

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 62/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: 26th of March, 2018

In the matter of:

Application under Section 63 of the Electricity Act, 2003 for adoption of Transmission charges with respect to the Transmission System established by Powergrid NM Transmission Limited (erstwhile Nagapattinam-Madhugiri Transmission Company Limited)

**And
In the matter of**

Application under Section 14 of the Electricity Act 2003 read with the Central Electricity Regulatory Commission (Procedure Terms & Conditions for Grant of Transmission Licence and other related matters) Regulations, 2009 with respect to Transmission Licence to Powergrid NM Transmission Limited (erstwhile Nagapattinam- Madhugiri Transmission Company Limited).

**And
In the matter of**

Nagapattinam-Madhugiri Transmission Company Limited
Power Grid Corporation of India Limited, Saudamini,
Plot No.2, Sector -29, Gurgaon 122001

.....Petitioner

Vs

1. IL & FS Tamil Nadu Power Company Ltd,
'B' Block, Navin's Presidium, 4th Floor,
103, Nelson Manickam Road,
Aminjikarai, Chennai – 600 029.

2. Chief Engineer (PSPM-II)
Central Electricity Authority
PSPM Division, Sewa Bhawan,
Rama Krishna Puram,
New Delhi-110 066

3. Chief Operating Officer,
Central Transmission Utility (CTU)
Saudamini, Plot No.2, Sector – 29
Gurgaon

.....Respondents

Parties present:

Shri M.G. Ramachandran, Advocate, PNMTL
Ms. Ranjitha Ramachandran, Advocate, PNMTL
Shri V.C. Shekhar, PGCIL
Shri B. Vamsi, PGCIL
Ms. Manju Gupta, PGCIL

ORDER

The Petitioner, Powergrid NM Transmission Limited (PNMTL), has filed the present petition with the following prayers:

“(a) Approve the methodology for apportionment of transmission charges between 765 kV D/C Nagapattinam-Salem transmission line and Salem-Madhugiri transmission lines

(b) Payment of transmission charges for 765kV D/C Nagapattinam-Salem transmission line with effect from 23rd October 2016- the date of CoD and date the line was also put to use.

(c) Pass an interim order for payment of transmission charges in respect of prayers at (a) and (b).”

2. The Petitioner is a fully owned subsidiary of Power Grid of India Limited (PGCIL) which was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the Act) to establish transmission system for transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A on Build, Own, Operate and Maintain (BOOM) basis and to provide transmission service to the Long

Term Transmission Customers (LTTCs) of the Project comprising the following elements:

S. No.	Transmission line	Completion Target	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
1.	Nagapattinam Pooling Station-Salem 765 kV D/C line	36 months from effective date	765 kV S/C Salem – Madhugiri
2.	Salem-Mahugiri 765 kV S/C line	36 months from effective date	765 kV D/C Nagapattinam Pooling Station – Salem

3. The Petitioner was incorporated as a special purpose vehicle by PFC Consulting Ltd. (PFCCL) as part of Tariff Based Competitive Bidding process for implementing the project on BOOM basis. PGCIL participated in the competitive bidding process conducted by PFCCL and on emerging as the successful bidder, Letter of Intent (LOI) was issued by PFCCL to PGCIL on 6.3.2012. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with PFCCL on 29.3.2012. The Petitioner entered into the Transmission Service Agreement with Long Term Transmission Customer on 2.2.2012. The Commission in its order dated 12.6.2013 in Petition No. 121/TL/2012 granted the transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 9.5.2013 in Petition No. 122/2012 adopted the transmission charges for the project.

4. During pendency of the petitions for grant of licence and adoption of transmission charges, PGCIL filed Petition No. 143/MP/2012 raising apprehension regarding the execution of the generation project of ITPCL and seeking issue of appropriate direction with regard to whether or not to implement Transmission

system associated with IPP projects in Nagapattinam/Cuddalore Area. Subsequently, PGCIL filed IA No. 5/2013 in Petition No.121/TL/2012 seeking a direction for execution of the project with time and cost over- run and for extension of period of 36 months from the date of grant of transmission licence. The Commission while disposing of the IA No.5/2013 directed the Petitioner to first try to resolve the issues in consultation with ITPCL in terms of TSA and in case of non-resolution of issues to approach the Commission in accordance with law. The Commission vide order dated 14.4.2014 in Petition No. 121/MP/2014, directed as under:

“12. The petitioner is directed to go ahead with execution of the project. As regards the extension of time for execution of the project, the petitioner is required to execute the project within 36 months from the effective date and is required to obtain the transmission licence within 6 months from the effective date in terms of Article 3.1.3 of the TSA. In other words, the petitioner is required to implement the project within 30 months from the date of grant of transmission licence.”

5. The Petitioner has submitted that based on the above direction dated 16.4.2014, execution of the project was taken up in the right earnest. The Petitioner has submitted that both the transmission assets were taken up simultaneously. However, due to severe Right of Way (ROW) issues in both the transmission lines during the intervening period, the progress of the lines was impacted. The Petitioner has submitted that Nagapattinam-Salem transmission line was completed, charged and declared under commercial operation on 23.10.2016. As regards the Salem-Madhugiri transmission line, the land owners have made representations seeking land compensation and stopped the work. The Deputy Commissioner, Tumkur and Deputy Commissioner, Ramanagara awarded land compensation for tower locations and the corridor. The above order from a Government Instrumentalities is subsequent to the date of bidding for the project. Therefore, as per Article 12 of the

TSA, the cost compensation on account of the above order required to be paid falls under the provisions of Change of Law.

6. The Petitioner has submitted that owing to the advancement of the progress of the 765 kV D/C Nagapattinam-Salem transmission line, the Petitioner vide its letter dated 23.3.2016 requested CEA to allow for taking up the work to complete the transmission line independently. CEA vide its letter dated 26.12.2016 accorded its consent for completion of both the transmission lines independently and stated that the line may be considered in regular service from the date of operationalization of LTA of both units (1080 MW) of IL&FS. The Petitioner vide its letter dated 11.1.2017 requested CEA not to link the date of commissioning to the operationalization of LTA and to re-examine the date of independent commissioning and restore the date of COD to actual date of commissioning of elements. CEA in the minutes of meeting held on 15.9.2016 regarding Transmission System associated with IPPs of Nagapattinam/Cuddalore Area: Package-A stated that the Commission may examine the method to be adopted for apportionment of tariff between the two lines through one of the following four methods :

- (i) Apportionment based on initial cost as recorded in the Empowered Committee meetings, or
- (ii) Apportionment based on cost of each element as per the cost matrix of Cost Committee of TBCB, or
- (iii) Apportionment based on cost of transmission lines as considered for PoC calculations, or
- (iv) Apportionment based on utilization of the individual element considering its benefit to the system.

7. The Petitioner has submitted that since the transmission charges are to be paid as per the PoC mechanism and the PoC calculation presently are governed by a set cost of various configurations of transmission lines, the third suggested method may be considered for apportionment of transmission charges between 765 kV D/C Nagapattinam-Salem transmission line and 765 kV D/C Salem-Madhugiri transmission line whose line lengths are presently 202.87 km and 220.844 km respectively.

8. Notice was issued to the respondents to file their replies. No reply has been filed by the Respondents. The Bid Process Coordinator, namely PFCCL was directed to file its comments on the prayers of the Petitioner and assist the Commission.

9. PFCCL, vide its affidavit dated 28.8.2017, has submitted that subsequent to completion of bid process and transfer of the SPV, PFCCL does not have any role with respect to the methodology for apportionment of transmission charges and dates from which transmission charges are payable. PFCCL has submitted that as per Article 10.1 of the TSA, LTTCs are required to pay the transmission charges to the SPV on the monthly basis from the date of declaration of commercial operation of the elements. As per proviso to Article 6.2.1 of the TSA, "an element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD". Further, as per Schedule 3 of the TSA, both the elements are required to be commissioned progressively and commissioning of one element would be only considered after commissioning of the other element. PFCCL has submitted that as per the financial bid quoting the

transmission tariff in accordance with the RfP, the Petitioner had submitted quoted escalable transmission charges for the first contract year and quoted non-escalable transmission charges for a period of 35 years, commencing from the SCOD. The transmission charges quoted are not apportioned separately for each element. PFCCL has submitted that TSA or RfQ/RfP do not provide for apportionment of transmission charges for each element and payment of transmission charges as per the TSA is to be made upon successful commissioning of both the elements.

10. CEA was requested to clarify whether the commissioning of the asset will be in the interest of safety and security of the grid and whether the asset can be put to useful service after its commissioning. The Empowered Committee on Transmission was requested to consider whether a transmission project which was approved as an integrated system to be executed through TBCB can be segregated time-wise for execution and the tariff can be proportionately apportioned.

11. CEA, vide its letter dated 4/5.9.2017, has submitted as under with regard to the methodology for apportionment and utilization of 765 kV D/C Nagapattinam-Salem transmission line:

(a) With regard to methodology of apportionment of transmission charge, CEA has stated that TSA between the Petitioner and IL&FS do not contain element-wise tariff of Nagapattinam-Salem transmission line and Salem Madhugiri transmission line. However, the estimated cost of the individual element was recorded by the Empowered Committee of Nagapattinam-Salem transmission line and Salem-Madhugiri transmission line as Rs. 650 crore and Rs. 375 crore respectively. The cost was estimated on the basis of the prevailing cost assuming the length of transmission lines as 250 km each.

Therefore, total cost of each element prevailing at that time can be calculated as under which works out to 61:39:

Elements	Line length (in km) as per Empowered Committee	Empowered Committee cost (Rs. in crore)	Cost Per km (Rs. crore/km)	Actual length in kms	Total cost as per actual length (Rs. in crore)	Proportion considered for bifurcation of transmission charges
Nagapattinam-Salem 765 kV D/C	250	650	2.6	203	528	61%
Salem-Madhugiri 765 kV D/C	250	375	1.5	221	332	39%
					860	100%

Accordingly, the transmission charges between the two lines could be considered in the ratio of 60:40.

(b) With regard to utilization of 765 Nagapattinam-Salem transmission line, CEA has submitted that new 765/400 kV Pooling station at Nagapattinam (GIS) was completed in April, 2015 and the LILO of 2nd circuit of Neyveli-Trichy 400 kV D/C line at Nagapattinam Pooling station was completed in September, 2015. Accordingly, part LTA (540 MW) of IL&FS was operationalised from 29.9.2015 for the beneficiary TANGEDCO. 765 kV Nagapattinam-Salem D/C line was declared under commercial operation on 23.10.2016. However, 765 kV Salem Madhugiri S/C line has been delayed due to RoW issues. Power is being evacuated over Nagapattinam-Salem D/C line from the date of its commissioning.

12. The Petitioner vide its affidavit dated 16.11.2017 has placed on record the minutes of meeting of 37th Empowered Committee on Transmission dated 20.9.2017

in which Empowered Committee endorsed the views of CEA on segregation of the elements time-wise and apportionment of transmission charges of the two lines. In the minutes of the meeting, it has been recorded that CEA vide its letter dated 5.9.2017 has already advised the Commission about the utilization of Nagapattinam-Salem transmission line and the apportionment of the transmission charges between the two transmission lines.

13. The Petitioner was directed to submit the following information vide ROP dated 15.2.2015:

- (a) Status of the conditional consent (i.e linking the operationalization of LTA) given by CEA vide letter dated 26.12.2016;
- (b) Time frame for the completion of Salem-Madhugiri transmission line;
- (c) Details of the expenditure incurred by the Petitioner in the construction of Nagapattinam-Salem and Salem-Madhugiri transmission lines.

14. The Petitioner, vide its affidavit dated 1.3.2018, has submitted as under:

- (a) With regard to status of the conditional consent (i.e linking the operationalization of LTA) given by CEA vide letter dated 26.12.2016, the Petitioner has submitted that CEA after various discussions and meetings involving the officials of POSOCO, SRPC, SRLDC, CTU and CEA, vide its letter dated 26.12.2016 informed that the Petitioner may complete the two transmission lines independently. CEA also intimated that the Petitioner may complete the two transmission lines independently. CEA while giving consent vide letter dated 26.12.2016 communicated that the Nagapattinam-Salem 765 kV D/C may be considered in regular service from the date when LTA for both the units of IL&FS is operationalized. CEA has already furnished its views to

the Commission with regard to utilization of the Nagapattinam-Salem 765 kV D/C line. As per the minutes of 37th Empowered Committee meeting, CEA has already advised the Commission on segregation of the elements time-wise and apportionment of transmission charges among individual transmission elements of Powergrid NM Transmission Limited and Empowered Committee on transmission has also endorsed the views of CEA.

(b) With regard to time frame for the completion of Salem-Madhugiri transmission line, the Petitioner has submitted that it is under implementation and could not be completed due to severe ROW issue. The Petitioner has submitted the status of the line as under:

	Item	Unit	765 kV Salem-Madhugiri transmission line	
1	Foundation	Nos	574	567
2	Tower erection	Nos.	574	558
3	Stringing	km	219	144

(c) The Petitioner has submitted that most of the work has been completed except 7 tower foundations, 16 tower erection and about 75 km of line stringing works which is severely affected due to RoW issues around Bengaluru area. All the procurement under the Salem-Madhugiri line has been completed and is expected to be completed by September, 2018.

(d) With regard to details of the expenditure incurred by the Petitioner in the construction of Nagapattinam-Salem and Salem Maiduguri transmission lines, the Petitioner has submitted that as on the date, the total estimated cost of the project works out to Rs. 1464 crore with the share of Nagapattinam-Salem and Salem-Madhugiri transmission lines as Rs. 833 crore and Rs. 531

respectively. As on 31.1.2018, the Petitioner has incurred Rs. 1112 crore on account of the construction of the project. However, the cost of the both the lines may be further increased due to litigations regarding higher compensation. With regard to cost of Salem Madhugiri transmission line, since the line is yet to be completed, additional burden towards IDC and IEDC is also anticipated besides higher compensation.

Analysis and Decision:

15. We have considered the submissions of the Petitioner, CEA and BPC. The issue our consideration is that whether the Petitioner is entitled for apportionment of the tariff between two elements of an integrated transmission system awarded through competitive bidding guidelines in the absence of separate transmission charges for each element in the TSA.

16. The Petitioner was selected as a successful bidder through the international tariff based competitive bidding under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the Act) to establish transmission system. The Petitioner entered into the Transmission Service Agreement dated 2.2.2012 with Long Term Transmission Customer. The Commission in its order dated 12.6.2013 in Petition No. 121/TL/2012 granted the transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 9.5.2013 in Petition No. 122/2012 adopted the transmission charges for the project.

17. The Petitioner has submitted that despite severe RoW issues, Nagapattinam-Salem transmission line was completed, charged and declared commercial operation

on 23.10.2016. However, Salem-Madhugiri transmission line could not be completed due to severe RoW issues including compensation by land owners.

18. On 23.3.2016, the Petitioner approached CEA to allow to taking up the work to complete the transmission lines independently in accordance with the Commission`s direction dated 28.1.2015 in Petition No. 284/ADP/2015. CEA in the minutes of meeting on `Transmission System associated with IPPs of Nagapattinam/Cuddalore Area, Package A` held on 15.9.2016 informed that the allocation of tariff for each of the two transmission lines, is not prescribed in the TSA. With regard to apportionment of cost to individual transmission lines, CEA informed that in case a decision is taken to implement the transmission lines individually, the same would be looked into by the Commission. CEA vide its letter dated 26.12.2016 accorded its approval for completion of both the transmission lines independently and stated that the transmission lines may be considered to be in regular service for the date of operationalization of LTA of both units of IL&FS

19. Regulation 6.3A (v) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 provides as under:

“(v) An element shall be achieved to have declared COD only after all the elements which are pre-required to achieve COD as per the Transmission Service Agreement are commissioned. In case any element is required to be commissioned prior to commissioning of the pre-required element, the same can be done if CEA confirms that such commissioning is in the interest of the power system.”

20. Thus, as per the Regulation of the Grid Code, an element can be considered independently achieved its pre-requisite element if it is certified by the CEA. The Petitioner has relied upon the Commission`s order dated 28.1.2016 in Petition No.

284/ADP/2015 in which the Commission observed that in case of an element which can be put to use without the commissioning of the pre-required asset, the same can be commissioned, if the CEA certifies that the commissioning of the asset will be in the interest of the safety and security of the grid and the asset can be put to useful service after its commissioning.

21. CEA was requested to assist the Commission on the methodology of apportionment of transmission charges between both the transmission lines. CEA vide its letter dated 4/5.9.2017 has submitted as under:

“1. Methodology of apportionment of transmission charges:

- i) The Transmission Service Agreement between Powergrid N M Transmission Limited and IL&FS the generating company does not have element wise tariff for individual element i.e. 765 kV D/C Nagapattinam-Salem line and 765 kV Salem-Madhugiri line. However, estimated cost for individual element as recorded in the Empowered Committee (EC) Meetings is as given below:

765 D/C Nagapattinam-Salem line	:	Rs. 650 Cr.
765 kV Salem-Madhugiri line	:	Rs. 375 Cr.

- ii) The cost recorded in the Empowered Committee (EC) Meetings was estimated based on prevailing cost in setting up of such lines. The line length considered in estimating the cost was 250 Km each for the element. The same cost was the basis of price discovery at the time of bidding. Therefore, the apportionment of transmission charges could have been in the same ration as the estimated cost of each element. However, it has been noted that line length based on actual implementation/survey for Nagapattinam-Salem 765 kV D/C and Salem-Madhugiri 765 kV S/C is about 203 Km and 221 Km respectively. Therefore, total cost of each element prevailing at that time can be calculated as given in the table given below:

Elements	Line length (in km) as per Empowerment Committee	Empowered Committee Cost (Rs. Cr.)	Cost per km (Rs. Cr/km)	Actual Length in km	Total cost as per actual line length (Rs. Cr)	Proportion considered for Bifurcation of transmission charges
Nagapattinam-Salem-765 kV D/C	250.000	650	2.6	203	528	61%
Salem-	250.000	375	1.5	221	332	39%

Madhugiri 765 kV S/C						
Total					860	100.00%

- iii) For proportion of transmission charges between the two lines the estimated cost calculated considering length based on actual implementation/ survey can be considered. As given in the above table in the ratio works out to 61:39.
- iv) Therefore, transmission charges between the two lines i.e. Nagapattinam-Salem 765 kV D/C and Salem-Madhugiri 765 kV S/C could be considered in the ration of say 60:40 respectively.”

22. CEA has clarified that there is no provision in the TSA entered into between the Petitioner and LTTCs for element-wise tariff for individual asset. However, as per the Empowered Committee meetings, for proportion of transmission charges between the two lines, the estimated cost calculated considering length based on actual implementation/survey can be considered and therefore, transmission charges between the two lines could be considered in the ratio of 60:40.

23. CEA was further requested to clarify whether the commissioning of the 765 kV D/C Nagapattinam-Salem transmission line would be in the interest of safety and security of the grid. CEA vide its letter 4/5.9.2017 has submitted as under:

“2. Utilization of 765 kV Nagapattinam- Salem line:

- i) The evacuation plan for generation project of IL&FSTamilnadu Power Company Limited (ITPCL) [2X600 MW] consists of Dedicated Transmission System up to Nagapattinam pooling station was to be implemented by ITPCL and inter-State Transmission System (ISTS) beyond Nagapattinam pooling station was to be developed by PNMTL awarded through TBCB. Scope of the project awarded to PNMTL comprises of Nagapattinam Pooling Station-Salem 765 kV D/C line and Salem-Madhugiri 765 kV S/C line.
- ii) For startup power to generators of IL&FS, following interim arrangement was agreed:
 - a) LILO of one circuit of Neyveli-Trichy 400 kV D/C line at Nagapattinam Pooling Station (which later shall be bypassed).

- b) New 765/400 kV Pooling Station at Nagapattinam (GIS) (initially to be charged at 400 kV).
- iii) Since there was delay in completion of associated transmission lines, following contingency arrangement was agreed by CEA for evacuation of power from generating projects of IL&FS:
 - a) LILO of 2nd circuit of Neyveli-Trichy 400 kV D/C line at Nagapattinam Pooling Station.
 - b) Strengthening of Neyveli TS-II to Neyveli TS-I expansion 400 kV link with higher capacity conductor as contingency plan.
- iv) New 765/400 kV Pooling station at Nagapattinam (GIS) (initially to be charged at 400 kV and LILO of one circuit of Neyveli-Trichy 400 kV D/C line at Nagapattinam Pooling Station under interim arrangement was completed in April, 2015. Further, the LILO of 2nd circuit of Neyveli-Trichy 400 kV D/C line at Nagapattinam Pooling station was completed in September, 2015. Accordingly, part LTA (540 MW) of IL&FS for Tamilnadu as beneficiary was operationalized w.e.f. 29.9.2015.
- v) 765 kV Nagapattinam-Salem D/C line (operated at 400 kV level) was declared under commercial operation w.e.f. 23.10.2016. However, 765 kV Salem-Madhugiri S/C line was delayed due to RoW issues.
- vi) Power is also being evacuated over Nagapattinam-Salem D/C line since its commissioning. As per information received from SRLDC, average power flow on each circuit of Nagapattinam-Salem D/C line was 150 MW and maximum power transferred on both circuits was 628 MW till date.

24. CEA has given the tentative apportionment of the cost between the two transmission lines based on the estimated cost recorded in the Empowered Committee meeting and has also stated that Nagapattinam-Salem DC transmission line after its COD is being used for evacuation of power. However, CEA has not specifically certified that commercial operation of the said transmission line without the COD of the Salem-Madhugiri SC line is the interest of power system and safety and security of the grid.

25. The Petitioner has relied upon the order dated 28.1.2016 in Petition No. 284/ADP/2015 to claim the transmission tariff for Nagapattinam-Salem DC transmission line. This order was issued to regulate the grant of incentive in terms of Government of India, Ministry of Power Policy dated 15.7.2015. In the said order, the Commission had observed as under:-

“29.Scheduled COD has been given in Schedule 3 of the TSA with overall SCOD as 40 months from the effective date and certain elements have been pre-required for declaring the COD. At the end of the Schedule 3, the following has been mentioned:

“The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.”

Article 6.2.1 of the TSA provides as under:

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

Provided that the Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to achieve COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

From the above provisions, it emerges that certain elements can be considered for grant of transmission charges on completion of their successful commissioning on or before its Scheduled COD only after the successful commissioning of the pre-required elements. Therefore, the commissioning of the elements of the transmission system for the purpose of incentive should take into account the pre-required commissioning of the elements as per scheduled COD. Further there may be upstream or downstream assets which are executed by PGCIL on cost plus basis or by any other transmission licensee through competitive bidding. Since the SCOD of the transmission elements mentioned in Schedule 3 have been decided matching with the commissioning of the upstream or downstream assets, that is a requirement of matching commissioning of these upstream or downstream assets with the commissioning of the transmission system in case of early commissioning for the purpose of availing incentives as per the Policy direction of Ministry of Power. If the matching commissioning does not take place, then the transmission assets which have commissioned before the SCOD for the purpose of availing incentive will remain unutilized and in the absence of the assets being put into service, it will not be appropriate to load the DICs with the transmission charges. It is, therefore, directed that the petitioner should realistically forecast early commissioning of the element, liaise with the developer of the upstream and downstream assets and mutually decide the COD of the transmission assets matching with the COD of the upstream or downstream assets so that both can be benefited by the Policy of the Govt. for

incentivizing the early commissioning of the transmission assets. In case of an element which can be put to use without the commissioning of the pre-required asset, the same can be commissioned, if the CEA certifies that the commissioning of the asset will be in the interest of the safety and security of the grid and the asset can be put to useful service after its commissioning.”

This order is not applicable in case of the Petitioner as the Petitioner is not seeking early commissioning of the transmission assets in order to avail incentive scheme.

26. The Commission in order dated 26.11.2015 in Petition No. 122/MP/2015 dealt with the specific case of commercial operation of the transmission asset prior to the commissioning of a pre-requisite asset. The relevant observations of the Commission are as under:

“17.Clause 6.2 of the TSA provides as under:

“6.2 Commercial Operation: 6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (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.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

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.”

Perusal of the above provision of the TSA reveals that an element can be declared to have achieved COD only after all the elements which are prerequisite have achieved their respective COD. As the execution work was delayed, the petitioner was advised by CEA in its meeting dated 24.9.2013 to work on all the elements independently, since each element under the project was critical for evacuation of power. Accordingly, the petitioner commissioned each element independently.”

21. All the elements of the scheme awarded to the petitioner have been commissioned. Therefore, the purpose of prescribing the pre-requisites has been achieved. Moreover, the elements have been put into service on the basis of the recommendation of the CEA that the elements can be put into regular service after successful trial operation irrespective of the prerequisites specified in the TSA. Keeping these factors in view, we direct that the petitioner shall be entitled for transmission charges from the date each element was put into regular service without linking to the pre-requisites prescribed in the Schedule 3 of the TSA. It is clarified that in respect of the other aspects including contract year for payment of transmission charges, the provisions of the TSA shall be strictly followed.”

It is noted that in case of transmission system covered under Petition No. 122/MP/2015, CEA certified that commissioning of the specified element without the prerequisite element being commissioned were in the interest of safety and security of the grid. Further, element-wise breakup of tariff in percentage terms has been provided for in the TSA. The case of the Petitioner is distinguishable from this case, as CEA has not certified that the commissioning of the Nagapattinam-Salem transmission line is in the interest of the power system and safety and security of the grid and there is no breakup of element-wise tariff in the TSA.

27. In our view, since there is no provision in the RfQ/RfP and TSA regarding apportionment of transmission charges between different elements of the transmission system being executed through TBCB route, and no certificate of CEA is available to the effect that commissioning of Nagapattinam-Salem transmission line is in the interest of the power system and safety and security of the grid. Moreover, the orders of the Commission dated 26.11.2015 and 28.1.2016 in Petition Nos. 122/MP/2015 and 284/ADP/2015 respectively are not applicable to the instant petition. Further, as per the Petitioner, the Madhugiri-Salem transmission line is expected to be commissioned in July, 2018. We are of the considered view that the

Petitioner shall be entitled for tariff for the entire transmission system after the Madhugiri-Salem transmission line is put under commercial operation.

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