

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 3/TL/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 30th March, 2024

In the matter of:

Application under Section 14 of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Transmission License and other related matters) Regulations, 2009 for the grant of transmission licence to Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) for the implementation of Indian portion of New Butwal- Gorakhpur 400 kV Double Circuit Cross-border interconnection transmission line and associated bay extension work.

And

In the matter of

Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL),

Plot No. 2, Sector 29,

Gurugram-122001, Haryana

...Petitioner

Vs

1. Central Transmission Utility of India Limited,

Plot No. 2, Sector 29, Saudamini,

Gurugram-122001, Haryana

2. Nepal Electricity Authority,

BGCPTL & MCA Nepal

3. Central Electricity Authority,

Sewa Bhawan, Ramakrishna Puram,

Sector-1, New Delhi-110 066

...Respondents

The following were present:

Shri Shubham Arya, Advocate, BGCPTL
Ms. Reeha Singh, Advocate, BGCPTL
Shri Devanshu Sharma, Advocate, BGCPTL
Shri V K Bhaskar, Representative, BGCPTL
Shri Prashant Kumar, Representative, BGCPTL
Shri Siddharth Sharma, Representative, CTUIL
Shri Rupesh Kr. Shah, Representative, NEA

ORDER

The Petitioner, Butwal-Gorakhpur Cross Border Power Transmission Limited (in short 'BGCPTL'), has filed the present Petition under Section 14 of the Electricity Act, 2003 (in short 'the Act') read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Transmission License and other related matters) Regulations, 2009 (in short Transmission Licence Regulations') for the grant of a transmission licence to Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) for the "implementation of the Indian portion of New Butwal-Gorakhpur 400 kV Double Circuit Cross-Border interconnection transmission line and associated bay extension work" (in short 'the Transmission Project'). The scope of the Transmission Project for which the transmission licence has been sought is as under:

Scope of Transmission Project	Implementation Timeframe	Total Estimated Cost:
<ul style="list-style-type: none"><i>Indian Portion of New Butwal-Gorakhpur 400 kV D/C (Quad Moose) transmission line</i>	30.5.2026	Rs. 461.96 crore
<ul style="list-style-type: none"><i>Extension of existing 400 kV substation of POWERGRID at Gorakhpur with 2 Nos. 400 kV GIS Bays</i>		

2. The Petitioner has made the following prayers:

“(a) Grant transmission licence to the Applicant- Butwal-Gorakhpur Cross Border Power Transmission Limited for implementation of Indian portion of New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 02 nos GIS bays at Gorakhpur under RTM mode;

(b) Condone any inadvertent omissions/shortcomings/errors and permit the Applicant to add/modify/alter this application and make further submissions as may be required at a future date; and

(c) Pass such other order/orders, as may be deemed fit and proper in the facts and circumstances of the case.”

3. BGCPTL is a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Plot No. 2, Saudamini, Sector 29, Gurugram-122001, Haryana. BGCPTL is a joint venture company of Power Grid Corporation of India Limited (in short 'PGCIL') and Nepal Electricity Authority (in short 'the **NEA**') with 50:50 equity participation.

4. The Petitioner has submitted that on completion of the 'Indian portion of New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 2 nos. GIS bays at Gorakhpur, BGCPTL shall claim the monthly transmission service charges from the Nepal Electricity Authority (NEA) w.e.f. the Commercial Operation Date (COD) as per the terms and conditions stipulated under the Implementation and Transmission Service Agreement (ITSA) dated 1.6.2023.

Hearing dated 6.3.2024

5. During the course of the hearing, the learned counsel of the Petitioner submitted that the Petitioner has already complied with all the procedural formalities required under the Transmission Licence Regulations. The learned counsel further submitted

that the Government of India and the Government of Nepal entered into an Agreement on 21.10.2014 in regard to Electric Power Trade, Cross Border Transmission Interconnection and grid connectivity. In terms of the above Agreement, a Joint Working Group ('JWG') co-chaired by the Secretaries of Power shall undertake the role of planning and identification of cross-border interconnections, etc. on 14.10.2019. During the meeting, it was decided that the new Butwal-Gorakhpur 400 kV Double Circuit Cross-Border interconnection transmission line and associated bays at Gorakhpur shall be implemented by a Joint Venture ('JV') between POWERGRID and Nepal Electricity Authority ('NEA') with 50:50 equity participation. Learned counsel further submitted that the Ministry of Power had issued a letter to POWERGRID enclosing the letter dated 16.3.2020 from NITI Ayog wherein NITI Ayog has concurred on the formation of a Joint Venture between POWERGRID and NEA for implementation of the Indian Portion of New Butwal-Gorakhpur 400 kV Cross-Border Interconnection. Accordingly, the BGCPTL is a joint venture company of POWERGRID and Nepal Electricity Authority with 50:50 equity participation incorporated under the provisions of the Companies Act 2013. Learned counsel further submitted that the Commission in a Transmission project of a similar nature has granted a transmission licence *vide* Order dated 1.12.2010 in Petition No. 31 of 2010 to Cross Border Power Transmission Company Limited for the implementation of Muzzafarpur-Sursand Transmission Line (Indian portion of 400 kV Muzaffarpur-Dhalkebar cross border line). In the above order dated 1.12.2020, the Commission has held that the levy of transmission charges shall be governed as per the agreement and NEA to bear the transmission charges of the entire transmission capacity of the Indian portion.

6. The representative of the NEA, during the course of the hearing submitted that an ITSA agreement has already been signed between BGCPTL & NEA, and it shall pay the transmission charges to the Petitioner as per the mutually agreed terms in the ITSA. The representative of the CTUIL submitted that it has issued its recommendations for the grant of a transmission licence to the Petitioner company. There is no mismatch in the present case. After hearing the submissions of the learned counsel of Petitioner, NEA and CTUIL, the Commission directed Respondents to file their replies, within a week, with a copy to the Petitioner, who may file its rejoinder, if any within a week thereafter. However, no reply has been filed by the Respondents.

7. Vide Record of the Proceedings for the hearing dated 6.3.2024, the Petitioner was directed to submit the details with respect to the Muzaffarpur (India)- Dhalkebar (Nepal) cross-border line. The Petitioner, vide its affidavit dated 14.3.2024, has submitted that the Indian portion of Muzaffarpur (India)- Dhalkebar (Nepal) cross-border line has been implemented by the Cross Border Power Transmission Company Limited (CBPTCL). In similar circumstances, Transmission Licence No. 12/Transmission/2010/CERC was granted by this Commission *vide* Order dated 1.12.2010 in Petition No. 31 of 2010 to Cross Border Power Transmission Company Limited for implementation of the Muzzafarpur-Sursand Transmission Line (Indian portion of 400 kV Muzaffarpur-Dhalkebar cross border line). Further, vide order dated 10.01.2019 in Petition 195/MP/2018, the Commission amended the transmission licence granted to the Cross-Border Power Transmission Company Limited for bay extension work at Muzzafarpur sub-station. In the above order dated 10.01.2019, the

Commission has held that the levy of transmission charges shall be governed as per the agreement. The relevant part of the order reads as under:

“8. According to the Petitioner, the entire transmission capacity of the line would be available to Nepal Electricity Authority on payment of Transmission Charges as per the mutually negotiated “Implementation and Transmission Service Agreement (ITSA)” between Nepal Electricity Authority and licensee. The Transmission charges are not part of the ISTS pool and are not borne by the ISTS beneficiaries.

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15. The Sharing of transmission charges shall be governed as per agreement entered into between the Petitioner and Nepal Electricity Authority.”

Analysis and Decision

8. We have considered the submissions of the Petitioner, NEA and CTUIL. The Petitioner has filed the present Petition for the grant of a transmission licence for the implementation of the Indian portion of New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 02 nos. GIS bays at Gorakhpur.

9. An agreement “Electric Power Trade, Cross Border Transmission Interconnections and Grid Connectivity” was signed between the Government of Nepal and the Government of the Republic of India on 21.10.2014. As per Article V(a), a Joint Working Group (JWG) has been set up which is co-chaired by Joint Secretaries of the Power/ Energy Ministries of the two countries. In addition, as per Article V(b), a Joint Steering Committee (JSC) has been set up, which is co-chaired by Secretaries of the Power/ Energy Ministries of the two countries.

10. On 27.6.2016, the 3rd Joint Working Group (JWG) on Indo-Nepal Cooperation in Power Sector noted the above and directed that Joint Technical Team (JTT) may be

entrusted with the task of preparing the Joint-DPR for the New Butwal-Gorakhpur 400 kV D/c (Quad Moose) Cross-Border Interconnection line including investment requirement on either side and also suggest a mode of payment of the transmission charges based on prevailing regulations and usage by both the countries. On 28.6.2016, the 3rd Joint Steering Committee (**JSC**) on Indo-Nepal Cooperation in Power Sector recommended the JWG for the construction of a New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line to supply additional power to Nepal along with the construction of New Butwal-New Hetauda-Dhalkebar 400 kV D/c line in line in Nepal in matching time frame. In February 2017, the JTT prepared the Project Report in regard to the construction of the New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line.

11. From February 2017 to October 2019, there were numerous rounds of discussions between the parties on the course of implementation of the New Butwal - Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line. Meanwhile, during the 5th Joint Technical Team (JTT) Meeting between India and Nepal held at POWERGRID Office, Gurugram on 27.12.2018, the Joint Technical Team (JTT) of Nepal and India recommended the construction of the New Butwal - Gorakhpur 400 kV Double Circuit Cross-border interconnection transmission line.

12. On 14.10.2019, the 7th Meeting of the Joint Working Group (**JWG**) on Indo-Nepal Cooperation in Power Sector was held wherein it has been, inter-alia, decided that the New Butwal-Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line shall be implemented by a Joint Venture (JV) between POWERGRID

and NEA with 50:50 equity participation and debt: equity ratio of 80:20. It was further agreed that NEA would pay the transmission charges for Indian portion of the said line for 25 years for availing entire capacity of the Indian portion of the transmission line. In the meeting, it was also found that the two nos. of GIS bays can be accommodated in the existing Gorakhpur (POWERGRID) substation instead of investing in the construction of a new substation at Gorakhpur.

13. On 15.10.2019, the 7th Meeting of the Joint Steering Committee (**JSC**) on Indo-Nepal Cooperation in the Power Sector was held at which the JSC *inter-alia* agreed to the above proposal of JWG.

14. In pursuance to the above, on 16.3.2020, the Ministry of Power issued a letter to POWERGRID enclosing the letter dated 16.3.2020 from NITI Aayog wherein NITI Aayog has concurred with the formation of a 50:50 Joint Venture between Power Grid Corporation of India Limited (PGCIL) and the Nepal Electricity Authority (NEA), for implementation of the Indian portion of New Butwal-Gorakhpur 400 kV Cross-border Interconnection.

15. On 31.8.2022, BGCPTL was incorporated under the provisions of the Companies Act, 2013, with equity participation of 50:50 between POWERGRID and NEA. On 30.9.2022, a Board Meeting of BGCPTL was held wherein it was resolved that POWERGRID be engaged as Project Management Consultant (PMC) for the implementation of the Indian portion of 400 kV New Butwal (Nepal)-Gorakhpur (India) Cross Border Transmission line and associated bay extension work. On 24.5.2023, a

Project Management Consultancy Agreement (PMC) Agreement has been entered into between the BGCPTL and POWERGRID for the Implementation of the Butwal - Gorakhpur 400 kV D/c (Quad Moose) transmission line & associated 2 Nos. GIS Bays at Gorakhpur. Further, an Implementation and Transmission Service Agreement (ITSA) has been entered into BGCPTL and NEA on 1.6.2023.

16. According to the Petitioner, on completion of the 'Indian portion of New Butwal-Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 02 nos GIS bays at Gorakhpur, BGCPTL shall claim the monthly transmission service charges from the Nepal Electricity Authority (NEA) w.e.f. the Commercial Operation Date as per the terms and conditions stipulated under ITSA dated 1.6.2023.

17. Section 14 of the Act provides that the Appropriate Commission may, on an application made under Section 15 of the Act, grant a licence to any person to transmit electricity as a transmission licensee in any area as may be specified in the licence. The word "person" has been defined in Section 2(49) of the Act to include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person. The Petitioner company has been incorporated under the Companies Act, 2013. The main objective of the Petitioner Company is as under:

A. To engage in the business of building, maintaining and operating transmission systems between India and neighboring countries like Nepal, Bhutan, Bangladesh, Myanmar, Sri Lanka & Pakistan for the purpose of export and import of electricity, transmission of data and other related business including transformers, converters, transmitters, processors, developers, storers, carriers, importers and exporters of, and dealers in electricity, and any products or by-products derived from any such business and any such products derived from, or connected with any form of energy, including without

limitation heat, solar, wind, hydro, wave tidal, bagasse, bio-mass, waste, geothermal and biological.

B. To accumulate electrical power and to transmit, distribute and supply such power throughout the area of the India and neighboring countries like Nepal, Bhutan, Bangladesh, Myanmar, Sri Lanka & Pakistan.

C. To carry on the business of a transmission company in all its branches, and to construct, lay down, establish fix and carry out all necessary power stations, cables, wires, line accumulators, lamps and works and to generate accumulate, distribute and supply electricity, and to light cities, towns, streets, docks, market, theaters, building and places, both public and private.

18. Regulation 7 of the Transmission Licence Regulations read with the order dated 22.1.2022 passed in Petition No.1/SM/2022 [whereby the Commission, in the exercise of 'Power to Relax' under Regulation 24 of the Transmission Licence Regulations, modified/amended Clauses (4), (7), (9) and (12) and dispensed with Clause (10) of Regulation 7], provides for the procedure for the grant of a transmission licence as under:

“(1) The application for grant of licence shall be made to the Commission in Form-I appended to these regulations and shall be accompanied by such fees as may be prescribed by the Central Government from time to time.

(2) In case of the person selected for implementation of the project in accordance with the guidelines for competitive bidding, the application shall also contain such additional information, as may be required under these guidelines.

(3) The application shall be supported by affidavit of the person acquainted with the facts stated therein.

(4) Before making an application, the applicant shall submit the original application in electronic form along with annexures and enclosures on the e-filing portal of the Commission so that the same is served electronically on all the long-term customers of the project registered on the e-filing portal of the Commission. Also, a copy of the same be served through e-mail on the long-term customers of the project not registered on the e-filing portal of the Commission. Further, the applicant shall also post the complete application along with annexures and enclosures in English and in the vernacular language, on its website.

(5) The application shall be kept on the website till such time the licence is issued or the application is rejected by the Commission.

(6) Immediately on making the application, the applicant shall forward a copy of the application to the Central Transmission Utility.

(7) The applicant shall, within 7 days after filing the application, post the application on the e-filing portal of the Commission and on its website in Form-II attached to these regulations in English language and in Vernacular language of the State or Union Territory where an element of the project or a long-term customer is situated, inviting comments from the general public.

(8) As far as possible, within 7 days of receipt of the application the Secretariat of the Commission shall convey defects, if any, if noticed on preliminary scrutiny of the application for rectification and the defects conveyed shall be rectified by the applicant in such time as may be indicated in the letter conveying the defects.

(9) In the notice published on the e-filing portal of the Commission and on the applicant's website under clause (7) it shall be indicated that the suggestions and objections, if any, on the application, may be filed before the Secretary, Central Electricity Regulatory Commission, Third Floor, Chanderlok Building, Janpath, New Delhi-110001 (or the address where the office of the Commission is situated), with a copy to the applicant, by any person, including the long-term customers, within 30 days of publication of the notice.

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(10) The Central Transmission Utility shall send its recommendations, if any, to the Commission on the proposal made in the application within a period of thirty days from the date of receipt of application by it:

Provided that copy of the recommendations, if any, made by the Central Transmission Utility shall always be forwarded to the applicant:

Provided further that these recommendations of the Central Transmission Utility shall not be binding on the Commission.

(11) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the notice posted on the e-filing portal of the Commission and on the applicant's website by him, within 45 days of service of copy of the application on the Central Transmission Utility or publication of notice posted on the e-filing portal of the Commission and on the applicant's website, with an advance copy to the Central Transmission Utility or

the person who has filed the suggestions and objections on the proposal made in the application, as the case may be.

(12) The Commission after considering the suggestions and objections received in response to the public notice published by the applicant and the recommendations, if any, of the Central Transmission Utility may, propose to grant transmission licence or for reasons to be recorded in writing, reject the application.”

19. The Petitioner has filed the present Petition for the grant of a transmission licence in accordance with the Transmission Licence Regulations. The Petitioner has submitted proof of web posting of the complete application. On perusal of the application, it is also noted that the Petitioner has served a copy of the application on the respondent for the Project.

20. The Petitioner made the application as per Form-I prescribed in the Transmission Licence Regulations. The Petitioner posted its application on its website in Form-II on 22.11.2023 in English and Hindi. The Petitioner submitted that no objection has been received in response to the public notices.

21. The Petitioner has served a copy of the application to CTUIL as required under Section 15(3) of the Act and Regulation 7(6) of the Transmission Licence Regulations. CTUIL, vide its letters dated 20.12.2023, has recommended the grant of a transmission licence to the Petitioner. The relevant portions of the said letter dated 12.2.2024 are extracted as under:

“This has reference to petition filed by M/s Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) before Hon'ble CERC under Section 14 of the Electricity Act, 2003 and CERC (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009 for grant of transmission license. The diary no. of the petition viz. 511 of 2023 was generated on

23-11-2023. M/s BGCPTL has provided copy of the petition to CTU. In this regard, following is submitted:

1. Muzaffarpur (POWERGRID, India) — Dhalkebar (NEA, Nepal) 400kV D/c link was established as first high capacity cross-border interconnection between India and Nepal. In case of outage of this line, it was considered that Nepal grid might experience grid disturbance/blackout. Further, with Nepal installing large amount of hydro projects, there is continuous requirement of development of high voltage high capacity cross-border interconnections between India and Nepal for transfer of surplus hydro power from Nepal to India. Additionally, during hydro deficit conditions in Nepal grid, Nepal can draw power from Indian grid to meet their load requirements. Thus, for secure and reliable power exchange between India and Nepal, another high capacity cross-border interconnection line viz. New Butwal (NEA, Nepal) — Gorakhpur (POWERGRID, India) 400kV D/c (Quad Moose) line between India and Nepal was proposed. Further, to ensure reliability in Nepal grid, Nepal Electricity Authority (NEA) proposed to complete 400kV New Butwal — New Hetauda — Dhalkebar 400kV corridor resulting in formation of 400kV ring viz. New Butwal (Nepal) — New Hetauda (Nepal) — Dhalkebar (Nepal) — Muzaffarpur (India) — Gorakhpur (India) — New Butwal (Nepal).

2. After various rounds of deliberations between India and Nepal at the level of Joint Working Group (JWG) and Joint Steering Committee (JSC), in the 7th meeting of JWG held on 14-10-2019, it was agreed that NEA will pay the transmission service charges for Indian portion of subject line for 25 years for availing the entire capacity of the Indian portion of the transmission line. Accordingly, it was proposed that the national utility / central transmission utility of the both the countries viz. Nepal Electricity Authority (NEA) and Power Grid Corporation of India Ltd. (POWERGRID) may form a Joint Venture (JV) company for implementation of the Indian portion of the New Butwal — Gorakhpur 400kV (Quad Moose) line. Thus, following action points were agreed to be proposed to JSC:

(a) Formation of JV company between NEA and POWERGRID with 50:50 equity participation and 80:20 debt-equity ratio.

(b) Signing of Implementation & Transmission Service Agreement (ITSA) between JV company and NEA (the ITSA may also inter alia include detailed scope of works).

3. In the 7th meeting of JSC held on 15-10-2019, the deliberations of the 7th meeting of JWG were noted and also the proposal was agreed.

4. Pursuant to the decision in the 7th meeting of JSC, Ministry of Power, Govt. of India vide letter dated 16-03-2020 issued a letter to POWERGRID enclosing therewith letter dated 16-03-2020 from NITI Aayog wherein NITI Aayog concurred the formation of 50:50 JV between POWERGRID and NEA, for implementation of Indian portion of the subject cross-border link.

5. *It is understood that M/s Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) was incorporated on 31-08-2022 under the provisions of the Companies Act, 2013 with equity participation of 50:50 between POWERGRID and NEA. Further, it is also understood that that an Implementation and Transmission Service Agreement (ITSA) has been entered into between M/s BGCPTL and NEA on 01-06-2023 for recovery of monthly transmission service charges by M/s BGCPTL from NEA, and completion schedule of the transmission project is 36 months from signing of the ITSA i.e. 30-05-2026.*

*The detailed scope of works of the transmission scheme is enclosed at **Annexure-I**. In line with Section 15(4) of the Electricity Act, 2003, and based on details furnished by M/s Buwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) in their petition filed in CERC (diary no. 511 of 2023), CTU recommends the grant of transmission license to M/s BGCPTL for executing the implementation of Indian portion of New Butwal (NEA, Nepal) —Gorakhpur (POWERGRID, India) 400kV Double Circuit (Quad Moose) cross-border transmission line and associated bay extension works at Gorakhpur (POWERGRID, India) S/s.”*

22. Instant Petition has been filed for the grant of a transmission licence for the implementation of the Indian portion of the New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 02 nos GIS bays at Gorakhpur.

23. Section 14 of the Act provides that the Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person to transmit electricity as a transmission licensee in any area as may be specified in the licensee. Section 16 of the Act provides that the Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or a class of licensees, and such conditions shall be deemed to be conditions of such licence. The Commission has specified the Transmission Licence Regulations. Regulation 6 of the said Regulation lays down the eligibility criteria for the grant of a transmission licence as under:

“6. Eligibility for Grant of licence:

(a) No person shall be eligible for grant of licence unless it is—(a) selected through the process under the guidelines for competitive bidding, or

(b) a State owned or controlled company identified as a project developer on or before 5.1.2011, or

(c) a generating company which has established the dedicated transmission line and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system.”

24. In the present case, the Petitioner does not fulfil any of the eligibility conditions for the grant of a transmission licence. However, an agreement, “Electric Power Trade, Cross Border Transmission Interconnections and Grid Connectivity” was signed between the Government of Nepal and the Government of the Republic of India on 21.10.2014. Under this agreement, a Joint Working Group (JWG) has been set up, which is co-chaired by Joint Secretaries of the Power/ Energy Ministries of the two countries. In the 7th Meeting of JWG held on 14.10.2019, it was decided that the new Butwal- Gorakhpur 400 kV Double Circuit Cross-Border interconnection transmission line and associated bays at Gorakhpur shall be implemented by a Joint Venture (‘JV’) between POWERGRID and Nepal Electricity Authority (‘NEA’) with a 50:50 equity participation. Subsequently, the Ministry of Power has issued a letter to POWERGRID enclosing the letter dated 16.03.2020 from NITI Ayog wherein NITI Ayog has concurred with the formation of a 50:50 Joint Venture between POWERGRID and NEA. Accordingly, the BGCPTL has been formed as a joint venture company of POWERGRID and Nepal Electricity Authority with 50:50 equity participation incorporated under the provisions of the Companies Act 2013.

25. Therefore, BGCPTL has been formed after approval of the Ministry of Power and NITI Ayog to implement the Indian portion of New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 2 nos GIS bays at Gorakhpur. We are of the view that, for the said Transmission Project, agency has been nominated by the Government authorities of both India and Nepal and considering the importance of the Transmission Project in promoting exchange of power between India and Nepal and the policy decision of the Government, it is a fit case for a relaxation of the provisions of Regulation 6 by invoking the power vested under Regulation 24 of the Transmission Licence Regulations.

26. Regulation 24 of the Transmission Licence Regulations, dealing with the power to relax in appropriate cases, provides as under:

“24. The Commission may, when it considers necessary or expedient to do so and for reasons to be recorded in writing, relax or depart from any of the provisions of these regulations”.

27. It is an established principle of law that the power to relax has to be strictly construed and is to be exercised judiciously and with caution. Further, the power to relax is to be exercised only when undue hardship is caused by the application of the rules or regulations. Since, the Petitioner is a joint venture company of POWERGRID and Nepal Electricity Authority with a 50:50 equity participation incorporated under the provisions of the Companies Act, 2013 formed after due approval of Ministry of Power and NITI Ayog, the Commission, in the exercise of power under Regulation 24, hereby relaxes the provision of Regulation 6 of the Transmission Licence Regulations and holds that the Petitioner is eligible for the grant of a separate transmission licence. We

hereby direct that a public notice under clause (a) of sub-section (5) of Section 15 of the Act be published to invite suggestions or objections to grant a transmission licence aforesaid. The objections or suggestions, if any, shall be filed by any person before the Commission, by **17.4.2024**.

28. The Petition shall be listed for hearing on **19.4.2024**.

**Sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(Jishnu Barua)
Chairperson**