ₹5.40 crore (Rupees Five crore and forty lakh only) separately in favour of each of the LTTCs, as per the directions of BPC.

(d) Thereafter, POWERGRID acquired Unchahar Transmission Limited on 24.3.2014, after execution of the Share Purchase Agreement and completing all procedural requirements specified in the RfP document. The effective date as per the TSA was 24.3.2014 and accordingly, the Scheduled Commercial Operation Date (SCOD) was 24.9.2016 which was 30 months from effective date.

(e) The Petitioner after acquiring Unchahar Transmission Limited, filed the petitions for grant of transmission license and adoption of transmission tariff on 24.3.2014 before the Commission. The Commission, vide order dated 3.7.2014 in Petition No. 55/TT/2014, adopted the transmission tariff and vide order dated 21.7.2014 in Petition No. 56/TL/2014 issued the directions for grant of Transmission licence. Unchahar Transmission Limited was



subsequently renamed as POWERGRID Unchahar Transmission Limited (PUTL).

- (f) Pursuant to the acquisition of Unchahar Transmission Limited, the Petitioner undertook various activities for timely implementation of the project. The Petitioner, as per Clause 6.1.1 of the TSA, served an advance notice on the LTTCs, vide letter dated 26.7.2016, informing that it intended to connect Unchahar-Fatehpur 400 kV D/c line on 24.9.2016.
- (g) The Petitioner completed the above line on 24.9.2016. Thereafter, the Central Electricity Authority (CEA), vide letter dated 24.9.2016, issued the Energization Certificate to the Petitioner. However, the line could not be charged on 24.9.2016 due to non-readiness of the interconnection facility i.e. non-availability of 400 kV bays at NTPC Unchahar end.
- (h) The Petitioner intimated NTPC from time to time about the expected date of completion of its line as 24.9.2016, and requested NTPC for clearing the area in NTPC premises for tower works and also to match the commissioning of bays at NTPC Unchahar end.
- (i) As per clause 6.2.1 of the TSA, 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.



- (j) In accordance with Clause 6.2.1 of the TSA, the Petitioner, vide letter dated 24.9.2016, informed all the LTTCs that the project element comprising of Unchahar-Fatehpur 400 kV D/c line was completed on 24.9.2016 and was ready for charging.
- (k) Subsequently, the deemed COD of the line was achieved on 1.10.2016, after completion of mandatory seven days period in terms of Clause 6.2.1 of the TSA and the Petitioner, vide letter dated 1.10.2016, informed all the LTTCs about the same. The deemed COD of the subject transmission system with effect from 1.10.2016 was in alignment with the directions of the Commission in order dated 21.9.2016 in Petition No. 43/MP/2016.
- (l) As per Clause 6.2.2 of the TSA, the transmission element after achieving the deemed COD shall be eligible for payment of the monthly Transmission Charges. Further, as per the provisions of the bidding documents and in accordance with the pre-bid clarifications furnished by BPC, the applicable transmission charges shall be payable to the Petitioner as per the PoC mechanism (Sharing Regulation). Accordingly, the Petitioner, vide letter dated 29.8.2016, furnished its Yearly Transmission Charge (YTC) data to NLDC, being the nodal agency. However, NLDC, vide letter dated 19.9.2016, stated that in light of the Commission's recent orders and prevailing regulations, the transmission charges of Unchahar-Fatehpur 400 kV D/c line would be payable by NTPC and accordingly, the transmission charges for the subject line were not included in PoC. Further, the Validation Committee denied inclusion of transmission charges as adopted by the Commission in the PoC.



- (m) Pursuant to the directions of NLDC, the Petitioner vide its letter dated 19.9.2016, requested the CTU to bill the transmission charges of the subject transmission line upon NTPC and accordingly, CTU raised bills upon NTPC for payment of the transmission charges since 1.10.2016. However, NTPC commenced payment of transmission charges only from 21.12.2016.
- (n) The Petitioner vide letter dated 2.12.2016, took up the matter with BPC to resolve the issue and to ensure that payment of transmission charges were paid from 1.10.2016. The Petitioner also followed up with BPC and CEA. The Petitioner, despite making best efforts for timely completion of its scope of work under competitive bidding route with significant investment, has been deprived of the transmission charges from 1.10.2016 to 21.12.2016 for no fault of the Petitioner.
- (o) Further, a few LTTCs viz., Jaipur, Ajmer and Jodhpur from Rajasthan and UPPCL initiated invocation of CPGs (Contract Performance Guarantees) submitted by the Petitioner citing the delay of 7 days i.e. from 24.9.2016 to 1.10.2016, in achieving the CoD as per the TSA. UPPCL, vide letters dated 21.1.2017 and 22.2.2017, raised the liquidated damages demand of ₹4,62,910/- (Rupees Four lakh sixty two thousand nine hundred and ten only) for release of CPG without providing any reasoning for levy of liquidated damages and called for encashment of CPG furnished by the Petitioner or alternatively requested for extension of CPG. Whereas, RUVNL, vide letter dated 17.1.2017 raised the liquidated damages demand of ₹1,78,853/- (Rupees One lakh seventy eight thousand eight hundred and fifty three only).



(p) The Petitioner vide its letter dated 24.9.2016 informed all the LTTCs including LTTCs from Rajasthan and Uttar Pradesh about the completion of the line and the deemed COD on 1.10.2016. Subsequently, the issue related to levy of liquidated damages was raised by the LTTCs after 4 months approximately from the date of deemed COD. Therefore, the LTTCs have by their conduct waived their right to liquidated damages.

(q) The Petitioner, vide various letters to LTTCs in Rajasthan and Uttar Pradesh i.e. RUVNL and UPPCL, informed that the period of seven (07) days is the mandated period in achieving deemed COD of Unchahar-Fatehpur 400 kV D/c line in accordance with the provisions of the TSA and is not attributable to the Petitioner. It was also informed by the Petitioner that had the bays at NTPC Unchahar end been ready, the Petitioner would have commissioned the Unchahar-Fatehpur 400 kV D/c line on its scheduled date of completion i.e. on 24.9.2016 and the seven days' notice period would not have arisen. Thus, the levy of liquidated damages for this mandated period does not arise and the Petitioner is not liable to pay the said charges / liquidated damages. Due to non-readiness of the bays at Unchahar end by NTPC, the Petitioner has, in fact, been deprived of transmission charges for seven (07) days. Accordingly, the Petitioner requested the said LTTCs not to levy liquidated damages and to return CPGs.

(r) A joint meeting between CEA, BPC, POWERGRID, UPPCL, UPPTCL and NTPC was held on 31.1.2017 to resolve the issues. In the said meeting, the Petitioner informed the details about the scheduled commissioning of the line,





readiness of the line for charging on 24.9.2016 and the reasons for declaration of deemed CoD on 1.10.2016 as per provisions of the TSA due to non-readiness of interconnection facility i.e. non availability of 400 kV bays at NTPC Unchahar end. Further, non-applicability of liquidated damages for the mandated period of seven (07) days in achieving deemed COD of the line was also informed by the Petitioner. Despite huge deliberations on the issues, the matter could not be resolved.

(s) Despite repeated follow-ups and explaining the matter, UPPCL and Rajasthan Discoms continued to seek levy of liquidated damages or extension of CPGs without providing any reasons for the same. Accordingly, as advised in the minutes of the meeting held with the CEA on 31.1.2017, the Petitioner has approached the Commission for resolution of the issues.

3. Against the above background, the Petitioner has made the following prayers:

“(a) that the transmission charges w.e.f. 01.10.2016 to 21.12.2016 be paid to the Petitioner;

(b) direct the LTTCs to return the Contract Performance Guarantees and restrain them from invoking and/or encashing the Contract Performance Guarantees or taking any coercive action against the Petitioner in relation to the claim of liquidated damages; and also reimburse the Contract Performance Guarantee extension charges;

(c) Award cost of litigation in favour of the Petitioner and against the respondents.”

4. Notices were issued to the respondents to file their replies. CTU and NTPC have filed their replies.



5. NTPC vide RoP dated 15.6.2017 was directed to furnish the application for Connectivity and LTA as submitted to CTU and letter of intimation for grant of Connectivity and LTA by CTU. NTPC vide its affidavit dated 7.7.2017 has submitted that Connectivity and LTA was granted by CTU from November, 2016.

6. NTPC vide its additional submission dated 13.7.2017 has submitted as under:

(a) NTPC Ltd is developing a 1X500 MW coal-based generating station, namely Unchahar-IV at Unchahar in the State of UP. For development of transmission system for evacuation of power from Unchahar-IV, NTPC, on behalf of the beneficiaries had applied to CTU for grant of LTA. In response, CTU informed that the investment approval of the generating station had been accorded by the Board of Directors of NTPC Ltd on 30.7.2013 and the Unit was scheduled to be commissioned in 40 months from date of investment approval. CTU vide letter dated 3.1.2014, intimated about the grant of LTA from November, 2016.

(b) The appropriate authority had decided to develop Unchahar- Fatehpur transmission line through Tariff Based Competitive Bidding while construction of Unchahar end 400 KV bays was in the scope of NTPC and Fatehpur end 400 KV bays were to be constructed by PGCIL. Keeping in view the commissioning schedule of generating station and grant of LTA, NTPC had planned commissioning of 400 KV bays at Unchahar end accordingly.

(c) The chronology of commissioning of 400 KV bays is as under:



Activity	Activity completion data		Remarks
	Bay-I	Bay-II	
CEA Charging Clearance date	28.11.2016	28.11.2016	Copy of CEA letter dtd 28.11.2016 has been submitted.
Date of commissioning of PLCC	5.12.2016	5.12.2016	Copy of e-mail dtd 05.12.2016 from PGCIL has been submitted.
Date of charging of bays along with line	15.12.2016	6.12.2016	
Date of power flow (being used for drawal of start-up power)	21.12.2016	21.12.2016	

(d) For development of Transmission line, Transmission Service Agreements (TSA) were signed with the beneficiaries of Unchahar-IV generating station and NTPC is not a party to the TSA. The present petition has been filed by Powergrid Unchahar Transmission Limited in relation to dispute arising under the Transmission Service Agreement dated 20.12.2013.

(e) The limited issue in the petition with reference to NTPC is the issue of liability of payment of transmission charges till CoD of the generating station. NTPC made an application dated 8.8.2011 to CTU for grant of LTA. Subsequently, NTPC vide letter dated 8.8.2013 informed PGCIL that the investment approval of the generating station has been accorded by the Board of Directors of NTPC Ltd. and the Unit of the generating station was scheduled to be commissioned in 40 months from the date of investment approval (30.7.2013), which worked out to 30.11.2016. CTU vide its letter dated 3.1.2014 granted LTA for Unchahar IV from November, 2016.



(f) The Generating Unit had already been commissioned on 31.3.2017 and commercial operation of generating station was expected to be declared by September, 2017.

(g) As NTPC did not require the line before 30.11.2016 which was made clear to PGCIL before grant of LTA, liability of NTPC, for payment of IDC or Annual Transmission charges of instant transmission asset, if any, be from 1.12.2016 onwards only or COD of the line whichever was later.

7. CTU vide RoP dated 15.6.2017 was directed to furnish the scheduled date of construction of 400 kV D/C Unchahar- Fatehpur line and the basis for the same. CTU vide affidavit dated 18.7.2017 has submitted as under:

(a) NTPC had applied for 500 MW Connectivity for Unchahar-IV TPS (1X500 MW) in January, 2011 and thereafter, LTA for 495.78 MW was applied in August, 2011 wherein COD of the generation project was mentioned as 28.2.2015. Subsequently, the transmission System associated with Unchahar-IV TPS (IX 500MW) comprising 400 kV Unchahar-Fatehpur D/C line was agreed in the Connectivity/LTA meeting of NR constituents held on 19.12.2011 and 25th NRPC meeting held on 24.2.2012 wherein NTPC informed the commissioning schedule of the generation project as March, 2015. Subsequently, during the Connectivity/LTA meeting of NR constituents held on 2.1.2013, NTPC informed the commissioning schedule of the generation project as June, 2016.



- (b) The transmission system associated with Unchahar TPS, namely 'Unchahar-Fatehpur 400 kV D/C line' was discussed during the 29<sup>th</sup> meeting of Empowered Committee on Transmission held on 15.6.2012 and the project was recommended for implementation through Tariff Based Competitive Bidding (TBCB) route. It was also noted in the said meeting that associated bays at generation end and POWERGRID sub-station end are to be matched with commissioning of the transmission scheme.
- (c) Subsequently, RECTPCL issued RFQ document on 11.1.2013. Based on the request of RECTPCL, CTU vide its letter dated 19.6.2013 forwarded the inputs for preparation of RFP to RECTPCL mentioning that as per NTPC, COD of the generation project was expected by June, 2016. However, commissioning schedule for Unchahar-Fatehpur 400 kV D/C would be informed later, based on the communication from NTPC.
- (d) NTPC vide letter dated 8.8.2013 intimated that as per the investment approval, the generation project was scheduled to be commissioned by November 2016. Accordingly, based on the Connectivity and LTA applications and considering the generation schedule, Connectivity for 500 MW and LTA for 495.78 MW effective from November, 2016 were granted by CTU to NTPC vide intimation letter dated 3.1.2014.
- (e) Based on the communication from NTPC, commissioning schedule of the generation project was confirmed as November, 2016 to RECTPCL vide email dated 11.9.2013. In response, RECTPCL vide email dated 11.9.2013 informed



that as per requirement of Standard Bid Document, completion schedule (in number of months from effective date) was required to be provided and requested CTU for the same so as to proceed further with RFP process.

(f) CTU vide email dated 11.9.2013 reiterated that the commissioning schedule for Unchahar-IV generation project was November, 2016 and completion schedule of associated Transmission system should be matched with the generation project.

(g) RECTPCL vide its email dated 11.9.2013 requested CTU that due to preparatory activities for commencement of RFP process, a period of 33 months could be given as completion target in the RFP for transmission project. However, CTU vide email dated 12.9.2013 again reiterated that since, the commissioning schedule for generation project was November, 2016, the associated Transmission system, *inter-alia* including time for preparatory activities should be matched with the generation. RECTPCL was requested to finalize the schedule accordingly.

(h) Considering the RFP processing time viz. time taken from issuance of RFP till finalization of successful bidder and transfer of SPV to the successful bidder, there was a need to align the completion schedule of the associated transmission system matching with the commissioning of the generation project. Thus, if the firm generation project schedule was known, then it was the responsibility of the BPC to align the bid processing time in such a manner that completion of the associated transmission system matches with the



commissioning schedule of the generation project. However, in the instant case, BPC was not agreeable to provide a firm completion schedule of the associated transmission system as November 2016; instead BPC was insisting for completion schedule in months.

- (i) In order to finalize the timeline and to resolve the matter, a meeting was held on 7.10.2013 at CEA between CEA, CTU and RECTPCL wherein CTU again reiterated that Unchahar-IV Generation Project was scheduled for commissioning by November, 2016 and transmission system was required to be built matching with commissioning of generation project.
- (j) RECTPCL floated the RFP on 17.10.2013 wherein scheduled COD of the project was indicated as 30 months from effective date without linking it to the commissioning scheduling of Unchahar IV TPS. Further, in the RFP, following important timelines were mentioned:

"2.16.2 Important timelines are mentioned below:

<b>Date</b>	<b>Event</b>
17.10.2013	Issuance of RFP
01.11.2013	Submission of written clarification/amendments, if any, on the RFP / RFP Project Documents by Bidders so as to reach BPC by 1700 hours. Such written clarifications/amendments shall be in the format provided
15.11.2013	Pre-Bid meeting(s) at 1430 hours (1ST)
21.11.2013	Issuance of written clarifications/amendments, if any
08.01.2014	Issue of signed RFP Project Documents (except for the Share
15.01.2014	Submission of Bid
15.01.2014	Opening of Non-Financial Bid
04.02.2014	Opening of Financial Bid
14.02.2014	Selection of Successful Bidder and issue of Lol
17.03.2014	Signing of Share Purchase Agreement and transfer of Unchahar Transmission Limited



- (k) As per the timeline specified in RFP, i.e. considering the effective date as 17.3.2014 and the commissioning schedule as 30 months, the scheduled COD worked out to 17.9.2016, which was well before November, 2016 (schedule of generation project). CTU had been consistently informing the BPC the schedule date of the Unchahar-IV generation project of NTPC and requesting that transmission system was required to be built matching with commissioning of generation project.
- (l) RECTPCL floated the RFP on 17.10.2013, Lol was issued to the successful bidder on 14.2.2014 and thereafter, POWERGRID acquired Unchahar Transmission Limited on 24.3.2014, after execution of the Share Purchase Agreement and completing all procedural requirements specified in the RFP documents. Further, with the effective date as 24.3.2014, the commissioning schedule of the transmission system considering 30 months worked out to 24.9.2016, whereas, as per the information submitted by NTPC vide letter dated 8.8.2013, schedule of the generation project was November, 2016. Even though the schedule of generation project was known to RECTPCL well before issuance of RFP, RECTPCL did not take action to rectify the scheduled commissioning date of the transmission line.

### **Analysis and Decision**

8. We have considered the submissions of the Petitioner and the Respondents. The following issues arise for our consideration:





- (a) **Issue No.1:** Whether the Petitioner's declaration of COD of Unchahar-Fatehpur 400 kV D/C line is in terms of the TSA?
- (b) **Issue No.2:** Who shall bear the monthly transmission charges from the date of deemed COD till the date of start of LTA?
- (c) **Issue No.3:** Whether the LTTCs have acted as per the provisions of the TSA by invoking the Contract Performance Guarantee of the Petitioner?
- (d) **Issue No. 4:** If the answer to Issue No.3 is in the negative, whether the Petitioner should be restored the Contract Performance Guarantee?

The above issues have been dealt with in the succeeding paragraphs.

**Issue No.1: Whether the Petitioner's declaration of COD of Unchahar-Fatehpur 400 kV D/C line is in terms of the TSA?**

9. The Petitioner was selected as the Transmission Service Provider (TSP) based on the competitive bidding carried out by RECTCL as Bid Process Coordinator in accordance with the Bidding Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. The Petitioner acquired the SPV after paying the acquisition price and the Contract Performance Guarantee. In terms of the Transmission Service Agreement entered into by the Petitioner with the Long Term Transmission Customers (LTTCs), the completion schedule of Unchahar-Fatehpur 400 kV D/c line was 30 months from the effective date. Effective date has been defined as later of the following dates:

- (a) the date when the TSA is executed and delivered by the parties;



- (b) the date on which the selected bidder acquired for the acquisition price 100% of the equity shareholding of REC Transmission Project Company Limited in the SPV Unchahar Transmission Limited alongwith all its related assets and liabilities as per the provisions of the Share Purchase Agreement;
- (c) the date on which the selected bidder on behalf of the TSP has provided the contract performance guarantee as per the terms of the TSA.

The Petitioner as the selected bidder acquired the SPV on 24.3.2014 after entering into Share Purchase Agreement and furnishing Contract Performance Guarantee. Accordingly, 24.3.2014 became the effective date. The Scheduled Commercial Operation Date (SCOD) being 30 months from the effective date is 24.9.2016.

10. The Petitioner executed the project keeping the SCOD date of 24.9.2016 in view. Under Article 6.1.1 of the TSA, the TSP is required to give a notice of at least 60 days to RLDCs, CTU/STU and LTTCs about the intended date of connection of the project which shall not be earlier than SCOD. Further, under Article 6.1.2, the CTU/STU or RLDCs or LTTCs may defer the intended date of inter-connection for a reasonable cause including failure to arrange the inter-connection facilities by a period of 15 days upto a maximum period of 30 days. The said provisions are 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 be not 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.

6.1.2 The RLDC / SLDC (as the case may be) or the CTU / STU (as the case may be) or the Lead Long Term Transmission Customer may, for reasonable cause, including failure to arrange for Interconnection Facilities as per Article 4.2, defer the connection for up to fifteen (15) days from the date notified by the TSP pursuant to Article 6.1.1 if it notifies to the TSP in writing, before the date of connection, of the reason for the deferral and when the connection is to be rescheduled. However, no such deferment on one or more occasions would be for more than an aggregate period of 30 days. Further, the Scheduled COD would be extended as required, for all such deferments on day for day basis.”

The Petitioner, in accordance with Article 6.1.1 of the TSA served an advance notice on the LTTCs, CTU and RLDCs vide letter dated 26.7.2016, informing that it intended to connect Unchahar-Fatehpur 400 kV D/c line on 24.9.2016. However, neither CTU nor RLDC nor LTTCs took any action for deferment of SCOD on account of non-availability of inter-connection facility. The Petitioner completed the Unchahar-Fatehpur 400 kV D/c line on 24.9.2016 and obtained Energisation Certificate dated 24.9.2016 from the CEA.

11. Article 6.2.1 and 6.2.2 of the TSA deal with the commercial operation of the asset executed by the Petitioner. The said provisions are extracted as under:-

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

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

12. As per the above provisions, an element of the project shall be declared to have achieved COD 72 hours following the connection of the element with the



interconnection Facilities or 7 days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP. Once the element is declared to have achieved the deemed CoD in terms of Article 6.2.1 of the TSA, such element shall be deemed to be availability equal to target availability till the actual charging of the element and is entitled to payment of monthly transmission charges applicable to such element. In the present case, the Petitioner, vide letter dated 24.9.2016, informed all the LTTCs that the project element comprising of Unchahar-Fatehpur 400 kV D/c line had been completed on 24.9.2016 in accordance with Clause 6.2.1 of the TSA and was ready for charging. Thereafter, the Petitioner declared the deemed COD of the line on 1.10.2016, after completion of mandatory seven days period in terms of Clause 6.2.1 of the TSA and vide letter dated 1.10.2016, informed all the LTTCs about deemed COD of the transmission line. In our view, the Petitioner has complied with the provisions of the TSA while declaring the deemed CoD of the Unchahar-Fatehpur 400 kV D/c line with effect from 1.10.2016. In terms of the TSA, the Petitioner is entitled to payment of monthly transmission charges with the deemed availability equivalent to target availability till the element is actually charged and put to use.

**Issue No.2: Who shall bear the monthly transmission charges from the date of deemed COD till the date of start of LTA?**

13. The Petitioner has submitted that in accordance with the pre-bid clarifications furnished by BPC, the applicable transmission charges shall be payable to the Petitioner as per the PoC mechanism under the Sharing Regulations. Accordingly, the Petitioner, vide letter dated 29.8.2016, furnished its YTC data to the NLDC, being the nodal agency, for inclusion in PoC charges. However, NLDC vide letter dated



19.9.2016, declined to include the transmission charges of the element under PoC charges and stated that in light of the Commission's recent orders and prevailing regulations, the transmission charges of Unchahar-Fatehpur 400 kV D/c line would be payable by NTPC. The Petitioner has submitted that the Validation Committee constituted under the Sharing Regulations also denied inclusion of transmission charges as adopted by the Commission in the PoC, thus depriving the Petitioner from receipt of the transmission charges.

14. Pursuant to the directions of NLDC, the Petitioner vide letter dated 19.9.2016 requested the CTU to bill the transmission charges of the subject transmission line upon NTPC. Accordingly, CTU raised the bills upon NTPC for payment of the transmission charges since 1.10.2016. However, NTPC commenced payment of transmission charges only from 21.12.2016 i.e. from the date of drawal of start-up power by NTPC.

15. NTPC in its reply has submitted that NTPC applied for LTA to CTU vide application dated 8.8.2011. Thereafter, vide letter dated 8.8.2013, NTPC informed the CTU that the investment approval of the generating station was accorded by the Board of Directors of NTPC on 30.7.2013 and accordingly, the Unit was scheduled to be commissioned on 30.11.2013 i.e. 40 months from the date of investment approval. NTPC has submitted that since NTPC did not require the transmission line before 30.11.2016 which was made clear to CTU before grant of LTA, the liability of NTPC for payment of transmission charges of Unchahar-Fatehpur 400 kV D/c line would be from 1.12.2016 onwards only or COD of the transmission line whichever was later.



16. CTU in its reply has submitted that NTPC applied for connectivity for 500 MW for Unchahar IV TPS in January 2011 and LTA for 495.78 MW in August 2011 with the CoD of the generation project as 28.2.2015. In the Connectivity/LTA meeting of NR constituents held on 19.11.2011 and 25<sup>th</sup> NRPC meeting held on 24.2.2012, the transmission system associated with Unchahar TPS comprising Unchahar-Fatehpur 400 kV D/c line was agreed to wherein NTPC indicated the scheduled commissioning of the generation project as March 2015. In the Connectivity/LTA meeting of NR constituents held on 2.1.2013, NTPC informed the commissioning schedule of the generation project as June 2016. CTU has further submitted that in the 29<sup>th</sup> meeting of the Empowered Committee on Transmission Planning held on 15.6.2012, it was decided to execute the transmission system associated with Unchahar TPS through competitive bidding. It was specifically noted that associated bays at generation end and PGCIL sub-station end are to be matched with the commissioning of the Unchahar-Fatehpur 400 kV D/c line. RECTPCL was appointed as the Bid Process Coordinator for selection of TSP through tariff based competitive bidding. RECTPCL issued the RfQ on 11.1.2013 and thereafter requested CTU to forward the inputs for preparation of RfP. CTU vide its letter dated 19.6.2013 forwarded the inputs in which the expected date of generation was indicated as June 2016 based on the feedback of NTPC in the meeting dated 2.1.2013. The letter of CTU is extracted as under:

“B. Unchahar-Fatehpur Transmission Line

Completion Schedule: The line is for evacuation of power from Unchahar generation. In the last LTA/Connectivity meeting NTPC has indicated Award for the main plant is expected by March'13. COD is expected 39 months after award, i.e. by June'16. We are coordinating with NTPC to provide the information of award.



We will provide the date when the scheme is required on receipt of required information from NTPC. Based on the communication from NTPC, the commissioning schedule for the Unchahar-Fatehpur line shall be informed."

NTPC vide its letter dated 8.8.2013 intimated that the commissioning of the generation project would be 40 months from the date of investment approval i.e. in November 2016. Accordingly, CTU granted connectivity for 500 MW and LTA for 495.78 MW to NTPC vide its letter dated 3.1.2014 effective from November 2016. CTU also confirmed the commissioning schedule as November 2016 to RECTPCL vide email dated 11.9.2013. RECTPCL vide email dated 11.9.2013 informed that as per requirement of Standard Bid Document, completion schedule (in number of months from effective date) was required to be provided and requested CTU for the same so as to proceed further with RFP process. CTU vide email dated 11.9.2013 reiterated that the commissioning schedule for Unchahar-IV generation project was November 2016 and completion schedule of associated Transmission system should be matched with the generation project. RECTPCL replied to above mentioned email on 11.9.2013, requesting that due to preparatory activities for commencement of RFP process, a period of 33 months could be given as completion target in the RFP for transmission project. However, CTU vide email dated 12.9.2013 again reiterated that the commissioning schedule for generation project was November 2016 and hence the associated Transmission system, inter-alia including time for preparatory activities should be matched with the generation and requested RECTPCL to finalize the schedule accordingly. In order to finalize the timeline and to resolve the matter, a meeting was held on 7.10.2013 under the aegis of CEA between CTU and RECTCL wherein CTU again reiterated that Unchahar-IV Generation Project was scheduled for commissioning by November, 2016 and transmission system was required to be

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built matching with commissioning of generation project. Despite the request of CTU to adjust the time schedule with the commissioning of the unit of the generating station, RECTPCL went ahead with the RFP on 17.10.2013 wherein the signing of Share Purchase Agreement and transfer of SPV was indicated as 17.3.2013 and scheduled COD of the project was indicated as 30 months from Effective Date. CTU has submitted that if the firm generation project schedule is known, then it is the responsibility of the BPC to align the bid processing time in such a manner that completion of the associated transmission system matches with the commissioning schedule of the generation project. CTU has submitted that in the instant case, BPC was not agreeable to provide a firm completion schedule of the associated transmission system as Nov, 2016 but was insisting for completion schedule in months.

17. RECTPCL has not submitted any reply despite notice. However, in Petition No. 48/TT/2017 relating to the tariff of associated bays of Powergrid at Fatehpur end of the instant transmission line, RECTPCL has submitted its reply which has been recorded in the said order as under:

“18. RECTPCL was directed to give the reasons for giving early schedule for commissioning of the 400 kV D/C Unchahar-Fatehpur transmission line when it was required by November, 2016.

19. RECTPCL, vide affidavit dated 10.7.2017, has submitted as under:-

a) As per the requirement of the Standard Bidding Documents, the completion schedule for the transmission system is to be provided in months from the Effective Date. As per Transmission Service Agreement (TSA), the definition of Effective Date is as given below: "This Agreement (TSA) shall be effective from later of the dates of the following events: -

i. The Agreement (TSA) is executed and delivered by the Parties;





ii. The Selected Bidder has acquired for the Acquisition Price, one hundred percent (100%) of the equity shareholding of REC Transmission Projects Company Ltd. in Unchahar Transmission Limited along with all its related assets and liabilities as per the provisions of the Share Purchase Agreement, and

iii. The Selected Bidder, on behalf of the TSP, has provided the Contract Performance Guarantee, as per terms of Article 3.1 of this Agreement (TSA).

b) A meeting to finalize the completion schedule in months was held in CEA on 7.10.2013 wherein CTU informed that Unchahar Generation project is scheduled for commissioning by 1.11.2016 and the transmission system is required to be built matching with the commissioning of generation project.

c) RECTPCL conveyed that based on the past experience approximately 5-6 months would be required for handing over of the SPV i.e. Unchahar Transmission Limited (UTL) to the selected bidder which means SPV can be handed over by March-April, 2014.

d) After considering the commissioning schedule of NTPC's generation project and tentative time required to complete the bidding process, it was decided to keep the completion schedule of the Transmission Line as 30 months' from the effective date to match the completion of Transmission & Generation Schedule.

e) After successful completion of the bidding process the SPV, Unchahar Transmission Limited was transferred to successful bidder on 24.3.2014 about 5 and 1/2 months from the date of the meeting. As per the timeline of Standard Bidding Documents, RECTPCL has to handover the SPV in stipulated time. RECTPCL has completed the bid processing activities within a given time i.e. 5-6 months, as agreed in the above meeting.

f) As 30 months' period was mentioned in the RFP, only option to match the scheduled date of NTPC plant commissioning with the commissioning of Transmission System was to postpone the Effective Date by one month i.e. to delay handing over of SPV to successful bidder. However, this is not a good practice considering the importance of line and any delay would have led to bottlenecking of generation. As a general practice, TSP constructs the line in cooperation and coordination with stakeholders which is NTPC in this case.

g) As regards Connection and Commissioning of the project, the TSA provides as follows:-

#### “6. Connection and Commissioning of the Project

##### 6.1 Connection with the Inter-Connection Facilities:

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 be not 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.

6.1.2 The RLDC / SLDC (as the case may be) or the CTU / STU (as the case may be) or the Lead Long Term Transmission Customer may, for reasonable cause, including failure to arrange for Interconnection Facilities as per Article 4.2, defer the connection for up to fifteen (15) days from the date notified by the TSP pursuant to Article 6.1.1 if it notifies to the TSP in writing, before the date of connection, of the reason for the deferral and when the connection is to be rescheduled. However, no such deferment on one or more occasions would be for more than an aggregate period of 30 days. Further, the Scheduled COD would be extended as required, for all such deferments on day for day basis.”

h) As per the above provisions of TSA, Scheduled COD can be extended upto 30 days in the case of failure of arrangement of Inter-Connection facility which has to be provided by NTPC in the immediate case.”

18. From the submissions of NTPC, CTU and RECTPCL as discussed in the preceding paras, it is apparent that NTPC vide its letter dated 8.8.2013 informed the CTU that as per the Investment Approval, the expected date of CoD of the unit was November 2016 and CTU in its e-mail dated 11.9.2013 informed RECTPCL about the commissioning schedule as November 2016. Even though RECTPCL was requested to align the commissioning of the transmission line with the generation project, RECTPCL has not taken care to implement the request of CTU. In fact, the time schedule given in the RfP clearly indicated the date 17.3.2014 as the date of “Signing of Share Purchase Agreement and transfer of Unchahar Transmission Limited”. A period of 30 months from 17.3.2014 (i.e.17.9.2016) has been prescribed as SCOD which does not match with the commissioning schedule of the generation project. Interestingly, RECTPCL has admitted the mismatch in its affidavit dated 10.7.2017 filed in 48/TT/2017 and has submitted that “only option to match the scheduled date of NTPC plant commissioning with the commissioning of Transmission System was to postpone the Effective Date by one month i.e. to delay



handing over of SPV to successful bidder. However, this is not a good practice considering the importance of line and any delay would have led to bottlenecking of generation.” The other option suggested by RECTPCL in the said affidavit is that SCOD could be postponed for a period upto one month in terms of Article 6.1.2 of the TSA. In our view, the explanation of RECTCL about giving the timeline of transfer of SPV as 17.3.2013 and schedule SCOD as 30 months thereafter does not take into account the requirement of matching the SCOD of the transmission line with that of the SCOD of generating station which was conveyed to RECTCL in no unmistakable term as 30.11.2016. It is pertinent to mention that as per the Guidelines for Competitive Biddings, in case of deviation from the Standard Bidding Documents, approval of the Commission should be sought. RECTCL as BPC without exercising the said option went ahead with a timeline at RfP stage without due consideration of the SCOD of the generating station for which the transmission line was meant. We do not appreciate the conduct of RECTCL for its failure to handle the issue as per the Bidding Guidelines. Further, the Petitioner at the time of grant of licence should have brought this mismatch to the notice of the Commission for appropriate directions which it failed to do. Moreover, since CTU was involved in correspondence with NTPC and RECTCL, it was incumbent on CTU to bring the mismatch to the notice of the Commission in its comments on the grant of transmission licence under Section 15(5) of the Act. We direct the BPCs including RECTCL to ensure that the timelines given in the RFP documents take into account the matching of the SCOD of the generation with the SCOD of the transmission sought to be implemented through competitive bidding. Further, we also direct CTU to bring such instances of mismatch in the bidding documents to the notice of the Commission for appropriate



directions.

19. In the instant case, the transmission line has been interconnected with the bays of PGCIL at Fatehpur in October, 2016. However, the associated bays of NTPC were not ready on account of which the Petitioner was prevented from putting the assets into regular use. NTPC in its reply has submitted that it required the transmission line from 30.11.2016 and is agreeable to pay the transmission charges from that date. The Petitioner has declared deemed COD of the project on 1.10.2016 after 7 days of the SCOD in accordance with the TSA. In accordance with Article 6.2.2 of the TSA, the Petitioner is entitled to monthly transmission charges from the date of deemed CoD till the charging of the line. The question now arises as to who shall pay the transmission charges for the period from 1.10.2016 till 29.11.2016.

20. The Commission has taken a consistent view that the entity who is responsible for the asset not being put to use shall be liable to pay the transmission charges from the date of deemed CoD till the asset is put to use. 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.”

The above decision of the Commission has been upheld by the Appellate Tribunal in its judgement dated 27.3.2018 in Appeal No 390 of 2017 and IA Nos. 566 of 2017, 725 & 1063 of 2017 (Punjab State Power Corporation Limited Vs Patran Transmission Company Limited & Others). The following observations of the Appellate Tribunal are relevant:

“(vii).....The most relevant decision of the Central Commission matching to the circumstances of the present case is its order dated 21.9.2016 in Petition No. 43/MP/2016 where the principles were laid down clearly that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/ downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it appears that PSTCL is the defaulting party and should have been made liable to pay the said transmission charges. However, we find that there is no contractual relation between the Respondent No. 1 and PSTCL. The contractual relation between the Appellant and the Respondent No. 1 is the TSA, which lays down the rights and obligations of the parties. The Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The relevant portion is reproduced below:

*“4.2 Long Term Transmission Customers’ obligations in implementation of the Project:*

*4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers’, at their own cost and expense, undertake to be responsible*

.....  
*b. for arranging and making available the Interconnection facilities to enable the TSP to connect the Project.”*

The LTTCs, including the Appellant at their own cost and expense were required to provide interconnection facilities to the Respondent No. 1 so that the Transmission System could be connected by SCOD and made operational.”



21. In the said case, Patran Transmission Company Limited was implementing the transmission line through TBCB route which achieved CoD as per the SCOD whereas the downstream transmission system being developed by Punjab State Power Corporation Limited (PSPCL) could not be commissioned matching with the TBCB line. The Appellate Tribunal held that the LTTCs including PSPCL were responsible for providing inter-connection facility and PSPCL amongst all the LTTCs was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. Accordingly, PSPCL was held liable for payment of transmission charges from the SCOD till the commissioning of the downstream transmission system.

22. The principle laid down in Petition No.43/MP/2016 as upheld by the Appellate Tribunal is applicable in this case. The transmission lines could not be put to use on account of lack of inter-connection facility in NTPC's Unchahar generating station. However, NTPC cannot be blamed for the delay as NTPC required the transmission line with effect from 30.11.2016 and NTPC is willing to bear the transmission charges with effect from that date, even the power flow on the line started from 21.12.2016. As already stated, it is on account of the failure of RECTPTCL to take into account the scheduled commissioning of the generation project for matching with the SCOD of the transmission line that a mismatch of almost two months has arisen. However, RECTPCL is not developing the transmission assets in the switchyard of Unchahar sub-station of NTPC. It is the nominated agency of Ministry of Power, Government of India for carrying out the selection of successful bidder. Considering the status of RECTPCL, the liability of transmission charges from



1.10.2016 till 29.11.2016 cannot be levied on RECTPCL. Since the LTTCs are required to arrange for inter-connection facility and they have failed to provide the same, we are of the view that the transmission charges from 1.10.2016 till 29.11.2016 should be recovered from the LTTCs of the transmission system who are responsible for providing the interconnection facility. CTU shall recover the charges from the LTTCs and make payment to the Petitioner in terms of the mechanism given in our order dated 4.1.2017 in Petition No. 155/MP/2016. The transmission charges from 30.11.2016 till the start of LTA shall be borne by NTPC. Thereafter the transmission charges shall be considered under POC and the billing collection and disbursement of transmission charges shall be governed by provision of the Sharing Regulations, as amended from time to time.

**Issue No.3: Whether the LTTCs have acted as per the provisions of the TSA by invoking the Contract Performance Guarantee of the Petitioner?**

23. The Petitioner has submitted that on 20.3.2014, it has furnished the Contract Performance Guarantees for an aggregate value of ₹5.40 Crores separately in favor of each of the LTTCs, as per the direction of BPC. The Petitioner, vide letter dated 24.9.2016, informed all the LTTCs that the project element comprising of Unchahar-Fatehpur 400 kV D/c line has been completed on 24.9.2016 in accordance with Clause 6.2.1 of the TSA and was ready for charging. Thereafter, the deemed COD of the line was achieved on 1.10.2016, after completion of mandatory seven days period in terms of Clause 6.2.1 of the TSA. Accordingly, the Petitioner, vide letter dated 1.10.2016, informed all the LTTCs about deemed COD of the line as 1.10.2016.



24. The Petitioner has submitted that however, a few LTTCs viz., Jaipur, Ajmer and Jodhpur from Rajasthan and UPPCL initiated invocation of CPGs submitted by PUTL citing the delay of 7 days i.e. from 24.9.2016 to 1.10.2016, in achieving the CoD. UPPCL, vide letters dated 21.1.2017 and 22.2.2017, raised the liquidated damages demand of ₹4,62,910/- for release of CPG without providing any reasoning for levy of liquidated damages and called for encashment of CPG furnished by the Petitioner or alternatively requested for extension of CPG. Whereas, RUVNL, vide letter dated 17.1.2017 raised the liquidated damages demand of ₹1,78,853/-. The Petitioner has submitted that the LTTCs have raised the issue of levy of liquidated damages after four months of the intimation regarding deemed CoD and therefore, the LTTCs have by their conduct waived their right to liquidated damages.

25. We have considered the submissions of the Petitioner and respondents. The Petitioner has completed the transmission line on 24.9.2016 as per the provisions of the TSA and has informed all LTTCs vide its letter dated 24.9.2016. Since the line could not be charged on 24.9.2016 due to non-readiness of the interconnection facility i.e. non-availability of 400 kV bays at NTPC Unchahar end, the Petitioner in terms of Clause 6.2.1 of the TSA, after completion of mandatory seven days period, has declared the deemed COD of the line on 1.10.2016 and has vide letter dated 1.10.2016 informed all the LTTCs about deemed COD. Therefore, the Petitioner has acted strictly in accordance with the provisions of the TSA.

26. Article 4.2.1 (b) of the TSA which provides for obligations of the LTTCs for implementation of the project. The said Article is extracted as under:





“4.2 Long term Transmission Customers’ obligation in implementation of the project:

4.2.1.....

b. for arranging and making available the Interconnection Facilities to enable the TSP to connect the project;”

As per above provision of the TSA, it is the responsibility of LTTCs to arrange for inter-connection facilities to enable the TSP to connect the project. The Petitioner as TSP could not achieve the COD as on SCOD on account of lack of inter-connection facility which was the responsibility of the LTTCs in terms of Article 4.2.1 (b) of the TSA. The Petitioner had duly notified to the LTTCs about its readiness to achieve COD but for the lack of inter-connection facilities, it could not achieve the COD. Therefore, the LTTCs cannot take advantage of their failure to provide the inter-connection facility in terms of the TSA and impose liquidated damages and encash the contract performance guarantee by alleging breach of contract on the part of the Petitioner. Since there is no lapse on the part of the Petitioner in not achieving the COD as on the date of SCOD and the Petitioner has declared deemed CoD seven days after the SCOD in terms of Article 6.2.2 of the TSA, we are of the view that the actions of LTTCs in levying the liquidated damages and encashing the contract performance guarantee are not in compliance of the provisions of the TSA.

**Issue No.4: If the answer to Issue No.3 is in the negative, whether the Petitioner should be restored the Contract Performance Guarantee?**

27. We have held that the actions of LTTCs in invoking bank guarantee to recover the liquidated damages for the delay in declaration of the deemed CoD are not in compliance with the provisions of the TSA. Therefore, the Petitioner needs to be restored the Contract Performance Guarantee by the LTTCs. Accordingly, we direct that the LTTCs who have encashed the Contract Performance Guarantees of the



Petitioner shall restore the same to the Petitioner with 9% interest within one month from the date of issue of this order.

28. The Petition is disposed of in terms of the above. A copy of this order shall be sent to the BPCs including RECTPCL for their information and compliance of the observations made in para 17 above.

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

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

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

**sd/-**  
**(P. K. Pujari)**  
**Chairperson**

