

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 7/RP/2019 in

Petition No. 195/MP/2017

Coram:

**Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member**

Date of Order: 15.1.2020

In the matter of

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and Regulation 103 (1) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking review of order dated 29.03.2019 passed in Petition No. 195/MP/2017

And

In the matter of

NRSS XXXI (B) Transmission Ltd.

Essel Infraprojects Limited, 06th Floor,
Plot no. 19, Film City, Sector – 16 A,
Gautam Buddha Nagar, Noida, UP 201301

...Review Petitioner

Versus

1. **U.P. Power Corporation Ltd.**
14th Floor, Shakti Bhawan Extension,
14-Ashok Marg, Lucknow, Uttar Pradesh-226001.
2. **A.D. Hydro Power Ltd.**
A-12 Bhilwara Tower, Sector-1,
Noida, Uttar Pradesh-201301.
3. **Haryana Power Purchase Centre**
Shakti Bhavan Energy Exchange,
(Room No.446), Top Floor,



Sector-6, Panchkula, Haryana-134109.

4. **Punjab State Power Corporation Ltd.**
D-3, Shakti Vihar, PSPCL, Patiala-147001
 5. **Himachal Sorang Power Pvt. Ltd.**
#D-7, Lane-1, Sector-1,
New Shimla, Shimla, Himachal Pradesh-171009
 6. **Adani Power Ltd, Mundra**
3rd Floor, Achalraj Building,
Opp. Mayor Bungalow, Law Garden,
Ahmedabad-380006
 7. **Rajasthan Urja Vikas Nigam Limited**
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur-302005
 8. **Lanco Anpara Power Ltd.**
Lanco House, Plot No.397,
Udyog Vihar, Phase-3, Gurgaon-122016.
 9. **Lanco Budhi Hydro Power Pvt. Ltd.**
Plot No.397,
Udyog Vihar, Phase-3, Gurgaon-122016.
 10. **Power Development Deptt., Govt. of J&K**
Govt. of Jammu & Kashmir, SLDC Building,
220 kV Grid Station Premises, Gladni,
Narwal-Bala, Jammu-180006.
 11. **North Central Railways**
Head Quarter's Office, Subedarganj,
Allahabad-211033.
 12. **Jaiprakash Power Ventures Ltd.**
Sector-128, Noida-201304.
 13. **BSES Yamuna Power Ltd.**
2nd Floor, Shakti Kiran Building,
Karkardooma, New Delhi-110092.
 14. **BSES Rajdhani Power Ltd.**
BSES Bhawan, Nehru Place, New Delhi-110019.
 15. **Tata Power Delhi Distribution Ltd.**
NDPL House, Hudson Lines,
Kingsway Camp, New Delhi-110009.
 16. **New Delhi Municipal Council**
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NDMC, Palika Kendra, Parliament Street,
New Delhi-110001.

17. **Electricity Wing of Engineering Dept., Union Territory of Chandigarh**
Electricity OP Circle, 5th Floor,
New Deluxe Building, Sector-9, Chandigarh-160009.
18. **Power Grid Corporation of India Ltd.**
HVDC Dadri & HVDC Rihand, "Saudamini",
Plot No.2, Sector-29, Near IFFCO Chowk,
Gurgaon-122001
19. **PTC (Budhil), PTC India Ltd.**
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi-110066.
20. **PTC (Everest), PTC India Ltd.**
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi-110066.
21. **Uttarakhand Power Corporation Ltd.**
Victoria Cross Vijeyta Gabar Singh Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun-248001, Uttarakhand.
22. **Himachal Pradesh State Electricity Board Ltd.**
HPSEB Ltd., Vidyut Bhawan, Shimla-171004
23. **REC Transmission Projects Company Ltd.**
ECE House, 03rd Floor,
Annexe-II, 28 A, KG Marg,
New Delhi-110001

...Respondent(s)

For Review Petitioner : Shri M.G Ramchandran, Sr. Advocate, NRSS
Shri Shubham Arya, Advocate, NRSS
Shri Neeraj Kumar, NRSS

For Respondents : Ms. Swapna Seshadri, Advocate, PSPCL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri Tushar Mathur, Advocate, PGCIL
Ms. Sanjana Dua, Advocate, PGCIL
Shri Nehal Sharma, Advocate, PGCIL
Shri A. K. Verma, PGCIL
Shri Nitish Kumar, PGCIL
Shri Siddharth Sharma, PGCIL
Ms. Swati Verma, PGCIL



ORDER

The review petitioner, NRSS XXXI (B) Transmission Ltd. (hereinafter "Review Petitioner") had filed Petition no. 195/MP/2017 inter *alia* seeking compensatory and declaratory reliefs under the Transmission Services Agreement dated 02.01.2014 on account of various changes in law and force majeure events which affected the construction of 400 kV D/C Kurukshetra – Malerkotla and 400 kV D/C Malerkotla – Amritsar Transmission Lines under "Northern Region System Strengthening Scheme – XXXI (B)". The said Petition was decided by the Commission by the order dated 29.3.2019.

2. The review Petitioner has filed the present review petition seeking review/rectification/clarification of the Order dated 29.3.2019, inter-alia, on grounds of certain errors apparent on the face of record. The review Petitioner has made following prayers:

- a) *Admit the present Review Petition and review and rectify the Order Dated 29.03.2019 to the extent stated in the review petition; and*
- b) *Allow oral hearing of the present Review Petition before deciding the present review petition; and*
- c) *Consider the above-mentioned submissions made by the Review Petitioner and review the Order dated 29.03.2019 passed in Petition No. 195/MP/2017 to grant appropriate relief to the Review Petitioner; and*
- d) *Pass any other or further Orders as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.*

Submissions of Review Petitioner

3. The Commission has held in favour of the Review Petitioner that the requirement of obtaining forest clearance falls within the ambit of change in law and also that the time spent in obtaining the forest clearance for the Project was beyond the control of the Review Petitioner. However, the Commission has not considered



and granted the logical consequential reliefs of allowing the Review Petitioner in the IDC and IEDC in order to restore it to the same economic position had the above force majeure events not been there.

4. The Commission has not considered that PSPCL i.e., Respondent no. 4 had converted their existing 66 kV transmission lines from poles to towers, in the route of 400 kV DC Malerkotla – Amritsar Transmission Line of the Review Petitioner and that the same was not envisaged at the time of bidding for the Project which was awarded to the Review Petitioner in pursuance to the competitive process initiated by the bid process coordinator. The Review Petitioner had to provide additional tower extensions in the particular crossing segment to maintain suitable electrical clearances from such 66 kV tower lines, which were not factored in the bid given for the Project. In the order dated 29.03.2019, the Commission has held in favour of the Review Petitioner that the conversion of the 66 kV lines from poles to towers has been done by PSPCL after the site survey done by the Review Petitioner but has erroneously held that the said conversion on part of PSPCL would not amount to any change in the scope of work by the Review Petitioner since the conversion of 66 kV lines from poles to towers was a legitimate activity on part of PSPCL.

5. The Commission while denying relief to the Review Petitioner has failed to consider that the deviations as acted upon by PSPCL clearly fall within the ambit of Change in Law under Article 12.1.1 of the TSA, which, inter-alia, provides as under:

“12.1.1

- *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;

.....”

6. The Commission has also not considered that, at Kurukshetra sub-station, the actual co-ordinates of the terminating point were different from those specified in the RFP/ bid documents based on which the bids were invited and were submitted. This caused the Review Petitioner to change the entry alignment of 400 kV DC Kurukshetra - Malerkotla line and increase the Line length by 3.5 km. Such change in Kurukshetra and Malerkotla Gantry coordinates have resulted in an additional cost of approximately Rs. 6.88 crore due to increase in the length of 400 kV D/C Kurukshetra – Malerkotla transmission line by 3.5 kms.

7. The Commission has further erroneously held that there was slackness on the part of the Review Petitioner to pursue the matter of gantry coordinate confirmation with the CTU. There is nothing on record to show that the Review Petitioner did not pursue the matter with diligence and there cannot be any such negative/adverse assumption against the Review Petitioner in the absence of any material to show slackness on the part of the Review Petitioner. The Review Petitioner was coordinating with PGCIL regularly at site level. Even in absence of gantry coordinate confirmation by PGCIL, the Review Petitioner had completed the transmission line check survey of entire transmission line, except the PGCIL Kurukshetra and Malerkotla Substation area (for which the gantry coordinates were mandatory in order to finalize the entry of Review Petitioner’s transmission line to the respective substation). This clearly establishes that there was no reason or factor attributable to the Review Petitioner. There is also no reason for the Review Petitioner to delay only



the aspects of PGCIL Kurukshetra and Malerkotla Substation area while duly completing the work in other areas.

8. With regard to the above, the Commission has not considered the letter dated 15.01.2016 (placed on record) of Chief Engineer (CEA) to Chairman and Managing Director of PGCIL, in which it was stated by CEA that the bays at Kurukshetra substation were yet to be allocated and there could be space constraints to accommodate terminal bays for 02 nos. 400 kV D/C lines (Kurukshetra-Jind and Kurukshetra- Malerkotla line). Further CEA also advised PGCIL to finalize the bays and forwarded its location coordinates to the Review Petitioner, so that Review Petitioner may finalize route of its transmission line.

9. The Commission while extending Scheduled Date of Commercial Operation ("SCOD") of each element has not considered that the tariff for the first year was Rs. 124.37 crore which is higher than the Second year tariff of Rs. 88.30 crore, thus the differential tariff is Rs. 58.67 crore. The aforementioned differential amount qua tariff for the 07-month duration could not be realized due to force majeure events which was beyond control of Review Petitioner and have been held to be so by the Commission. The Review Petitioner submits that the monetary impact needs to be allowed to be recovered from the extended SCOD of respective transmission element.

10. Further, the review petitioner has submitted that it is seeking review for clarification of the following:

- a) The Commission has allowed the Review Petitioner to recover the amount paid by it to the forest authorities for obtaining the forest clearance and other expenditure incurred due to change in several taxes & duties from the LTTCs



and hence, directed the Review Petitioner to submit documentary evidence thereof to LTTCs. The documentary evidence pertaining to the same had already been submitted as part of the petition filed and has also been served to LTTCs. The details of the same has been enumerated in the table below:

S. NO.	PARTICULARS OF THE SUBMISSIONS MADE BY REVIEW PETITIONER IN IMPUGNED PETITION	Amount (Rs.)	CORRESPONDING REFERENCE AS ALREADY PLACED ON RECORD IN IMPUGNED PETITION (195/MP/2017)	REMARK
1	Forest Demand Notes and Payment Receipts			
1.1	For 400 kV D/C Kurukshetra-Malerkotla Line (Haryana portion)	68,41,672	Under Annexure – P17, Between Page no. – 1550 to Page no. – 1575	Submitted along with Impugned Petition filed
1.2	For 400 kV D/C Kurukshetra-Malerkotla Line (Punjab portion)	2,65,66,783	Under Annexure – P17, Between Page no. – 1576 to Page no. 1618	
1.3	For 400 kV D/C Malerkotla-Amritsar Line	6,02,68,541	Under Annexure – P17, Page no. – 1619 to Page no. 1684	
	Sub Total (1)	9,36,76,996		
2	Documentary Evidence in support of Change in several taxes & duties			
2.1	Change in excise duty (from 12.36% to 12.50%)	1,24,082	Under Annexure – 05, Page no. – 2991	Submitted through Review Petitioner affidavit vide dated 28.06.2018
	Change in excise duty (from 12.36% to 12.50%)	5,61,823	Under Annexure – 05, Page no. – 2992	
	Change in excise duty (from 12.36% to 12.50%)	11,16,244	Under Annexure – 05, Page no. – 2993	
	Change in service tax (from 12.36% to 15%)	38,94,573	Under Annexure – 05, Page no. – 2992	
2.2	Change in excise duty (from 12.36% to 12.50%)	5,79,028	Page no. – 3247	Submitted through Review Petitioner affidavit vide dated 24.12.2018
	Change in service tax (from 12.36% to 15%)	30,19,019	Page no. – 3247	
	Sub Total (2)	92,94,769		
	Grand Total (1+2)	10,29,71,765		



- b) The Commission has allowed the Review Petitioner to recover the amount paid by it to the forest authorities for obtaining the forest clearance and other legitimate expenditure incurred due to change in several taxes & duties from the LTTCs. However, the quantum of relief allowed in the form of percentage increase in yearly transmission charges as allowed under Article 12 (Change in Law) of Transmission Service Agreement has not been specified. The formula as provided in TSA for such quantification reads as under:

“.....

12.2.1 During Construction Period

For every cumulative increase/decrease of each Rupees One Crore Fifteen Lakhs Eighty Thousand only (Rs. 1.158 Cr.) in the cost of the Project up to Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to Zero Point Three One Three percent (0.313%) of the Non-Escalable

....”

- c) The Commission may clarify and provide that the Review Petitioner shall be entitled to recover the amount paid by it to the forest authorities for obtaining the forest clearance and other legitimate expenditure incurred due to change in several taxes & duties from the LTTCs, in terms of the above and recover the same as the revised transmission charges.

Reply of Respondent No. 4, Punjab State Power Corporation Limited (PSPCL):

11. The Respondent No.4 has submitted that the Review Petitioner has proceeded on an erroneous understanding and interpretation of the Force Majeure and the Change in Law clauses of the TSA. The view expressed by this Commission on the conversion of 66 kV transmission lines from poles to towers cannot by any stretch of imagination be an error apparent on the face of record. The Petitioner cannot reargue the same to be an issue of interpretation under the Force Majeure or Change in Law clauses of the TSA.



12. The Respondent No.4 has submitted that as per the TSA, the relief under Force Majeure clause is limited to extension of time and as such vide the impugned order, this Commission has condoned the entire delay on part of the Petitioner in commissioning of the project. It is not understood as to how the Review Petitioner can again seek any monetary relief by invoking Force Majeure clauses since as aforesaid, any relief *qua* cost escalation cannot be given under the Force Majeure clause of the TSA.

13. The Respondent No.4 has submitted that the project was accorded to the Review Petitioner consequent to a competitive bidding process as per Section 63 of the Electricity Act, 2003. Since it was through a bidding process, the Review Petitioner ought to have calculated all the risks and costs involved in the project and ought to have taken into account any and all cost escalations for which there was no provision in the bidding documents. The tariff as quoted by the Review Petitioner would have been arrived at by taking into account all such risks and factors.

14. The Respondent No.4 has submitted that the Review Petitioner is misleading this Commission by invoking Article 11.3 (b) of the TSA which deals with events which are beyond the scope of the parties. Conversion of 66 kV transmission lines from poles to towers cannot be termed as Force Majeure events. In any case, even if any event is declared to be a Force Majeure, the framework of the competitive bidding under Section 63 of the Electricity Act, 2003 permits time escalation and not cost escalation.

15. The Respondent No.4 has submitted that further, the Hon'ble Supreme Court in *Energy Watchdog v. CERC and Ors. (2017) 14 SCC 80* considered the scope of the Force Majeure clauses in similar PPAs and held that mere change in prices/



costs of inputs would not be a Force Majeure event. The judgement also settles the position that the regulatory commissions do not have general regulatory powers to grant compensatory/ restitutory relief. Further, the 'Force Majeure' exclusion clause provided in the PPA (which is the same as Article 11.4 of the present TSA) specifically states that the agreement becoming onerous to perform is not to be treated as a force majeure event.

16. The Respondent No.4 has submitted that the Review Petitioner has sought to misinterpret the provisions of Article 11.3 of the TSA by contending that any delay caused in the implementation of project is an event that wholly or partly prevents or unavoidably delays the performance of its obligations under the TSA. The reasons cited by the Review Petitioner qua the Answering Respondent are only the general approvals which are required in setting up transmission project and which are known much in advance to all bidders.

17. The Respondent No.4 has submitted that the Commission has rightfully denied cost escalation to the Review Petitioner vide the impugned order since the events which the Review Petitioner is trying to pass off as Force Majeure events are in fact mere approvals and project risks which are to be envisaged by a party submitting a bid in accordance with Section 63 of the Electricity Act, 2003.

18. The Respondent No.4 has submitted that the Commission has correctly held that conversion of 66 kV lines from poles to tower was a legitimate activity on the part of the Answering Respondent. Thus the deviations as acted upon by the Answering Respondent do not fall within the ambit of Change in Law under article 12.1.1 of the TSA.



19. The Respondent No.4 has submitted that the change in gantry coordinates does not necessitate the Review Petitioner to obtain clearances and as such cannot be termed as a Change in Law. It is submitted that such project risks are to be taken into account at the time of bidding. The Review Petitioner itself has admitted that the differential amount *qua* tariff could not be realized due to 'force majeure' events. In light of the aforementioned statement, it is obvious that the relief against Force Majeure events, if any, are limited to extension of time and not monetary compensation under the TSA.

20. The Respondent No.4 has submitted that there is no merit in the review petition and the same is liable to be rejected with cost.

Reply of BSES Rajdhani Power Limited, Respondent-14:

21. The Respondent No.14 has submitted that the Review Petitioner has contended that PSPCL had converted their existing 66 kV transmission lines from poles to towers in the route of 400 kV D/C Kurukshetra-Malerkotla transmission line which was not envisaged at the time of bidding for the project. The Commission has examined the issue in its impugned order and after hearing the parties analyzed the issue and finally decided in para 86 of the impugned order that the conversion of the 66 kV transmission lines from poles to towers would not amount to change in law being the legitimate activity of PSPCL. The contention of Review Petitioner in providing additional tower extension is misleading and without any basis as the statutory clearance between the transmission lines crossing each other remains the same whether the 66 kV transmission line is on poles or onto towers. Accordingly, there is no error apparent and the submission of the review Petitioner is liable to be rejected by the Commission.



22. The Respondent No.14 has submitted that the Review Petitioner has also contended that the Commission has not allowed IDC & IEDC from SCOD to actual commercial operation date which has been claimed under the Force Majeure clause. The Review Petitioner has further contended that the Commission although held the requirements of obtaining forest clearance but has not considered and granted the logical consequential reliefs of allowing IDC and IEDC. On this issue, the Respondent has submitted that the Commission has considered the issue under the Force Majeure clause under which the extension of COD does not entail any financial benefit in the form of IDC and IEDC. The order on this issue is based on the Judgments of the higher judicial forums which were quoted by Respondent-PSPCL and the same is part of the impugned order (Para-48). Accordingly, there is no error apparent and the submission of the review Petitioner is liable to be rejected by the Commission.

23. The Respondent No.14 has submitted that third issue raised by the Review Petitioner is expenditure relating to change in Kurukshetra and Malerkotla sub-station gantry co-ordinates which subsequently caused change in connection agreement for 400 kV D/C Kurukshetra-Malerkotla transmission line resulting into increase in length by 3.5 km. On this issue, it has submitted that the Commission examined the issue in its impugned order and after hearing the parties analyzed the issue and finally decided in para 105 of the impugned order that the Review Petitioner did not pursue the matter diligently with the CTU. There was slackness on the part of the Review Petitioner which could not be explained. Accordingly, there is no error apparent and the submission of the review Petitioner is liable to be rejected by the Commission.



24. The Respondent No.14 has submitted that the fourth issue raised by the Review Petitioner by way of clarification is that the Commission although decided for the requirements of forest clearance and expenditure incurred but is silent on the quantification of the consequential reliefs under change in law. On this issue, it has stated that RECTPCL i.e. Bid Process Coordinator had adequately forewarned the prospective bidders to conduct their own surveys and investigation of the transmission line routes prior to submission of their bids. Clause 5.1.4 of the draft TSA (which formed part of RFP) made it clear that the TSP shall be responsible for the survey and geo-technical investigation of the line route in order to determine the final route of the transmission lines (Para-41). It is also mentioned in the reply of RECTPCL that the disclaimer contained in the Survey Report made amply clear that the Survey Report was only indicative in nature. It is, thus, evidently clear that it is the Review Petitioner who has failed to perform his part of the act to visit the route concerning the Project and its surrounding areas to obtain or verify all the required information and also conduct the requisite investigation before submitting their bids. The Review Petitioner has chosen its own route for construction of transmission lines based on its own techno-economic evaluation and therefore liable to incur expenditure on forest clearance. The mere fact that the Commission has not quantified the consequential reliefs under change in law clearly show that there was either slackness or the route was techno-economically suitable to the Review Petitioner and hence under these circumstances it cannot be allowed any relief. It is also noted from Para-74 of the impugned order that the Commission has stated that the amount paid by the Petitioner to the forest authorities for obtaining diversion of forest land and other legitimate expenditure incurred in connection with forest clearance shall be reimbursable on account of change in law. It is the submission of



Respondent-BRPL that the amount of Rs. 9,36,76,996 incurred by the Review Petitioner is not the legitimate expenses on the basis of the facts as explained above and narrated from the impugned order nor such an expense can be reimbursed under the TSA. Thus, there is a mistake or error apparent on the face of the record. Accordingly, the Respondent has suggested that the Commission may correct the mistake or error apparent by disallowing the amount of Rs. 9,36,76,996 incurred by the Review Petitioner as it is not a legitimate expense. Such mistake or error can be corrected by the Commission through the review petition.

25. The Respondent No.14 has submitted that another issue under change in law is related to several taxes & duties amounting to Rs. 92,94,764. This amount is below the base value of 1.158 Crore for determining the impact of increase in non-escalable Transmission Charges and thus liable to be ignored by the Commission.

Analysis and Decision:

26. The Review Petition was heard on 16.9.2019 and the Commission after hearing the parties reserved the Order.

27. We have considered the submissions of review petitioner and the respondents. The review Petitioner has sought review of Order dated 29.3.2019 in Petition No. 195/MP/2017 on following grounds:

- a) The Commission has not considered and granted the consequential reliefs of allowing the IDC and IEDC from SCOD to actual COD.
- b) The Commission has not considered the additional cost incurred due to PSPCL converting their 66 kV transmission lines from poles to towers, as change in law.



- c) The Commission has not considered and granted additional expenditure incurred on account of change in the gantry coordinates at Kurukshetra & Malerkotla sub-station. The Commission has further erroneously held that there was slackness on the part of the Review Petitioner to pursue the matter of gantry coordinate confirmation with the CTU.
- d) The Commission while extending Scheduled Date of Commercial Operation (“SCOD”) of each element has not considered that the tariff for the first year was Rs. 124.37 crore which is higher than the Second year tariff of Rs. 88.30 crore, thus the differential tariff is Rs. 58.67 crore. The aforementioned differential amount qua tariff for the 07-month duration could not be realized due to force majeure events which was beyond control of Review Petitioner and have held to be so by the Commission.
- e) While allowing the Review Petitioner to recover the amount paid by it to forest authorities, it has not specified the methodology in this regard.

First Ground:

28. In the first ground, the review Petitioner has contended that the Commission in the impugned order has held that the requirement of obtaining forest clearance falls within the ambit of Change in Law and the time spent in obtaining it was beyond the control of the Review Petitioner. However, the Commission did not allow the IDC and IEDC in order to restore the Review Petitioner to the same economic position as if change in law had not occurred.

29. We have considered the submissions of review Petitioner. As regard the contention of review Petitioner, it is noted that the submission of review Petitioner was considered in the impugned Order and based on the submission of review Petitioner the Commission gave its finding on the said issue. The relevant part of the impugned Order is extracted as under:



“95. In our view, the Petitioner was prevented from discharging its obligations under the TSA on account of unexpected requirement and delay in grant of forest clearance which was not there in the RFP documents and as such delay beyond one year in grant of forest clearance is covered under Force Majeure. Accordingly, the SCOD shall stand extended till the actual CODs of Kurukshetra – Malerkotla and Malerkotla – Kurukshetra Transmission Lines which are 18.1.2017 and 27.3.2017 respectively. However, we would like to make it clear that the extension of COD of the instant assets does not entail any financial benefit in the form of IDC and IEDC to the Petitioner.”

30. Further, the Commission at para-113 of the impugned Order has held as under:

“113. The Petitioner has submitted that on account of events of Force Majeure and unexpected requirement of forest clearance, there was delay as a result of which there was time over-run of 128 days in case of Kurukshetra-Malerkotla Line and 196 days in case of Malerkotla-Amritsar Line. The Petitioner has submitted that it had incurred IDC during the period beyond SCOD till the respective dates of commercial operation of the Kurukshetra-Malerkotla and Malerkotla-Amritsar Transmission Lines. We have already extended the scheduled COD of the Kurukshetra-Malerkotla and Malerkotla-Amritsar Transmission Lines upto the actual CODs without the benefit of consequential IDC. Accordingly, the Petitioner’s prayer for grant of IDC for the period beyond the scheduled COD is rejected.....”

31. In view of above, the Commission had considered the submission of the review Petitioner and decided the issue. There is no error apparent on record. In our view, the review Petitioner is seeking to reagitate the matter by advancing fresh arguments which cannot be entertained in review.

Second Ground:

32. In the second ground, the review Petitioner has contended that the deviations (conversion from poles to towers) by PSPCL clearly fall within the ambit of Change in Law under Article 12.1.1 of the TSA.

33. We have considered the submissions of review Petitioner. As regard the contention of review Petitioner, it is noted that the submission of review Petitioner was considered in the impugned Order and the Commission has held as under:



“85. We have considered the submission of Petitioner and PSPCL. We have also gone through the Petitioner’s letter dated 21.3.2016 wherein the Petitioner informed PSPCL that while executing the transmission line, the Petitioner has been encountering the clearance problem from the newly constructed 66 kV line on tower structure. However, during the check survey, the lines were on poles and accordingly the height was considered by maintaining statutory clearance and the work was accordingly carried out.

86. We are of the view that although the conversion of the 66 kV lines from poles to towers has been done by PSPCL after the site survey done by the Petitioner but the same would not amount to change in law as claimed by the Petitioner since the conversion of 66kV lines from poles to tower was a legitimate activity on the part of PSPCL. In, the light of above discussion, we are not inclined to grant any relief in this regard.”

34. From the above, we observe that the Commission had considered the submission of the Review Petitioner and has held that the conversion of 66kV lines from poles to tower was a legitimate activity on the part of PSPCL and does not amount to change in law. The review Petitioner is seeking to re-agitate the matter by advancing fresh arguments, which cannot be entertained in review.

Third Ground:

35. In the third ground, the Review Petitioner has contended that the Commission did not consider additional expenditure of Rs. 6.88 crore incurred by the Review Petitioner towards increase in the length of transmission line due to change in gantry co-ordinates. The actual coordinates of the terminating point were different from those specified in the RfP/bid documents based on which bids were invited and submitted by the Review Petitioner. Further, the Commission erroneously held that there was slackness on the part of the Review Petitioner regarding gantry coordinate confirmation with CTU and did not consider the implication of letter dated 15.1.2016 of Chief Engineer, CEA addressed to PGCIL which, among others, advised PGCIL to finalize the bays and its location coordinates, to enable Review Petitioner to finalize route of transmission line.



36. We have considered the submissions of review Petitioner. The submission of review Petitioner was considered in the impugned Order and based on the submission of review Petitioner, the Commission has given its finding on the said issue. The relevant part of the impugned Order is extracted as under:

“98. The Petitioner has further submitted that at Kurukshetra Sub-station the actual co-ordinates of the terminating point were different from RFP and these caused the Petitioner to change the entry alignment of 400 kV D/C Kurukshetra- Malerkotla line and increase the Line length by 2.5 km. At Malerkotla Sub-station, the actual co-ordinates of the terminating point were different from RFP Specification and these caused the Petitioner to change in the entry alignment of 400 kV D/C Kurukshetra - Malerkotla line and increase the Line length by 1 km. It has resulted in an additional cost of approximately `6.88 crore for increase in length of 400 kV D/C Kurukshetra – Malerkotla transmission Line by 3.5 km.

104. The Petitioner vide its letter 14.5.2014 requested for gantry coordinates and PGCIL vide its letter dated 4.7.2014 had informed the Petitioner that there may be change in North Coordinate by few meters during detailed Engineering. Thereafter, the Petitioner after a gap of more than one year vide its letter dated 27.8.2015 sought clarification pertaining to change in North Coordinate gantry at Kurukshetra. In the said letter, the Petitioner had also acknowledged the receipt of GA & SLD of the bays at Malerkotla, Kurukshetra and Amritsar Substations on 4.7.2014. The coordinates were provided by PGCIL on 10.10.2015 for Malerkotla and on 12.3.2016 for Kurukshetra.

105. It is observed that the Petitioner wrote the first letter on 14.5.2014 and the next letter was written on 27.8.2015. The Petitioner has not explained the delay of one year in pursuing the matter. Moreover, the Petitioner has not placed on record any document to show that it was pursuing the matter with the CTU during the said period. As a TSP, it is expected on the part of the Petitioner to pursue the matter diligently with CTU. However, there was slackness on the part of the Petitioner. Therefore, we are not inclined to grant any relief in this regard.”

37. It is clear from the above that the Commission has already given a clear finding in the impugned order that there was slackness on the part of the Petitioner in pursuing the matter. The review Petitioner is trying to re-agitate the matter on merits at the stage of review which is not permissible. We are of the view that there is no error in the impugned order.



Fourth Ground:

38. In the Fourth ground, the review Petitioner has contended that the Commission, while extending SCOD of each element, has not considered that the tariff for the first year was Rs. 124.37 crore, which is higher than the second year tariff of Rs. 88.30 crore. Thus, the differential tariff is Rs. 58.67 crore and this aforementioned differential amount qua 07 month duration could not be realized due to force majeure events which was beyond control of Review Petitioner as has been held by the Commission.

39. We have considered the submission of review Petitioner. Contention of the Review Petitioner is that it is getting tariff from the actual CoD of the transmission line due to delay beyond its control, which has been condoned by Commission. Thus, it could not recover the tariff of first year which is higher than the second year, without any fault of the Review Petitioner.

40. We have perused the Order dated 29.3.2019. We find that review Petitioner had made a submission regarding the same in Petition No.195/MP/2017. In the present petition, the Review Petitioner has contended that the monetary impact needs to be allowed to be recovered from the extended SCOD of the respective transmission elements. In other words, the Review Petitioner is seeking that the first contract year should start from the date of actual COD of the transmission lines, and not from the dates indicated in the TSA in order to enable the Review Petitioner to recover the tariff envisaged for the first contract year which is more than the tariff for the second contract year and correspondingly extend the last contract year. In this regard, the relevant provision i.e. Schedule – 5 (d) of the TSA provides as under:



Schedule: 5

Computation of Transmission charges

d. In case of any extension of time period for the Scheduled COD, the applicable Transmission Charges in relation to an Element shall be the Transmission Charges of the Contract Year. In which the COD of such Element Occurs or it has deemed to have occurred, and in relation to the Project, The Transmission Charges applicable will be for the Contract Year in which the COD occurs.

41. From the above, provision of TSA it is noted that it is clearly provided that in case of any extension of time period for the SCoD, the applicable transmission charges for an element shall be of the contract year in which the CoD of the element has occurred. Hence, the prayer of petitioner to allow first year tariff is rejected. The Petitioner had raised the issue of tariff for the extended period during hearing held on 16.09.2019, and requested for liberty to file fresh petition in this regard. In this regard, we grant the petitioner the liberty to file a separate petition regarding tariff for the extended period.

Fifth Ground:

42. The review Petitioner has sought clarification regarding grant of quantum of relief allowed in the form of percentage increase in yearly transmission charges as allowed under Article 12 of TSA.

43. We have considered the submission of the review Petitioner. The quantum of relief allowed in the form of percentage increase in yearly transmission charges was not specified in order dated 29.3.2019 and we are of the view that it should have been specified in the impugned order and the same is an error apparent. The relief on account of Change in Law during the construction period is provided in Article 12.2.1 of the TSA dated 2.1.2014 between the Review Petitioner and the LTTCs and it provides as follows:-



“.....

12.2.1 During Construction Period

For every cumulative increase/decrease of each Rupees One Crore Fifteen Lakhs Eighty Thousand only (Rs. 1.158 Cr.) in the cost of the Project up to Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to Zero Point Three One Three percent (0.313%) of the Non-Escalable

....”

44. The Review Petitioner was affected by Change in Law events and is entitled to recover the amount paid by the Review Petitioner to the forest authorities for obtaining forest clearance and other legitimate expenditure due to change in taxes and duties as allowed in order dated 29.3.2019. Accordingly, as per the above provision of TSA, the Review Petitioner is entitled for increase in non-escalable transmission charges, which shall be equal to 0.313% of non-escalable transmission charges for every cumulative increase of Rs. 1.158 Cr in the cost of the project upto scheduled COD. The Review Petitioner may claim the same from the LTTCs in terms of the above provision in TSA for the amount allowed under change in law in order dated 29.3.2019.

45. The Review Petition No. 7/RP/2019 in Petition No. 195/MP/2017 is disposed of in terms of above.

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

Sd/-
(P.K. Pujari)
Chairperson

