

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 194/MP/2017  
I.A. No. 23/2019**

**Coram:  
Shri P. K. Pujari, Chairperson  
Dr. M.K. Iyer, Member  
Shri I.S. Jha, Member**

**Date of Order: 20<sup>th</sup> of March, 2019**

**In the matter of:**

Petition under Sections 61, 63 and 79 of the Electricity Act, 2003 read with Article 16 of the TSA and tariff based competitive bidding guidelines for transmission service, for claiming relief under TSA dated 14.3.2016 relating to implementation of the transmission project elements.

**And**

**In the matter of:**

North Karanpura Transco Limited  
7<sup>th</sup> Floor, A-Wing, Sambhav Building,  
Judges Bungalow Road,  
Bodakdev, Ahmedabad-380 015

**.... Petitioner**

**Versus**

- 1) Jharkhand Bijli Vitran Nigam Limited  
Engineering Building  
H.E.C. Dhurwa, P.S. Hatia  
Ranchi, Jharkhand-834004
- 2) South Bihar Power Distribution Company Limited  
Second Floor, Vidhut Bhawan  
Bailey Road, Patna-800001
- 3) North Bihar Power Distribution Company Limited  
Second Floor, Vidhut Bhawan,  
Bailey Road, Patna-800001
- 4) Gridco Limited  
Janpath, Bhuvneshwar-751022
- 5) West Bengal State Electricity Distribution Company Limited  
Vidyut Bhawan, 2<sup>nd</sup> Floor, Block-B  
Saltlake, Kolkata-700091

- 6) NTPC Limited  
NTPC Bhawan,  
SCOPE Complex, Institutional Area,  
Lodhi Road, New Delhi-110003
- 7) REC Transmission Projects Company Limited  
Core-4, SCOPE Complex, 7  
Lodhi Road, New Delhi-110003
- 8) Ministry of Coal  
Rafi Marg, Shram Shakti Bhawan,  
New Delhi, Delhi-110001
- 9) Ministry of Power  
Shastri Bhawan, New Delhi-110001
- 10) Central Mine Planning and Design Institute  
Gondwana Place  
Kanke Road  
Ranchi-834031, Jharkhand
- 11) Central Coalfields Limited  
Darbhanga House, Kutchery Road  
Ranchi-834029, Jharkhand
- 12) Central Electricity Authority  
Sewa Bhawan, R.K. Puram  
Sector-1, New Delhi-110066

**..Respondents**

**Parties present:**

Shri Sanjay Sen, Senior Advocate, NKTL  
Shri Nishant Kumar, Advocate, NKTL  
Shri Jagdeep Dhankar, Senior Advocate, CCL and MoC  
Shri Anshuman, Advocate, CCL and MoC  
Shri R.S. Saroj, Deputy Secretary, MoC  
Shri Karan Singh Bhati, Advocate, CMPDI  
Shri M.G. Ramachandran, Advocate, NTPC  
Ms. Poorva Saigal, Advocate, NTPC  
Ms. Tanya Sareen, Advocate, NTPC  
Shri Subhash Thakur, NTPC  
Shri V.S. Dubey, NTPC  
Shri Nishant Gupta, NTPC  
Shri Shailendra Singh, NTPC  
Shri Saahil Kaul, PGCIL

**ORDER**

The Petitioner, North Karanpura Transco Limited (NKTL), an inter-State

transmission licensee, has filed the present Petition under section 61, 63 and 79 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) seeking extension of the Scheduled Commercial Operation Dates of various elements of the Transmission System on account of non-availability of No Objection Certificate from Ministry of Coal which has resulted in delay in implementation of the subject transmission system.

**Facts of the Case:**

2. The Petitioner was incorporated as a Special Purpose Vehicle by the Bid Process Coordinator, namely, REC Transmission Projects Company Limited to develop and implement the “Transmission System for immediate evacuation for North Karanpura (3x660 MW) generation project of NTPC alongwith creation of 400/220 kV sub-station at Dhanbad (ERSS-XIX) (hereinafter the Project). The Project consisted of the following elements to be executed through Tariff Based Competitive Bidding under section 63 of the Act on Build, Own, Operate and Maintain (BOOM) basis and provide transmission services to the Long Term Customers of the Project:

- (a) North Karanpura-Gaya 400 kV D/C transmission line with quad moose conductor;
- (b) North Karanpura-Chandwa (Jharkhand) 400 kV D/c transmission line along with 400 kV Pooling Station with quad moose conductor;
- (c) LILO of both circuits of Ranchi-Maithon RB 400 kV D/c line at Dhanbad; and
- (d) Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad.

3. The Petitioner entered into the Transmission Service Agreement with Long Term Transmission Customers (LTTCs) on 14.3.2016. On the basis of the Tariff Based Competitive Bidding, Adani Transmission Limited (ATL) was selected as successful bidder and Letter of Intent was issued on 24.5.2016. Post award of the Project, ATL acquired the SPV on 8.7.2016 which became its fully owned subsidiary. The Commission in its order dated 29.9.2016 in Petition No. 116/TL/2016 granted the transmission licence to the Petitioner for inter-State transmission of electricity and in order dated 6.9.2016 in Petition No. 121/AT/2016 adopted the transmission charges for the project.

4. Since the proposed 400 kV D/C North Karanpura Chandwa Transmission Line was passing through the coal mining area of Chitrapur and Chikla, the Petitioner wrote a letter dated 25.6.2016 requesting Central Mine Planning and Design Institute Limited (CMPDI) to issue No Objection Certificate for the said line. CMPDI informed the Petitioner that the subject transmission line was falling under the coal bearing area which was part of the catchment area of Central Coalfield Limited (CCL) and, therefore, NOC could only be granted by CCL. The Petitioner wrote a letter dated 4.7.2016 to CCL for grant of NOC for the subject transmission line. In response, CCL asked the Petitioner vide its letter dated 27.7.2016 to provide the layout diagram of transmission line on revenue map and the plot-wise area of the land belonging to CCL. During the pendency of the application of the Petitioner for NOC, Ministry of Coal, Government of India issued a Gazette Notification (No.SO 2701 (E) dated 12.8.2016) giving notice of its intention to expand area of Magadh II coal block in exercise of its power under section 7(1) of the Coal Bearing Area Act, 1957. As a result of the said Notification, both North Karanpura-Chandwa (Jharkhand) 400 kV

D/c transmission line and North Karanpura-Gaya 400 kV D/C transmission line were affected.

5. The Petitioner took up the matter with CMPDI, Coal Controller, CCL, CEA, MoP and the lead LTTC, namely JBVNL (Respondent No. 1). Meetings were held under the aegis of CEA and MoP for expediting the issue of NOC for both lines. In a meeting dated 14.12.2016 taken by JS (Transmission), Ministry of Power, Government of India and a follow-up meeting between the Petitioner and the representatives of CCL, CMPDI and CEA, it was suggested by CCL/CMPDI that there is one corridor starting from NTPC plant along the bank of Baki River through which both lines can be passed through multi circuits towers upto approximately 4 kms from North Karanpura Power Plant. It was decided that the Petitioner would conduct site survey on routes suggested by CMPDI/CCL and check its feasibility and implications and present it to CCL and CMPDI after which NOC would be granted after discussion at appropriate level at CCL. The Petitioner after conducting the survey intimated the requisite details vide its letter dated 6.1.2017 to CCL, CEA, CERC and LTTCs and requested CCL to issue NOC for the alternate route suggested by CMPDI/CCL. On 23.2.2017, CCL wrote to MoC stating that the alternate route as suggested by CMPDI may be agreed to subject to certain terms and conditions. CCL vide its letter dated 15.4.2017 provided the details of the alternate route to the Petitioner.

6. A meeting was held on 27.4.2017 under the aegis of Member (PS), CEA with the attendance of representatives of PGCIL, NTPC, BPC, CCL and CMPDI for reviewing the transmission project. In the said meeting, CEA requested CCL/CMPDI to explore the possibility of providing NOC to the Petitioner for the BPC

recommended routes for North Karanpura-Chandwa line on similar grounds as given to NTPC for setting up the generation project and advised the Petitioner to explore the possibility of taking the North Karanpura-Gaya transmission line on the routes identified by BPC by taking small deviations wherever there were active mines in a manner to avoid change in scope or cost of the project. In the said meeting, CCL agreed to technically evaluate the BPC recommended route in case the said line is dismantled/decommissioned after 35 years and refer the matter to CCL/MoC. CEA advised the Petitioner to submit an undertaking to CCL/CMPDI to that effect. The Petitioner vide its letter dated 15.6.2017 submitted an undertaking to CMPDI that the transmission lines would be de-commissioned after 35 years matching with decommissioning of the NTPC north Karanpura power plant or shifted to a suitable alternate corridor as and when the mining of coal is commenced near the proposed route.

7. In the above backdrop, the Petitioner has made the following prayers in the petition:

“In view of the aforementioned facts and circumstances of the present case, it is therefore, prayed that the Commission may, in the circumstances of force majeure and change in law narrated above, graciously be pleased to:

(a) Extend the timelines for achieving COD of the elements of Project as provided under:

	Elements 1 and 2	Completion Target from grant of respective NOCs
1.	North Karanpura - Gaya 400 kV D/c line with quad moose conductor	41 months
2.	North Karanpura - Chandwa (Jharkhand) Pooling Station 400 kV D/c line with quad moose conductor	17 months
	Elements 3 and 4	Completion Target from grant of NOC of elements 1 & 2, whichever is later

3.	Establishment of 400/220 kV, 2x500 MVA substation at Dhanbad	34 months
4.	LILO of both circuits of Ranchi - Maithon-RB 400 kV D/c line at Dhanbad (Twin Moose)	34 months

(b) Grant Liberty to the Petitioner to approach the Commission for actual time and cost overruns, on account of force majeure and change in law events, once the project achieves commercial operation; and

(c) Restrain the Long-Term Transmission Customers (LTTCS) from taking any coercive measures, including imposition and/or recovery of any liquidated or other damages, as per the TSA on account of time overruns.”

### **Developments after filing of the petition**

8. The petition was listed for hearing on admission on 7.9.2017. The Commission directed the Respondents to file their replies on admission as well as on merit. On the next date of hearing on 27.9.2017, the Commission directed the LTTCS not to take any coercive measures till the next date of hearing apart from issuing directions to CCL to place the minutes of the meeting between MoC and CCL/CMPDI and to the Petitioner to place on record the current status of the transmission lines. During the hearing on 16.1.2018, learned senior counsel for CCL submitted that CCL conducted a Board meeting on 27.12.2017 to discuss the issue of NOC to North Karanpura Chandhwa (NK-C) 400kV D/C and North Karanpura to Gaya (NK-G) 400 kV D/C transmission lines and further stated that certain undertakings as sought by CCL have been furnished by the petitioner on 3.1.2018 which have been forwarded to the Ministry of Coal (MoC) for processing NOC. During the hearing on 10.4.2018, learned senior counsel for the Petitioner brought to the notice of the Commission that despite all its efforts and compliance with the requirements of CCL/CMPDI, NOC has not been issued to the Petitioner. The Commission directed MoC to file its reply in the matter.

9. The Petitioner filed IA No. 24 of 2018 seeking to amend the petition in order to bring on record the developments including the termination letter dated 13.4.2018 for

termination of the Transmission Service Agreement (TSA) dated 14.4.2016 on account of force majeure events beyond a reasonable period as prescribed in the TSA. The Petitioner also filed IA No.25/2018 for continuation of the interim directions in its favour. During the hearing on 31.5.2018, notices were issued on the IAs. The Commission directed the Ministry of Coal to convene a meeting with CEA, CCL, CPMDI, NTPC and BPC to resolve the issue and find an amicable solution in the matter. During the hearing on 26.7.2018, learned senior counsel for MoC and CCL submitted that MoC convened a meeting on 29.6.2018 with all the stakeholders namely, Ministry of Power, CEA, RECTPCL, NTPC, CMPDI, CIL and CCL for amicable resolution of the issue. Learned Senior counsel for MoC further submitted that CCL/CMPDI suggested two routes i.e. through the area earmarked for infrastructure of Magadh OCP [Tandwa NTPC to Chandwa 36 kms. approx.] and bypassing Magadh OCP [Tandwa NTPC to Chandwa 38 kms approx.] which was agreed in principle. It was agreed that the implementing agency may chose either of two options and after selection of the routes, implementing agency may approach CCL for approval who would then send the agreed proposal to MoC for consideration and issue of NOC. The Commission directed CMPDI to share the coordinates with the Petitioner who would conduct a survey of the proposed routes and submit the report of the survey to the CEA. During the hearing of the petition on 9.10.2018, learned senior counsel for the Petitioner submitted that the Petitioner had conducted a survey on the proposed routes and submitted the survey report to CEA which has been forwarded by CEA to CCL and CMPDI for their comments. Learned senior counsel further submitted that based on the survey conducted by the Petitioner, it is evident that deviation at some of the places is essential from the routes proposed by CCL and CMPDI, mainly to avoid habitations, densely populated areas, public and



private premises, minimum forest area and uneven terrain. Learned Senior Counsel further submitted that a part of North Karanpura- Gaya line would pass through coal blocks i.e. Brinda, Sisai allocated to Usha Martin. The Commission directed MoC and CCL to submit their recommendations on the survey report submitted by the Petitioner and further directed NTPC to coordinate with MoP, MoC, CCL and CMPDI to facilitate grant of NOC at the earliest.

10. During the hearing on 12.12.2018, learned senior counsel for MoC and CCL submitted that CCL has submitted its inputs on the survey report of the Petitioner to MoC which needs further time to evaluate the report. Learned senior counsel for the Petitioner submitted that on the North Karanpura-Gaya route, another coal block belonging to a private group, i.e. M/s Usha Martin, exists. The Petitioner has already taken up the matter with M/s Usha Martin for NOC for this route and is hopeful of reaching an amicable solution. In the alternate scenario of not being able to get a NOC from M/s Usha Martin, the Petitioner can construct Multi Circuit Towers on the North Karanpura-Chandwa route for evacuation of power towards Chandwa and Gaya. Learned counsel further submitted that the Petitioner has filed an affidavit dated 10.12.2018 conveying its willingness to construct the project in a compressed time line and accordingly, has withdrawn the notice of termination dated 13.4.2018 vide its letter dated 10.12.2018. Learned senior counsel sought permission to withdraw the IA No. 24/2018 which was allowed and accordingly, IA No. 24/2018 was disposed of. The representative of NTPC submitted that a meeting was convened by Ministry of Power on 28.11.2018 to discuss issues related to the said project and it was decided that PGCIL would take up construction of one D/C North Karanpura-Chandwa line on priority basis to match with the commissioning timelines considering it as dedicated line of North Karanpura-Chandwa project. Learned senior

counsel for the Petitioner submitted that the Petitioner would be willing to implement the project in a compressed timeline through better mobilisation and faster execution once NOC is available. The Commission also directed the Ministry of Coal to submit its recommendation on the survey report at the earliest.

11. Ministry of Coal vide its affidavit dated 21.1.2019 has submitted the following:

“3. That at the outset Respondent No.8 wants to state that CERC had furnished the Record of Proceedings held on 12.12.2018 in which the Commission has directed the Ministry of Coal to submit their recommendations on the survey report. In this connection, it is informed that the proposal was put up for approval in CCL Board meeting held on 9.10.2018 for the following to forward to MoC for NOC:

(i) North Karanpura- Gaya route along Barki River: 11.60 M. tes. in Chandragupta OCP and 25 M. tes below Tandwa town. Also there will be some blockage in non-CIL Brinda coal block.

(ii) North-Karanpura- Chandwa route: Option A- Along proposed infrastructure of Magadh OCP (51 MYT) - about 20 M. tes in Amrapali OCP (25 MTY) – Phase-II and about 25 M. tes in Sanghamitra OCP.

CCL Board furnished the same to this Ministry vide letter No. Rev/18/2193 dated 23.10.2018 along with minutes of the meeting to resolve the matter through ADRM route.

4. The laying of lines will result in blockage of coal and because of this, the Ministry is of the considered view that it is necessary to avoid loss/blockage of coal. In order to comply with the condition of dismantling of transmission lines by M/s NKTL, it would be appropriate if the Commission in term of Section 16 of the Act issue such a direction to the implementing agency. Generally, the life of transmission line is about 35 years. If CCL requires this land for production of coal, in such situation, it is essential that implementing agency will take responsibility to arrange for shifting/diverting the transmission lines with 24 months subsequent upon issuance of notice period by CCL failing which NKTL will be liable to pay the price of the coal to CCL, equivalent to the loss of production suffered by CCL due to non-diversion of transmission lines. A D.O. letter on this effect has already been sent from Secretary(C) to Secretary (Power) vide D.O. letter No. 43022/5/2017-LA&IR (Annexure)”.

12. The Petitioner, vide its affidavit dated 29.1.2019, has agreed to the proposal submitted by the MoC in its affidavit dated 21.1.2019 regarding dismantling of transmission line. The relevant portion of the affidavit is extracted as under:

“3. In terms of the above, the Petitioner would like to confirm and submit as follows:

(i) The Petitioner agrees with the proposal submitted by the Ministry of Coal in its Affidavit dated 21.01.2019:

(a) For inclusion of a condition by this Hon'ble Commission for dismantling of transmission line, if CCL requires land for production of coal;

(b) Such condition may be issued in such order as this Hon'ble Commission deems appropriate;

(c) Although the life of the transmission asset is about 35 years, subject to CCL giving notice of 24 months the Petitioner will make arrangements for shifting/diverting the transmission line.

(ii) Without prejudice to the above, the Petitioner would like the Hon'ble Commission to appreciate that according to the survey report on the recommended route along the Barki river for North Karapura-Gaya line, the route needs to pass through Brinda Coal Mine owned by M/s Usha Martin Limited, beyond the command area of CCL. The Petitioner had approached M/s Usha Martin through its Si letter dated 27.10.2018 with request to allow it to lay line through the said Brinda Coal Block. However, M/s Usha Martin through its letter dated 19.11.2018 has denied permission for laying of such line i.e. North Karapura-Gaya line through Brinda Coal line. In view of above the recommended route along the Barki river is not feasible and hence an alternate route has to be explored. For this purpose the petitioner proposes to take both North Karapura-Gaya and North Karapura-Chandwa lines through Multi-circuit towers on the corridor recommend for Northkarapura-Chandwa line under Option " A" till end of the coal bearing area and beyond which Northkarapura-Gaya line have to be taken through a route parallel to the existing PGCIL transmission line between Chandwa and Gaya. Such changes in the scope of the project were not envisaged by the Petitioner at the time of submission of bid for the project.

Apart from the aforesaid requirement to have Multi-circuit towers, it is reiterated that even the line length for the transmission lines between North Karapura-Chandwa and North Karapura-Gaya will be substantially longer on account of failure to obtain NOC.

The Hon'ble Commission would have to also consider any consequential increase in cost of project on account of delay due to non-availability of NOC for a period of almost 2 years. In this context, this Hon'ble Commission would have to take judicial notice of change in scope of work due to factors/ reasons not attributable to the Petitioner. In this regard, the Petitioner submits that prices of major project materials i.e. Aluminium Jiave increased from USD 1564 per MT at the time of bid submission in the month of April / May 2016 to USD 1860 per MT at present, similarly prices of Zinc which was USD 1852 per MT at the time of bid submission has now increased to USD 2700 per MT. Further, the cost of Structural Steel which was INR 7900 per MT at the time of bid submission has increased to INR 38,800 at present, (iii) At this stage while the Petitioner awaits issuance of NOC from the Ministry of Coal, the Petitioner additionally seeks liberty to approach the Hon'ble Commission for hardships if any, including extension of time and associated costs (on account of change of scope and/ or otherwise) for laying transmission lines through multi-circuit towers etc. This Hon'ble Commission may consider granting such liberty on terms and conditions that the Hon'ble Commission deems appropriate and reasonable, keeping in view the special facts of this case.

(iv) Further, the Petitioner would like Hon'ble Commission to specify that Ministry of Coal shall have to provide alternate route for diverting / shifting of transmission lines as and when required by CCL with notice of 24 months. The Hon'ble Commission is also requested to grant liberty to the Petitioner to approach it for appropriate relief of associated additional cost as and when required.

(v) Further the Petitioner would like to draw attention of the Hon'ble Commission to orders of the Hon'ble Commission vide Case No.162 of 2011 and 174 of 2016 wherein change in scope of work has been considered favourably by awarding compensation in identical to the issue of the Petitioner.”

13. During the hearing of the petition on 31.1.2019, the Commission directed MoC/CCL to file their response to the affidavit of the Petitioner dated 21.1.2019.

14. The Petitioner has filed IA No. 23/2019 on 25.2.2019 in which it has been stated that during the pendency of the present petition, Power Grid Corporation of India (PGCIL) published a Tender Notice on 25.01.2019, having Reference No. CC-CS/930-ER1/TW-3942/3/G1 and Tender Id 20032, for transmission lines associated with 400kV D/C (Quad) North Karanpura-Chandwa Transmission Line under Consultancy services to NTPC. The Petitioner has further submitted that the unilateral action of NTPC (which is a Respondent in the present petition) of seeking to appoint PGCIL to undertake any kind of activity relating to the implementation of the Transmission Project, or a part thereof, including laying down of the same, results in circumventing the present pending legal and regulatory process, when the entire matter is pending adjudication before the Commission and NTPC ought to have taken leave of this Commission before taking any such unilateral action. The Petitioner has further submitted that for implementation of the transmission Project (NK-C and NK-G lines), only one route is viable, and in the event the same is taken over by NTPC / PGCIL, then the Petitioner would not be able to execute the said project for which it has been granted a specific license. The Petitioner has submitted that the Petitioner is best placed to complete this Project on a fast track basis as it has already completed a lot of activities as mentioned in para

10 of the IA which would enable the Petitioner to squeeze the timelines in order to match the commissioning schedule of the generating station. Accordingly, the Petitioner has sought a direction to restrain NTPC, and/or PGCIL, from taking any actions pursuant to the notification of the impugned Tender dated 25.01.2019 and to quash the Tender Notification dated 25.01.2019 issued by PGCIL.

15. NTPC vide its reply affidavit dated 6.3.2019 to IA No. 23 of 2019, *inter-alia*, has submitted that NTPC is in dire need of the immediate implementation of the evacuation line at least from North Karanpura Power Station to the transmission sub-station of PGCIL (in the region of 40 kms from the Power Station) to source the start-up power for carrying out pre-commissioning activities and for declaring commercial operation. NTPC has submitted that it has been prevented from doing so only on account of the transmission system to be constructed by North Karanpura Transco Limited not being available. According to NTPC, in terms of Section 7, Section 10 and definition of Dedicated Transmission Line under the Act, it has the right to construct dedicated transmission line for which there is no need to obtain a transmission license under Section 14 read with Section 12 of the Act. The dedicated transmission line, so constructed, will be treated as a part of the generating assets of NTPC and the generation tariff to be determined by the Commission will also include the tariff admissible for the dedicated transmission line. Otherwise, there will be substantial financial loss and prejudice to NTPC and the beneficiaries in as much as the power availability from the North Karanpura Station will get significantly delayed and the investments made and the assets established will be stranded for a long time. NTPC has submitted that, in these circumstances, it proceeded to take steps to protect its investments and took the decision of constructing its dedicated transmission line up to the sub-station at Chandwa in consultation with CEA, Ministry

of Coal, Ministry of Power, CTU, etc. NTPC has submitted that in April 2018, NKTL proceeded to terminate the TSA on account of the alleged Force Majeure conditions under Article 13.5 of the TSA. It was only thereafter that the decision was taken on 28.11.2018 (under the Chairmanship of Secretary, Ministry of Power) that '*Powergrid shall take up construction of one D/C North Karanpura-Chandwa line on priority basis to match with the commissioning timelines, considering it as dedicated line of North Karanpura project*'. However, NKTL belatedly chose to withdraw its Termination Notice dated 13.4.2018 and filed an affidavit to the same effect before the Commission on 10.12.2018.

16. *Per contra*, the Petitioner vide its rejoinder dated 7.3.2018 *inter-alia* has submitted that the first proviso of Regulation 8 (8) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 prohibits construction of a dedicated line by a generating station having a capacity above 500 MW. The Petitioner has contended that a transmission line can become part of ISTS only pursuant to the due process of transmission planning and there is nothing on record to demonstrate that the alleged dedicated transmission line being proposed by NTPC has been cleared for implementation by the Standing Committee. The Petitioner has further submitted that for laying down overhead lines, including the transmission lines, approval of the Appropriate Government is required under Section 68 of the Act. In the event a Section 68 approval has been granted to a developer for a particular element/ asset, then the earlier approval needs to be withdrawn in the event a new developer is permitted to construct the same element/ asset. In the present case, the Petitioner has already been granted a Section 68 approval. As regards withdrawal of termination notice vide affidavit dated

10.12.2018, the Petitioner has submitted that the said argument is wholly misleading and erroneous, since the Applicant was not part of the meeting held on 28.11.2018. The Petitioner came to know of the said meeting only on 12.12.2018 during the hearing held before the Commission.

17. The matter was heard on 8.3.2019. Learned counsel for NTPC conceded that the LTTCs have not acted upon the termination notice of the Petitioner and after withdrawal of the termination notice by the Petitioner, the Transmission Service Agreement stands and as per the said agreement, it is the Petitioner who is responsible for construction of the transmission lines covered under the scope of the project. Learned counsel however insisted that on account of delay in execution of the transmission lines by the Petitioner, NTPC cannot draw the start-up power for commissioning activities and therefore, it was decided that a part of the transmission line should be implemented as dedicated transmission line. Learned Senior Counsel for MoC/CCL submitted that the Petitioner vide its affidavit dated 21.1.2019 and 25.2.2019 has accepted the conditions put forth by MoC and accordingly, NOC would be processed and issued to the Petitioner soon. Learned Senior Counsel for the Petitioner submitted that the subject to issue of NOC by MoC, the Petitioner would implement the transmission systems in a compressed timeline.

### **Analysis and Decision**

18. The Petitioner was selected as a Transmission Service Provider through a process of tariff based competitive bidding for building the following transmission lines on BOOM basis and provide transmission service to the Long Term Transmission Customers:

(a) North Karanpura-Gaya 400 kV D/C transmission line with quad moose



conductor;

(b) North Karanpura-Chandwa (Jharkhand) 400 kV D/c transmission line along with 400 kV Pooling Station with quad moose conductor;

(c) LILO of both circuits of Ranchi-Maithon RB 400 kV D/c line at Dhanbad; and

(d) Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad.

On account of the coal bearing area on the route of North Karanpura Gaya 400 kV D/c Transmission Lines and 400 kV North Karanpura-Chandwa (Jharkhand) 400 kV D/C Transmission Lines, the Petitioner was required to obtain NOC from CCL/MoC. As already enumerated in the earlier part of this order, the NOC has not been issued to the Petitioner. Finally, MoC has agreed to issue the NOC subject to re-routing of the Transmission Lines. The Petitioner has given its consent for the alternative routes vide its affidavit dated 29.1.2019 and 25.2.2019. The Affidavit dated 29.1.2019 is extracted in para 12 above. Relevant portion of the affidavit dated 25.2.2019 is extracted as under:

“2. On the last date of hearing before this Commission, the reply affidavit dated 29.1.2019 filed by the Petitioner, to the affidavit dated 21.1.2019 of Ministry of Coal, was brought on record. The Petitioner vide the said affidavit inter alia requested the Commission to specify that Ministry of Coal shall have to provide alternate route for diverting/shifting of transmission lines with notice of 24 months as and when required by Central Coalfields Limited. The Commission was also requested to grant liberty to the Petitioner to approach it for appropriate relief of associated additional cost as and limited to their reply to the affidavit dated 29.1.2019 of the Petitioner.

3. Further, the Petitioner undertakes to re-route/divert/shift the transmission lines in future, in accordance with law and he orders passed by this Commission, based on the alternate route provided by the Ministry of Coal and Central Coalfields Limited.”

19. Learned counsel for MoC/CCL submitted during the hearing on 8.3.2019 that NOC would be issued to the Petitioner on the basis of the undertaking furnished. Accordingly, we expect that MoC would issue NOC to the Petitioner as early as



possible, and in no case not later than one week from the date of issue of Order in this Petition.

20. It is also noted that NTPC has proposed to develop a portion (about 40 KM) of the North Karanpura-Chandwa Transmission Line as dedicated Transmission Line through PGCIL. The move was apparently triggered on account of the termination notice dated 13.4.2018. However, the LTTCs have not acted upon the said notice and the Petitioner has withdrawn the notice and has filed an affidavit dated 10.12.2018 before the Commission. Further, the Commission vide the Record of Proceedings dated 12.12.2018 has permitted the Petitioner to withdraw IA No.24/2018 which was filed by the Petitioner to amend the Petition to bring the termination notice on record. Since the termination notice has been withdrawn, the Transmission Service Agreement is in force and it is the Petitioner who is required to execute the transmission systems including the modified systems suggested by MoC/CCL. Further, it is noticed from the affidavit of the Petitioner that it has taken substantial steps for implementation of the transmission project and is agreeable to implement the transmission project in a compressed time schedule matching with the requirement of North Karanpura STPP of NTPC. Considering all these factors, the Commission is of the view that the Petitioner should implement the transmission project in a compressed time schedule in consultation with NTPC. CEA is directed to coordinate with the Petitioner and NTPC to finalise a compressed time schedule. In the light of the concurrence of MoC/CCL to grant of NOC to the Petitioner, the decision of NTPC to make a dedicated transmission line in place of North Karanpura-Chandwa Transmission Line for which licence has been granted to the Petitioner would result in wastage of resources and NTPC is advised not to proceed

with the execution of the said line as dedicated transmission line. IA No.23/2019 is disposed of in terms of the above.

21. The first prayer of the Petitioner is to extend the SCOD of the transmission systems on account of force majeure events. The Petitioner has submitted that the effective date of the project is 8.7.2016. The SCOD of the North Karanpura-Chandwa Transmission Line and North Karanpura-Gaya Transmission Line are November 2017 and November 2019 respectively. The Petitioner has submitted that immediately after getting the LOI, it made request to CMPDI, CCL and MoC for grant of NOC. However, till date NOC has not been granted. The Petitioner has submitted that there are no reasons attributable to the Petitioner for non-grant of NOC and non-completion of the project within the timeline under the TSA and the delay is entirely beyond the reasonable control of the Petitioner. The Petitioner has submitted that since the event was beyond the reasonable control of the Petitioner and has prevented the Petitioner in performance of its obligations under the TSA, on account of delay in issue of NOC, it is covered under Article 11.3 of the TSA.

22. Article 11.3 of the TSA provides as under:

**“11.3 Force Majeure**

A ‘Force Majeure’ means any event or circumstances or combination of events and circumstance including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices;

(a) **Natural Force Majeure Events:**

xx

(b) **Non- Natural Force Majeure Events:**

XX

#### 11.4 Force Majeure Exclusions:

XXXXXXXXXXXXXXXXXXXX

#### 11.5 Notification of Force Majeure Event

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one(1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about they Force Majeure.

11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure, and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”

#### 11.6 Duty to perform and duty to mitigate

To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.

#### 11.7 Available Relief for a Force Majeure Event

Subject to this Article 11

(a) no Party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;

(b) every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.

(c) For the avoidance of doubt, it is clarified that the computation of Availability of the Element(s) under outage due to Force Majeure Event, as per Article 11.3 affecting the TSP shall be as per Appendix III to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014, as on seven (7) days prior to the Bid Deadline. For the event(s) for which the Element(s) is/ are deemed to be available as per Appendix III to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014, then only the Non

Escalable Transmission Charges, as applicable to such Element(s) in the relevant Contract Year, shall be paid by the Long Term Transmission Customers as per Schedule 5, for the duration of such event(s).

(d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Lead Long Term Transmission Customer may, from time to time on one (1) day notice, inspect the Project and the TSP shall provide the Lead Long Term Transmission Customer's personnel with access to the Project to carry out such inspections, subject to the Lead Long Term Transmission Customer's personnel complying with all reasonable safety precautions and standards."

23. As per Article 11.3 of the TSA, any event, circumstance or combination of events and circumstances that wholly or partly prevents or unavoidably delays the affected party from performing its obligations under the said TSA, such events are termed as force majeure, provided the same are not within the reasonable control of the said affected party. Further, Article 11.3 is an inclusive definition and is not limited to the events enlisted Natural or Non-Natural Force Majeure Events or Force Majeure Exclusions. Therefore, delay in grant of NOC by MoC/CCL which is beyond the control of the Petitioner and prevents the Petitioner from performing the obligations under the TSA, falls under Article 11.3.

24. Article 11.7 (b) of the TSA provides that "every party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under the Agreement". Article 4.4.2 provides as under:

"4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a 'day for day' basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5."

Delay has occurred for more than 180 days in getting the NOC. The transmission systems are required for evacuation of power from North Karanpura STPP and execution of the transmission lines are in the interest of both the

generator and the beneficiaries of the generating station who are also the LTTCs of the transmission systems. Therefore, SCOD has to be extended beyond 180 days. The exact time period for extension of SCOD shall be known after the grant of NOC by MoC/CCL and once the revised compressed time schedule for execution of the transmission systems is decided by CEA in consultation with NTPC and the Petitioner. The Petitioner is granted liberty to approach the Commission for extension of SCOD after execution of the transmission systems.

25. The second prayer of the Petitioner is to approach the Commission for actual cost and time overrun on account of force majeure and Change in Law events after the project achieves commercial operation. The Petitioner has also submitted in its affidavit dated 29.1.2019 that the transmission lines to be constructed in terms of the NOC of MoC/CCL and denial of NOC by Usha Martin for the transmission lines to pass through its Brinda coal mine would result in change in the scope of work and involve substantial cost. At this stage, it is not possible to take a view in the matter. CEA is directed to determine the change in the scope of work after execution of the project and place the same on record. The Petitioner is granted liberty to approach the Commission with the change in scope of work and its cost implications which shall be dealt with in accordance with law.

26. The Petitioner in the third prayer has sought a direction to restrain the LTTCs from taking any coercive measures including imposition and/or recovery of any liquidated or other damages as per TSA on account of time overrun. The Commission has from time to time issued directions to the LTTCs not to take any coercive measures in terms of the TSA. Since we have held that the Petitioner is affected by force majeure and its impact on SCOD would be determined after

commercial operations of the transmission lines, the LTTCs are directed not to take any coercive measures till the SCODs are revised taking into account the force majeure events.

27. MoC in its affidavit dated 21.1.2019 has submitted that laying of lines will result in blockage of coal and it is necessary to avoid loss/blockage of coal for which the Petitioner would be required to comply with the condition of dismantling the transmission line and arrange for shifting/diverting the transmission line within 24 months subsequent upon issuance of notice period by CCL failing which the Petitioner would be liable to pay the price of coal to CCL equivalent to the loss of production suffered by CCL due to non-diversion of transmission line. MoC has requested that the Commission may issue appropriate direction to the Petitioner in terms of Section 16 of the Act. The Petitioner on the other hand has submitted that the Commission may specify that MoC shall have to provide alternate route for shifting/diverting of transmission line as and when required by CCL with notice of 24 months and also for liberty to the Petitioner to approach for appropriate relief for the associated additional cost as and when required.

28. Section 16 of the Act provides as under:-

“16. Conditions of licence.- The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence.”

As per the above provision, the Commission may specify any general or specific condition to be applicable to a licensee which shall be deemed to be conditions of such licence. Since the NOC has been stated to be issued by MoC subject to the condition that transmission line shall have to be removed and relocated with 24 months' notice as decided by CCL, we direct that the Petitioner

shall comply with such a condition which shall be treated as part of terms and conditions of its licence. The useful life of transmission assets is of 35 years, and dismantling of the transmission line without an alternate route will not only result in under-recovery of transmission charge but will also create bottlenecks for evacuation of power from North Karanpura STPP. Therefore, we direct MoC to indicate an alternative route for shifting of the transmission line as and when required by MoC/CCL.

29. The summary of our decision in the present order are as under:-

- (a) The Petitioner is affected by force majeure on account of non-issue/delay in issue of NOC by MoC/CCL. Since the Petitioner is willing to execute the transmission system, subject to the issue of NOC by MoC/CCL in a compressed timeframe, the execution schedule of the transmission lines shall be decided by CEA in consultation with NTPC and the Petitioner.
- (b) MoC/CCL shall issue the NOC to the Petitioner as early as possible but not later than one week after the issue of this Order.
- (c) SCOD of the transmission system shall be considered for extension after the grant of NOC by MoC/CCL and the revised time schedule for execution of the transmission system is decided by CEA.
- (d) Since the Petitioner is executing the North Karanpura-Chandwa transmission line, NTPC is advised not to proceed with the execution of the said line as dedicated transmission line.

- (e) The Petitioner is granted liberty to approach the Commission with change in scope of work along with its impact on cost and time overrun which shall be dealt in accordance with law.
- (f) LTTCs are directed not to take any coercive measures in terms of the TSA till the SCODs are revised taking into account the force majeure events. The CEA shall decide the revised time schedule in consultation with NTPC and the Petitioner.
- (g) Shifting of the transmission lines at the behest of MoC/CCL with 24 months' notice shall be considered as a part of terms and conditions of the licence of the Petitioner.
- (h) MoC shall be required to provide an alternate route for shifting of the transmission line. The Petitioner is at liberty to approach the Commission for compensation on account of the dismantling/shifting of the transmission line which shall be dealt in accordance with law.

30. The Petition No. 194/MP/2017 and IA No. 23/2019 are disposed of in terms of the above.

**sd/-**  
**(I.S. Jha)**  
**Member**

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

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