

**ENTRAL ELECTRICITY REGULATORY COMMISSION,  
NEW DELHI**

**Petition No.174/MP/2016**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

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

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

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

**Date of Order: 13<sup>th</sup> of September, 2017**

**In the matter of**

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework for tariff based competitive bidding for transmission service for approval of quantification of the increase in transmission charges on account of change in law and force majeure events.

**And**

**In the matter of**

East North Interconnection Company Limited,  
C-II, Mira Corporate Suites,  
Ishwar Nagar,  
New Delhi – 110025

**.... Petitioner**

**Vs**

1. Jodhpur Vidyut Vitran Nigam Ltd.,  
New Power House, Industrial Area,  
Jodhpur – 342 003
2. Jaipur Vidyut Vitran Nigam Ltd.,  
Vidyut Bhawan,  
Janpath, Jaipur – 302 005
3. Ajmer Vidyut Vitran Nigam Ltd.,  
Old Power House, Hathi Bhatta,  
Jaipur Road, Ajmer

4. BSES Yamuna Power Ltd.,  
Shakti Kiran Building, Karkardooma,  
New Delhi – 110 092
5. BSES Rajdhani Power Ltd.,  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019
6. North Delhi Power Ltd.,  
(Now known as Tata Power Delhi Distribution Limited)  
Sub Station Buidling, Hudson Lines,  
Kingsway Camp, New Delhi – 110 009
7. New Delhi Municipal Corporation  
Palika Kendra Building, Opp. Jantar Mantar Building,  
Parliament Street, New Delhi – 110 001
8. Uttarakhand Power Corporation Ltd.,  
Urja Bhawan, Kanwali Road,  
Dehradun, 248 001
9. Paschimanchal Vidyut Vitran Nigam Ltd.,  
Victoria Park, Meerut – 250 001
10. Poorvanchal Vidyut Vitran Nigam Ltd.,  
Hydel Colony, Bhikharipur,  
Post: DLW, Varanasi – 221 004
11. Dakshinanchal Vidyut Vitran Nigam Ltd.,  
220 kV Vidyut Sub-Station,  
Mathura Agra by pass road,  
Sikandra, Agra – 282 007
12. Madhyanchal Vidyut Vitran Nigam Ltd.,  
4-A, Gokhle Marg,  
Lucknow-226 001
13. Uttar Haryana Bijli Vitran Nigam Ltd.,  
Vidyut Sadan, Plot No. 16-C,  
Sector-6, Panchkula- 134 109

14. Dakshin Haryana Bijli Nigam Ltd.,  
Vidyut Sadan, Vidyut Nagar,  
Hissar – 125 005
15. Punjab State Electricity Board,  
The Mall, Patiala – 147 001
16. Power Development Department,  
Mini Secretariat, Jammu,  
Jammu & Kashmir – 180 001
17. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Shimla – 171 004
18. North Central Railway,  
Subedarganj, Allahabad – 211 033
19. UT Chandigarh,  
Chandigarh Administration,  
Sector-9, Chandigarh

... Respondents

**Parties present:**

**For Petitioner:**

**Ms. Nishtha Kumar, Advocate, ENICL**  
**Shri T.A.N. Reddy, ENICL**  
**Shri Harshit Gupta, ENICL**  
**Shri Rohit Gera, ENICL**

**For Respondents:       None**

**ORDER**

The Petitioner, East North Interconnection Company Limited (“ENICL”), has filed the present petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with the statutory framework for tariff based competitive bidding for transmission service for approval of quantification of increase of 8.45% in the

levelised transmission charges on account of force majeure and change in law event in terms of the order dated 24.8.2016 in Petition No. 32/MP/2014. The Petitioner has made the following prayers:-

- “(a) Allow the present Petition and approve the quantification of increase of 8.45% per annum in the non-escalable transmission charges on account of Force Majeure and Change in Law event as approved by this Hon’ble Commission in its Judgment dated 24.08.2016 in Petition No. 32/MP/2014;
- (b) Restore the Petitioner to the same economic condition prior to the occurrence of the Changes in Law and Force Majeure events;
- (c) Allow payment of increased transmission tariff of respective elements from the actual COD of BS Line i.e. 11.11.2014, and PB Line i.e. 13.09.2013, the dates as approved by this Hon’ble Commission in its Judgment dated 24.08.2016 in Petition No. 32/MP/2014; and
- (d) Pass any such further order(s) as this Hon’ble Commission may deem fit in the facts and circumstances of the present case.”

### **Background of the Case:**

2. The Petitioner, East North Interconnection Company Limited (ENCIL) is a fully owned subsidiary of Sterlite Technology Limited which was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 (the Act) to establish the following transmission systems on build, own, operate and maintain basis and to provide transmission service to the Long Term Transmission Customers of the project:

- (a) Bongaigaon-Siliguri 400 kV Quad D/C transmission line (BS Line)

(b) Purnea-Biharsharif 400 kV Quad D/C transmission line (PB Line)

3. ENICL approached the Commission for grant of transmission licence in Petition No. 131/2010 and for adoption of tariff of the transmission system in Petition No.130/2010. The Commission in its order dated 28.10.2010 in Petition No. 130/2010 adopted the tariff of the transmission system and in order dated 28.10.2010 in Petition No.131/2010 granted licence to ENICL for inter-State transmission of electricity.

4. The Petitioner filed Petition No.162/MP/2011 seeking extension of time for implementation of the project, increase in tariff due to change in geographical co-ordinates viz. the 'start' and 'end' points; and additional expenditure towards forest clearance of 1.84 km (8.46 Ha of forest land). The Commission, vide interim order dated 8.5.2013 in Petition No.162/MP/2011 held that the Petitioner was entitled to transmission Charges on *pro rata* basis for the expenditure for constructing the additional scope of work, and also granted additional time to ENICL for completion of the project. Relevant portion of the said order is extracted as under:

“42. The Commission has the statutory responsibility to balance the interest of the consumers with the need for investment. While the petitioner needs to be compensated for the additional scope of work which has been imposed subsequent to the bidding process, it has to be ensured that the petitioner does not unduly gain by virtue of our decision in this order. The expenditure on the construction of the transmission line has to be optimized in the interest of the consumers. Therefore, we direct that the petitioner shall be entitled to claim the transmission charges on *pro-rata* basis for the expenditure incurred on constructing the transmission lines for the additional scope of work i.e. the difference between the actual length of the transmission lines linking the existing sub-stations of the PGCIL at Bongaigaon, Siliguri, Purnea and Biharshariff and

the length of the transmission lines (427 km) for which license has been granted vide our order dated 28.10.2010 in Petition No.131/2010.”

5. The Commission while disposing of the petition vide order dated 31.7.2013 in Petition No.162/MP/2011 held that expenditure on Forest Clearance amounted to “Change in Law” and was required to be reimbursed to the Petitioner ENICL. Accordingly, directed that actual expenditure on Forest Clearance would be included in transmission charges, and the same would be payable from the date of commercial operation of the BS Line. The Commission further observed as under:

5. The petitioner had submitted in one of the affidavits filed in Petition No.162/MP/2011 that since the scope of work had increased due to which the SCOD of the transmission line had been delayed and the reasons were beyond the control of the petitioner, the Commission might consider to allow interest during construction from the date of scheduled COD. The Commission had ruled that the said prayer was beyond the scope of Petition No.162/MP/2011 and granted liberty to the petitioner to pursue appropriate remedy in accordance with law.”

6. Subsequently, the Petitioner filed petition seeking compensation for the forest clearance and other unforeseen and uncontrollable events such as riots in Kokrajhar, bandhs in Assam, obstructions caused by the villagers at Mahendra Nagar, floods in Bihar and Uttarakhand, excessive compensation by land owners and theft of conductors which the petitioner encountered in execution of the transmission lines. The Petitioner further requested for grant of extension in the Scheduled COD by a period of 631 days for the Bongaigaon-Siliguri line and 249 days for the Purnia-Biharsharif line. The Commission vide order dated 24.8.2016 in Petition No. 32/MP/2014 allowed reliefs in the petition as under:

“Summary of our decisions:

48. The summary of our decision are as under:

(a) The petitioner is entitled to all legitimate expenditure incurred for obtaining forest clearance including the expenditure on compensatory afforestation. The petitioner shall be required to submit the documentary proof of the expenditure made in getting the diversion of forest land for laying the transmission lines. However, the petitioner has submitted a letter No. FG 27/Nodal Proposal/Trans Line ENIC Ltd., dated 27.1.2014 in connection with payment of Rs. 1,31,20,304 / towards diversion of forest land in Assam Division. The petitioner is directed to submit similar letter received from West Bengal Division.

(b) Overload expenditures are not separately reimbursable unless they form part of the forest clearance.

(c) Delay in forest clearance, riots in Kokrajhar, floods in Assam and West Bengal, Bandhs in Assam, Obstructions at Mahenderpur village are covered under Force Majeure.

(d) Flood in Uttarakhand has not been held as force majeure as no evidence has been placed on record to substantiate that work on the project was affected due to the said flood.

(e) Expenditure on account of compensation for right of way, excess compensation for carrying out stringing, expenditure on account of theft of conductors and increase in number of pile foundations are not covered under force majeure and no compensation for the same can be given.

(f) The petitioner is entitled to extension of SCOD of Bongaigaon-Siliguri Transmission Line by a period of 675 days and Purnea-Biharshariff Transmission Line by a period of 225 days.

(g) The petitioner is entitled for payment of debt service for the period of force majeure in the form of increase in Non-Escalable Transmission Charges in terms of provisions of 6.3.1 of the TSA.

(h) The petitioner shall be required to provide to the LTTCs and this Commission the documentary proof regarding the loans outstanding for this project drawn by it on the date of commencement of force majeure and the interest serviced on this debt up to the date of cessation of force majeure.

(i) In the event of non-response by LTTCs or of disputes with LTTCs, the petitioner is at liberty to approach the Commission for appropriate directions.”

7. In the above background, the Petitioner has filed the present petition for approval of quantification of increase of 8.45% in the levelised transmission

charges on account of force majeure and change in law events in terms of the order dated 24.8.2016 in Petition No. 32/MP/2014. The Petitioner has submitted that the following additional expenditure has been incurred towards Bongaigaon-Siliguri 400 kV D/C (quad) and Purnia-Biharsharif 400 kV D/C (quad) lines:

**A. Expenditure incurred towards obtaining Forest Clearance including the expenditure on the compensatory afforestation:**

8. The Petitioner has submitted that after the award of the Project, it was required to construct the transmission line over forest area, which was admittedly not a part of the scope of the Project at the time of bidding and award of the Project. Accordingly, after commencement of construction, the Petitioner was required to divert forest land for construction of the transmission line across the forest area. According to the Petitioner, in-principle Forest Clearance (Stage-1) was obtained on 5.12.2013 and 13.1.2014 for the State of West Bengal and Assam, respectively and thereafter, the Petitioner undertook such activities, namely transfer and mutation of non-forest land to Forest Department; and Payment towards Compensatory Afforestation (for both Assam and West Bengal), Net Present value of the forest land so proposed to be diverted for undertaking non-forestry activities (for both Assam and West Bengal), Overhead costs (for both Assam and West Bengal) and Dwarf Specific Plantation (only in the case of Assam). The Petitioner has submitted that for undertaking above activities, it incurred an expenditure of Rs.188,36,286. Further, for compensatory



afforestation, the Petitioner has incurred an expenditure of Rs.1,71,81,315. The total expenditure on forest compensation is Rs. 3.602 crore.

**B. Additional expenditure towards IDC on loans during the extended construction period:**

9. The Petitioner has submitted that there have been cumulative force majeure events leading to loss of 1198 days in commissioning the BS Line, and 550 days in PB Line, out of which the Commission has allowed from SCOD (7.1.2013) to actual CoD of respective elements i.e. 13.9.2013 for Purnia-Biharsharif line and from 7.1.2013 to 11.11.2014 for Bongaigaon-Siliguri line, resulting in increase in IDC. The petitioner has incurred the interest cost, for the period 7.1.2013 to 11.11.2014, in respect of the bank loan availed from State Bank of India, Bank of India and Canara Bank and capitalized in the books of account of the Petitioner for the financial years ended 31.3.2014 and 31.3.2015 as specified in the statement:

Period	Transmission Line	Amount Rs.
Jan 7, 2013 to Sep 13, 2013	Purnia- Biharsharif line	24,93,53,364
Jan 7, 2013 to Nov 11, 2014	Bongaigaon- Siliguri line	77,05,38,150
<b>Gross interest</b>		<b>1,01,98,91,514</b>

10. The Petitioner has computed the total financial impact as under:

S. No.	Description	Cost increase (Rs. crore)
1.	Additional expenditure incurred on account of IDC	101.989
2.	Additional expenditure incurred towards obtaining Forest clearance	3.602

	<b>Total</b>	<b>105.591</b>
	Increase in non-escalable transmission charges per annum as per Article 12.2.1 of TSA [(105.591/4) *0.32%]	<b>8.45%</b>

11. The Petitioner has submitted that the total additional expenditure on account of Change in Law and Force Majeure events being claimed by the Petitioner is Rs. 105.591 crore. As per Article 12.2.1 of the TSA, TSP is entitled to an amount equivalent to 0.32% of non-escalable transmission charges for every cumulative increase of Rs. 4 crore in the cost of the Project upto scheduled COD of the project. Accordingly, the Petitioner has claimed compensation by an increase of 8.45% per annum in the non-escalable transmission charges. The Petitioner has submitted that as per the Commission`s order dated 24.8.2016 in Petition No. 32/MP/2014, the increase in the non-escalable tariff is imperative at least to offset the impact of the additional cost and restore minimum economic viability of the project for the remaining term of the TSA. Accordingly, the same should be given effect to from the actual date of commissioning of each of the transmission elements of the Project. The Petitioner has submitted that the Commission has already granted in-principle approval towards additional cost incurred by the Petitioner towards compensatory afforestation and IDC.

12. The Petitioner, vide Record of Proceeding for the hearing dated 27.10.2016, was directed to file the following information:

- (a) Loan-wise detailed computation of gross interest incurred,
- (b) Accrual and cash interest income made from temporary parking of fund,
- (c) Net interest capitalized pertains to the period from SCOD to till the date of cessation of force majeure, duly certified by Auditor.
- (d) If there is any finance charges, separate computation thereof.

The Petitioner, vide its affidavit dated 14.11.2016, has filed the necessary information.

13. Uttar Pradesh Power Corporation Ltd. (UPPCL) in its reply dated 16.12.2016 has submitted that the Commission vide order dated 24.8.2015 in Petition No. 32/MP/2014 had held that the petitioner is entitled to extension of SCOD of Bongaigaon-Siliguri transmission line by a period of 675 days and Purenna-Biharshariff transmission line by a period of 225 days on account of force majeure events namely delay in forest clearance, riots in Kokrajhar, floods in Assam and West Bengal, Bandhs in Assam, obstructions at Mahenderpur village. UPPCL has submitted that increase of 8.45% in non-escalable charges per annum as per Article 12.2.1 of the TSA is not permissible, though, the impact of increase in cost due to forest clearance amounting to Rs. 3.602 crore can be considered, if permissible, as per the Commission`s order dated 24.8.2016.

14. The Petitioner in its rejoinder dated 20.1.2017 has submitted that UPPCL is indirectly and erroneously trying to challenge the findings in the order dated 24.8.2016 in Petition No. 32/MP/2014, which have already attained finality. The Petitioner has submitted that UPPCL has erroneously and without basis averred that the petitioner has incorrectly quantified and claimed the amount of Rs. 105.591 crore. In support of its claim, the petitioner has placed on record the copies of in-principle Forest Clearance for BS line in the State of Assam dated 13.1.2014 and for West Bengal dated 5.12.2013, copies of the land mutation agreement, registration certificate and stamp duty, copies of the demand note sent by the State Forest Department to Principal Chief Conservator of Forests etc. and copy of the certificate issued by the Chartered Accountant in this regard and net IDC incurred by the petitioner, etc. The Petitioner has submitted that as per Article 12.2.1 of the TSA, the Petitioner is entitled to an amount equivalent to 0.32% of non-escalable transmission charges for every cumulative increase of Rs. 4 crore in the cost of the project. Accordingly, the Petitioner is required to be compensated by an increase of 8.45% per annum in the non-escalable transmission charges.

15. The Petitioner was directed to submit the following information:

- (a) Auditors Certificate mentioning the application of debt-equity in equal proportion with documentary proof;

(b) Auditor certified loan-wise IDC computation for the period from actual drawal till SCOD and from SCOD till the actual COD of concerned assets consisting of (i) gross interest indicating the outstanding load, rate of interest applied along with documentary proof for outstanding load and rate of interest; (ii) Interest income made from the temporary parking of fund up; (iii) net interest capitalized;

(d) Documentary proof for original project cost and the IDC considered in deciding the original project cost.

The Petitioner, vide its affidavit dated 31.5.2017, has submitted the required information supported by Auditor's Certificate.

**Analysis and Decision:**

16. The present petition has been filed by the Petitioner seeking consequential relief on account of the direction of the Commission in order dated 24.8.2016 in Petition No. 32/MP/2014. The Petitioner has placed on record all relevant documents including auditor's certificate. We have gone through the documents and the claims of the Petitioner on account of forest clearance and IDC on account of delay occasioned by the time consumed for forest clearance. The claims of the Petitioner have been examined in the succeeding paragraphs.

**(A) Expenditure incurred towards obtaining Forest Clearance including the expenditure on the compensatory afforestation:**

17. The Commission in paras 16 and 48 (a) of the order dated 24.8.2016 in Petition No. 32/MP/2014 had decided that the Petitioner was entitled to all legitimate expenditure incurred for obtaining forest clearance including the expenditure on compensatory afforestation. The said paras are extracted as under:

“16. The petitioner has submitted that Rs.3 crore has been spent by the petitioner on compulsory afforestation and Rs. 5 crore on overhead expenses. The petitioner has not explained the break-up of the expenditure on compulsory afforestation and overhead expenses. On perusal of the documents on record, it is noticed that Principal Chief Conservator of Forest, Government of Assam in its letter dated 27.1.2014 had given an estimate of Rs.1,31,20,409/- for diversion of 8.4226 Ha. of forest land for the purpose of 400 kV D/c transmission line from sub-station of PGCIL in Salakati to Siliguri in Satbhendi reserve forest which included Net Present Value, Compensatory Afforestation, Overhead Charge and Dwarf Specific Plantation. It appears that overhead charges are a part of the charges paid to the State Government/Forest Authorities for diversion of the forest lands. The petitioner has not submitted the details of estimated cost for diversion of forest land received from the Government of West Bengal, Forest Division. In this regard, the petitioner is required to submit the letter in connection with payment towards diversion of forest land in West Bengal Division. In our view, the expenditure incurred by the petitioner and paid to the State Government/forest authorities for obtaining diversion of forest land and any other legitimate expenditure incurred in connection with forest clearance shall be reimbursable on account of change in law, subject to production of documentary evidence.

48.(a) The petitioner is entitled to all legitimate expenditure incurred for obtaining forest clearance including the expenditure on compensatory afforestation. The petitioner shall be required to submit the documentary proof of the expenditure made in getting the diversion of forest land for laying the transmission lines. However, the petitioner has submitted a letter No. FG 27/Nodal Proposal/Trans Line ENIC Ltd., dated 27.1.2014 in connection with payment of Rs.1,31,20,304/- towards diversion of forest land in Assam Division. The petitioner is directed to submit similar letter received from West Bengal Division.”

18. The Petitioner has submitted that it has incurred an expenditure of Rs. 3.602 crore on account transfer and mutation of non-forest land to State

Forest Department and for compensatory afforestation. The details of the expenditure are as under:

- (i) For transfer and mutation of non-forest land to State Forest Department:

(Amount in Rs)

<b>Break-up of expenses incurred in Assam and West Bengal towards Land Acquisition for Compensatory Afforestation</b>			
<b>Description</b>	<b>West Bengal (Land Area - 8.4226 Ha)</b>	<b>Assam (Land Area - 1.564 Ha)</b>	<b>Total</b>
Sale Value	67,65,000	103,95,000	171,60,000
Stamp Duty	4,05,900	3,11,925	7,17,825
Registration Fee Paid	74,436	8,84,025	9,58,461
<b>Total (With Supporting)</b>	<b>72,45,336</b>	<b>115,90,950</b>	<b>188,36,286</b>

- (ii) For Compensatory Afforestation, Net Present value of the forest land, Overhead costs and Dwarf Specific Plantation in terms of the Demand Note:

(Amount in Rs)

<b>Break-up of the payment transferred to CAMPA account</b>			
<b>Description</b>	<b>BS-Assam</b>	<b>BS-West Bengal</b>	<b>Total</b>
Compensatory Afforestation	20,03,120	16,28,856	
NPV of Forest Land	79,08,821	14,68,600	
Operation Cost	-	1,49,022	
Overhead Cost	10,01,560	8,14,428	
Dwarf Specific Plantation	22,06,908	-	
<b>Total</b>	<b>131,20,409</b>	<b>40,60,906</b>	<b>1,71,81,315</b>

- (iii) The following amount was incurred by the Petitioner on account of Forest Clearance:

<b>Nature</b>	<b>Rs. in crore</b>
Payment transferred to CAMPA	1.718

Account	
Land for Compensatory Afforestation	1.884
<b>Total</b>	<b>3.602</b>

19. The Petitioner has placed on record the Land Mutation Agreement, Registration Certificate and Stamp Duty and demand note received from the State Forest Department of West Bengal and Assam (**Annexure P4 and P5 of the Petition**). The Petitioner has further placed on record the Auditor certificate dated 17.7.2017 stating that the Petitioner has paid Rs. 3.602 crore towards forest cost for the project. In the light of our directions in order dated 24.08.2016 and after going through the documents placed on record showing the actual expenditure made in this regard, we allow the additional expenditure of Rs. 3.602 crore incurred towards forest clearance under Change in law.

**(B) Additional expenditure incurred on account of Interest During Construction:**

20. The Commission in order dated 24.8.2016 in Petition No. 32/MP/2014 has held that the Petitioner is entitled to extension of SCOD of Bongaigaon Siliguri Transmission Line for a period of 675 days and Purnea-Biharshariff Transmission Line by a period of 225 days. The relevant portion of the order dated 24.8.2016 is extracted as under:

22. Bongaigaon Siliguri Transmission Line was also passing through the Patla- Khowa protected forest in West Bengal for 0.232 km or 1.067 Ha of forest land. The petitioner submitted the proposal for forest clearance on 15.3.2011 to Divisional Forest Officer, Cooch Behar, West Bengal. Divisional Forest Officer, Cooch Behar Division vide its letter dated 18.3.2011 advised the petitioner to make the proposal after identifying the exact location in the field. No document has been placed on record as to when the proposal was



made after identifying the location. Divisional Forest Officer, Cooch Behar Division in its letter dated 16.8.2011 advised the petitioner to identify the suitable non-forest land for compensatory afforestation in consultation with the respective section of the Land Department of Government of West Bengal and submit the proposal to the Nodal Officer in the Office of Principal Conservator of Forest, MOEF, West Bengal. The petitioner has placed on record a copy of the letter of CEA dated 25.11.2011 requesting the Nodal Officer in the Office of Principal Conservator of Forest, MOEF, West Bengal to extend all possible help to the petitioner to complete the transmission line in time. From the said letter of CEA, it is noticed that the petitioner had submitted the proposal for diversion of land on 18.10.2011. The Conservator of Forest & Nodal Officer, West Bengal in its letter dated 14.12.2011 pointed out the discrepancies in the proposal of the petitioner and directed the petitioner to resubmit the proposal with all relevant documents and maps through the Divisional Forest Officer and Conservator of Forests. The petitioner vide its letter dated 26.12.2012 submitted the proposal to Divisional Forest Officer, Cooch Behar West Bengal. The petitioner has placed on record a letter dated 26.8.2013 written by the Nodal Officer, Forest Conservation Act, West Bengal with reference to the letter dated 3.5.2013 written by the Eastern Regional Office of MOE&F, Government of India, Bhubaneswar in which the Nodal Officer is stated to have obtained No Objection Certificate under the Forest Conservation Act, 2006 from the District Authorities and forwarded the same to the Eastern Regional office of MOE&F at Bhubaneswar. The Eastern Regional Office vide letter dated 5.12.2013 accorded the in principle approval for diversion of forest land of 1.564 Ha of forest land in Cooch Behar Forest Division for drawal of 400 kV D/c Bongaigaon Siliguri Transmission line subject to fulfilment of certain conditions. The final approval of MOE&F for diversion of the forest land was accorded on 2.6.2014. On perusal of the documents on record, it is noticed that in case of forest clearance of Patla Khawa reserve forest, the petitioner got the Stage 1 clearance on 5.12.2013 and Stage 2 clearance on 2.6.2014. The order for diversion of forest land has been issued on 12.6.2014. Since both Satbhendi Reserve forest and Patla Khawa fall on the route of same transmission line, we are of the view that the delay in forest clearance was not within the control of the petitioner till 12.6.2014 when Stage 2 clearance for Patla Khawa forest was accorded. Since the petitioner has claimed force majeure from the date of Scheduled COD, it is held that the period from the SCOD i.e. 7.1.2013 till 12.6.2014 (522 days) were beyond the control of the petitioner.

23.... In the present case, forest clearance is a mandatory requirement for laying the transmission lines in the forest area. The petitioner took up the matter with the authorities for forest clearance. Therefore, the time taken for grant of forest clearance which was beyond the reasonable control of the

petitioner has affected the project implementation and thereby prevented the petitioner from performance of its obligations under the TSA i.e. to declare commercial operation of the project by SCOD and provide transmission services to the LTTCs. In our view, the petitioner's project is affected by force majeure event on account of delay in forest clearance which has unavoidably delayed the petitioner in the performance of its obligations under the TSA."

39. The Commission vide order dated 31.7.2013 had allowed 26.714 km as additional scope of work on account of the discrepancies on coordinates on both lines. The petitioner was granted liberty to approach the Commission regarding additional time in case of any difficulty after taking up the matter with LTTCs. The petitioner has stated that it require 240 days time to carry out the additional scope of work. It is noted that the petitioner would have started its work on additional scope only after issue of the order dated 31.7.2013 when the Commission allowed the extra kilometres on account of change of coordinates as additional scope of work. In the additional scope of work of Bongaigaon Siliguri Transmission Line, the forest stretch requiring forest clearance was there. Therefore, after undertaking the work on the non-forest stretch falling within the additional scope of work, the petitioner has undertaken the works on the transmission line pertaining to forest stretch after grant of forest clearance. There was a riot at Kokrajhar till 20.6.2014. Starting the work from 21.6.2014, it has taken 145 days to complete and commission the transmission line. We consider it reasonable time to complete the additional scope of work in Bongaigaon Siliguri Transmission line, particularly considering the fact that the petitioner had to deal with the issue of theft of strung conductors. In case of Purnea-Biharshariff Transmission line, it took 44 days from 1.8.2013 (after issue of the order dated 31.7.2013) till the date of commissioning on 13.9.2013. We find the said period as reasonable to execute the additional scope of work."

48. (f) The petitioner is entitled to extension of SCOD of Bongaigaon Siliguri Transmission Line by a period of 675 days and Purnea-Biharshariff Transmission Line by a period of 225 days."

21. It is to be noted that the requirement of forest clearance was a post bid development falling with the additional scope of work which was directed to be undertaken by the Petitioner vide order dated 31.7.2013. Delay in forest clearance has delayed the completion of the project which was beyond the control of the Petitioner. The Commission in the order dated 24.8.2016 has decided that the Petitioner shall be entitled for IDC for the period beyond the

SCOD till the actual date of commercial operation for the period of force majeure in terms of Article 6.3.1 of the TSA. On examination of the provisions of Article 6.3.1 of the TSA, it appears that the provisions of the said article is applicable only if the TSP is ready to connect the elements of the project and has given due notice to the LTTCs of the intention to connect the elements of the project but is not able to connect the same due to LTTC`s event of default, or due to Direct Non-natural force majeure or indirect non natural force majeure event affecting the LTTCs. Since the Petitioner could not complete the line due to force majeure event by the SCOD, this provision will not be applicable to the petitioner. Therefore, no relief under Article 6.3.1 of the TSA can be granted to the petitioner for the period of force majeure. However, the period which has resulted on account of delay in obtaining forest clearance which has been reckoned under Change in law, the Petitioner shall be entitled to compensation in terms of Article 12.2.1 of the TSA to place it in the same economic position had the delay in forest clearance not occurred. The Petitioner has not only incurred additional expenditure in getting forest clearance, the Petitioner has also incurred the Interest During Construction during the period beyond SCOD till the respective dates of commercial operation of the Bongaigaon-Siliguri transmission and Purnea-Biharsharif transmission line. In view of the Commission, the delay in getting the forest clearance was beyond the control of the Petitioner and the Petitioner should be allowed IDC for the extended period in order to put the Petitioner in same economic position as if the Change in Law had not occurred.

22. As per the TSA, the SCOD of project was 7.1.2013. Bongaigaon-Siliguri 400 kV Quad D/C transmission line and Purnea-Biharsharif 400 kV Quad D/C transmission line were commissioned on 11.11.2014 and 13.9.2013 respectively. The Petitioner has considered the 48:52 ratio to apportion the IDC between above two lines. The Petitioner was directed to file the Auditors Certificate mentioning the application of debt equity, loan-wise IDC computation for the period from actual drawal of SCOD and from SCOD till the actual COD of concerned assets consisting of gross interest indicating the outstanding loan, rate of interest applied, interest income made from the temporary parking of fund up and net interest capitalized. The Petitioner vide its affidavit dated 31.5.2017 has submitted the Common Rupee Loan Agreement dated 14.12.2010 executed between the Petitioner consortium of lenders and the lender`s Agents, namely State Bank of India.

23. With regard to IDC, the Petitioner has placed on record the Auditor Certificate dated 30.5.2017 and 8.11.2016 certifying the IDC capitalised as under:

(Rs. in crore)

Summary of actual IDC on Bank loan capitalized during the project			
Particulars	Up to SCOD (7.1.2013)	From SCOD to Actual COD	Total IDC
Purnia-Biharsharif Line (48%)	28.06	24.94	52.99
Bongaigaon-Siliguri Line (52%)	30.41	77.05	107.46
Gross Interest	58.47	101.99	160.45

Less: Income earned from Temporary investment in FD/Mutual Funds	5.01	1.14	6.15
<b>Net Interest Capitalised</b>	<b>53.46</b>	<b>100.85</b>	<b>154.31</b>

24. The Petitioner has considered the ratio of 48:52 to apportion the IDC between two assets:

(Rs. in crore)

IDC worked out for Bongaigaon-Siliguri Line			
Particulars	Up to SCOD (7.1.2013)	From SCOD to Actual COD	Total IDC
Bongaigaon-Siliguri Line (52%)	30.41	77.05	107.46
Less: Pro rata income earned form temporary investment in FD/Mutual Funds	2.61	0.59	3.20
<b>Net Interest Capitalised</b>	<b>27.80</b>	<b>76.46</b>	<b>104.26</b>

25. The SCOD of the project was 7.1.2013. Bongaigaon-Siliguri transmission line was commissioned on 11.11.2014. There is time overrun of 674 days. Considering the fact that forest clearance took 522 days i.e. 7.1.2013 to 12.6.2014 (inclusive of both days which were consumed for obtaining forest clearance), the Petitioner shall be entitled for the debt service obligation for the said 522 days. Accordingly, the compensation is workout out as under:

S. No.	Claims	Allowed (Rs. in crore)
1.	Total net IDC as certified by Auditor for Bongaigaon-Siliguir transmission line	104.26
2.	The estimated IDC and Finance Charge as per	48.24

	Financing plan appertaining to Bongaigaon-Siliguri transmission line (i.e 52% of the estimated IDC for the project as whole (-) Rs. 92.76 crore)	
3.	IDC over run due to time over run of 673 days i.e 3= (1-2)	56.02
4.	Out of 673 days of time over run , the IDC worked out on pro rata basis for 522 days	43.45
	<b>Total</b>	<b>43.45</b>

26. The increase in the cost of the project on account of Change in Law works out to Rs.47.052 (Rs. 43.45 crore + Rs. 3.602 crore). As per Article 12.2.1 of the TSA, the Petitioner is entitled for relief as under:

$$\text{Percentage Increase in non-escalable transmission charges per annum} \\ = [(47.052/4)*0.32] = 3.764\%$$

27. Accordingly, the Petitioner is entitled to the increase in non-escalable transmission charges of 3.764% per annum on the quoted non-escalable charges of the respective years from the date of commercial operation of the respective transmission lines in terms of our order dated 24.8.2016 in Petition No. 32/MP/2014.

28. The petition is disposed of in terms of the above.

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

sd/-  
(A.S.Bakshi)  
Member

sd/-  
(A.K. Singhal)  
Member

sd/-  
(Gireesh B. Pradhan)  
Chairperson