

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 126/MP/2019**

**Coram:**

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

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

**Shri I.S.Jha, Member**

**Date of Order: 8<sup>th</sup> January, 2020**

**In the matter of**

Petition under Section 79(1)(c) and (f) and other applicable provisions of the Electricity Act, 2003 seeking declaration that the event namely, notification of the GIB Arc coordinates vide letter dated 28.2.2019 by the Deputy Conservator of Forest, Jaisalmer on account of which Petitioner is required to re-route the 765 kV D/C Fatehgarh-Bhadla Transmission Line, is a Change in Law event under Article 12 of the TSA dated 10.1.2018, with liberty to approach the Commission to assess the actual impact of such Change in Law event, based on the actual and audited expenditure incurred by the Petitioner as per formula specified under Article 12.2.1 of the TSA and other consequential reliefs.

**And**

**In the matter of**

Fatehgarh-Bhadla Transmission Limited  
C-105, Anad Niketan,  
New Delhi-110 021

**..Petitioner**

**Vs.**

1. Adani Renewable Energy Park Rajasthan Limited  
Achalraj Building,  
Opp. Mayor Bunglow,  
Law Garden, Ahmedabad-380 006

2. Power Grid Corporation of India Ltd.  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon-122 001, Haryana

**....Respondents**

**The following were present:**

Shri Buddy A. Ranganadhan, Advocate, FBTL  
Shri Raunak Jain, Advocate, FBTL  
Shri C.K. Rai, Advocate, AREPRL  
Shri Rakesh Shah, AREPRL  
Ms. Jyoti Prasad, PGCIL

**ORDER**

The Petitioner, Fatehgarh-Bhadla Transmission Limited (FBTL), an inter-State transmission licensee, has filed the present Petition under Section 79(1)(f) of

the Electricity Act, 2003 (hereinafter referred to as the “Act”) seeking declaration that the notification of the GIB Arc coordinates vide letter dated 28.2.2019 by the Deputy Conservator of Forest, Jaisalmer is a ‘Change in Law’ event under Article 12 of the Transmission Service Agreement (TSA) dated 10.1.2018.

### **Facts of the case**

2. The Petitioner was incorporated as a Special Purpose Vehicle (SPV) by the Bid Process Coordinator, namely, PFC Consulting Limited (PFCCL) to develop and implement the “Transmission System for Ultra Mega Solar Park in Fatehgarh, District Jaisalmer, Rajasthan” (hereinafter referred to as “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:

- (a) Establishment of 400 kV Pooling Station at Fatehgarh
- (b) Fatehgarh Pooling station- Bhadla (PG) 765 kV D/C line (to be operated at 400 kV).
- (c) 2 Nos. of 400 kV line bays at Fatehgarh Pooling Station
- (d) 1X125 MVAR Bus reactor at 400 kV Fatehgarh Pooling Station along with associated bay
- (e) Space for future 220 kV (12 Nos.) line bays
- (f) Space for future 400 kV (8 Nos.) line bays along with line reactors at Fatehgarh Pooling Station
- (g) Space for future 220/400 kV transformers (5 Nos.) along with associated transformer bays at each level.
- (h) Space for future 400 kV bus reactor (2 Nos.) along with associated bays.

3. The Petitioner entered into the Transmission Service Agreement with the Long Term Transmission Customer (LTTC), namely, Adani Renewable Energy Park Rajasthan Ltd. (AREPRL) on 10.1.2018. Pursuant to Tariff Based Competitive

Bidding conducted by PFCCL, Adani Transmission Limited (ATL) was selected as the successful bidder and Letter of Intent was issued on 21.2.2018. Post award of the Project, ATL acquired the SPV (the Petitioner) on 14.3.2018 which became its fully owned subsidiary. The Commission in its order dated 27.8.2018 in Petition No. 94/TL/2018 granted transmission licence to the Petitioner for inter-State transmission of electricity.

4. Thereafter, the Petitioner commenced construction of the transmission line and submitted its application dated 28.11.2018 to the office of Nodal Officer, Jaipur seeking requisite permission and clearances in its favour for Diversion of 0.6466 Ha forest land for 765 kV D/C Fatehgarh-Bhadla Transmission Line. However, the Chief Conservator of Forest (CCF), Jodhpur vide letter dated 21.1.2019 did not recommend clearance to the proposal of the Petitioner on the ground that the area around the proposed route is a breeding ground for the Great Indian Bustard (GIB) which is of critical importance and an endangered bird. CCF, Jodhpur, further observed that it is not in the interest of conservation of GIB to grant approval for conversion of land in the case. Subsequently, the Deputy Conservator of Forest (Wildlife), Jaisalmer vide letter dated 5.2.2019 directed the Petitioner to keep the line route outside the GIB Arc. DCF (Wildlife), Jaisalmer provided the coordinates of GIB Arc area vide letter dated 28.2.2019. The Petitioner has submitted that on account of re-routing of the transmission line, there will be an increase in length of the transmission line from 102.98 km to 152 km.

5. In the above background, the Petitioner has filed the present Petition and made the following prayers in the Petition:

*“a) Declare that the event namely, notification of the GIB Arc coordinates vide letter dated 28.02.2019 by the Deputy Conservator of Forest, Jaisalmer*

*on account of which Petitioner is required to re-route the 765 kV D/C Fatehgarh-Bhadla Transmission Line, is a 'Change in Law' event under Article 12 of the TSA dated 10.01.2018;*

*b) Grant extension in the Scheduled Commercial Operation Date to allow 6 months' time to achieve CoD on account of the above 'Change in Law' event and re-routing of the transmission line and waive any penalties or any other consequences thereof under the TSA, and further allow recovery of Transmission Charges under Schedule 3 of the TSA as per extended CoD as considered and granted by this Hon'ble Commission;*

*c) Direct the Respondent not to take any coercive steps including encashment of Bank Guarantees against the Petitioner considering the present SCoD of Sep'19 as the transmission line will likely get delayed beyond Sep'19 due to above 'Change in Law' event and re-routing of the transmission line;*

*d) Grant liberty to the Petitioner to approach this Hon'ble Commission to assess the actual impact of such 'Change in Law' event, based on the actual and audited expenditure incurred by the Petitioner as per formula specified under Article 12.2.1 of the TSA;*

*e) Pass any such further or other orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case."*

6. The Petitioner has mainly submitted as under:

(a) In response to the proposal submitted by AREPRL (Respondent No. 1) to the Forest Officials for setting up its Solar Park, the Deputy Conservator of Forest, Jaisalmer vide its letter dated 17.11.2016, gave no-objection to the proposal for construction of overhead power line with the stipulation that Bird Diverters of certified quality shall be installed at a distance of 20 metres and the same should be replaced at regular intervals in case of damage to such Bird Diverters.

(b) PFCCCL issued Request for Proposal (RfP) on 21.11.2017 along with a Survey Report indicating three alternative routes with length of 100.782 km (Alt-1), 108.063 km (Alt-2) and 108.658 km (Alt-3). PFCCCL recommended the first alternative of 100.782 km as the optimum final route.

(c) Vide its Order dated 22.1.2018, National Green Tribunal, Central Zone, Bhopal (NGT) in O.A. No. 63/2016(CZ) and O.A. No. 64/2016 (CZ), directed the State of Rajasthan to file the GPS coordinates of the Arc within which the GIBs have been found to be flying.

(d) In the 49<sup>th</sup> Meeting of Standing Committee of National Board for Wildlife held on 13.6.2018, the Committee discussed the recovery plans for critically endangered GIB. During the meeting, it was indicated that in Rajasthan, power companies have been mandated to install bird diverters on power lines, samples of which have been supplied by the Wildlife Institute of India to power companies and tested on a pilot basis. The Committee was also informed that the bird diverters increase visibility of power lines to birds and are known to reduce collision risks to the Great Bustard in Spain.

(e) The Petitioner while finalizing the line route and in compliance to all the regulations prevailing in respect of GIB enclosures or otherwise, provisioned to install Bird Diverters. Further, the Petitioner sought approval under Section 164 of the Act from Central Electricity Authority (CEA) vide letter dated 30.7.2018.

(f) The CEA, Ministry of Power, vide its order dated 26.10.2018, published authorization under Section 164 of the Act and conferred all the powers to the Petitioner under the Gazette of India, for laying the above overhead transmission line, which Telegraph Authority possesses under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts for the purposes of a telegraph established or maintained by Government or to be established or maintained.

(g) Subsequently, the Petitioner started activity for laying of the 765 kV D/C transmission line and completed 24 numbers of foundations along with securely supplying for erection of towers.

(h) The Petitioner submitted its application dated 28.11.2018 with the office of Nodal Officer, Jaipur seeking requisite permission and clearances in its favour for Diversion of 0.6466 Ha forest land for 765 kV D/C Fatehgarh - Bhadla Transmission Line.

(i) The Office of Chief Conservator of Forest (CCF), Jodhpur vide its letter dated 21.1.2019, intimated to the Petitioner that its proposal for clearance is not being recommended on the ground that the area around the

proposed route is a breeding ground for the GIB which is of critical importance and an endangered bird. It was further observed by CCF that execution of the proposed overhead transmission lines is likely to adversely impact the bird habitat. Consequently, CCF, Jodhpur suggested to explore the alternative route outside GIB Habitat Arc. In view of this, CCF, Jodhpur did not recommend approval to the proposed line route.

(j) Subsequently, Deputy Conservator of Forest (Wildlife), Jaisalmer issued letter dated 5.2.2019 directing the Petitioner to keep the line route outside the GIB Arc.

(k) In response to the letter issued by DCF (Wildlife), Jaisalmer, the Petitioner held various meetings with the Forest Officials in order to understand the area covered under the said GIB Arc as mentioned by the DCF (Wildlife), Jaisalmer. The Petitioner vide its letters dated 23.1.2019, 29.1.2019, 2.2.2019 and 7.2.2019 to forest authorities sought to (a) understand the extension of the Arc of the GIB to offer a better solution to the problem; and (b) amicably and satisfactorily resolve the objection raised with respect to laying of overhead transmission line in GIB Arc with request to allow construction on the original route with installation of bird diverter / reflector.

(l) Ministry of New and Renewable Energy (MNRE), Govt. of India vide its Circular dated 22.2.2019 has advised power transmission line agencies and wind farm developers to identify critical power transmission lines and wind energy farms passing through the GIB habitats in the State of Rajasthan and Gujarat in consultation with the Wild Life Institute of India and the concerned State Governments and to take up risk mitigation measures against bird hits by putting Bird Diverters on the conductors, painting of vane tips of the wind turbines etc.

(m) After ample requests to allow its transmission line to proceed as per CEA sanctioned line route with installation of Bird Diverters/ reflectors and to share the coordinates of the said GIB Arc to evaluate the alternative route, the DCF, Jaisalmer vide its letter dated 28.2.2019 provided the coordinates of the GIB Arc area. Upon analysis of the coordinates, it is clear that the

approved line route for 765 kV D/C Fatehgarh- Bhadla Transmission Line is falling within the GIB Arc coordinates notified by the DCF, Jaisalmer.

(n) Consequently, the Petitioner vide its letter dated 26.3.2019 intimated the Respondent regarding '*Change in Law*' event in terms of the TSA dated 10.1.2018.

(o) Decision of DCF, Jaisalmer not to allow construction of overhead transmission line in GIB Arc, and the event of re-routing the line on account of notification of the GIB Arc coordinates vide letter dated 28.2.2019 by DCF, Jaisalmer squarely falls under the definition of Change in Law under Clause 12 of the TSA dated 10.1.2018.

(p) As per Clause 2.16.2 and Clause 2.17.1 of the RfP, the Bid Deadline was 22.1.2018. Accordingly, the Cut-off Date in terms of the TSA which is seven days prior to the Bid deadline is 15.1.2018. As on 15.1.2018, there was no prohibition under any extant law to lay down the transmission line as per approved route line including in the Final Survey Report of the Bid Coordinator i.e. PFCCL.

(q) On account of the aforesaid '*Change in Law*' event and consequent re-routing of the transmission line, there will be an increase in length of the transmission line from 102.98 KMs to 152 KMs. Further, revision in route of line will result in abandoning 24 foundations already casted by the Petitioner as per line route approved by CEA under Section 164 of the Act.

(r) In light of the above, the Petitioner is entitled to extension in the Scheduled Commercial Operation Date of 6 months to achieve CoD on account of the above '*Change in Law*' event and re-routing of the transmission line.

(s) In the present Petition, the Petitioner is only praying for seeking declaration that the event namely, notification of the GIB Arc coordinates vide letter dated 28.2.2019 by the Deputy Conservator of Forest, Jaisalmer is a '*Change in Law*' event under Article 12 of the TSA dated 10.01.2018 with liberty to approach the Commission to assess the actual impact on cost and

time of such '*Change in Law*' event, based on the actual and audited expenditure incurred by the Petitioner as per formula specified under Article 12.2.1 of the TSA.

### **Hearing on 17.7.2019**

7. The Petition was heard on 17.7.2019. During the course of hearing, the Commission observed that since the Scheduled COD of the Project is September, 2019, the Petition at that stage was premature. In response, learned counsel for the Petitioner requested for a week's time to file an affidavit for withdrawal of the Petition. However, the Petitioner mentioned the matter on 23.7.2019 and submitted that the Commission vide Record of Proceedings for the hearing dated 17.7.2019 had allowed the Petitioner to file an affidavit for withdrawal of the Petition based on the Commission's observation that the Petition is pre-mature at this stage. Learned counsel submitted that the Petitioner wants to pursue only the prayer with regard to declaration of GIB Arc coordinates as change in law. Accordingly, the learned counsel for the Petitioner requested for withdrawal of the prayers (b), (c) and (d) of the Petition with liberty to approach the Commission at a later stage. Accordingly, the request of the Petitioner was allowed by the Commission. Subsequently, the Petitioner vide affidavit dated 31.7.2019 limited its Petition only to prayer (a) i.e. for a declaration of 'Change in Law' and sought to withdraw prayers (b) to (d) with liberty to raise the same through appropriate proceedings at appropriate time. The Petition was admitted on 21.8.2019 and the Respondent accepted notice. Further, the Commission directed the Petitioner to implead Power Grid Corporation of India Ltd. (CTU) as party to the Petition.

### **Submissions by AREPRL and CTU**

8. AREPRL and CTU have filed their reply vide affidavits dated 4.9.2019 and 13.9.2019 respectively.



9. AREPRL vide its reply dated 4.9.2019 has submitted that as per clause 12.2.3 and 12.2.4 of the TSA, the Petitioner is required to approach the Appropriate Commission with documentary proof of such increase/ decrease in cost of the Project/ revenue for establishing the impact of such Change in Law and the decision of the Appropriate Commission, subject to right of Appeal, shall be final and binding on both the parties. The Petitioner vide its rejoinder dated 6.9.2019 to the reply of AREPRL has submitted that the Commission, vide RoP dated 23.7.2019, has permitted the Petitioner to limit the petition only to prayer (a) i.e. for declaration of 'Change in Law' at this stage and to withdraw other prayers (b) to (d) with liberty to raise these prayers through appropriate proceedings at appropriate time. Accordingly, the Petitioner shall approach the Commission with documentary proof of such increase/ decrease in cost of the Project/ revenue for establishing the impact of such 'Change in Law' at appropriate stage. The Petitioner has further submitted that the scope of the present petition is limited to only seeking a declaration that the event namely, notification of the GIB Arc coordinates vide letter dated 28.2.2019 by the Deputy Conservator of Forest, Jaisalmer is a 'Change in Law' event under Article 12 of the TSA dated 10.1.2018.

10. CTU vide its reply dated 13.9.2019 has submitted as under

(a) There are no specific averments and pleadings against CTU in the Petition.

(b) All issues emanating from the provisions relating to 'change in law' are bipartite issues between the Petitioner and the LTTC i.e. AREPRL governed under the bipartite TSA as executed between parties.

(c) The scope of work for the Transmission System for Ultra Mega Solar Park in Fatehgarh was agreed in the 39<sup>th</sup> Meeting of Standing Committee on

Power System Planning of Northern Region held on 29.5.2017 and 30.5.2017.

(d) It was decided in the meeting convened on 12.12.2017 in CEA to indicate 30.9.2019 as the scheduled date of commissioning of the transmission scheme in the bidding document and that AREPRL shall provide details about suitable land for Fatehgarh sub-station and its tentative cost to PFCCL within a weeks' time.

(e) In the meeting convened on 26.7.2018 in CEA to discuss the issues related to the aforesaid transmission scheme, the Petitioner had informed CTU that it would make best efforts to commission the Project by September 2019 as indicated in the TSA and in case of delay, relevant provisions of TSA shall be applicable.

(f) The Respondent No.1 (AREPRL) vide letter dated 7.1.2019 informed Acme Solar Holdings Ltd. and CTU that it is yet to hand over land for substation at Fatehgarh to the Petitioner on account of stay order issued by the Hon'ble High Court with regard to land for development of the solar park.

(g) A meeting on 765 kV Fatehgarh-Bhadla Transmission Line was convened on 20.3.2019 under the Chairmanship of Secretary (MNRE) with participation from MNRE, CEA, CTU, SECI and others, wherein the Petitioner informed that they will complete the work of 400 kV Fatehgarh S/s and Fatehgarh- Bhadla 765kV D/c line (to be operated at 400 kV) by March, 2020. Additionally, it was informed by the Petitioner that it has re-routed the line as per directions given by Forest Department in view of the Great Indian Bustard (GIB) habitat region and due to this, the total length of transmission line may increase from 100 km to 150 km.

### **Rejoinder by the Petitioner**

11. The Petitioner vide its rejoinder dated 24.9.2019 has submitted as under:

(a) As regards minutes of the meeting dated 12.12.2017, it may be observed from the list of participants of the meeting that the Petitioner had no occasion to attend the same as bidding process to select the Transmission Service Provider had not been completed by then. However,

the obligation of AREPRL to provide land for Fatehgarh sub-station has been recognized in the minutes.

(b) The details submitted by CTU about other meetings to the extent they refer to the factual aspects, are matter of record and not relevant for the purpose of deciding the present claim of the Petitioner regarding declaration of the event, namely notification of GIB Arc coordinates by the Deputy Conservator of Forest as a 'Change in Law' event under the TSA dated 10.1.2018.

12. The Petition was heard on 29.10.2019. After hearing the parties, the Commission granted time to file written submissions to both the parties. The Petitioner vide its note of argument dated 7.11.2019 has reiterated that as on the Bid Deadline i.e. 22.1.2018, there was no restriction on construction of overhead transmission lines in areas where GIB were found to fly. The construction of overhead transmission lines in GIB habitat areas was permissible even prior to the Bid Deadline date, with the stipulation that Bird Diverters of certified quality shall be installed at a distance of 20 metres and the same should be replaced at regular intervals in case of damage to such Bird Diverters. It has been further submitted that the GIB Arc coordinates were not known to anybody as on the Bid Deadline date i.e. 22.1.2018. The Petitioner has contended that the rejection of the Forest Clearance proposal of the Petitioner on 21.1.2019 and 5.2.2019 by the Forest Authorities on account of GIB Arc clearly qualifies as 'Change in Law' event under the second bullet point of Article 12.1.1 regarding change in the manner the law has been interpreted and applied by the Forest Authorities.

### **Analysis and Decision**

13. We have considered the submissions of the Petitioner, AREPRL and CTU, and perused the documents on record. The issue that arise for our consideration is

as to whether the notification of the GIB Arc coordinates issued by Deputy Conservator of Forest (Wildlife), Dept. of Forest, Government of Rajasthan dated 28.2.2019 is covered under change in law provision of the TSA.

14. The Petitioner was selected as a Transmission Service Provider through a process of tariff based competitive bidding for building the “*Transmission System for Ultra Mega Solar Park in Fatehgarh, distt. Jaisalmer, Rajasthan*”. The Petitioner entered into a Transmission Service Agreement dated 10.1.2018 with AREPRL to provide transmission service for the aforesaid scheme. The Petitioner submitted its application dated 28.11.2018 to Office of Nodal Officer, Jaipur seeking permission/clearance for diversion of 0.6466 Ha forest land for 765 kV D/C Fatehgarh-Bhadla Transmission line. However, the Petitioner was denied clearance by forest authorities in Rajasthan vide letters dated 21.1.2019 and 5.2.2019 on the original route on the ground that the area around the proposed route was a breeding ground for the GIB which is an endangered bird. The Petitioner has claimed that denial of consent by the forest authorities is an event of change in law as contemplated under Article 12 of the TSA.

15. Article 12.3 of the TSA dated 10.1.2018 provides as under”

**“12.3 Notification of Change in Law:**

**12.3.1** *If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.*

**12.3.2** *The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in law.*

**12.3.3** *Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”*

As per the above provision, TSP is required to give notice to Lead Long Term Transmission Customer of change in law as soon as reasonably practicable

after becoming aware of the same if it wishes to claim relief for such change in law under Article 12 of the TSA.

16. Pursuant to GIB coordinates provided by DCF, Jaisalmer vide letter dated 28.2.2019, the Petitioner gave change in law notice dated 26.3.2019 to the Respondent in terms of the TSA dated 10.1.2018. In response to the 'Change in Law' notice sent by the Petitioner regarding notification of the GIB Arc coordinates, AREPRL vide its letter dated 12.4.2019 advised the Petitioner to approach the Commission for seeking the necessary declaration and relief in terms of the TSA. In these circumstances, the Petitioner has filed the present Petition seeking declaration of change in law. In our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the LTTC before approaching the Commission.

17. The Petitioner has sought change in law relief under Article 12.1.1 of the TSA. The relevant extract of Article 12 is reproduced below

**ARTICLE 12:**

**12 CHANGE IN LAW**

**12.1 Change in Law**

*12.1.1 "Change in Law" means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the TSP or any income to the TSP:*

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*

- *a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;*
- *any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP;*
- *any change in the Acquisition Price; or*
- *any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

*12.1.2 Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change:*

*a. on account of regulatory measures by the Appropriate Commission including calculation of Availability; and*

*b. in any tax applied on the income or profits of the TSP.”*

18. The Bid deadline in terms of Bidding documents for the Project was 22.1.2018. Therefore, the cut-off date in terms of the TSA which is seven days prior to bid deadline shall be 15.1.2018. It is noted that all the three alternate routes provided by the Bid Process Coordinator, namely, PFCCL in the Final Survey Report as part of RfP were in the range of about 100 to 108 kms. The Petitioner has submitted that the length of the transmission line on the revised route has increased from the original estimate of 102.98 km to 152 km to avoid GIB Arc. Therefore, it is apparent that there was no consideration of GIB Arc coordinates in the optimum route or other alternative routes selected by BPC. It is also noted that, in response to the proposal submitted by AREPRL to the Forest Officials for setting up its Solar Park, the Deputy Conservator of Forest, Jaisalmer vide its letter dated 17.11.2016, gave no-objection to the proposal for construction of overhead power line with the stipulation of that Bird Diverters of certified quality shall be installed at a distance of 20 metres and the same should be replaced at regular intervals in case of damage to such Bird Diverters. Relevant portion of the said letter dated 17.11.2016 is extracted as under:

“ ...

To,

District Collector & District Magistrate,  
Jaisalmer

*Subject : Relating to allotment of land to M/s. Adani Renewable Energy Park, Rajasthan Ltd. to establish 1000 Megawatt Solar Park at Village Dawada, Tehsil Fatehgarh and Village Neydan Tehsil Pokharan*

...

*In respect of aforesaid subject and context, it is stated that the land for establishing a 1000 MW Solar Park by M/s. Adani Renewable Energy Park Rajasthan Ltd. in Village Dawada and Rasla, Tehsil Fatehgarh and Village Nedan Tehsil Pokharan, has been required vide your Letter No. 6827-28 dated 02.11.2016.*

*As per the Letter Spl. Jsm dt. 12.08.2016 of the Regional Forest Officer, Wildlife Range Pokharan, GIB Closure, Rasla A 500 is near to the proposed solar project and Rasla B 110, has been made and therefore, No Objection is granted subject to the condition that Bird Diverter shall be installed at distance of each 20 meters, on all the Overhead Power Line over the proposed plant.*

*The said Bird Diverter (as per model) should be of Certified quality and the same should be replaced in the event of any damage thereto from time to time...”*

19. Also, Ministry of New and Renewable Energy, Govt. of India vide its Circular dated 22.2.2019 intimated the power transmission line agencies and wind energy farm developers regarding the measures taken by Ministry of Environment, Forest & Climate Change (MoEF&CC) for ensuring the safety of GIB and other migratory bird species and issued necessary instructions. The relevant extract of the circular is as under:

*“.....In this regard, MOEF&CC has taken following measures for ensuring the safety of GIB and other migratory bird species:*

*(a) It has taken an ambitious Great Indian Bustard Species Recovery Programme in collaboration with Wild Life Institute of India (WII) and GIB range States like Rajasthan and Gujarat, which includes identification of the critical power transmission lines and wind energy farms in GIB habitats and making them GIB friendly.*

*(b) Standing Committee of National Board of Wild Life in its 47th meeting has made the submission of the animal passage plan, prepared on the basis of WII guidelines, mandatory for considering approval of any new linear infrastructure project proposal passing through protected areas and other wild life rich areas.*

*These guidelines suggest for putting up of the bird diverters on the conductors of the power transmission lines.*

*(c) In compliance of the Supreme Court direction dated 19<sup>th</sup> January, 2018 in Civil Writ Petition No. 275 of 2015, the MOEF&CC is constituting an inter-ministerial Task Force comprising of officers of the Ministry of Power, PGCIL, Central Electricity Authority and MOEF&CC for suggesting various measures for avoiding death of the birds and other animals due to electrocution and collision with the power transmission lines.*

*(d) Forest Advisory Committee in its meeting held on 22<sup>nd</sup> March, 2018 has made it mandatory for power transmission line agencies to deploy bird diverters on conductors and paint the vane tips of wind turbine with orange colour to avoid bird hits.*

3. *In this regard, it is requested that power transmission line agencies and wind energy farm developers may identify critical power transmission lines and wind energy firms passing through the Great Indian Bustard (GIB) habitats in Rajasthan and Gujarat in consultation with the Wild Life Institute of India (WII) and concerned States Governments and accordingly take up risk mitigation measures against bird hits like putting up bird diverters on the conductors, painting of vane tips of the wind turbines, etc.”*

20. Perusal of the above circular reveals that the Hon'ble Supreme Court had directed MoEF&CC on 19.1.2018 in Civil Writ Petition No. 275 of 2015 to constitute an inter-ministerial Task Force comprising of officers of the Ministry of Power, PGCIL, Central Electricity Authority and MOEF&CC for suggesting various measures for avoiding death of the birds and other animals due to electrocution and collision with the power transmission lines. Accordingly, as on the cut-off date of 15.1.2018, there were no guidelines on the measures for avoiding death of the birds and other animals due to electrocution and collision with the power transmission lines.

21. The Petitioner has stated to have provisioned to install Bird Diverters while finalizing the original line route and seeking approval under Section 164 of the Act from CEA vide its letter dated 30.7.2018. The Central Electricity Authority, Ministry of power, vide its order dated 26.10.2018, published authorization under Section 164 of the Act, and conferred all the powers to the Petitioner under the transmission



scheme “Transmission system for Ultra Mega Solar Park in Fatehgarh, Dist Jaisalmer, Rajasthan” under the Gazette of India, for laying the overhead transmission line, which Telegraph Authority possesses under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts for the purposes of a telegraph established or maintained by Government or to be established or maintained. The relevant extract of the Gazette Notification dated 26.10.2018 is as under

*“ And now the applicant has requested to confer upon him, all the powers under section 164 of the Electricity Act, 2003, which the telegraph authority posses under the Indian Telegraph Act, 1885 with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained by Government or to be so established or maintained for laying of electric lines under the transmission scheme “Transmission system for Ultra Mega Solar Park in Fatehgarh, Dist Jaisalmer, Rajasthan”*

*The overhead line covered under the above scheme will pass through, over, around and between the following villages, town and cities:*

District	Tehsil	Name of Village
Jaisalmer	Pokaran	Narawaton ki Dhani, Aje ri Talai, Nahri Talai, Neran, Pariharon ki Dhani, Lakho ka Nado, Dinikhani ki Dhani, Sanawra, Managal Singh ka Tola, Mahesha, Mahesha ki Dhani, Ruperi Talai, Darson ki Dhani, Beldaron ki Dhani, Khalton ki Dhani, Nananiyai, Lonewala Magra, Kelawa, Salvi, Hardikot ka Magra, Maliyon ka Magra, Billa, Mulbin Khan ki Dhani, Ganganiwala Magra, Gomat, Pokaran, Paupadia, Sankhla Sar, Ramdevra, Hathalmer, Biram deora, Didania, Didwaniya, Hajiron ki Dhani, Aika, Panch Pipali, Panji ki Dhani, Dudhiya, Udavaton ki Dhani, Sada, Madhopura, Naya Sanawara, Pratappura, Sarnayat, Galar
Jodhpur	Phalodi	Shivpura, Rayra, Mashaka, Tekra, Sihra, Merari Talav, Durgani, Khada Dhani, Badi Kanasi, Tepu, Jodhani, Bulidansingh ki Dhani, Bherusingh ki Dhani, Sonalpura, Dholiya, Madpura, Anopnagar, Modki, Khetusar, Durjani, Amre Ka Bera, Dedasri, Raneri, Khakhuri, Sinavri Talav, Gulam ki Dhani, Bhuraj, Kanasar, Kalu ki Dhani, Ismail ki Dhani, Ajeri ki Dhani.

*M/s. Fatehgarh-Bhadla Transmission Limited had complied with the MoP’s procedure for obtaining the authorization under section 164 of Electricity Act, 2003 for the above scheme. Now, after careful consideration, Central Electricity Authority, Ministry of Power, Government of India, under section 164 of the Electricity Act, 2003, confers all the powers to M/s. FBTL (Fatehgarh-Bhadla Transmission Limited) for laying above overhead line, which telegraph authority posses under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts for the purpose of a telegraph established or maintained, by Government or to be established or maintained subject to following terms and conditions for installing the above mentioned transmission lines, namely:*

- (i) *The approval is granted for 25 years.*
- (ii) *The Applicant shall have to seek the consent of the concerned authorities i.e. local bodies, Railways, National Highways, State Highways etc. before erection of proposed lines;*
- (iii) *The Applicant shall have to follow regulations/codes of the Appropriate Commission regarding transmission, O&M, open access, etc. framed under Electricity Act, 2003....”*

22. As per the above approval under Section 164 of the Act, the Petitioner had to seek the consent of concerned authorities i.e. local bodies, Railways, National Highways and State Highways, etc. before erection of proposed lines. The Petitioner submitted its application dated 28.11.2018 with the office of Nodal Officer, Jaipur seeking requisite permission and clearances in its favour for Diversion of 0.6466 Ha forest land for 765 kV D/C Fatehgarh- Bhadla Transmission Line. However, the Chief Conservator of Forest, Jodhpur vide letter dated 21.1.2019 refused to recommend proposal of the Petitioner for forest clearance on the ground that the forest land applied for is natural zone of breeding of GIB and their habitat. Accordingly, the CCF, Jodhpur stated that it is not in the interest of conservation of GIB to grant approval of conversion of forest land in the case. The relevant text of the letter dated 21.1.2019 is extracted as under:

“To,

*The Most Principal Chief Forest Conservator Forest Security  
And Nodal Officer F C A Rajasthan  
Jaipur*

*Subject: Proposal No. FP/RJ/TRANS/37264/2018 Diversion of 0.6466 Ha forest  
land for 765 kV D/C Fatehgarg-Bhadla Transmission Line in Jaisalmer*

*In Re: Letter No. 274 dt. 18.1.2019 of Deputy Chief Forest Conservator*

Sir,

*In the aforesaid matter, it is requested that for diversion of transmission lines proposal, Deputy Forest Conservator, Jaisalmer in his subject Letter has reported in his Part II in Point 2 and has forwarded it in 2 copies in this office. As per diversion of transmission lines proposal Part-II Point No. 8(i) and as per Deputy Forest Conservator Site Inspection Report, the forest land applied for is natural zone of breeding of Godavan and their habitat. Therefore, it is not in the interest of conservation of Gadavan to grant approval for conversion of forest land in the*

case. Accordingly, necessary instructions by the undersigned are given in Part III for further action in the matter with one copy annexed.

Enclosures: Proposal in 1 copy

Sd/-  
R.K. Jain  
Chief Forest Officer  
Jodhpur ”

23. Subsequently, Deputy Conservator of Forest (DCF) (Wildlife), Jaisalmer issued its letter dated 5.2.2019 directing the Petitioner to keep the line route outside the GIB Arc. The relevant extract of the letter dated 5.2.2019 is as under

“To,

Mr. Rajnish Pandey,  
Associate Vice President, Transmission  
Fatehgarh-Bhadla Transmission Limited  
R-19, Housing Board Colony,  
Jethwai Road, Jaisalmer

Subject: In relation to finalizing the route of 765 kV D/C Fatehgarh-Bhadla Transmission Line, District Jaisalmer.

In Re: Your letter FBTL/Jaisalmer/F-B/F2 dated 23.01.2019

Sir,

It is stated in respect of aforesaid subject and context that KML File of the proposal made available by you for 765 kV D/C Fatehgarh-Bhadla Transmission Line, has been examined in the presence of the officers of your company with the KML file of GIB Arc, whereupon it was learnt that approximately 63 km of your proposed transmission Electric line passes through GIB Arc of D.N.P. As you are aware that the Godavan is the State Bird of Rajasthan and is included in the IUCN's Red Data List and is declared as Critically Endangered by IUCN. Apart from this, the same is wildlife animal in the Schedule I of the Wildlife Protection Act of 1972. There have also been incidents of Godavan (GIB) deaths earlier due to crash in the electric transmission lines located in the GIB Arc. The Hon'ble High Court, Jodhpur, has also taken the cognizance of above in view of the serious situation of Godavan.

Therefore, it is appropriate in light of the above facts. It will be that you may consider other options in relation to the proposed line and the new route.”

24. Subsequently, DCF, Jaisalmer vide its letter dated 28.2.2019 provided the coordinates of the GIB Arc area. The Petitioner has submitted that upon analysis of the coordinates, it was clear that the approved line route for 765 kV D/C Fatehgarh-

Bhadla Transmission Line is falling within the GIB Arc coordinates notified by the DCF, Jaisalmer.

25. It is observed from the letters dated 21.1.2019 and 5.2.2019 that the forest clearance was not denied to the Petitioner on account of any restriction on construction of transmission line in the GIB Arc area. The Forest authorities have not referred to ban on construction of transmission lines in the GIB Arc area but denied consent on the ground that GIB is a critically endangered bird and it would not be in the interest of conservation of GIB to grant approval for conversion of forest land in the case. Further, perusal of Survey Report of PFCCL and the circular of MNRE dated 22.2.2019 reveals that there was no restriction on construction of overhead transmission lines passing through GIB habitat areas, except installation of Bird Diverters as on cut-off date. The Petitioner has also submitted that there are already 3 other overhead transmission lines passing through the vicinity where Petitioner was required to construct the transmission line as per original approved route. In fact, the Petitioner wrote to the forest authorities vide its letters dated 23.1.2019, 29.1.2019, 2.2.2019 and 7.2.2019 to provide clarity on GIB Arc coordinates and sought to lay overhead transmission line in GIB Arc on the original route with installation of bird diverter/ reflector.

26. In light of the above discussion, it is held that imposition of condition to re-route the transmission lines by the forest authorities (along with savings on account of non-implementation of bird diverters/ reflectors and other associated cost thereof) is an event of change in law in terms of the Article 12.1.1 of the TSA which is extracted as under:

***“12 CHANGE IN LAW***

***12.1 Definitions***

12.1.1 "Change in Law" means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the TSP or any income to the TSP:

• .....

• **the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;**"

27. Since the Petitioner has not implemented the Project, no relief can be granted at this stage. However, the Petitioner is directed to implement the project at the earliest so that associated generating stations are not stranded. The Petitioner is granted liberty to approach the Commission for appropriate relief, if any, in terms of the provisions of the TSA after completion of the project.

28. The Petition No. 126/MP/2019 is disposed of in terms of the above.

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

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

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