

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 13/MP/2021

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 7th May, 2022

In the matter of

Petition under Section 63 and Section 79 of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relief under Force Majeure, (Article 11) and Change in Law, (Article 12) of Transmission Service Agreement dated 31.08.2015, related to Strengthening of Transmission System beyond Vemagiri.

And

In the matter of

POWERGRID Southern Interconnector Transmission System Limited (PSITSL),
(Formerly known as Vemagiri II Transmission Limited)
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016

....Petitioner

Vs

- 1) Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),
(Through its Managing Director)
Srinivasapuram, Thiruchanoor Road,
Tirupati-517503, Andhra Pradesh
- 2) Eastern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),
(Through its Managing Director)
P&T Colony, Seethammadhara,
Visakhapatnam- 530 013, Andhra Pradesh
- 3) Bangalore Electricity Supply Company Limited,
(Through its Managing Director)
Krishna Rajendra Circle,
Bangalore-560001

- 4) Gulbarga Electricity Supply Company Limited,
(Through its Managing Director)
Main Road,
Gulbarga-585102
- 5) Hubli Electricity Supply Company Limited,
(Through its Managing Director)
Corporate Office, P.B. Road, Navanagar,
Hubli- 580025
- 6) Mangalore Electricity Supply Company Limited,
(Through its Managing Director)
Paradigm Plaza, A.B. Shetty Circle, Pandeshwar,
Mangalore - 575001
- 7) Chamundeshwari Electricity Supply Corporation Limited,
(Through its Managing Director)
No.29, CESC Corporate Office,
Hinkal, Vijaynagar 2nd Stage,
Mysuru - 570017
- 8) Tamil Nadu Generation & Distribution Corporation Limited,
(Through its Chairman cum Managing Director)
NPKRR Malligai, 144 Anna Salai,
Chennai – 600 002
- 9) Kerala State Electricity Board,
(Through its Chairman cum Managing Director Limited)
Vaidyuthi Bhawanam, Pattom,
Thiruvananthapuram – 695004
- 10) Southern Power Distribution Company of Telangana Limited,
(Through its Managing Director)
6-1-50, Mint Compound,
Hyderabad – 500 063, Telangana
- 11) Northern Power Distribution Company of Telangana Limited,
(Through its Managing Director)
2-5-31/2, Vidyut Bhawan, Nakkalgutta, Hanamkonda,
Warangal – 506 001
- 12) Electricity Department,
(Through its Superintending Engineer Cum Head of Department)
Government of Puducherry (PED),
137, Nethaji Subhash Chandra Bose Salai,
Puducherry – 605 001

13) Chief Electrical Engineer,
Electricity Department, Government of Goa,
Vidhyut Bhawan, Panaji,
Goa - 403001

14) Chief Executive Officer,
REC Power Development and Consultancy Limited,
(Formerly REC Power Distribution Company Limited)
REC Corporate Head Quarters,
D Block, Plot No. I – 4, Sec – 29,
Gurugram – 122 001

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

16) Chief Operating Officer,
Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector -29,
Gurgaon 122001

....Respondents

The following were present:

Shri M. G. Ramachandran, Sr. Advocate, PSITSL
Shri Shubham Arya, Advocate, PSITSL
Ms. Poorva Saigal, Advocate, PSITSL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Burra Vamsi Rama Mohan, PSITSL
Shri V. C. Sekhar, PSITSL
Shri Prashant Kumar, PSITSL
Shri Arjun Malhotra, PSITSL
Shri Venkatapathi Raju Nadimpalli, PSITSL
Dr. R. Kathiravan, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Shri R. Srinivasan, TANGEDCO

ORDER

The present Petition has been filed by the Petitioner, Power Grid Southern Interconnector Transmission System Limited ('PSITSL'), (earlier known as Vemagiri II Transmission Limited,) under Section 63 and Section 79 of the Electricity Act, 2003

(hereinafter referred to as 'the Act') seeking extension of time and compensation under Article 11 (Force Majeure) and Article 12 (Change in Law) of the Transmission Service Agreement dated 31.8.2015 (in short 'TSA'), which has adversely affected the construction of the 'Transmission System Strengthening of Transmission System beyond Vemagiri' (in short, 'the Project'). The Petitioner has made the following prayers:

“(i) Admit and entertain the present petition under Section 63 read with Section 79 of the Electricity Act, 2003 for claim of the Project being affected by Force Majeure events and Change in Law events and for providing relief under Article 11 and Article 12 respectively of Transmission Service Agreement dated 31.08.2015 as set out in the petition.

(ii) Hold that the Petitioner is entitled for time extension of 289 days on account of Force Majeure conditions.

(iii) Hold that the Petitioner shall be entitled to get the increase in cost of Project amounting to Rs 488.40 crore during execution and completion of the transmission project.

(iv) Hold that the Petitioner shall be entitled to increase in adopted annual non-escalable charges by 7.75% on account increase in aforementioned cost of project due to Change in Law.

(v) Allow recovery of filing fees and legal expenses in regard to the present Petition.”

Background

2. The Petitioner is a fully owned subsidiary of Power Grid Corporation of India Limited (in short 'PGCIL'), which was selected as a successful bidder through the tariff based competitive bidding under Section 63 of the Act to establish the Project on Build, Own, Operate and Maintain (BOOM) basis. The Petitioner is required to provide transmission service to the LTTCs (arrayed as Respondent No.1 to Respondent No.13) of the Project which requires establishing the transmission system comprising of the following transmission elements:

Sr. No.	Project Element	Scheduled Commercial Operation Date (SCOD)	Actual Commercial Operation Date (COD)	Difference in days
1.	Element 1 (a) Srikakulam Pooling Station - Garividi 400 (Quad) D/C Line (b) 2 number of 400 line bays at Garividi 400 kV S/s of APTRANSCO	February 2019	6.8.2018	Completion before SCOD
2.	Element 2 Cuddapah - Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit.	February 2019	28.2.2019	As per schedule
3.	Element 3 (a)Chilakaluripeta-Narasaraopeta (Sattenapalli) 400 D/C (Quad) line (b) 2 number 400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO	4.4.2019	Completed and CEA approval for energisation letter dated 15.10.2018 Charged on 29/30.3.2019 and Trial Operation completed on 30.7.2019 However, Actual COD achieved on 31.7.2019 after power flow from Cuddapah - C'Peta line	Completion as per schedule However, delay of 118 days in achieving actual COD after power flow from Cuddapah - C'Peta line
4.	Element 4 Establishment of 765/400 sub-stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each	4.4.2019	Completed and CEA approval for energisation letter dated 15.10.2018, 11.3.2019 and 28.3.2019 Charged on 29/30.3.2019 Trial Operation completed on 30.7.2019 However, Actual COD achieved on 18.1.2020 due to non-readiness of	Completion as per schedule However, delay of 289 days in achieving actual COD due to non-readiness of Vemagiri - C'Peta line owing to Force Majeure and Change in Law conditions

			Vemagiri – C’Peta line owing to Force Majeure and Change in Law conditions	
5.	Element 5 Chilakaluripeta-Cuddapah 765 D/C line with 2x240 MVAR switchable line reactor at both ends	4.4.2019	Completed and ready for charging (CEA approval for energisation letter dated 28.03.2019) However, actual COD achieved on 18.01.2020 due to non-readiness of Vemagiri— C’Peta line owing to Force Majeure and Change in Law conditions	Completion as per schedule However, delay of 289 days in achieving actual COD due to non-readiness of Vemagiri – C’Peta line owing to Force Majeure and Change in Law conditions
6.	Element 6 Vemagiri II-Chilakaluripeta 765 KV D/C Line with 2x240 MVAR switchable line reactors at both ends	4.4.2019	18.1.2020	Delay of 289 days due to Force Majeure and Change in Law conditions

3. The Petitioner was incorporated as a Special Purpose Vehicle (‘SPV’) by Bid Process Coordinator (in short, ‘BPC’), namely, REC Transmission Projects Company Limited (Now known as ‘REC Power Development and Consultancy Limited’) (in short ‘RECTPCL’) for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. In the bid process conducted by RECTPCL, PGCIL participated and emerged as the successful bidder. Letter of Intent (LoI) was issued by RECTPCL to PGCIL on 29.10.2015. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with RECTPCL on 4.12.2015. Under the TSA, Tamil Nadu Generation & Distribution Corporation Limited (‘TANGEDCO’) has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations

specified therein. The Commission in its order dated 14.3.2016 in Petition No. 300/TL/2015 granted transmission licence to the Petitioner for inter-State transmission of electricity and vide order dated 9.2.2016 in Petition No. 299/ADP/2015 adopted the transmission tariff of the Petitioner.

4. As per the TSA, the Project was to be completed and commissioned by February 2019/April 2019. However, the Petitioner has claimed that implementation of the Project was affected due to various Force Majeure and Change in Law events encountered during construction of the Project and its elements and led to certain delay in achieving the Commercial Operation Date (in short 'COD').

Submissions of the Petitioner

5. The Petitioner has mainly submitted as under:

(a) Element 1 and Element 2 were commissioned within the Scheduled Commercial Operation Date (hereinafter referred to as 'SCOD') as per the TSA. The Element 3, although completed in all aspects within the prescribed time schedule, achieved COD only after power flow in Cuddapah-C'peta line. The Element 4 and Element 5, even though completed in all respects within the prescribed time schedule, could not be commissioned as the pre-requisite Element 6 could not be completed owing to Force Majeure and Change in Law events. The Element 6 got delayed due to Force Majeure and Change in Law events encountered during the construction of the said element and could only achieve commercial operation only on 18.1.2020. Simultaneously, Element 4 and Element 5 were also declared for commercial operation on the same date. This

establishes that commercial operation of Element 4 and Element 5 were deferred only on account of delay affecting Element 6.

(b) The complete Project including all elements had been completed within the prescribed time schedule of the TSA, except for a 40 km stretch in Vemagiri-C'Peta 765kV D/C transmission line which held up the commissioning of the Project. The 40 km stretch in Vemagiri-C'Peta 765kV D/C transmission line was held up owing to Force Majeure and Change in Law conditions which could not have been anticipated and were beyond the control of the Petitioner.

(c) The Force Majeure and Change of Law events that had occurred during the construction stage and during implementation of the Project and prevented the Petitioner from discharging its obligations as per TSA with respect to commissioning of transmission element in line with Project's SCOD are detailed below.

Sr. No.	Force Majeure/ Change in law Event	Time Period	Delay with overlap	Delay without overlap
1	Delays and Severe Right of Way issues due to the change in Policy regarding land compensation in the State of Andhra Pradesh	1.4.2017 to 1.8.2019	853 days	853 days
2	General Elections	11.3.2019 to 23.5.2019	74 days (overlap with S.No.1)	0 days
3	Heavy Rainfall	August to October, 2019 (Heavy Rain fall in August, September & October 2019 were 20days, 20 days & 17 days, respectively)	57 days	57 days
4	Demonetization	8.11.2016 to 31.1.2017	85 days	0 days

5	Wildlife clearance obtained from National Tiger Conservation Authority (NTCA)	14.5.2018 to 15.11.2018	186 days	0 days
6	Delay due to promulgation of Goods and Services Taxes (GST) Act, 2017	1.7.2017 to 28.9.2017	90 days	0 days
Total Impact			1345 days	910 days

(d) The Force Majeure/ Change in Law events affecting the implementation of the elements and Project were beyond the reasonable control of the Petitioner and despite all efforts put in by the Petitioner could not be avoided. Due to continuous and prudent efforts and by employing industry's best prudent utility practices, implementation of the elements and Project was expedited in such a manner that the impact on the Project in terms of delay was minimized and the Project was completed with a delay of merely 289 days.

(e) The following Change in Law events occurred during the implementation of the Project leading to increase in the cost of Project:

- (i) Increase in Acquisition price of SPV by BPC.
- (ii) Notification of Goods and Service Tax Act, 2017 (hereinafter referred to as 'GST Laws') by Government of India.
- (iii) Notification of payment of Land compensation for tower base as well as corridor of transmission line by State Governments of Andhra Pradesh and Karnataka.
- (iv) Additional payment towards Wild life clearance from NTCA.
- (v) Cost Overrun on account of increase in the Project cost including funding cost and overhead cost due to Change in Law.

(f) Prior to bid submission, BPC vide its letter Ref No: RECTPCL/P-20/Vemagiri/RFP/2015-16/1704 dated 17.9.2015 had intimated to the bidders that the acquisition price payable by the selected bidder for acquisition of 100%

equity shareholding of Vemagiri-II Transmission Limited along with all its related assets and liabilities as Rs.18,14,41,000/-. Subsequent to bidding, BPC vide letter dated 1.12.2015 intimated the successful bidder the final acquisition price as Rs.18,26,64,718/-. This increase in acquisition price by Rs.12,23,718/- (From Rs.18,14,41,000/- to Rs.18,26,64,718/-) constitutes a Change in Law event covered under Article 12.1.1 of the TSA as it has occurred after cut-off date which is seven days prior to the bid deadline. The increase in the cost of the Project due to increase in acquisition price by BPC is Rs.0.20 crore which includes funding cost of Rs.0.07 crore and overheads of Rs.0.01 crore.

(g) Introduction of GST Laws by the Parliament after the cut-off date (7 days prior to the bid deadline) i.e. 2.10.2015 qualifies to be a Change in Law. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018, *inter-alia*, has already held that introduction of GST and subsuming/ abolition of specific taxes and duties, etc. in the GST constitute Change in Law. The claim of the Petitioner on account of introduction of GST Laws is Rs.61.24 crore up to March 2020 and Rs.0.20 crore is anticipated keeping in view the balance payments of the capital expenditure.

(h) As per the auditor certified calculation, net increase in cost of the Project due to revision in tax rates and introduction of GST after cut-off date is Rs.78.15 crore (including funding cost of Rs.13.35 crore and overheads of Rs.3.36 crore).

(i) Notifications/Orders were issued by the Governments of Andhra Pradesh and Karnataka with regard to payment of land compensation for transmission

lines in the States of Andhra Pradesh and Karnataka respectively. Since these Notifications/Orders issued by the Governments of Andhra Pradesh and Karnataka were issued after cut-off date i.e. 2.10.2015 (7 days prior to bid deadline), these qualify as Change in Law event in terms of Article 12.1.1 of the TSA. The additional expenditure incurred towards land compensation is Rs.171.64 crore.

(j) As per the auditor certificate, net increase in cost of the Project during the period of delay consequent upon the Change in Law event from April 2019 to CoD (January, 2020) is as under:

Sl. No	Description	Amount (Rs. crore)
(a) Payment towards land compensation		
a	Payment towards land compensation	171.64
b	Overheads towards (a)	10.11
c	Funding cost towards (a), (b)	23.42
(b) Increase in cost of equipment / services during the period April 2019 to CoD		
d	Payment towards cost of equipment / services	10.08
e	Overheads towards (d)	0.59
(c) Cost towards the un-commissioned elements from April 2019 to CoD		
f	Funding cost	174.87
g	Overheads	0.53
Total (a) + (b) + (c)		391.24

(k) A new requirement of obtaining National Tiger Conservation Authority ('NTCA') clearance due to notification of the Tiger Reserve subsequent to the bidding of the Project constitutes as a Change in Law event. The additional cost implication owing to the above new requirement is Rs.15.47 crore which was paid by the Petitioner to the Forest Department as per their invoices raised towards wild-life clearance and the Petitioner is entitled for relief in this regard as

per Article 12 of the TSA.

(l) The increase in cost of the Project due to payment under wild life clearance demanded by Government authorities after the cut-off date is Rs.18.81 crore (inclusive of funding cost of Rs.2.43 crore and overheads cost of Rs.0.91 crore).

(m) In terms of Article 12.2 (Relief for Change in Law) of the TSA, the impact of Change in Law for the construction period is to be given as an increase in the cost of the Project. The cost of the Project or the Project cost refers to and encompasses within its scope all costs in regard to establishment of the Project incurred by the entity i.e. not only the hard cost of the capital assets (i.e. plant, machinery and equipment, etc.) installed in the Project but also the interest cost, finance charges during construction and other soft costs related to establishment of the Project.

(n) The Petitioner has submitted that as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short, 'the 2014 Tariff Regulations'), Interest During Construction (IDC), which essentially comprises of the interest payable on debt part, is allowed to be capitalized along with other hard costs. The total expenditure incurred towards the Project including on account of time overrun is capitalized along with IDC as an additional cost. It has been submitted that for competitively bid transmission projects, increase in Project cost on account of Change in Law events need to be fully serviced. The increase in the Project cost as such comprises of (a)

additional cost on account of Change in Law events, (b) incidental expenditure associated with such Change in Law, and (c) funding of such additional cost during the construction period. The entire increase in the Project cost (100%) on account of capital expenditure incurred by the Petitioner on account of Change in Law as well as the funding and financing cost of such capital expenditure in full during the construction period and the incidental expenditure incurred owing to Change in Law need to be serviced by increased transmission charges payable over and above the quoted transmission tariff during the entire period of the TSA in order to compensate the Petitioner of the impact of Change in Law events. Therefore, the compensation/ relief should not be restricted to only the capital expenditure incurred but should also include funding and financing cost as well as the overheads cost.

(o) As to overhead cost, the Petitioner has entered into a Consultancy Agreement with Power Grid Corporation of India Limited to establish the Project with Consultancy Charges @ 5% + applicable taxes on the Project cost. In lieu of IEDC which is incurred as an overhead on the Project cost, the overheads have been claimed owing to the increase in the Project cost on account of Change in Law.

6. The Petitioner has summarized the increase in the cost of Project on account of Change in Law events along with funding cost and overhead cost as under:

(Rs. in crore)					
Sr. No.	Change in Law Event	Basic Amount	Associated increase in Overhead costs	Associated increase in Funding costs	Increase in project cost on account of Change in Law
1.	Increase in Acquisition Price of SPV by BPC	0.12	0.01	0.07	0.20
2.	Notification of GST Laws by Government of India	61.44	3.36	13.35	78.15
3.	Notification of payment of Land compensation for tower base as well as corridor of transmission line by State Governments of Andhra Pradesh and Karnataka.	181.72	11.23	198.29	391.24
4.	Additional payment towards Wild life clearance from NTCA	15.47	0.91	2.43	18.81
	Total impact of Project Cost	258.75	15.51	214.14	488.40

Hearing dated 22.04.2021

7. The Petition was admitted on 22.04.2021 and notices were issued to the Respondents to file their reply. The Respondent, TANGEDCO has filed its reply and the Petitioner has filed rejoinder to the same.

Reply of TANGEDCO

8. TANGEDCO, in its reply dated 13.8.2021, has mainly submitted as under:

(a) The Petitioner has declared COD of Srikakulam Pooling Station-Garividi 400 kV (Quad) D/c line in advance i.e. prior to its SCOD without consent of the beneficiaries. The Petitioner has deliberately avoided discussing the advancement of COD of the above asset with the LTTCs and failed to obtain the concurrence of the Lead LTTC/beneficiaries. In the absence of the concurrence of the Lead LTTC/ beneficiaries / SRPC forum, the Petitioner is eligible to avail tariff from the SCOD of the asset as per TSA. Hence, the Petitioner may be directed to recover the transmission charges from SCOD till the COD declared unilaterally by the Petitioner and refund the amount recovered from the beneficiaries if it has been included in the PoC pool.

(b) According to the Petitioner, Element 3 was completed in all respect within the SCOD and achieved COD on 31.7.2019 only after power flow in Cuddappah-Chilakaluripetah line was established. Similarly, Element 4 & Element 5 were completed within the SCOD and could not be commissioned due to prerequisite of commissioning of Element 6, which was delayed due to Force Majeure and Change in Law events. Since the Project is implemented as a system strengthening scheme, any of the elements added to the system would have been beneficially utilized as and when it was ready for commissioning. For instance, the Chilakaluripettah-Cuddappah 765 kV D/c lines, Chilakaluripettah 765/ 400 kV substation and the downstream 400 kV lines from Chilakaluripettah could have been brought to beneficial use independent of the Chilakaluripettah-Vemagiri 765 kV line. The Petitioner and the planning agencies are well aware of this technical feasibility. There were number of options available before the Petitioner to bring the assets into beneficial use independently. Also, Schedule 3 of the TSA provides element-wise tariff. If there was any technical / commercial constraint in commissioning the other Elements independent of the Element 6, then the Petitioner should have approached SRPC or the Commission for redressal. Without acting diligently, the Petitioner had kept the transmission elements idle for 171 days i.e. from the date of completion of the trial operation till the COD i.e.17.1.2020. This is total laxity on the part of the Petitioner and the delay is fully attributable to the Petitioner. Had it been brought to the knowledge of the Commission, the assets would have been put into beneficial use. Without bringing the assets into beneficial use, the Petitioner is not entitled to any reliefs and hence, the prayer of the Petitioner to extend the SCOD of the Element 3, Element 4 and Element 5 are liable to be rejected.

(c) The Petitioner should have been aware of the route of the transmission lines, land acquisition issues, seasonal rains, wildlife clearance and other issues which are actually factored in the timeline for completion of the Project. The Petitioner is responsible for timely completion of the Project and no time

extension or cost extension is allowed as per the RfP. The Petitioner's Force Majeure claims like RoW issues, general elections, heavy rainfall, demonetization, wildlife clearance and promulgation of GST Act, 2017 are not covered under Natural/Non-Natural Force Majeure conditions stipulated in the TSA. The Petitioner is duty bound to foresee such eventualities and act accordingly, rather than passing the burden of such eventualities on the beneficiaries.

(d) The Petitioner has submitted that route Survey Report furnished for Chilakaluripeta-Cuddapah 765 kV D/C line furnished by BPC did not indicate requirement of wildlife clearance and only on inquiry and pursuing with DFO, the Petitioner was confirmed that wildlife clearance is required to be obtained even for the route proposed by BPC. However, the Petitioner is duty bound to visit the route of lines associated with the Project and the surrounding areas and obtain/verify all information which they deem fit and necessary for the preparation of their bid. In addition, the Petitioner should have adhered to the provisions under Clause 2.14.2.4 of the RfP wherein it is provided that bidders in their own interest should carry out required survey and field investigation for submission of their bids. The Petitioner's fault in not surveying the route and the delay in getting the clearance cannot be factored into the cost escalation.

(e) As regards the increase in the Project cost due to notification of payment of land compensation by Governments of Andhra Pradesh and Karnataka, the Petitioner should have sought legal remedies to restrict the additional land compensation in line with the MoP Guidelines instead of settling down with the land compensation set by the State Governments. For instance, the heavy/excess land compensation to that of MoP Guidelines levied on PGCIL for erection of Edamon-Cochin 400 KV corridor under Kudankulam scheme was borne by the Government of Kerala. The Petitioner has failed to seek legal remedies against the land compensation levied by the State Governments or otherwise would have insisted the same approach in paying land compensation as that of Edamon-Cochin 400 KV corridor, since the States of Andhra Pradesh

and Karnataka are also benefited by the transmission Elements of the Project. The Petitioner may be directed to furnish the split-up details of payment of land compensation for individual assets that may include details of asset-wise land compensation levied by the State Governments of Karnataka and Andhra Pradesh that were in excess of that of MoP Guidelines along with notified dates and payment made with respect of each Element.

(f) The Petitioner has tabulated and claimed the increase in Project cost during the period of delay consequent to Change in Law events from April 2019 to CoD of the Project which includes (i) payment towards land compensation, (ii) increase in cost of equipment/services during the period from April, 2019 to CoD, and (iii) cost towards un-commissioned Elements from April, 2019 to CoD. However, the said claim of the Petitioner is irrational. The Petitioner has not furnished Element-wise details of compensation paid and justification for claiming such a huge overhead and funding costs towards dispersal of the compensation. The Petitioner has stated that except for 40 km stretch of Vemagiri-C'peta 765 kV line, all other elements were completed prior to SCOD and thus, the material for entire Project would have been supplied by the Contractors prior to April, 2019. Under such circumstances, it is not appropriate to claim the material/equipment cost escalation beyond SCOD.

(g) Also, the delay in declaring CoD of the other Elements is totally attributable to the Petitioner and hence, the funding cost on account of un-commissioned elements from April, 2019 to COD is unjust and will only enrich the Petitioner at the cost of the end consumers. Accordingly, the prayers for increase in cost of equipment and funding cost on account of non-commissioning of the other Elements ought to be rejected.

(h) As per Article 12.2 of the TSA, it is clear that increase in cost of the Project can be availed only till the SCOD of the Project. Further, the relief is applicable only to the hard cost of the Project excluding the financing charges/ interest and other overheads. It is irrelevant to compare the provisions under

Tariff Regulations under the ambit of Section 62 of the Act with the tariff determination process for TBCB projects under Section 63 of the Act, which otherwise would defeat the objective of competitive bidding.

(i) As per Article 11.5 of the TSA, the Petitioner is bound to give notice for any Force Majeure event and to seek extension of time. Extension of time is allowable on 'day for day' basis as per Article 4.4 of the TSA up to a maximum of 180 days. Since the Petitioner has not sought and obtained any consent from LTTCs for extension in line with Article 4.4.1 of the TSA, the Petitioner is not entitled for any relief under the provisions of TSA.

(j) There is a total delay of about 289 days from SCOD up to actual CoD of Element 3, Element 4, Element 5 and Element 6. As per Article 6.4.1 of the TSA, the liquidated damages are applicable for delay in declaring the CoD of the Elements of the Project. Accordingly, the LTTCs may be permitted to recover the liquidated damages for the delayed period as per the provisions of TSA.

Rejoinder of Petitioner to the Reply of TANGEDCO

9. The Petitioner in its rejoinder dated 30.0.2021 to the reply filed by TANGEDCO has submitted as under:

(a) Element 1 being Srikakulam Pooling Station-Garividi 400 kV (Quad) D/c line was put into early commissioning in terms of the Meeting held on 1.11.2017 in the Central Electricity Authority (CEA) to discuss the early commissioning of 'Strengthening of Transmission System beyond Vemagiri' being implemented by the Petitioner. Pursuant to the above, on 10.4.2018, the Petitioner wrote a letter giving Notice under Article 6.1 of the TSA to SRLDC, NLDC, CEA, CTU, lead LTTC, TANGEDCO and other LTTCs intimating its intention to declare the commercial operation of Srikakulam Pooling Station-Garividi 400 kV (Quad) D/C line and 2 number 400 kV line bays at Garividi 400 kV S/s of APTRANSCO. Thereafter, on 6.8.2018, in terms of the provisions of the TSA, the Petitioner declared the Commercial Operation of 400 kV D/C Srikakulam Pooling Station–

Garividi line along with associated bay equipment at Garividi sub-station. On the same date, the Petitioner sent a letter to this Commission, CEA, SRPC, POSOCO, TANGEDCO, the Lead LTTC, other LTTCs informing about early commissioning of the above Element 1 on 6.8.2018. There has been no objection from TANGEDCO to early commissioning of the above Element. Further, as recorded in the meeting, TANGENDCO had in fact provided “No Objection” to the early commissioning of the above Element. In fact, the transmission charges of the asset were considered under PoC mechanism after discussion in Validation Committee meeting dated 12.3.2019. Therefore, TANGEDCO’s contentions regarding recovery of tariff of the subject asset is mischievous and wrong.

(b) In terms of Schedule III of the TSA, the Elements could be declared under commercial operation only after the Element which is prerequisite for declaring the commercial operation of such element is also declared under commercial operation. The details of pre-requisite Elements on which the commercial operation of the asset was dependent are as under:

- I. Chilakaluripeta-Narasaraopeta Sattenapalli) 400 D/C (Quad) line and 2 no.400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO could only be declared successfully declared under commercial operation after power flow at “Establishment of 765/400 sub-stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each”.
 - i. The above asset was completed in all respects and CEA approval for energisation was received by letter dated 15.10.2018
 - ii. The trial operation was successfully completed on 30.7.2019.
 - iii. The actual COD was achieved on 31.7.2019 after the power flow from 765/400 kV sub-station at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each through Cuddapah - Chilakaluripeta 765 kV D/C line.
- II. 765/400 sub-station at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each could only be declared under commercial

operation with CoD of Vemagiri II-Chilakluripeta 765 kV D/C line with 2x240 MVAR switchable line reactors at both ends

- i. The trial operation was successfully completed on 30.7.2019.
- ii. The above asset was in use since completion of trial operation and the actual COD was achieved on 18.1.2020 as per TSA provision related to prerequisite Elements i.e. after the commercial operation of Vemagiri II-Chilakluripeta 765 kV D/C line with 2x240 MVAR switchable line reactors at both ends

III. Chilakaluripeta-Cuddapah 765 D/C line with 2x240 MVAR switchable line reactor at both ends could only be declared under commercial operation with CoD of Vemagiri II-Chilakluripeta 765 kV D/C line with 2x240 MVAR switchable line reactors at both ends

- i. The above element was completed and ready for charging on 28.3.2019.
- ii. The above asset was in use since completion of trial operation and the actual COD was achieved on 18.1.2020 as per TSA provision related to prerequisite elements i.e. after the commercial operation of Vemagiri II-Chilakluripeta 765 kV D/C line with 2x240 MVAR switchable line reactors at both ends.

(c) The above Elements were declared under commercial operation on a later date in terms of Schedule-III of the TSA. However, the Elements were put into use and the power flow on the above Elements commenced as soon as the trial operation of the above Elements was completed. It is wrong on the part of TANGEDCO to suggest that the Petitioner had kept the transmission Elements idle. In fact, the Petitioner brought the Elements into beneficial use as soon as practicable and had not claimed any tariff for use of such Elements before declaration of commercial operation.

(d) Alternatively, if this Commission deems it fit to consider TANGEDCO's submission to provide Element-wise tariff as provided in the TSA, the Commission may grant tariff to the Petitioner from the date of utilisation of the Elements of the Project irrespective of the actual COD of the Elements.

(e) TANGEDCO has denied that the Force Majeure events raised by the

Petitioner are covered under natural/non-natural Force Majeure conditions, without giving reasons or justifications for such denials.

(f) Considering the importance of the transmission system, the Petitioner made all efforts to resolve the impasse including holding numerous meetings with the local administration which included the MRO (Executive Magistrate), RDO (Sub- Divisional Magistrate), Joint Collectors and District Collector, etc. The Petitioner also undertook joint meetings with the land owners in the presence of Government Officials and continuously exchanged correspondences with the concerned officials in order to resolve the issues of Right of Way. The matter was taken up at the level of Principal Secretary, and Chief Secretary, of the State of Andhra Pradesh to resolve the issue.

(g) The Petitioner, encountering a substantial delay on account of Force Majeure events, had also taken up the above Force Majeure events i.e. forest clearance and Right of Way issues through PRAGATI, which is a platform for monitoring and reviewing important programs and projects under the chairmanship of Hon'ble Prime Minister. In addition, the Petitioner also pursued the matter in SRPC forums for early resolution. The Petitioner was unable to lay down the transmission line due to stiff resistance by local population and consequent law and order problems caused by them which effectively is non-availability consent / clearance as headway in obstruction-free corridor was unavailable. The LTTCs were also requested to intervene and resolve the above issues in 40 km stretch faced by the Petitioner in terms of Article 4.2.1 of TSA. The LTTCs were fully aware of the realities being faced on the ground in the implementation of the Project.

(h) With regard to delay in obtaining wildlife clearance, it is pertinent to note that the route in the Survey Report for Chilakaluripeta–Cuddapah 765kV D/C line furnished by RECTPCL (BPC for the Project) does not indicate requirement of wild life clearance. However, on inquiry and pursuing with the DFO, it was confirmed by the DFO that wild life clearance is required to be obtained even for

the route proposed by RECTPCL. The same was completely beyond the control of the Petitioner. In fact, the application for forest clearance was approved by Principal Chief Conservator of Forests (PCCF), Guntur and District Forest Officer, Nellore. In case of the forest clearance from Proddatur division, it was informed by the DFO that the wildlife clearance is required since the area falls under the Tiger corridor. However, the DFO Proddatur division could not provide the requisite notification declaring the areas as Tiger corridor. Since there was no notification of the area as Tiger corridor, PCCF, Guntur approached National Tiger Conservation Authority (NTCA), New Delhi seeking applicability of wildlife clearance in absence of any notification. Thus, there being no notification declaring the area as a Tiger corridor before the bidding and the same being imposed as a condition only after the cut-off date, it could not have been possible for the Petitioner to envisage the same on the cut-off date or even while applying for forest clearance.

(i) The Petitioner when faced with the Force Majeure/Change in Law event of change in policy regarding land compensation took various steps and wrote various letters to LTTCs, including the lead LTTC, seeking support of the LTTCs in completing of Element 6. At the relevant time, TANGEDCO, lead LTTC did not intervene or support the Petitioner in resolving the said issue nor advised the Petitioner to challenge the orders issued by the Government of Andhra Pradesh regarding payment of land compensation. However, in the reply, TANGEDCO has contended that the Petitioner ought to have challenged the Notifications issued by the Governments of Andhra Pradesh and Karnataka. The Change in Law and Force Majeure cannot be denied on the basis that the person should have challenged the law. The correctness or validity of the Notification cannot be subject matter of this Petition.

(j) The example of Edamon-Cochin 400 kV corridor cited by TANGEDCO to claim that as Government of Kerala had paid land compensation and therefore, the same course ought to have been adopted in the present case. The said case is distinguishable for the various reasons as detailed in the rejoinder. Moreover,

the compensation was shared between PGCIL and Government of Kerala as one time special dispensation. This does not mean or necessitate that every Government in every case has to share the compensation and neither the Petitioner nor TANGEDCO can dictate such terms to the Government. The Government Notifications do not make any such provision for sharing of the compensation by the Government and the Petitioner is bound by such Notifications. In the order dated 25.1.2021 passed in Petition No. 265/MP/2020 (Powergrid Warora Transmission Limited) and order dated 29.1.2021 in Petition No. 264/MP/2021 (Powergrid Parli Transmission Limited), the Commission has already dealt with the above issue and has allowed the relief on account of above Change in Law/Force Majeure events.

(k) Contention of TANGEDCO that the relief claimed in the Petition is only applicable to hard cost excluding funding cost and IDC, etc. is wrong and misplaced. The issue relating to IDC and carrying cost on account of Change in Law events has been settled by the APTEL in its judgment dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Company v. Central Electricity Regulatory Commission and Ors.

(l) The Petitioner had notified the LTTCs, including the Lead LTTC, TANGEDCO on each and every occasion when the progress of the Project was impacted by the Force Majeure/Change in Law events and copy of the same have already been furnished along with the Petition. Thus, the Petitioner has complied with the provisions of the TSA in letter and spirit.

(m) The contention of TANGEDCO that the Petitioner has not sought and obtained consent from the LTTCs for extension in line in terms of Article 4.4 of the TSA, is baseless and contrary to the documents available on record. In this regard, vide letter dated 4.3.2020, TANGEDCO sought certain details from the Petitioner and stated that the issue of extension of SCOD will be examined by lead LTTC in consultation with other LTTCs and till a final decision is taken in this regard, the validity of the BG be extended for a further period of six month from

4.4.2020. Thereafter, on 10.7.2020, a meeting was held between the Petitioner and LTTCs regarding extension of SCOD of the Project and TANGEDCO issued letter enclosing minutes of meeting wherein it was concluded that "Since there was no consensus between PSITSL and the LTTCs for extending the SCOD, LTTCs opined that PSITSL may approach the CERC for resolution".

Hearing dated 9.11.2021

10. The matter was heard at length on 9.11.2021. During the course of hearing, the learned senior counsel for the Petitioner circulated note of arguments and advanced detailed submissions in the matter. The learned counsel for the Respondent, TANGEDCO also advanced detailed submissions by referring to the reply. The matter was thereafter reserved for order.

11. However, consequent upon issuance of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') dated 22.10.2021 by the Ministry of Power, Government of India requiring a change in procedure dealing with the Change in Law cases, the matter had been re-listed on 11.1.2022.

Hearing dated 11.1.2022

12. The parties were heard on the applicability of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules') on the present Petition. After hearing the learned senior counsel for the Petitioner and the learned counsel for Respondent, TANGEDCO, the matter was once again reserved for order. The Petitioner was also directed to file (a) CEA clearance certificates for all elements as mentioned in the Petition; and (b) break-up and proof of payment made for wild-life clearance for Element 5, which were filed by the Petitioner via affidavit dated 28.1.2022.

Analysis and Decision

13. As regards the applicability of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 ('Change in Law Rules'), the Appellate Tribunal for Electricity (APTEL) vide its judgment dated 5.4.2022 has, *inter alia*, held that the Change in Law Rules apply only prospectively and cannot be retrospectively applied to the proceedings pending for adjudication before the Commission particularly where the cause of action had already arisen before the rules were brought into existence and accordingly, the Commission has been directed to consider each such case on merit and adjudicate the matter in exercise of its jurisdiction under Section 79 of the Act. In view of the aforesaid judgment of the APTEL, since the present Petition had already been filed prior to the notification of the Change in Law Rules and was pending for adjudication under Section 79 of the Act read with Article 12 of the TSA, the Commission proceeds to consider the claims of the Petitioner on the merits under exercise of jurisdiction under Section 79 of the Act.

14. We have considered the submissions of the Petitioner and TANGEDCO and perused the documents on record. The following issues arise for our consideration:

Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?

Issue No. 2: Whether the Petitioner is entitled for time extension under Force Majeure?

Issue No. 3: What shall be the SCOD and COD of the elements in Petitioner's Project?

Issue No. 4: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?

Issue No. 5: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?

The above issues have been dealt with in succeeding paragraphs.

Issue No. 1: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under Force Majeure and Change in Law?

15. The Petitioner has claimed relief under Article 11 (Force Majeure) of the TSA.

Article 11.5.1 of the TSA provides as under:

“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 the 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.”

16. Under Article 11.5.1 of the TSA, an 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 days after the date on which the party knew or should have reasonably known of the commencement of the event of Force Majeure. It further provides that such notice shall be a pre-condition to the affected party's entitlement to claim relief

under the TSA.

17. The Petitioner has further claimed relief under Article 12 (Change in Law) of the TSA. Article 12.3.1 of the TSA provides as under:

“12.3 Notification of Change in Law Event

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.”

18. Article 12.3 of the TSA provides that 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, it shall give notice to the lead LTTC as soon as reasonably practicable after being aware of the same. It further provides that any notice served pursuant to Article 12.3.1 and Article 12.3.2 of the TSA shall provide amongst other things, precise details of Change in Law and its effect on the TSP.

19. The Petitioner has placed on record the various notices issued to the LTTCs intimating the occurrence as well as the cessation of the Force Majeure events. For delay and Right of Way issues due to change in Policy regarding land compensation in the State of Andhra Pradesh, the notices were issued on 7.7.2017, 29.12.2018, 12.3.2019, and 6.11.2019. For general elections, notice was issued on 16.3.2019. For heavy rainfall, the notice was issued on 6.11.2019. However, we observe that for the events such as demonetization and promulgation of Goods and Services Taxes (GST)

Act, 2017, no separate notice for Force Majeure as issued by the Petitioner has been placed on record and for such events the Petitioner, has only placed on record the Change in Law notices issued on 5.1.2017 & 10.2.2017 and 7.7.2020 respectively. For the delay due to wildlife clearance obtained from National Tiger Conservation Authority (NTCA) also the Petitioner has only placed on record the notice on 31.1.2018 issued under the Change in Law, albeit, the Petitioner had mentioned therein that in the event NTCA wildlife clearance is required to be obtained, the Project is likely to get delayed beyond the SCOD. As per Article 11.5.1 of the TSA, it is clear that issuance of notice about the Force Majeure event is a pre-condition to the affected Party's entitlement to claim relief under Force Majeure. In our view, before approaching the Commission, the Petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs regarding occurrence of Force Majeure events relating only to (i) Right of Way issues due to change in Policy regarding land compensation in the State of Andhra Pradesh and (ii) general elections. At the same time, in our view, before approaching the Commission, the Petitioner has not complied with the requirement of TSA regarding prior notice to the LTTCs regarding occurrence of Force Majeure events relating to (i) demonetization; (ii) promulgation of Goods and Services Taxes (GST) Act, 2017 and (iii) requirement of wildlife clearance to be obtained from National Tiger Conservation Authority (NTCA).

20. The Petitioner gave notices to the LTTCs dated 23.9.2016, 19.5.2017 and 7.7.2017 under Change in Law events regarding payment of compensation for transmission lines due to introduction of land compensation for transmission lines in the States of Andhra Pradesh and Karnataka, dated 7.7.2017 regarding introduction of GST

with effect from 1.7.2017, and dated 31.1.2018 regarding requirement of obtaining wildlife clearance from NTCA and the additional financial impact thereof. However, no response was received from the lead LTTC/ LTTCs. As regards increase in the acquisition price of SPV, while the Petitioner has not placed any notice intimating the LTTCs about the aforesaid Change in Law, it has been pointed out that all the LTTCs were duly informed by the Petitioner regarding increase in the acquisition price of SPV by BPC in Petition No. 299/ADP/2015 filed by the Petitioner under Section 63 of the Act for adoption of tariff and it also served copies of the Petition *inter-alia* stating reimbursement of increased acquisition price of SPV, on the LTTCs including the BPC. Perusal of the records reveals that the Petitioner had intimated the LTTCs about increase in the acquisition price of SPV in the aforesaid Petition filed by the Petitioner after the selected bidder (PGCIL) acquired the SPV as per the bid process, which in our view suffices the requirement of notice to LTTCs. Notice is a legal concept describing a requirement that a party be aware of legal process affecting their rights, obligations or duties. We have considered that through Petition No. 299/ADP/2015, LTTCs were made aware about increase in acquisition price by BPC. Accordingly, in our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the LTTCs regarding occurrence of Change in Law before approaching the Commission.

21. This issue is answered accordingly.

Issue No.2: Whether the Petitioner is entitled for time extension under Force Majeure?

22. The Petitioner has sought time extension under Article 11.7 (Force Majeure) of the TSA on account of the occurrence of Force Majeure events during the construction/

implementation of the Project, which have led to the delays in achieving the commercial operation of the Project.

23. The provisions of the TSA with regard to “Force Majeure” are extracted hereunder:

“11.3 Force Majeure

A ‘Force Majeure’ means any event or circumstance or combination of events and circumstances 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:

Act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,

(b) Non-Natural Force Majeure Events:

i. Direct Non–Natural Force Majeure Events:

- *Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*

- *the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*

- *any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

ii. Indirect Non - Natural Force Majeure Events.

- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*

- *radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non-Natural Force Majeure Event mentioned above,*

excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or

- *industry wide strikes and labour disturbances, having a nationwide impact in India.*

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

(a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;

(b) Delay in the performance of any contractors or their agents;

(c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;

(d) Strikes or labour disturbance at the facilities of the Affected Party;

(e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and

(f) Non-performance caused by, or connected with, the Affected Party's:

i. negligent or intentional acts, errors or omissions;

ii. failure to comply with an Indian Law; or

iii. breach of, or default under this agreement or any Project Documents.

.....

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.

24. In the light of the provisions of Force Majeure, the claims of the Petitioner have been examined. The Petitioner has submitted that construction of Project was delayed for the reasons beyond its control on account of (a) ROW and law and order problem on account of change in policy regarding land compensation in the State of Andhra Pradesh; (b) general elections; (c) heavy rainfall; (d) demonetization; (e) Notification of Goods and Service Tax Act, 2017); and (f) requirement of wildlife clearance to be

obtained from National Tiger Conservation Authority.

(a) Delay due to ROW and law and order problem on account of change in policy regarding land compensation in the State of Andhra Pradesh

25. The Petitioner has submitted that pursuant to issuance of Guidelines by Ministry of Power, Government of India dated 15.10.2015 and the Order dated 20.6.2017 of the Government of Andhra Pradesh, it has been required to make payment of compensation towards tower base area and towards diminution of land value in the width of transmission line corridor. Prior to the above, the transmission licensees were required to pay compensation towards normal crop and tree damages in terms of Section 67 and Section 68 of the Act read with Section 10 and Section 16 of the Indian Telegraph Act, 1885. However, the above Guidelines and the consequent Orders/Notifications issued by State Authorities led to an impact on the time-line of the Project as there was now a requirement of determination and payment of compensation which did not exist prior to the bid cutoff date. The process of determination and payment of compensation to be undertaken after the introduction of these Policies/Orders involved (a) marking of the entire land in the line corridor where transmission line is passing through and identification of individual land pieces and their area; (b) identifying land owners with the help of land records officials of the Governments of Andhra Pradesh and Karnataka; (c) calculating area coming under each owner and verification of the same by land records officials; and (d) certification by revenue authorities of the area & ownership of land and amounts payable; and (e) processing the proposals for compensation disbursement owner-wise. These conditions made the entire process very time consuming and cumbersome. The Petitioner, through prudent practices and constant efforts managed to complete all the works in the Project

as on April 2019 except for about 40 km of stretch in Vemagiri-II-Chilakaluripeta 765 D/C line (Element 6) falling in the Krishna district of Andhra Pradesh comprising of three Mandals viz. Veerulapadu, Nandigama, and Chandarlapadu. The balance construction works were obstructed by the local population in the above three Mandals. Despite seeking support from the local administration, the local population was not ready to allow construction of work and caused serious law and order problems. The State Government and the local administration were unable to provide any support for completion of the 40 km stretch.

26. The Petitioner has further submitted that considering the importance of the transmission system, the Petitioner made all efforts to resolve the impasse including holding numerous meetings with the local administration which included the MRO (Executive Magistrate), RDO (Sub-Divisional Magistrate), Joint Collectors and District Collector, etc. The Petitioner also undertook joint meetings with the land owners in the presence of Government Officials and continuously exchanged correspondences with the concerned officials in order to resolve the issues of ROW (Right of Way). The matter was taken up at the level of Principal Secretary and Chief Secretary of the State of Andhra Pradesh to resolve the issue. The Petitioner even sought the assistance from the LTTCs for resolving the issues in the 40 km stretch that was affecting the progress of the line / Project. The Petitioner took up the matter with the Southern Regional Power Committee besides taking up with highest authority at PRAGATI (Pro-Active Governance and Timely Implementation) which is a three-tier system (PMO, Union Government Secretaries, and Chief Secretaries of the States) to *inter-alia* monitor /review projects and to resolve issues. The Petitioner has contended that Article 4.2.1 of

TSA places an obligation on LTTCs of the transmission system to assist Transmission Service Provider (TSP) (Petitioner in this case) in obtaining clearances and consent for timely completion of the Project. In the instant scenario, the Petitioner was unable to lay down the transmission line due to stiff resistance by local population and consequent law and order problems, which effectively is non-availability of consent / clearance as headway in obstruction-free corridor was unavailable. The LTTCs were fully aware of the realities being faced on the ground in implementation of the Project. Since these factors were beyond the control of the Petitioner, it could not have implemented the Project in time.

27. We have considered the submissions of the Petitioner. The Petitioner has submitted that the issuance of the Guidelines dated 15.10.2015 by the Ministry of Power and consequent Order/Notification by the State Authorities led to a new process and requirement of determination and payment of compensation which did not exist prior to the cut-off date. However, we observe that even prior to the issuance of the Guidelines of Ministry of Power dated 15.10.2015 and Order of Government of Andhra Pradesh dated 20.6.2017, the concerned State/District Authorities were awarding the land compensation after following the prescribed process. Therefore, in our view the Petitioner ought to have factored in and taken into account the time required in the process and various activities.

28. The Petitioner has submitted that for the 40 km stretch of Element 6 passing through Krishna District, Andhra Pradesh, it faced numerous ROW and severe law and order issues created by owners of land and local population, thereby delaying the

construction of the said element. In order to substantiate its plea, the Petitioner has placed heavy reliance on various correspondences exchanged between the Petitioner with the concerned authorities/officials to resolve the RoW issues.

29. We have perused the documents placed on record by the Petitioner. We observe that the representations made by the Petitioner to the various authorities clearly indicate that ROW and law & order issues as stated by the Petitioner mainly emerged on account of the failure in settling the land compensation to the land owners. In this regard, the relevant extracts of the certain correspondences and the minutes of meeting taken by the Chief Secretary are reproduced as under:

Letter dated 22.1.2018 to Collector and District Magistrate, Krishna, Andhra Pradesh

“.....During the construction, the work was stopped by the land owners stopped the work on 24.02.2017, stating that land compensation orders from District collector, Krishna. Accordingly District administration issued land compensation order vide ref no: RT10MIS(PG)/3/2016-JA(H6)-KCO DT 01.04.2017.

After resuming the works on 13.05.2017, again the landowners are stopped the works demanding payment for the corridor and revision of compensation order issued by the District Collector. Govt of AP issued orders vide Go. RT No:83 dt 20.06.2017 towards corridor compensation.

Again we have tried to resume the work, but the land owners are not allowing and demanding more compensation.

Total 111 (107 in Land + 4 in River) locations are situated in the Mylavaram, Veerulpadu, Nandigama & Chandrelapadu Mandals of Krishna District. Out of 111 loc we have completed 76 Locations Foundations and 46 towers erected with smoothly and we have paid crop and tree compensation for the damages for 70 foundations & 42 erected locations. Now we are facing major resistance from the balance 31 loc land owners since March'17. We have tried to convince the land owners but they are reluctant to allow for carrying work.

Hence, it is kindly requested to advise/oblige with necessary orders to the concerned Revenue and Police Authorities to cooperate for resolving ROW and to provide security for our men, materials during execution of the above important and critical project as the project has to be completed by May'18.”

Letter dated 23.1.2018 to Sub-Collector, Vijaywada, Andhra Pradesh

“Subsequent to the directions of your good offices, Tahasildars of the respective Mandals have conducted meetings with the land owners on various occasions and appealed the land owners for allowing the construction works of the above line. However, the land owners are insisting to enhance the valuation considered for tower base compensation. However we could complete the foundation at Loc. 80/0, near Peddapuram village, Veerulapadu Mandal by taking the protection from police in the month of December’17. Barring the above work, we could not advance any progress further.

It is further to inform that the work is progressing well in the other areas of the above line and to enable the commissioning of the line as scheduled to ensure the availability of adequate power in around Amaravathi area, it is necessary to resolve the Right of way issue of the above locations immediately.

In view of the above submissions, we earnestly request you to please arrange to resolve the Right of way issue in the above Mandals to enable us to effectively utilize the ensuing season for completing the line as scheduled.”

Letter dated 6.2.2018 to Collector & District Magistrate, Krishna District, Andhra Pradesh

“...During the construction, the work was stopped by the land owners stopped the work on 24.2.2017, stating that land compensation orders from District Collector, Krishna. Accordingly, the District administration issued land compensation order vide ref. no. RT10MIS(PG)/3/2016-JA(H6)-KCO DT 01.04.2017. Subsequent to the above order, work has progressed without any much obstruction except in Veerulapadu, Nandigama and Chandralapadu Mandals, POWERGRID is making compensation payments on priority as per the above orders.

After resuming the works in above Mandals, again the landowners are stopped the works demanding payment for the corridor and revision of compensation. Further, Govt. of AP looking into issues has Go. RT. No. 83 dt 20.06.2017 towards corridor compensation.

Again we have tried to resume the work, but the land owners are not allowing and demanding more compensation and threatening with dire consequence if the work started.

At present we are not having any work front in the above Mandals, in view of the tight schedule of completion in May’18 to provide supply to CRDA, it is kindly requested to advise/ oblige with necessary orders to the concerned Revenue and Police authorities to cooperate for resolving ROW and to provide security for our men, materials during execution of the above important and critical project as the project has to be completed by May’18.....”

Minutes of Meeting held by Chief Secretary, Andhra Pradesh on 23.4.2019

“ii) 765 kv Vemagiri - Chilakaluripeta DC line being taken up by PGCIL

It was informed by CGM, PGCIL that PGCIL has taken up 765 kv Inter Regional High Power Transmission Corridor to facilitate flow of power of 4500 MW from Odisha to the Southern States. The above Transmission Line is passing through the State of Andhra Pradesh in which the entire line has been commissioned except for a distance of 40 KM in which 111 Towers are there in the villages of Nandigama, Chadarlapadu and Veerulapadu. The above work has been stopped by the villagers as they have been demanding higher compensation than what is eligible as per G.O.Ms.No.83. Due to the stoppage of above work, the entire transmission line is unavailable for flow of power from the Eastern region to the Southern region. The issue is being regularly reviewed by the PMG constituted by Gol.

The District Collector, Krishna, has informed that the above land comes under the CRDA region and very close to the national highway as well and the value of the land has gone up abnormally due to the proximity to the national highway and the capital city. As such the farmers are not willing to accept the compensation presently paid by PGCIL. Collector, Krishna, further informed that he, along with Sub Collector, Vijayawada, have conducted a number of meetings with the farmers and they have convinced the farmers for a certain reasonable price for Tower Foundations. Similarly, for transmission corridor the rate would be as per G.O.Rt.No.83 and land value as per proceedings dated 1.4.2017 already approved by Collector. Collector and S.P., Krishna, further informed that it would not be possible to lay the Towers even with police protection as it may lead to severe Law and Order problem. Further, they informed that the rate is negotiated by district administration may kindly be considered by PGCIL so that the work can be taken up immediately without any Law and Order problem and also doing justice to the farmers. After detailed discussions, PGCIL have agreed to put up the proposal for the consent of the management in the interest of completing the Project of national importance at the earliest. To facilitate early start of work, PGCIL requested for a demand letter so that the compensation could be deposited with district Collector, Krishna. Collector, Krishna, has promised to submit the details with the next three days and PGCIL would make the necessary payment to district administration. On receipt of the amount, the district administration would convince the farmers and permit the PGCIL to take up the work at the earliest.”

30. Various other letters and correspondence, in addition to the above, furnished by the Petitioner along with the Petition also give the similar indication that the RoW issues arose due to insufficiency of the compensation. We are of the view that the issues of

ROW, resistance by landowners and issue of compensation are well known and the transmission licensees undertaking the implementation of transmission projects are expected and required to anticipate and factor in such issues. The transmission licensees are expected to resolving such issues by exercising prudent utility practices and availing various remedies available.

31. Therefore, the question before us is as to whether prudent utility practices were employed by the Petitioner to resolve the issues. As we have already observed issues relating to ROW and delays in the present case arose on account of failure to settle the land compensation to the land owners. While the Petitioner has submitted that such issues have arisen pursuant to the change in policy regarding land compensation, we do not find any merit in the submission inasmuch as the order of adopting the compensation rates as prescribed under Guidelines issued by Ministry of Power dated 15.10.2015, was issued by the Government of Andhra Pradesh as far back as on 20.6.2017. Thus, the Petitioner had almost 2 years (~21 months) to address the issue of land compensation raised by the landowners. However, the Petitioner instead of timely resolving such issues, sought police protection for completion of the works.

32. We note that transmission licensee, once having been vested the power of authority under Section 164 of the Act, has various remedies under Section 16 of the Indian Telegraph Act, 1885 (Telegraph Act). The relevant extract of the said Section reads as under:

“16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority

1. If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

2. If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

3. If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

4. If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

5. Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

33. Thus, in terms of the above quoted provisions, if the exercise of the powers mentioned in Section 10 Telegraph Act in respect of property referred to in Section 10(d) is resisted or obstructed, the District Magistrate may order that the telegraph authority be permitted to exercise them. If any person continues to resist the exercise of power by the authority even after issuance of an order by District Magistrate, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code. Further, in case of any dispute concerning the sufficiency of the compensation to be

paid under Section 10(d) of the Telegraph Act, either of the disputing party is entitled to approach the District Judge within whose jurisdiction the property is situated for determination of the compensation, which shall be the final. In the present case, despite the continuous resistance and obstruction by landowners and local population and their claims relating to insufficiency of the compensation, nothing has been brought on record by the Petitioner to indicate the efforts undertaken by it as per the aforesaid provisions for resolution of such issues and timely completion of the Project.

34. In our view, in the facts and circumstances of the present case, the resolution of the delays and RoW issues due to change in policy regarding land compensation in the State of Andhra Pradesh could have been timely addressed by the Petitioner had it exercised reasonable care in settling the issues relating to insufficiency of the land compensation as per the remedies available to the licensees under the various statutory provisions including Section 16 of the Indian Telegraph Act. Therefore, the delay due to ROW and law and order problem on account of change in Policy regarding land compensation cannot be condoned under the provisions of the Force Majeure clause.

(b) Delay due to General Election

35. The Petitioner has submitted that from 11.3.2019 i.e. the notification of general elections of Lok Sabha and Legislative Assembly of the State of Andhra Pradesh by the Election Commission of India till the conclusion of general election process on 23.5.2019, the requisite support and assistance of the State authorities was not available to the Petitioner as the Government Officials remained engaged in work relating to the election. The Petitioner has submitted that aforesaid event is Force Majeure event falling within the meaning of Article 11 of the TSA.

36. We have considered the submissions made by the Petitioner. At the outset, we note that the SCOD of the Project was 4.4.2019. Therefore, by the date of notification of the general election of Lok Sabha and Legislative Assembly of the State of Andhra Pradesh, the Petitioner was required to have achieved substantial progress in respect of its Project. Further, we do not find any rational and justification in the submission of the Petitioner that the Petitioner could not proceed with the implementation of the Project in the absence of the requisite support and assistance from the government officials. Thus, the said claim of the Petitioner cannot be held to be covered under the Force Majeure provisions under Article 11 of the TSA.

(c) Delay due to Heavy Rainfall

37. The Petitioner has submitted that unprecedented heavy rainfall during the months of August, September and October in 2019 had severely affected the construction of the transmission line (Element 6). The Petitioner has submitted that the soil strata in Veerulapdu, Nadigama and Chandralapadu Mandals was clay/black cotton in nature and even with small amount of rains, the approaches to the line locations became difficult. The problem was further aggravated due to water logged fields with standing crops adjacent to the alignment of the transmission line. The Petitioner has submitted that high rain fall on a number of days spread over the period of August-October, 2019 was unprecedented and was not witnessed during the same period in the last four years. The Petitioner has submitted that based on the rain fall data obtained from Andhra Pradesh State Disaster Management Authority for the period from August-October, 2019 for the last four years in the three Mandals, it is seen that the number of days with rainfall in the months of August, September and October 2019 were 20 days,

20 days and 17 days respectively; the rainfall ranged in a day between 0.1 mm to 84.7mm; and there was no respite from rains for sufficient time for approaches to dry out. The Petitioner has submitted that persistent rains during the period rendered it difficult for movement of men and material and despite several efforts including use of Porta Deck for making temporary approaches in water logged/slushy area, the progress did not improve. It is only after October 2019 when the rains abated, progress of the work picked up. The Petitioner has submitted that despite these difficulties, the Petitioner took all reasonable steps and made best possible efforts, complying with prudent utility practices and completed the balance work by December 2019. The Petitioner has submitted that the heavy rainfall is a Force Majeure event within the meaning of Article 11 of the TSA and impact on account of the above is 57 days.

38. We have considered the submissions made by the Petitioner. We note that the time overrun claimed by the Petitioner on account of heavy rainfalls is 57 days, which is the total of number of days with rainfall in August, 2019 (20 days), September, 2019 (20 days) and October, 2019 (17 days). We observe that the period for which the Petitioner is claiming to have been affected by such heavy rainfall falls after the SCOD of the Project i.e. 4.4.2019. Therefore, the event of heavy rainfalls which occurred after the SCOD of the Project cannot come to the aid of the Petitioner under the Force Majeure clause. Further, Article 11.3 of the TSA as quoted in paragraph 23 above defines Natural Force Majeure Events as under:

“11.3 Force Majeure

(a) Natural Force Majeure Events:

Act of God, including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide,

flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,..."

The Petitioner has not placed on record any documents to show that the rainfall during the period of August-October, 2019 was an exceptionally adverse weather condition which was in excess of the statistical measures for the last hundred (100) years. Therefore, the event of excessive rainfall claimed by the Petitioner is not covered under the provisions of the Force Majeure clause and the delay due to heavy rainfall cannot be condoned

(d) Delay due to Demonetisation

39. The Petitioner has submitted that on 8.11.2016, the Government of India demonetized the High Denomination Bank Notes of Rs.500 and Rs.1000. The Petitioner has submitted that the same affected the execution of the transmission work as the construction workers are paid daily wages and due to restricted cash withdrawal limits imposed by the Government of India, there was delay in payment of wages to the workers. The Petitioner has submitted that the impact on account of the above is 85 days.

40. We have considered the submissions made by the Petitioner. We have already observed in paragraph 19 that the Petitioner has not complied with the requirement of issuance of notice regarding the aforesaid Force Majeure event. Therefore, the Petitioner cannot be entitled for any relief on this account. Nevertheless, in our view, the demonetization of the Notes of Rs.500 and Rs.1000 cannot be considered to be a Force Majeure event within the provisions of the TSA. Besides, as per the Petitioner's own submission, except for Element 6, all the other elements were ready for commissioning

prior to their SCOD, which clearly indicates that the Petitioner did not face any difficulties in execution of these other elements. Therefore, the claim of the Petitioner for condoning the time overrun on account of the demonetisation cannot be considered under Force Majeure and thus, deserves to be rejected.

(e) Delay due to Notification of Goods and Services Taxes (GST) Act, 2017

41. The Petitioner has submitted that pursuant to the notification of GST Laws with effect from 1.7.2017, the Petitioner encountered various unforeseen issues, including and in particular, disruption of the materials/supplies from the vendors, which constitutes Force Majeure event falling within the meaning of Article 11 of the TSA. The Petitioner has submitted that the impact on account of the above is 90 days i.e. from 1.7.2017 to 28.9.2017.

42. We have considered the submissions of the Petitioner. We have already observed in paragraph 19 that the Petitioner has not complied with the requirement of issuance of notice regarding the aforesaid Force Majeure event. Therefore, the Petitioner cannot be entitled to any relief of extension of SCOD on this account. Nevertheless, the Petitioner has submitted that pursuant to introduction of GST Laws, it faced various issues relating to the disruption of the material/supplies from the vendors and therefore, the notification of GST Laws constitutes Force Majeure event. The Petitioner, therefore, has sought condonation of time overrun of 90 days i.e. from 1.7.2017 to 28.9.2017. However, nothing has been brought on record by the Petitioner indicating as to how it has been affected by the aforesaid event in performance of its obligations under the TSA, which could not be avoided by exercising the reasonable care/control or by complying with Prudent Utility Practices. Besides, as already

observed, the Petitioner had been able to complete the work within the stipulated time in respect of all the elements except for Element 6 which clearly demonstrates that the Petitioner was able to successfully overcome the issues relating to introduction of the GST Laws by exercising reasonable care/control and Prudent Utility Practices. Therefore, the claim of the Petitioner for condoning the time overrun on account of the notification of the GST Laws deserves to be rejected.

(f) Delay due to Wildlife Clearance obtained from National Tiger Conservation Authority

43. The Petitioner has submitted that the Element 5, Chilakaluripeta–Cuddapah 765 kV D/C line was traversing through the forest areas in Proddatur and Nellore divisions in the State of Andhra Pradesh. Accordingly, on 18.4.2016, the Petitioner applied for grant of permission to undertake the survey of the forest areas in accordance with the established procedure. The Petitioner, pursuant to the receipt of the permission on 30.4.2016, undertook the Differential Global Position System survey in association with the District Forest Officer (DFO), Proddatur. After the acceptance of the said survey by the Principal Chief Conservator of Forest (PCCF), Guntur on 29.5.2017, the Petitioner submitted the proposal on 31.5.2017 for diversion of forest land measuring 74.486 ha in Proddatur and Nellore divisions, which was then forwarded to the DFO of Proddatur division and DFO of Nellore division respectively on 5.6.2017 for further action. While the DFO of Nellore division proceeded with the approval process, the DFO of Proddatur division informed the Petitioner that wildlife clearance is required since the area falls under the tiger corridor. However, on being requested by the Petitioner the DFO of Proddatur division could not provide any notification declaring the area as a tiger corridor. Accordingly, the Petitioner vide letter dated 19.12.2017 addressed to the

PCCF, Guntur raised the issue that wildlife clearance is required only if it is notified in terms of Clause 3.5.2 of the Guidelines dated 19.12.2012 issued by the Ministry of Environment and Forest. Based upon the aforesaid representation by the Petitioner to PCCF, Guntur, vide letter dated 1.1.2018 the PCCF, Guntur approached the National Tiger Conservation Authority, New Delhi seeking clarification regarding the applicability of wildlife clearance in the absence of any notification. On 12.3.2018, the NTCA confirmed the requirement of wildlife clearance.

44. The Petitioner has submitted that in line with the above confirmation, the proposal of the Petitioner was processed for wildlife clearance and recommendation of NTCA was forwarded to National Board for Wildlife (NBWL) on 12.6.2018. Thereafter, on the basis of the NBWL clearance, Stage-I forest clearance from Regional MoEF was issued on 4.10.2018 and working permission was granted by DFO on 15.11.2018. The Petitioner has submitted that the new requirement of obtaining wildlife clearance impacted the construction and progress of the transmission line and the total impact on account of obtaining the Forest Clearance was 185 days (i.e.14.5.2018 to 15.11.2018). However, with proactive measures and the best utility practices, the Petitioner was able to complete the line work and the line was commissioned within the SCOD. The Petitioner has submitted that the new requirement of obtaining NTCA clearance subsequent to the bidding of the Project constitutes a Force Majeure event.

45. We have considered the submissions made by the Petitioner. We observe that route length of instant transmission line i.e C'Peta-Cuddapah as per BPC survey report is as under:

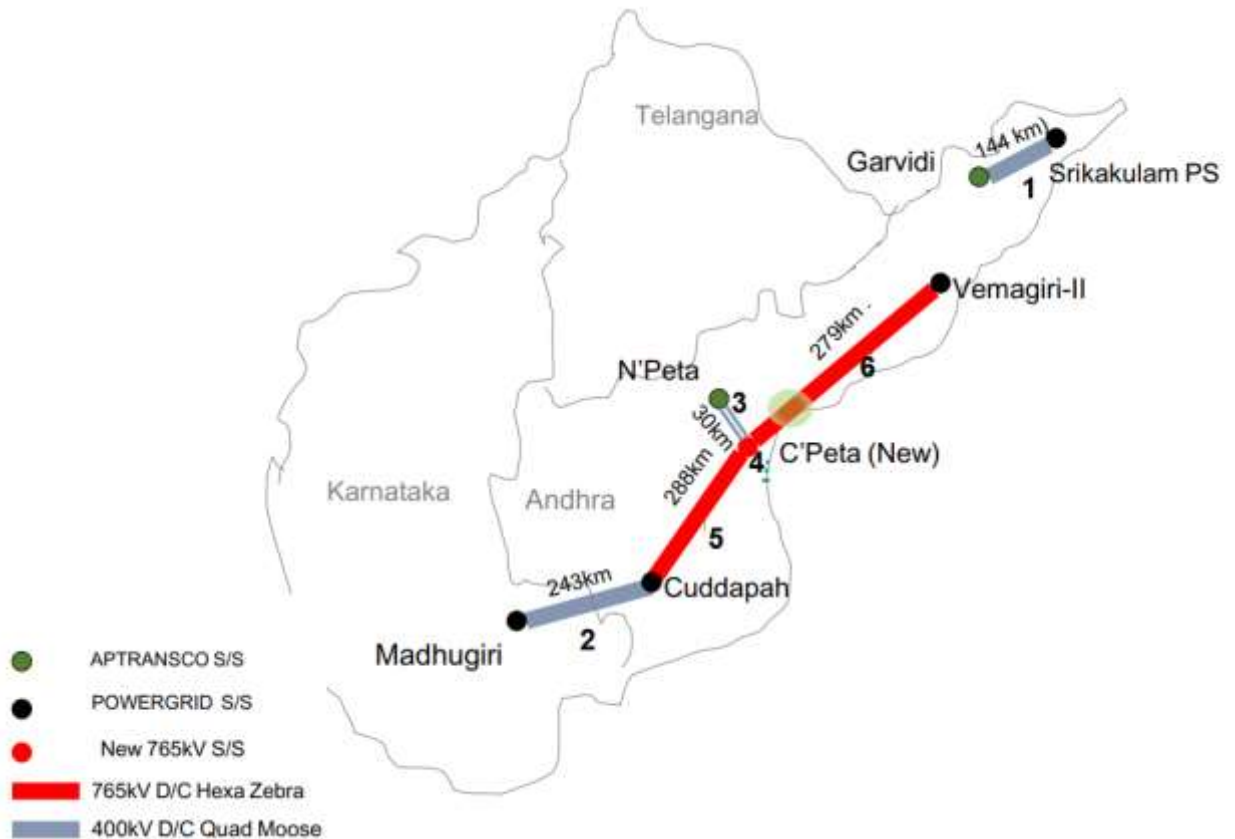
**Chilkaluripeta to Cuddapah 765 kV D/C Transmission Line
Comparative Statement for 3 Alternative Routes**

Sl. No.	Description	Alt-I (Proposed) (Violet)	Alt-II (Green)	Alt-III (Blue)
	Bee line length	229.258 km	237.634 km	237.634 km
1.	Line Length	260.175 km	261.303 km	274.146 km
	a) Plain	235.100 km	230.103 km	240.046 km
	b) Undulated terrain	25.075 km		
2.	a) Angle Points	95		
3.	Forest			
	a) Reserve forest	23.971 km		
	b) Protected forest	NIL		
	c) Social forest	NIL		
	d) Other area	NIL		
4.	Transportation & Maintenance	Available	Available	Available
		15 Nos.	13 Nos.	13 Nos.
5.	Power Line Crossings (132 kV & Above)	AP15-AP16 (220 kV D/C)	AP14-AP15 (220 kV D/C)	AP10-AP11 (132 kV D/C)
		AP16-AP17 (220 kV D/C)	AP16-AP17 (220 kV D/C)	AP14-AP15 (220 kV D/C)
		AP18-AP19 (132 kV D/C)	AP18-AP19 (132 kV D/C)	AP25-AP26 (220 kV D/C)
		AP20-AP21 (220 kV D/C)	AP24-AP25 (400 kV D/C)	AP29-AP30 (132 kV D/C)
		AP23-AP24 (132 kV D/C)	AP27-AP28 (132 kV D/C)	AP31-AP32 (400 kV D/C)
		AP32-AP33 (220 kV D/C)	AP33-AP34 (400 kV D/C)	AP44-AP45 (400 kV D/C)
		AP34-AP35 (400 kV D/C)	AP41-AP42 (132 kV D/C)	AP46-AP47 (400 kV D/C)
		AP36-AP37 (400 kV D/C)	AP59-AP60 (400 kV D/C)	AP50-AP51 (765 kV D/C)
		AP41-AP42 (132 kV D/C)	AP61-AP62 (765 kV D/C)	AP56-AP57 (400 kV D/C)
		AP48-AP49 (765 kV D/C)	AP76-AP77 (132 kV D/C)	AP76-AP77 (132 kV D/C)
	AP51-AP52 (400 kV D/C)	AP90-AP91 (132 kV D/C)	AP88-AP89 (132 kV D/C)	

Client:
REC Transmission Projects Company Ltd.
(A Wholly Owned Subsidiary of Rural Electrification
Corporation Limited)
New Delhi

Consultant:
M/s. Prasad Surveyors
Pune

46. The illustrative SLD provided by the Petitioner provides route length is as under:



47. We have already observed in paragraph 19 that the Petitioner has not complied with the requirement of issuance of notice regarding the aforesaid Force Majeure event. We also observe that the Petitioner followed route length as per its own survey which traversed some route not envisaged under the BPC survey. The TSA does not mandate the Petitioner to follow route as provided by the BPC, but provides the Petitioner to carry out its own survey which the Petitioner has carried out and the Petitioner has followed its own route.

48. The Petitioner has submitted that the new requirement of obtaining the wildlife clearance is a Force Majeure event and has claimed the impact of time overrun as 185 days i.e. from 14.5.2018 to 15.11.2018 on account of the same. We have considered

the submissions of the Petitioner. Admittedly, despite the Petitioner having to obtain the wildlife clearance pursuant to the confirmation of its requirement by NTCA on 12.3.2018, the affected Element, namely Element 5 was ready for commissioning within the SCOD. Therefore, the Petitioner cannot contend that the said requirement of having to obtain the wildlife clearance, in any way, wholly or partly, prevented or resulted in delay in completion of the construction of the said Element 5. We observe that the Element 5 could not be commissioned by the Petitioner on account of non-commissioning of Element 6, the commissioning of which was pre-requisite for declaring the CoD of the Element 5. Undeniably, the Element 6 was not in any way affected by the requirement of having to obtain the wildlife clearance. Therefore, the Petitioner's claim for allowing time overrun of 185 days under the Force Majeure clause does not arise and is not allowed, as admittedly, the Element 5 in respect of which the wildlife clearance was required, was ready for commissioning prior to SCOD.

49. The issue is answered accordingly.

Issue No. 3: What shall be the SCOD and COD of the elements in the Petitioner's Project?

Element 1

50. The Petitioner has submitted that in terms of the Schedule III of the TSA, the elements could be declared under the commercial operation only after the element which is pre-requisite for declaring the commercial operation of such elements is also declared under the commercial operation.

51. The Respondent, TANGEDCO has submitted that the Petitioner has deliberately avoided discussing advancement of CoD of Element 1 with the LTTCS and failed to

obtain the concurrence of the lead LTTC/beneficiaries. In the absence of concurrence of the lead LTTC/beneficiaries/ SRPC forum, the Petitioner is eligible to avail tariff from the SCOD of the asset as per the TSA. Accordingly, the Petitioner may be directed to recover the transmission charges from SCOD and refund the amount recovered from the beneficiaries from COD declared unilaterally by the Petitioner till its SCOD, if it has been included in the PoC Pool.

52. *Per contra*, the Petitioner has submitted that Element 1 was put into early commissioning in terms of the Meeting held on 1.11.2017 in CEA to discuss the early commissioning of the scheme 'Strengthening of Transmission System beyond Vemagiri' being implemented by the Petitioner. It has further submitted that TANGEDCO had provided No Objection for early commissioning of the above element, as recorded in the minutes of the said meeting. It has been submitted by the Petitioner that pursuant to the aforesaid meeting on 10.4.2018, the Petitioner issued a Notice under Article 6.1 of the TSA to SRLDC, NLDC, CEA, CTU, TANGEDCO and other LTTCs intimating its intention to declare the commercial operation of Element 1 and thereafter, on 6.8.2018, in terms of the provisions of the TSA, the Petitioner declared the commercial operation of Element1.

53. We have considered the submissions made by the parties. We have perused Schedule III of the TSA which is reproduced as under:

Sr. No	Name of the transmission elements	SCOD in months from Effective Date	Percentage of Quoted Transmission charges recoverable on SCOD of element of the Project	Elements which are pre-required for declaring the COD of the respective Element
1.	(a) Srikakulam Pooling Station-Garividi 400 (Quad) D/C Line (b) 2 numbers of 400 line bays at Garividi 400 kV S/s of APTRANSCO	38	9.05%	Both simultaneously
2.	Cuddapah - Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit.	38	14.10%	—
3.	(a) Chilakaluripeta - Narasaraopeta (Sattenapalli) 400 D/C (Quad) line (b) 2 numbers 400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO	40	3.10%	Establishment of 765/400 sub-stations at Chilakaluripeta And both element of 3
4.	Establishment of 765/400 sub-stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each.	40	14.27%	Chilakaluripeta-Cuddapah 765 D/C line And Vemagiri II-Chilakaluripeta 765 KV D/C Line
5.	Chilakaluripeta - Cuddapah 765 D/C line with 2x240 MVAR switchable line reactor at both ends	40	28.52%	Vemagiri II-Chilakaluripeta 765 KV D/C Line And Establishment of 765/400 sub-stations at Chilakaluripeta
6.	Vemagiri II-Chilakaluripeta 765 KV D/C Line with 2x240 MVAR switchable line reactors at both ends	40	30.96%	Chilakaluripeta - Cuddapah 765 D/C line And Establishment of 765/400 sub-stations at Chilakaluripeta

54. We observe that SCOD of each of the element as claimed and COD as claimed by the Petitioner is as under:

Sr. No.	Project Element	SCOD	COD
1.	Element 1 (a) Srikakulam Pooling Station - Garividi 400 (Quad) D/C Line (b) 2 number of 400 line bays at Garividi 400 kV S/s of APTRANSCO	February 2019	6.8.2018
2.	Element 2 Cuddapah - Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit.	February 2019	28.2.2019
3.	Element 3 (a) Chilakaluripeta - Narasaraopeta (Sattenapalli) 400 D/C (Quad) line (b) 2 number 400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO	4.4.2019	31.7.2019
4.	Element 4 Establishment of 765/400 sub-stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each	4.4.2019	18.1.2020
5.	Element 5 Chilakaluripeta-Cuddapah 765 D/C line with 2x240 MVAR switchable line reactor at both ends	4.4.2019	18.01.2020
6.	Element 6 Vemagiri II-Chilakaluripeta 765 KV D/C Line with 2x240 MVAR switchable line reactors at both ends	4.4.2019	18.1.2020

55. We observe that the Petitioner has indicated SCOD of Element 1 and Element 2 as February 2019 instead of a specific date of February, 2019. We observe from TSA that SCOD for Element 1 and Element 2 is 38 months from the date of effectiveness of TSA. Article 2.1 of the TSA is reproduced as under:

“2.1 Effective Date:

This Agreement shall be effective from later of the dates of the following events:

- a. The Agreement is executed and delivered by the Parties; and*
- b. The Selected Bidder has acquired for the Acquisition Price, one hundred percent (100%) of the equity shareholding of RFC Transmission Projects Company Ltd. in Vemagiri II Transmission Limited along with all its related assets and liabilities as per the provisions of the Share Purchase Agreement, and*
- c. The Selected Bidder, on behalf of the TSP, has provided the Contract Performance Guarantee, as per terms of Article 3.1 of this Agreement.”*

Thus, the effective date of TSA comes out to be 4.12.2015 as per the Article 2.1

of the TSA, and accordingly, the SCOD of Element 1 & Element 2 comes out to be 4.2.2019. The effective date of TSA has also been corroborated with SCODs of element 4, Element 5 and Element 6 by the Petitioner which is 40 months from the effective date of TSA and has been provided as 4.4.2019 by the Petitioner.

56. The Petitioner has claimed early commissioning of Element 1. Minutes of the Meeting held on 1.11.2017 in the CEA to discuss the early commissioning of the scheme 'Strengthening of Transmission System beyond Vemagiri' have been perused. The relevant portion of the minutes is extracted as under:

"6. Representative of CTU proposed that considering critical loading of 765/400 kV, 1500 MVA ICTs at Vemagiri S/s, it is prudent that the transmission scheme "Strengthening of Transmission System beyond Vemagiri" is commissioned at the earliest. It was further informed that TTC between Eastern and Southern Region shall be enhanced in the range of about 1500 MW – 1700 MW progressively with progressive commissioning of above transmission elements.

7. He further stated that early commissioning of above scheme was also discussed and agreed in the 41st Standing Committee Meeting of SR held at Chennai on 22.09.2017, wherein it was agreed to hold a meeting for Early commissioning of scheme "Strengthening of Transmission System beyond Vemagiri" with LTTCs and the Licensee.

8. Representative of POSOCO stated that commissioning of above scheme will remove constraints at Vemagiri area and strengthen ER-SR inter regional transmission corridor.

9. Chief Engineer (PSPA-II) informed that CEA had received a letter from Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), the Lead LTTC, intimating no objection to the early commissioning of the transmission scheme.

10. On the issue of inter-dependency of transmission elements in the scheme, it was clarified that Srikaukulam PS-Garividi (APTRANSCO) 400 kV (Quad) D/c line along with terminal bays may be commissioned early so that it would relieve loading on 765/400 kV ICT at Vemagiri-II(PG) to some extent. Similarly, Cuddapah-Madhugiri 400 kV (Quad) D/c line alongwith terminal bays may be commissioned early so that it would relieve loading on Gooty-Nelamangala 400 kV S/c & Gooty-Somanhally 400 kV S/c lines. Further Vemagiri-II (PG)-Chilakaluripeta 765 kV D/c along with Chilakaluripeta-Cuddapah 765 kV D/c are to be commissioned together, so as to ensure effective utilization.

...

13. After further deliberations, keeping in view the benefit to the system and enhancement of TTC of inter-regional corridor for import of power to Southern Region, it

was agreed that PSITSL and POWERGRID would put their best effort for early commissioning of transmission lines, associated line bays and substation covered under the transmission scheme 'Strengthening of Transmission System beyond Vemagiri' in the matching time frame.

The meeting ended with thanks to the chair."

57. The issue of early commissioning of Element 1 has been discussed in CEA and the minutes of the meeting dated 1.11.2017 records that keeping in view the benefit to the system and enhancement of TTC of inter-regional corridor for import of power to Southern Region, PSITSL would put their best effort for early commissioning of transmission lines, associated line bays and substation covered under the transmission scheme 'Strengthening of Transmission System beyond Vemagiri'. In view the minutes of the meeting in CEA held on 1.11.2017 and No Objection provided by the lead LTTC, TANGEDCO, the COD of Element 1 shall be considered as 6.8.2018 as claimed.

Element 2

58. The Petitioner has submitted that the Element 2 achieved COD on 28.2.2019, which is as per the schedule in the TSA. However, we observe that SCOD of Element 2 is 4.2.2019 and accordingly it is delayed by 24 days. The Petitioner has not furnished any reasons for such delay and accordingly shall be liable as per provisions of TSA for such delay.

Element 3

59. The Petitioner has submitted that Element 3 achieved COD on 31.7.2019 and Element 4, Element 5 and Element 6 achieved COD on 18.1.2020. We have perused Schedule-III of the TSA dated 31.8.2015. The pre-requisite Elements of Element 3 to Element 6 are depicted in tabular form as under:

Transmission Elements	Prerequisite Elements
Element 3	Element 4
Element 4	Element 5 & Element 6
Element 5	Element 4 & Element 6
Element 6	Element 4 & Element 5

60. Perusal of the Schedule III of the TSA clearly reveals that Element 3 could only be declared under commercial operation along with or after commercial operation of its prerequisite element i.e. Element 4. Element 4 was declared commercial operation only on 18.1.2020. Hence, Element 3 could not be declared COD before declaration of COD of Element 4. We observe that the Petitioner has furnished trial run certificate for Element 4 to be completed on 30.7.2019. However, it cannot be considered as completion of prerequisite for Element 3.

61. Accordingly, COD Element 3 shall be considered 18.1.2020 instead of 31.07.2019 as declared by Petitioner.

Element 4, Element 5 and Element 6

62. The Petitioner has submitted that it achieved actual COD of Element 4, Element 5 and Element 6 on 18.1.2020.

63. In view of discussions and findings in the forgoing paragraphs, the COD of the Elements shall be considered as under:

Transmission Elements	Approved COD
Element 1	06.08.2018
Element 2	28.02.2019
Element 3	18.01.2020
Element 4	18.01.2020
Element 5	18.01.2020
Element 6	18.01.2020

64. Thus, the Petitioner is directed to return the transmission charges received from the LTTCs/beneficiary, if any from the date of its declared COD till the COD approved in the instant order. CTU/PGCIL is directed to raise the bills on the Petitioner accordingly and adjust such charges from future bills of the Petitioner.

65. The issue is answered accordingly.

Issue No. 4: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?

66. The provisions of the TSA with regard to Change in Law are extracted as under:

“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 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.”*

67. Perusal of the above provisions of Article 12 in the TSA reveals that for an event to be declared as 'Change in Law', its occurrence has to be after seven days prior to the bid deadline and should result into any additional recurring/ non-recurring expenditure by TSP or any income to TSP.

68. The cut-off date for Change in Law events i.e. the date which is seven days prior to the bid deadline was 2.10.2015. In the light of the above provisions of Change in Law, the claims of the Petitioner with regard to Change in Law events, which have occurred after cut-off date during the construction period, have been examined in following paragraphs.

(a) Increase in acquisition price of SPV by BPC

69. The Petitioner has submitted that prior to submission of the bid, BPC vide its letter dated 17.9.2015 had intimated to the bidders the acquisition price payable by the selected bidder for acquisition of 100% equity shareholding of SPV along with all its related assets and liability as Rs.18,14,41,000/-. However, subsequent to bidding, BPC vide its letter dated 1.12.2015 intimated to the successful/ selected bidder the final acquisition price as Rs.18,26,64,718/-. The Petitioner has submitted that increase of Rs.12,23,718/- in the acquisition price of SPV is Change in Law event in terms of Article 12.1.1 of TSA and accordingly, the same may be allowed.

70. The Petitioner has submitted that REC Transmission Projects Company Limited is the Bid Process Coordinator (BPC) for the Project and the BPC had indicated the reasons for increased acquisition price to the Petitioner vide letter dated 24.8.2020. The increase of Rs.12,23,718/- in acquisition price by BPC (who has acted on behalf of

the beneficiaries in initiating the competitive bid process) were not within the control of the Petitioner. It has been submitted by the Petitioner that reason for increase in acquisition price as provided by BPC in its reply dated 24.8.2020 is due to increase in reimbursement expenses, increase in interest expenses and increase in Service Tax from 14% to 14.5%.

71. We have considered the submissions made by the parties. The BPC vide its letter dated 17.9.2015 had informed all the bidders about the acquisition price payable for acquiring 100% equity shareholding of SPV as Rs.18,14,41,000/-. Subsequently, the BPC vide its letter dated 1.12.2015 intimated the successful bidder the final acquisition price as Rs.18,26,64,718/-. The Petitioner wrote to BPC on 18.8.2020 seeking reasons for increase in acquisition price. In response, BPC vide its letter dated 24.08.2020 has submitted response with the details of increase in the acquisition price as under:

(Rs. in lakh)

Particulars		Final Acquisition Price intimated after bidding vide letter dated 1.12.2015	Tentative Acquisition Price intimated before bidding vide letter dated 17.9.2015
1	Professional Fee	1500.00	1500.00
2	Reimbursement of Expenses	87.71	84.20
3	Interest on Expenses	3.71	3.42
	Sub-Total without Service tax	1591.42	1587.62
4	Service Tax	230.22	221.79
5	Share Capital	5.00	5.00
	Total with Service tax	1826.64	1814.41

72. Perusal of above details reveals that the increase of Rs.12,23,718/- is due to increase in expenses and payment of service tax to the Government of India. As per sixth bullet under Article 12.1.1 of the TSA, 'any change in the acquisition price'

constitutes a Change in Law event. In view of the above, the Petitioner is entitled to relief for Change in Law on account of increase in acquisition price.

(b) Notification of GST Law with effect from 1.7.2017 by Government of India

73. The Petitioner has submitted that the Goods and Service Tax Act, 2017 has been notified by the Ministry of Finance, Government of India with effect from 1.7.2017, which is after the cut-off date, i.e. 2.10.2015 and, therefore, constitutes a Change in Law event. The Petitioner has further submitted that the Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 has held that the introduction of GST w.e.f. 1.7.2017 constitutes a Change in Law and that the differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law and also that the TSPs shall work out and provide the details of increase/ decrease in the tax liability in respect of introduction of GST to the LTTCs duly supported by Auditor's certificate. The Petitioner has claimed additional expenditure incurred by it on account of introduction of GST Laws as Rs.61.44 crore.

74. We have considered the submissions made by the Petitioner. The Commission in its order dated 17.12.2018 in Petition No. 1/SM/2018 in the matter of 'Additional tax burden on transmission licensees on introduction of Goods and Service Tax compensation cess' has held that the introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event. The relevant extract of the order dated 17.12.2018 in Petition No. 1/SM/2018 is reproduced below:

"27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The abolition of taxes, duties, cess, etc. on the introduction of GST are "Change in Law" events and the savings arising out of such "Change in Law" should be passed to the beneficiaries of the

TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute "Change in Law" events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties, cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.

Summary

28. Summary of our decision in the order is as under:-

(a) Introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event if the cut-off date (7days prior to the bid deadline) as per the relevant TSA falls on or after 1.7.2017.

(b) The differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law.

(c) The TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of introduction of GST to the beneficiaries/Long Term Transmission Customers duly supported by Auditor's Certificate.

(d) The additional expenditure on account of GST shall be reimbursed by the beneficiaries/Long Term Transmission Customers as per the relevant provisions of the TSA regarding Change in Law during the construction period or operating period, as the case may be.

(e) In case of dispute, either party is at liberty to approach the Commission in accordance with law."

75. In the present case, as on cut-off date i.e. 2.10.2015, there was no GST. Subsequently, the Parliament and State Legislative Assemblies, in order to introduce a unified indirect tax structure, have introduced a fresh set of taxation laws, which has replaced various Central and State level taxes, through various enactments collectively referred to as the GST Laws which came into effect from 1.7.2017. Since the additional recurring and non-recurring expenditure, which has been incurred by the Petitioner is on

account of an Act of Parliament/ State Legislative Assemblies after the cut-off date, i.e. 2.10.2015, the same is covered under Change in Law provisions of the TSA under Article 12.1.1 of the TSA. The relief for any additional expenditure incurred by the Petitioner due to introduction of GST shall be admissible for the Project within the original scope of work. The Petitioner shall submit relevant documents to LTTCs to establish one to one correlation between the items and GST levied thereon, duly supported by invoices and Auditor's certificate.

(c) Notification of payment of Land compensation for tower base as well as corridor of transmission line by State Governments of Andhra Pradesh and Karnataka.

76. The Petitioner has submitted that the orders issued by the State Governments of Andhra Pradesh and Karnataka with regard to payment of land compensation for tower base as well as corridor of transmission lines in the States of Andhra Pradesh and Karnataka respectively fall within Article 12.1.1 of the TSA. It has been submitted that as per Article 12.1.1 of the TSA, Change in Law includes 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 is Change in Law. Moreover, imposition of a requirement for obtaining any consent, clearances and permits which was not required earlier is also considered as Change in Law. Thus, the orders issued by the State Authorities of Governments of Andhra Pradesh and Karnataka fulfil the requirement of the Change in Law under the TSA as they are the enactments coming into effect after the cut-off date and they impose requirement of payment of land compensation for obtaining the consent and clearance for execution of the Project.

77. The Petitioner has submitted that at the time of bidding, there were no guidelines/ notifications for payment of land compensation for ROW of transmission lines. However, on 15.10.2015, Ministry of Power, Government of India issued the Guidelines whereby payment of compensation towards base area and towards diminution of land value in the width of transmission corridor was stipulated. It has been further submitted that prior to the notification of the Guidelines dated 15.10.2015, the transmission licensees were required to pay compensation towards normal crop and tree damages in terms of Section 67 and Section 68 of the Act read with Section 10 and Section 16 of the Indian Telegraph Act, 1885. However, the above Guidelines and the consequent orders/notification by the State Authorities led to an impact on the Project as there was now a requirement of determination and payment of compensation which did not exist prior to the bid cut-off date.

78. The Respondent, TANGEDCO has submitted that as regards the increase in the Project cost due to notification of payment of land compensation by Governments of Andhra Pradesh and Karnataka, the Petitioner should have sought legal remedies to restrict the additional land compensation in line with the MoP Guidelines instead of settling down with the land compensation set by the State Governments. For instance, the higher land compensation compared to that of MoP Guidelines levied on PGCIL for erection of Edamon-Cochin 400 KV corridor under Kudankulam scheme was borne by the State Government of Kerala. TANGEDCO has further submitted that the Petitioner has failed to seek legal remedies against the land compensation levied by the State Governments. Alternatively, it should have insisted on a similar approach in paying land compensation as in the case of Edamon-Cochin 400 KV corridor, as the States of

Andhra Pradesh and Karnataka are also benefited by the transmission elements of the Project. TANGEDCO has submitted that the Petitioner may be directed to furnish the details of payment of land compensation for individual assets, with details of asset-wise land compensation levied by the State Governments of Karnataka and Andhra Pradesh in excess of MoP Guidelines along with notified dates and payment made with respect of each element.

79. In response, the Petitioner has submitted that the Petitioner, when faced with the Force Majeure/Change in Law event of change in policy regarding land compensation, took various steps and wrote various letters to LTTCs, including the lead LTTC seeking support of the LTTCs in completing of Element 6. At the relevant time, TANGEDCO, the lead LTTC, did not intervene or support the Petitioner in resolving the said issue nor advised the Petitioner to challenge the orders issued by the Government of Andhra Pradesh regarding payment of land compensation. The Petitioner has further contended that compensation for Change in Law cannot be denied on the ground that the affected party should have challenged the law. The correctness or validity of the notification cannot be subject matter of this Petition. It has been further submitted by the Petitioner that the example of Edamon-Cochin 400 kV corridor cited by TANGEDCO where the Government of Kerala had paid the land compensation is not applicable in the present case. The said case is distinguishable for various reasons. Moreover, the compensation was shared between the PGCIL and Government of Kerala as a one-time special dispensation. This does not mean or necessitate that every State Government in every case has to share the compensation and neither the Petitioner nor TANGENDCO can dictate such terms to the State Government. The State Government notifications do not

make any such provision for sharing of the compensation fixed by the State Government and the Petitioner is bound by such notifications. In the order dated 25.1.2021 passed in Petition No. 265/MP/2020 (Powergrid Warora Transmission Limited) and order dated 29.1.2021 in Petition No. 264/MP/2021 (Powergrid Parli Transmission Limited), this Commission has already dealt with the above issue and has allowed the relief on account of above Change in Law event.

80. We have considered the submissions made by the parties and examined the documents made available on record in support of the aforesaid claim. Perusal of documents reveals that the claims of the Petitioner for payment of land compensation are on the basis of the orders of the District Collectors & Magistrates of the States of Andhra Pradesh and Karnataka. Moreover, orders of the District Collectors & Magistrates of the State of Andhra Pradesh relate to both prior and post period to the order G.O.RT No. 83 dated 20.6.2017 of Energy, Infrastructure & Investment Department, Government of Andhra Pradesh by which the Guidelines issued by Ministry of Power were adopted, albeit with certain changes/modifications.

81. At the outset, we would like to deal with the submission of the Petitioner to the effect that as on cut-off date, there was no guidelines/notification for payment of land compensation and that the transmission licensees were required to pay compensation towards normal crop and damages in terms of Section 67 and Section 68 of the Act read with Section 10 and Section 16 of Indian Telegraph Act, 1885. In our view, the aforesaid submission is not entirely correct. While it is correct that in many of the States, the transmission licensees are not required to pay the land compensation for laying of

the transmission lines, it is equally correct that in certain States, the provisions requiring the transmission licensee to pay the land compensation for laying of transmission lines under the aforesaid statutory provisions were in place. For instance, Hon'ble Supreme Court in its judgment in the case of Kerala State Electricity Board v. Livisha [2007(6) SCC 792], rendered as far back as in the year 2007, has acknowledged that drawing of electrical lines has an effect of diminution of value of land and other properties over which such lines are drawn and has also taken note of certain relevant factors for determination of land compensation. Further, even prior to the issuance of Guidelines issued by Ministry of Power, Government of India dated 15.10.2015, certain States/State authorities already had mechanism in place prescribing the applicable compensation for the transmission tower base area and/ or for diminution of value of land in the RoW corridor due to laying of transmission lines. It is also pertinent to note that the Guidelines issued by Ministry of Power were on the basis of the recommendations made by the Committee whose scope was to analyse the issues relating to RoW for laying of transmission lines and to suggest a '*uniform methodology*' for payment of compensation on this count. The said Guidelines were merely recommendatory in nature to the States/UTs and on their own did not constitute Change in Law as already observed by the Commission in its orders dated 29.3.2019 in Petition No.195/MP/2017 [NRSS XXXI (B) Transmission Limited and UPPCL and Ors.], order dated 29.1.2021 in Petition No. 264/MP/2020 [Powergrid Parli Transmission Limited v. MSEDCL and Ors.], etc. The acquisition of land being the State subject, all the States/UTs were requested by the Ministry of Power to take suitable decision regarding adoption of the said Guidelines. Thus, at the time of bidding, whether a transmission

licensee was required to factor in the land compensation payable needs to be examined on the basis of the procedure prevalent in the State and followed by State Authorities (or 'district' for that matter) where the transmission line is to be laid.

82. In view of the above, we now proceed to deal with the claims of the Petitioner on the basis of the orders issued by the Collector/District Magistrate, *inter alia*, fixing the rate of land compensation. Perusal of these orders reveals that in many of the cases, the Collectors have fixed the rate of land compensation for tower base by adopting the compensation rates fixed in the previous proceedings for laying of high voltage transmission lines. The relevant extract of one such order is as under:

West Godavari Collectorate, Eluru.
Dated 30/08/2016
PROCEEDINGS OF THE DISTRICT COLLECTOR, WEST GODAVARI, ELURU
PRESENT SHRI BHASKAR KATAMNENI, IAS

Sub: Land Acquisition – General – West Godavari District- Laying of Vemagiri-Chilakaluripeta 765KV D/C Overhead transmission Line u/s 68 of Electricity Act, 2003 for strengthening of Transmission System beyond Vemagiri- fixing up rates for land and trees – Orders issued.

Read: 1. W.G Collector's proceedings Roc No. G1/4617/2013, Dated 13.05.2015
2. W. G. Collector's proceeding Roc E-Computer No. G1/26414/2015 Dated 27.03.2016
3. Ref No. PSITSL/Nuzvid/DC/26, Dated 03.06.2016 of the DGM, Construction Area Office, Nuzivid.
4. Government Vide G.O.Ms No. 357 Revenue (L.A) Department, Dated 23.3.2006.
5. W.G. Collector's Roc E-Computer No. G1/26414/2016, Dated 30.06.2016
6. Ref No. PSITSL/Nuzvid/DC, Dated 27.08.2016 DGM, Construction Area Office, Nuzivid

In reference 3rd read above, the DGM, Construction Area Office, PSITSL, Nuzivid has submitted that beyond Vemagiri transmission system was evolved in Andhra Pradesh and the same has been entrusted to M/s POWERGRID Southern Inter Connector Transmission System Limited (PSITSL), a 100 % wholly owned subsidiary of POWERGRID.

The DGM, Construction Area Office, Nuzivid has further submitted the above mentioned transmission line runs through Tallapudi, Gopalapuram, Koyyalagudem, Jangareddigudem, T.Narasapuram and Chintalapudi Mandals of West Godavari District and through Krishna, Guntur and East Godavari District of A.P and the project is being implemented on Fast Track and scheduled to be completed within 27 months reckoned from March, 2016 and POWERGRID, on behalf of the PSITSL, making all out efforts to complete the project within the target period and presently survey works are in advanced stage and expect to commence the Foundation Works by 3rd week of June, 2016.

The DGM, Construction Area Office, Nuzivid has finally requested to advise the concerned authorities to provide required data as mentioned in the GoI Guidelines so as to enable to pay the compensation for the land between four legs of the tower and towards the damages for the crop/trees during the execution to the affected farmers/landlords at the earliest and further requested to advise the concerned Revenue/Police authorities to cooperate and support for resolving ROW issues, arise during the execution of the above important and critical project.

In the above circumstances, the DGM, Power Grid Corporation has been informed to attend Collectorate, W.G Eluru on 22.06.2016. Accordingly, the Managers, CAO, Power Grid Corporation Nuzivid and Sitanagaram have appeared before the District Revenue Officer, Eluru and in the meeting it was discussed about the following rates previously fixed in a similar cases, for tree valuses and land value for payment of compensation to the land owners in the cases of 400 KV Twin moose DC line from HNPCL/Visakhapatnam to 400/220 KV Substation at Kamavarpukota for evacuation of power from M/s Hinduja National Power Corporation Ltd. (1040 MW) Power Plant and also in case of 400 KV Twin Moose DC line from existing 400/220 KV Vemagiri Substation to 400/220 kV Kamavarapukota Substation issued in the reference 1st and 2nd cited and the copies of the same were supplied to the Power Grid Official, for giving consent and willingness to adopt the same rates in this case also.

Finally, the DGM Construction Area Office, PSITSL, Nuzivid has been requested to furnish their organization's willingness to adopt the following mentioned rates immediately to this office for taking further action in the matter.

1. Payment of Tree/Crop compensation @ 4 time on the rate fixed as per the G.O.M.S No. 357, Revenue (LA) Department, Dated 23.3.2006 and for Eucalyptus tree @ an amount of Rs.4,400/- per MT.
2. The land value in tower area is fixed at Rs.1,28,000/- lump sum.
3. If there are trees/crop exist in the tower area, value of trees/crop will be paid in addition to the land value.

In the reference 6th read above, the DGM, Construction Area Office, PSITSL Nuzivid has conveyed their organization's willingness to adopt the above compensation rates and requested to issue necessary orders at the earliest for implementation and

disbursement of compensation for the affected farmers in time during the execution of works, for Laying of Vemagiri – Chilakaluripeta 765 kV D/C Overhead transmission Line.

In the circumstances reported by the DGM, Construction Area Office, PSITSL, Nuzvid, it is hereby permitted to adopt the above tree value and land value fixed earlier in similar cases in respect of 400KV Twin Moose DC line from HNPCL/Visakhapatnam to 400/220 KV Substation at Kamavarapukota for evacuation of power from M/s Hinduja National Power Corporation Ltd. (1040 MW) Power Plant and also in case of 400KV Twin Moose DC line from existing 400/220 KV Vemagiri Substation to 400/20KV Kamavarapukota Substation.

83. Similarly, perusal of the Orders of District Collectors of Prakasam, Krishna and East Godavari shows that the land compensation fixed in respect of the Petitioner's Project were on the basis of the rate of compensation as already fixed in the earlier proceedings dated prior to the cut-off date (2.10.2015). The order of Collector of YSR District indicates that the compensation had been fixed, based on the request of the Petitioner, at the same rate as fixed in the case of APTRANSCO. Thus, it is clearly observed that the payment of land compensation for laying of transmission line in the various districts of the Andhra Pradesh was prevalent before the cut-off date as well as prior to the issuance of the Guidelines by Ministry of Power on 15.10.2015 and its adoption by the State of Andhra Pradesh by Energy, Infrastructure & Investment Department vide G.O.RT No. 83 dated 20.6.2017. Further, the Petitioner has not placed on record any document which clearly establishes that determination of compensation vide orders of District Collectors & Magistrates in Karnataka and Andhra Pradesh (before adoption vide G.O.RT No. 83 dated 20.6.2017) were not required as on cut-off date and that the need arose only on account of 'Change in Law' as defined in the TSA.

84. Hence, in our view, when the relevant State authorities were already awarding the land compensation for laying of transmission lines and for that purpose had fixed the

compensation rates which was prior to the cut-off date of the Petitioner, it was incumbent on the Petitioner to factor in such compensation while submitting its bid for the Project. Having not taken into cognizance such orders of the State authorities which were already in existence prior to the cut-off date, the Petitioner cannot be permitted to contend that there was no requirement of land compensation and that the orders of these State authorities fixing the land compensation constitute a Change in Law and its claims to this effect are to be allowed.

85. The similar issue has been considered by the Commission in its order dated 11.3.2019 in Petition No. 199/MP/2018 in the case of Maheshwaram Transmission Limited v. TANGEDCO, wherein the Petitioner therein had made the Change in Law claim by citing promulgation of new set of compensation guidelines for re-organized Rangareddy and Sangareddy districts in the State of Telangana. However, the Commission by rejecting its aforesaid Change in Law claim observed as under:

“37. The question arises whether (i) Government of Telengana notification dated 11.10.2016 re-organising the Rangareddy district and the revenue divisions, mandals, and villages due to which certain mandals which were earlier under the Mahabubnagar district in the State of Andhra Pradesh came under the re-organised Rangareddy district, (ii) Letters dated 5.11.2016 and 20.4.2017 issued by the Collector, Rangareddy district and District Collector, Sangareddy respectively fixing the compensation for land owners, are covered under change in law provisions of the TSA. It is noted that Collector, Rangareddy district and District Collector, Sangareddy vide their letters dated 5.11.2016 and 20.4.2017 while disposing of the representations of the Petitioner fixing compensation for land owners to fulfil their demands, have relied upon the previous order dated 8.8.2014 issued by District Collector & District Magistrate, Rangareddy district.

38. In our view, Change in law relief is allowable if there is any imposition of a new requirement of obtaining any consents, clearances and permits which was not required earlier or a change in the terms and conditions prescribed earlier or introduction of any new terms and conditions for obtaining the consents, clearances and permits after the cut-off date. However, in the present case, at the time of bidding, the Petitioner was aware about the order dated 8.8.2014 issued by the District Collector & District Magistrate, Rangareddy district fixing the compensation for land owners. Based on the representation of the Petitioner that the landowners are demanding huge compensation,

District Collector, Rangareddy District vide letter dated 5.11.2016 decided that the proceedings issued by the then Collector, Rangareddy vide No. G1/115/2014, dated 8.8.2014 will apply to reconstituted Rangareddy District including erstwhile Mahabubnagar district. After issue of the said letter, District Collector, Sangareddy District directed, vide its letter dated 20.4.2017, the Petitioner to pay the compensation as per the said order. It is noted that order dated 8.8.2014 was issued prior to the bid deadline i.e. 15.9.2014. Therefore, this cannot be considered as Change in terms and conditions of the consents, clearances and permits. Perusal of the both letters reveals that the Collector, Rangareddy district and District Collector, Sangareddy did not change the base rate of compensation and directed the Petitioner to pay the compensation to land owners already prevailing before the bidding. Since, as on cut-off date i.e. 15.9.2014, there was already provision for compensation to land owners fixed by the District Collector, Rangareddy district vide its order dated 8.8.2014 which was followed by the Collector, Rangareddy district and District Collector, Sangareddy without any change. Since, there is no change in base rate of compensation, the letters dated 5.11.2016 and 20.4.2017 issued by the District Collector, Rangareddy district and District Collector, Sangareddy district is not covered under change in law and therefore, claim in this regard is not allowable since, in the facts of the case, there is no change in rate of compensation.”

86. In the aforesaid order, the Commission rejected the Change in Law claim of land compensation made by the Petitioner therein on the basis of the orders of District Collectors (Sangareddy and Rangareddy) since at the time of bidding (prior to cut-off date), the Petitioner was already aware about the earlier order dated 8.8.2014 issued by the District Collector & Magistrate of Rangareddy (prior to its reconstitution) fixing the compensation for land owners and which was subsequently adopted by the Collectors of Sangareddy and reconstituted Rangareddy. The Commission had further observed that since, as on the cut-off date, there was already provisions of compensation to the land owners fixed by the District Collector Rangareddy vide order dated 8.8.2014 and there was no change in the base rate of compensation in the orders of the District Collectors of Sangareddy and reconstituted Rangareddy, it cannot be considered as change in terms and conditions of consent, clearance and permits and consequently, a 'Change in Law' event. The aforesaid decision squarely applies to the facts of the present case. The Petitioner cannot claim the land compensation under Change in Law

on the basis of the orders of District Collector fixing the compensation in line with the earlier orders which were already available as on the cut-off date. The Petitioner was required to factor in such compensation while submitting its bid.

87. It is further observed that the Government of Andhra Pradesh subsequently vide its G.O.RT No. 83 dated 20.6.2017 issued by Energy, Infrastructure and Investment Department adopted the Guidelines issued by the Ministry of Power on 15.10.2015 for the State of Andhra Pradesh, albeit with certain changes – (i) compensation @ 100% (as against 85% provided in MoP Guidelines) of land value determined by District Magistrate or any other authority based on circle rate/ Guidelines value/Stamp Act rates for tower base area and (ii) compensation towards diminution of value of land in the RoW corridor due to laying of transmission line and imposing certain restriction to be decided as per the categorisation/type of land in different place, subject to a maximum of 10% of land value as determined based on circle rate/Guidelines value/Stamp Act rates (as against 15% provided in the MoP Guidelines). The said order has been made effective from the date of its issuance i.e. 20.6.2017. The said order issued by the Government of Andhra Pradesh and made applicable across all the districts of Andhra Pradesh would constitute a Change in Law in terms of TSA. The State orders/notifications adopting the recommendations made in the Guidelines of Ministry of Power, Government of India dated 15.10.2015 have already been considered as Change in Law by the Commission vide its order dated 29.1.2021 in Petition No. 264/MP/2020 [Powegrid Parli Transmission Limited v. MSEDCL and Ors.], order dated 28.10.2021 [Powergrid Jabalpur Transmission Limited v. MSEDCL and Ors.] in Petition No. 610/MP/2020 and others. Therefore, the amount of land compensation paid by the

Petitioner towards tower base and for the RoW corridor in terms of the aforesaid order of the Government of Andhra Pradesh is required to be allowed under Change in Law, albeit after deducting the amount already fixed by the concerned District authorities in similar cases prior to the cut-off date, which the Petitioner was required to factor in at the time of submitting its bid.

88. In view of the above, the Petitioner will be entitled to claim the payment of land compensation under Change in Law only if the Petitioner has been required to pay the land compensation in terms of the G.O.RT No. 83 dated 20.6.2017 issued by Energy, Infrastructure & Investment Department, Government of Andhra Pradesh. The Petitioner will be entitled to claim such amount under Change in Law after deducting the compensation fixed by concerned State authority in similar cases prior to cut-off date, if any. The compensation fixed by the District Collector for the period before the Notification of G.O.RT No. 83 dated 20.6.2017 in accordance with the then prevailing law in Andhra Pradesh cannot be allowed as Change in Law.

89. In case of the State of Karnataka, the Petitioner has claimed the compensation on the basis of the orders passed by the DC, Tumakur District only. The Petitioner has not placed on record any notification or the order of the Government of Karnataka adopting the Guidelines of Ministry of Power dated 15.10.2015 post its cut-off date. As already observed, whether the State authorities were already awarding the land compensation for laying of transmission prior to the cut-off date is a relevant factor as in case such authorities were already awarding such compensation prior to the cut-off date, it was incumbent upon the Petitioner to factor in such compensation while submitting its bid.

We observe from the proceedings of the Committee constituted by the Ministry of Power for preparation of the Guidelines that the District Authority in Tumkur, Karnataka had in fact awarded the land compensation vide its order dated 8.7.2014 in the case of construction of transmission line, which clearly is prior to the cut-off date in the present case. Nothing contrary has been placed on record by the Petitioner to indicate that the District Authorities in Tumkur District, Karnataka were not awarding the land compensation prior to its bid cut-off date. Further, the Petitioner has not submitted any orders of Government of Karnataka regarding change in land compensation policy. The Petitioner has based its claim on the order dated 3.12.2018 of Tumkur District DC and DM passing the compensation payable to farmers relating to 400 kV D/C Cudapa-Madhugiri Power Line project

90. We observe that the above order dated 3.12.2018 issued by the Tumkur District DC and DM cannot be construed to be a 'Change in Law' since such orders are passed by DC under the Act and the Telegraph Authority Act, 1885 and the Petitioner had the recourse as provided in these Acts. Therefore, we are not inclined to grant any relief claimed against compensation paid in the State of Karnataka.

(d) Additional payment towards Wild life clearance from NTCA

91. The Petitioner has submitted that new requirement of obtaining NTCA clearance due to notification of the Tiger reserve subsequent to the bidding of the Project constitutes as Change in Law event. The additional cost implication owing to the above new requirement is Rs.15.47 crore which was paid by the Petitioner to the Forest Department as per its invoices raised towards wild-life clearance and the Petitioner is

entitled to relief as per Article 12 of the TSA.

92. The Respondent, TANGEDCO has submitted that the Petitioner was bound to visit the route of the transmission lines associated with the Project and surrounding areas and obtain/verify all information which it deemed fit and necessary for preparation of the bid. It has been further submitted that the Petitioner ought to have adhered to the Clause 2.14.2.4 of the RfP, which states that the bidders in their own interest should carry out required survey and field investigation for submission of their bids. Thus, merely sticking to survey report of the BPC and not surveying the route is squarely Petitioner's fault. Therefore, the delay in getting the clearance along with financial burden due to aforesaid imprudent act of the Petitioner cannot be passed on to the beneficiaries.

93. The Petitioner has submitted that Element 5, Chilakaluripeta–Cuddapah 765 kV D/C line was traversing through the forest area in Proddatur and Nellor divisions in the State of Andhra Pradesh. Accordingly, on 18.4.2016, the Petitioner applied for grant of permission to undertake the survey of the forest areas in accordance with the established procedure. The Petitioner, pursuant to the receipt of the permission on 30.4.2016, undertook the Differential Global Position System survey in association with the District Forest Officer (DFO), Proddatur. After acceptance of the said survey by the Principal Chief Conservator of Forest (PCCF), Guntur on 29.5.2017, the Petitioner submitted the proposal on 31.5.2017 for diversion of forest land measuring 74.486 ha in Proddatur and Nellor divisions, which was then forwarded to the DFO of Proddatur division and the DFO of Nellor division on 5.6.2017 for further action. While the DFO of

Nelloor division proceeded with approval process, the DFO of Proddatur division informed the Petitioner that wildlife clearance is required since the area falls under the tiger corridor. However, on the request of the Petitioner the DFO of Proddatur division could not provide any notification declaring the area as a tiger corridor. Accordingly, the Petitioner vide letter dated 19.12.2017 addressed to the PCCF, Guntur raised the issue that wildlife clearance is required only if it is notified in terms of Clause 3.5.2 of the Guidelines dated 19.12.2012 issued by the Ministry of Environment and Forest. Based upon the aforesaid representation by the Petitioner to PCCF, Guntur, vide letter dated 1.1.2018, the PCCF, Guntur approached the NTCA, New Delhi for seeking clarification regarding applicability of wildlife clearance in absence of any notification. On 12.3.2018, the NTCA confirmed the requirement of wildlife clearance.

94. We have considered the submissions of the Petitioner and the Respondent. We observe that route length of instant transmission line i.e C'Peta-Cuddapah under three alternatives as per BPC survey report are as follows:

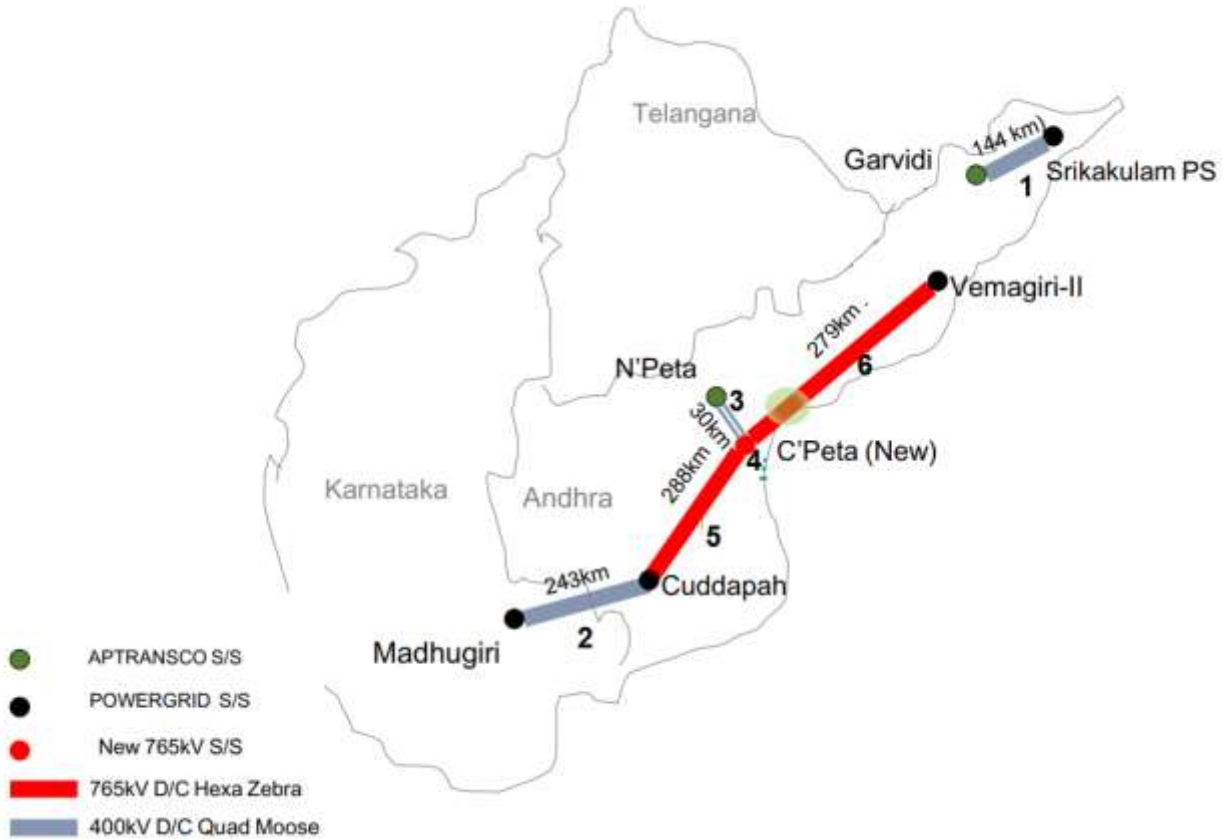
**“Chilkaluripeta to Cuddapah 765 kV D/C Transmission Line
Comparative Statement for 3 Alternative Routes**

Sr. No.	Description	Alt-I (Proposed) (Violet)	Alt-II (Green)	Alt-III (Blue)
	Bee line length	229.258 km	237.634 km	237.634 km
1.	Line Length	260.175 km	261.303 km	274.146 km
	a) Plain	235.100 km	230.103 km	240.046 km
	b) Undulated terrain	25.075 km		
2.	a) Angle Points	95		
3.	Forest			
	a) Reserve forest	23.971 km		
	b) Protected forest	NIL		
	c) Social forest	NIL		
	d) Other area	NIL		
4.	Transportation & Maintenance	Available	Available	Available
		15 Nos.	13 Nos.	13 Nos.
5.	Power Line Crossings (132 kV & Above)	AP15-AP16 (220 kV D/C)	AP14-AP15 (220 kV D/C)	AP10-AP11 (132 kV D/C)
		AP16-AP17 (220 kV D/C)	AP16-AP17 (220 kV D/C)	AP14-AP15 (220 kV D/C)
		AP18-AP19 (132 kV D/C)	AP18-AP19 (132 kV D/C)	AP25-AP26 (220 kV D/C)
		AP20-AP21 (220 kV D/C)	AP24-AP25 (400 kV D/C)	AP29-AP30 (132 kV D/C)
		AP23-AP24 (132 kV D/C)	AP27-AP28 (132 kV D/C)	AP31-AP32 (400 kV D/C)
		AP32-AP33 (220 kV D/C)	AP33-AP34 (400 kV D/C)	AP44-AP45 (400 kV D/C)
		AP34-AP35 (400 kV D/C)	AP41-AP42 (132 kV D/C)	AP46-AP47 (400 kV D/C)
		AP36-AP37 (400 kV D/C)	AP59-AP60 (400 kV D/C)	AP50-AP51 (765 kV D/C)
		AP41-AP42 (132 kV D/C)	AP61-AP62 (765 kV D/C)	AP56-AP57 (400 kV D/C)
		AP48-AP49 (765 kV D/C)	AP76-AP77 (132 kV D/C)	AP76-AP77 (132 kV D/C)
	AP51-AP52 (400 kV D/C)	AP90-AP91 (132 kV D/C)	AP88-AP89 (132 kV D/C)	

Client:
REC Transmission Projects Company Ltd.
(A Wholly Owned Subsidiary of Rural Electrification
Corporation Limited)
New Delhi

Consultant:
M/s. Prasad Surveyors
Pune”

95. The illustrative SLD provided by the Petitioner provides the route length as under:



96. We observe that the Petitioner followed the route length as per its own survey and traversed some route not envisaged under the BPC survey. The TSA does not mandate the Petitioner to follow route as provided by BPC, but provides the Petitioner to carry out its own survey which the Petitioner has carried out and followed its own route.

97. Change in Law can be claimed under TSA only for clear notifications of law which did not exist on the cutoff date. We observe that the requirement of obtaining the wildlife clearance by the Petitioner has not arisen from any notification issued by the Ministry of Forest & Environment after the cut-off date, but has arisen in terms of NTCA, Ministry of Forest & Environment having approved the Tiger Conservation Plan of Nagarjunsagar Srisaillam Tiger Reserve for the period from 2013-14 to 2022-23 vide F.No.1-19/2009- NTCA dated 13.10.2014, whereby certain areas outside the Tiger

Reserve had been approved as Tiger Corridor by NTCA. This is evident from the letter dated 1.1.2018 of the PCCF, Guntur addressed to NTCA. The relevant extract of the said letter reads as under:

“Sub: Andhra Pradesh Forest Department – Wildlife - Request for clarification on applicability of Wildlife clearance for projects (transmission lines etc.) passing through Tiger corridor with reference to the guidelines sl. No. 3.5.2 issued by Government of India, Ministry of Environment and Forest (Wildlife Division), New Delhi, dated 19.12.2012-Reg.

Ref: GM (Project & Comml.), Power Grid Corporation of India Ltd., Secunderabad, Ref. SRTS-I/Engg/ESMD/20117, Dt. 19.12.2017.

It is to submit that, the National Tiger Conservation Authority, Ministry of Environment, Forest and Climate Change, Government of India have approved the Tiger Conservation Plan of Nagarjunsagar Srissailam Tiger Reserve for the period from 2013-14 to 2022-23 vide F.no.1-19/2009-NTCA, dated 13.10.2014. In the above plan certain areas outside Tiger Reserve have been proposed as Tiger Corridor and the same has been approved by NTCA.

Recently, Power Grid Corporation of India Ltd., has approached this Office of the clarification on the applicability of the Wildlife clearance for projects (transmission lines) passing through Tiger corridor with reference to guidelines sl. No. 3.5.2 issued by Government of India, Ministry of Environment and Forest (Wildlife Division), New Delhi, dated: 19.12.2012 stating that Tiger Corridor has not been formally notified.

In view of above, it is requested to issue a clarification on the applicability of Wildlife clearance for projects (transmission lines) passing through approved Tiger Corridor with reference to the guidelines sl. No. 3.5.2 issued by Government of India, Ministry of Environment and Forest (Wildlife Division), New Delhi, dated 19.12.2012.

98. In response, the requirement of the wildlife clearance from NTCA for the projects passing through the tiger corridors of Nagarjunsagar-Srisailam Tiger Reserve was confirmed by the NTCA in terms of Section 38 O (1)(g) of the Wildlife (Protection) Act, 1972. The relevant extract of the letter of NTCA dated 12.3.2018 is as under:

“Sub: Request for clarification on applicability of wildlife clearance for projects (transmission lines etc.) passing through tiger corridor with reference to guidelines S. No. 5.2 issued by Government of India, Ministry of Environment, Forest & Climate Change

(Wildlife Division) letter dated 19.12.2012 –reg.

.....

With reference to the above subject, I am directed to convey that the projects (Transmission Lines etc.) passing through tiger corridors of Nagarjunasagar- Srisailam Tiger Reserve requires clearance/advice from this Authority in view of the provisions of the section 38 O (1)(g) of the Wild Life (Protection) Act, 1972.

The exact clarification can only be furnished once the shape files of the alignment of transmission lines are furnished along with GPS data in this regard....”

99. Thus, it is apparent that the approval of the tiger corridor by NTCA through the Tiger Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve was dated 13.10.2014 and was prior to the cut-off date. Consequently, the requirement of clearance from NTCA in respect of the projects passing through the said corridor under Section 38 O(1)(g) of the Wildlife (Protection) Act, 1972, was also in existence prior to the cut-off date. Therefore, the Petitioner cannot contend that there was an inclusion of new terms or conditions for obtaining consent, clearance or permit. In our view, the Petitioner has failed to exercise necessary prudence and due diligence and to make itself fully informed about the requirement of obtaining the wildlife clearance in terms of the existing provisions as on the cut-off date.

100. The Petitioner has also submitted that the route in the Survey Report furnished by the BPC for the Element 5 did not indicate the requirement of wildlife clearance, though wildlife clearance was required to be obtained even for the route proposed by BPC. The Petitioner has further submitted that in the absence of any notification declaring the areas as wildlife corridor, it was not possible for the Petitioner to ascertain the requirement of wildlife clearance till the requirement of such clearance was confirmed by the Forest Authorities.

101. We have considered the submissions of the Petitioner. In our view, the Petitioner's reliance placed on the Survey Report prepared by the BPC is misplaced. We observe that all the three alternate routes proposed in the Survey Report prepared by the BPC for the Element 5 clearly indicated that they pass through forest areas and thus, requirement of obtaining the forest clearance was within the knowledge of the Petitioner. We also observe that the TSA does not mandate the Petitioner to follow route as provided by BPC, but provides the Petitioner to carry out its own survey which the Petitioner has carried out and followed its own route. Since the route followed is as per the Petitioner's own survey, it was Petitioner's responsibility to ascertain the requirement of obtaining wildlife clearance. We further observe that the requirement of obtaining wildlife clearance for tiger corridor arose from the Tiger Conservation Plan of Nagarjunsagar Srisailam Tiger Reserve dated 13.10.2014 and as the said plan was prior to the cut-off date, the requirement of the Petitioner to obtain the wildlife clearance along with forest clearance for the tiger corridor area was in existence as on the cut-off date. Thus, in our view, the Petitioner was required to factor in the time and cost requirements for obtaining the wildlife clearance at the time of bidding. In view of the above, the Change in Law claim of the Petitioner for the additional payment toward wildlife clearance deserves to be rejected.

(e) Cost over-run on account of increase in the Project cost including funding cost and overhead cost due to Change in Law

102. The Petitioner has submitted claims on account of funding costs and overhead costs for each of the Change in Law events. The Petitioner has submitted that in terms of Article 12.2.1 of the TSA, the impact of Change in Law during the construction period

of the Project is to be given as an increase in the cost of the Project and that the expression cost of Project or Project cost during the construction period also refers to and encompasses within its scope, all costs with regard to the establishment of Project incurred by the entity. These not only includes the hard cost of capital assets (plant, machinery and equipment, etc.) but also the interest costs and finance charges during the construction and other soft costs/ overheads related to establishment of the Project. Relying upon the Terms and Conditions of Tariff Regulations, it has been submitted by the Petitioner that even as per the said Regulations, IDC, which essentially comprises of interest payable on debt part is allowed to be capitalized and the total expenditure incurred in completion of the Project including on account of time overrun is capitalized with IDC as an additional cost to the extent of 70% of the increased Project cost and the balance 30% of the increased Project cost serviced as equity providing for a return of 15.5% post-tax. Similarly, for competitively bid transmission projects, increase in project cost on account of Change in Law events needs to be fully serviced, namely, the cost overrun with regard to increase in project cost on account of Change in Law, associated incidental expenditure and the funding costs during the construction period. For that purpose, the quantum of increase in the Project cost is to be apportioned as normative debt-equity in the ratio of 70:30 and increased equity deployed related to such increase in Project cost is to be serviced at a higher return consistent with the rate of return applicable to the equity.

103. The Petitioner has further contended that increase in the Project cost on account of Change in Law *inter-alia* also includes the funding cost and the overhead cost during the construction period which needs to be serviced in terms of increase in transmission

charges payable over and above the quoted transmission tariff during the entire period of TSA in order to enable the Petitioner to be compensated fully for the effect of Change in Law event. Therefore, the compensation/relief to the Petitioner should not be restricted only to the capital expenditure incurred but should also include the funding/ financing costs as well as overheads costs. Accordingly, the Petitioner has claimed additionally Rs.15.51 crore as overhead costs and Rs.214.14 crore as funding costs for the aforesaid Change in Law events. The Petitioner in support of its contention has relied upon the judgment of APTEL dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Company vs Central Electricity Regulatory Commission and Ors.

104. In addition to above, the Petitioner has submitted that although all the elements of the Project were completed by April 2019 except for 40 km stretch of Vemagiri II-Chilakluripeta 765 kV D/C line, the Project could not be commissioned owing to Force Majeure and Change in Law conditions. The Petitioner has submitted that for the elements which were completed but could not be commissioned owing to Force Majeure and Change in Law conditions, the Petitioner incurred funding costs and overheads from April 2019 until actual CoD. The additional cost implication owing to funding and overheads from April, 2019 to CoD is Rs.174.87 crore and Rs.0.53 crore respectively and the Petitioner is entitled to relief as per Article 12 of the TSA. Further, costs towards continued mobilization of equipment/ services during the intervening period to be in readiness to undertake the work has also been claimed. The additional cost implication during the period from April, 2019 to CoD is Rs.10.08 crore owing to increase in the cost of equipment/ services and Rs.0.59 crore towards overheads and

the Petitioner is entitled to relief as per Article 12 of the TSA.

105. The Respondent, TANGEDCO has submitted that increase in the cost of the Project on account of relief under Change in Law is applicable only to the hard cost of the Project excluding financing charges/interest and other overheads. It is irrelevant to compare the provisions under Tariff Regulations under the ambit of Section 62 of the Act with the tariff determination process for TBCB based Projects under Section 63, which would otherwise defeat the objective of the competitive bidding. TANGEDCO has submitted that the Petitioner itself has stated that except 40 km stretch of Vemagiri-C'Peta 765 kV line, all other elements were completed prior to SCOD and therefore, the material for the entire Project would have been supplied by the Contractors prior to April, 2019. Thus, under such circumstances, the Petitioner cannot claim material/equipment cost escalation beyond SCOD. Further, delay in declaring the CoD of the other elements is totally attributable to the Petitioner and therefore, the funding cost on account of un-commissioned elements from April, 2019 to CoD ought also not to be allowed.

106. We have considered the submissions made by the parties. The Petitioner has relied upon the judgment of APTEL dated 20.10.2020 in Appeal No. 208 of 2019 in the case of Bhopal Dhule Transmission Company vs Central Electricity Regulatory Commission and Ors in which the APTEL has observed as under:

Appeal No.208 of 2019 Dated: 20th October, 2020 Bhopal Dhule Transmission Co. Ltd. v. CERC and Ors.

“8.8 Since the spirit of Article 12 of the TSA is to ensure monetary restitution of a party to the extent of the consequences of Change in Law events, such exceptions cannot be read into Article 12 of the TSA. The Appellant has submitted that a crucial factor for the Appellant whilst bidding for the Project was that uncontrollable Change in Law events

would be duly accounted for in accordance with Article 12 of the TSA. By the Impugned Order, the Central Commission has wrongly altered the meaning of the Change in Law clause of the TSA long after award of the bid and commissioning of the Project.

8.11. Such a denial of the IDC by the Central Commission is in contravention of the provisions of Article 12.1.1 of the TSA in the facts and circumstances of the present case. By adopting such an erroneous approach, the Central Commission has rendered the Change in Law clause in the TSA completely nugatory and redundant. Such an interpretation by the Central Commission is causing the Appellant grave financial prejudice as it has no other means of recovering the IDC which it was constrained to incur for no fault of its own.

8.14 Further, the Hon'ble Supreme Court in the Energy Watchdog Judgement dated 11.04.2017 held that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by, such change in law is to restore, through the monthly tariff payments, the affected party to the economic position if such change in law has not occurred.

8.15 We are of the view that the Central Commission erred in denying Change in Law relief to the Appellant for IDC and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant's Project in accordance with the TSA. Therefore, the impugned order passed by the Central Commission is liable to be set aside as the same is in contravention of settled law laid down by the Hon'ble Supreme Court (Supra) and also the previous orders passed by the Central Commission in Petition Nos. 73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the Commission differently. In view of these facts, the Appellant is entitled for the change in law relief as prayed for in the instant Appeal. The issue is thus, decided in favour of the Appellant

107. We observe that the issue in the Appeal No. 208 of 2019 in Bhopal Dhule Transmission Company Limited v. CERC and Ors. was monetary restitution and restoration to the same economic position as if Change in Law had not occurred. This issue has been dealt with by APTEL in its judgment dated 13.4.2018 in Appeal No. 210 of 2017 in the case of Adani Power Limited v. Central Electricity Regulatory Commission and Ors. and it was held that since Gujarat Bid-01 PPA had no provision for restoration to the same economic position, the decision of allowing carrying cost will not be applicable. The relevant extract of the judgment dated 13.4.2018 reads as under:

"ISSUE NO.3: DENIAL OF CARRYING COST

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same

economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India & Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid01 PPA."

108. While dealing with the issue of carrying cost, in another matter, APTEL in its judgment dated 14.8.2018 in Appeal No. 111 of 2017 in the matter of M/s. GMR Warora Energy Limited v. Central Electricity Regulatory Commission and Ors. has held as under:

"xiii. Now we have reached to the final issue raised by GWEL related to carrying cost on the allowed Change in Law events. For the sake of brevity we are not discussing the claims of GWEL and counter claims of the Discom/Prayas Energy Group on this issue as the said issue has been decided by this Tribunal vide judgment dated 13.4.2018 in Appeal No. 210 of 2017 in case of Adani Power Ltd. v. CERC wherein this Tribunal after detailed analysis has allowed carrying cost on the allowable Change in Law events. We straight way come to the relevant portion of the said judgment which is reproduced below:

"12 d)

.....

"ix. In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondents Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of redetermination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the

Respondents Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA. The relevant extract is reproduced below:

13.4 Tariff Adjustment Payment on account of Change in Law 13.4.1 Subject to Article 13.2 the adjustment in Monthly Tariff Payment shall be effective from: (a) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or (b) the date of order/ judgment of the Competent Court or tribunal or Indian Government instrumentality, if the Change in Law is on account of a change in interpretation of Law; (c) the date of impact resulting from the occurrence of Article 13.1.1. From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less than re-determination of the existing tariff.

x. Further, the provisions of Article 13.2 i.e. restoring the Appellant to the same economic position as if Change in Law has not occurred is in consonance with the principle of 'restitution' i.e. restoration of some specific thing to its rightful status. Hence, in view of the provisions of the PPA, the principle of restitution and judgment of the Hon'ble Supreme Court in case of Indian Council for Enviro Legal Action vs. Union of India &Ors., we are of the considered opinion that the Appellant is eligible for Carrying Cost arising out of approval of the Change in Law events from the effective date of Change in Law till the approval of the said event by appropriate authority. It is also observed that the Gujarat Bid-01 PPA have no provision for restoration to the same economic position as if Change in Law has not occurred. Accordingly, this decision of allowing Carrying Cost will not be applicable to the Gujarat Bid-01 PPA."

109. The judgment of the APTEL dated 13.4.2018 in Appeal No. 210 of 2017 in the case of Adani Power Limited v. Central Electricity Regulatory Commission and Ors. was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide its judgment dated 25.2.2019 in Civil Appeal No.5865 of 2018 with Civil Appeal No. 6190 of 2018 (Uttar Haryana Bijili Vitran Nigam Limited & Anr. Vs. Adani Power Ltd. & Ors.) has held as under:

"10. A reading of Article 13 as a whole, therefore, leads to the position that subject to restitutionary principles contained in Article 13.2, the adjustment in monthly tariff payment, in the facts of the present case, has to be from the date of the withdrawal of exemption which was done by administrative orders dated 06.04.2015 and 16.02.2016. The present case, therefore, falls within Article 13.4.1(i). This being the case, it is clear that the adjustment in monthly tariff payment has to be effected from the date on which the exemptions given were withdrawn. This being the case, monthly invoices to be raised by the seller after such change in tariff are to appropriately reflect the changed tariff. On the facts of the present case, it is clear that the respondents were entitled to

adjustment in their monthly tariff payment from the date on which the exemption notifications became effective. This being the case, the restitutionary principle contained in Article 13.2 would kick in for the simple reason that it is only after the order dated 04.05.2017 that the CERC held that the respondents were entitled to claim added costs on account of change in law w.e.f. 01.04.2015. This being the case, it would be fallacious to say that the respondents would be claiming this restitutionary amount on some general principle of equity outside the PPA. Since it is clear that this amount of carrying cost is only relatable to Article 13 of the PPA, we find no reason to interfere with the judgment of the Appellate Tribunal.”

16.....There can be no doubt from this judgment that the restitutionary principle contained in Clause 13.2 must always be kept in mind even when compensation for increase/decrease in cost is determined by the CERC.”

110. We observe that the TSA in the instant matter does not have restitution provisions and the Petitioner has also not placed before us any such provisions in the TSA. Therefore, in view of above judgments of APTEL and Hon'ble Supreme Court, since the TSA in the instant Petition does not have a provision dealing with restitution principles of restoration to same economic position, the claim of the Petitioner to be fully compensated for IDC incurred on account of Change in Law is not admissible.

111. As regards the claims of the Petitioner for funding and overhead costs towards un-commissioned elements from April, 2019 to CoD owing to delays on account of Force Majeure, as the Commission has not condoned the delay in achieving the SCOD, the Petitioner shall not be entitled to be compensated for IDC and overheads incurred by it towards un-commissioned elements and during the aforesaid period.

112. As regards the claim of the Petitioner towards increase in cost of equipment/service during the period from April, 2019 to CoD, we observe that as per the Chartered Accountant certificate furnished by the Petitioner, the entire claim under the aforesaid head i.e. Rs.10.08 crore of additional payment towards cost of equipment/

services and Rs.0.59 crore as overhead cost is on anticipation basis and as on the date of filing of the Petition, the Petitioner was yet to incur such additional cost. Moreover, nothing has been brought on record as to the details of underlying equipment or services whose cost has increased, the justification as to why such cost or its increase could not have been factored into by the Petitioner and how the increase is attributable to any Change in Law events. In the above circumstances, we are not inclined to allow the aforesaid claim of the Petitioner.

113. This issue is answered accordingly.

Issue No. 4: What reliefs, if any, should be granted to the Petitioner in the light of the answers to the above issues?

114. Article 12.2 of the TSA provides for relief for Change in Law as under:

“12.2 Relief for Change in Law

12.2.1 During Construction Period: During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

- For every cumulative increase/decrease of each Rupees Nineteen Crore Seventy Two Lakh Only (Rs 19.72 Crore) in the cost of the Project up to the 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 Transmission Charges.

.....
12.2.3 For any claims made under Article 12.2.1 and 12.2.2 above, the TSP shall provide to the Long-Term Transmission Customers and the Appropriate Commission documentary proof of such increase/decrease in cost of the Project/revenue for establishing the impact of such Change in Law.

12.2.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 12.2.1 and 12.2.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to the rights of appeal provided under applicable Law.”

115. The delay of 289 day claimed by the Petitioner on account of Force Majeure has

not been condoned by the Commission.

116. All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each Rupees Nineteen Crore Seventy-Two Lakh Only (Rs.19.72 crore) in the cost of the Project up to the 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 Transmission Charges. Thus, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of Project, to be supported by CA certificate, and accordingly, shall be entitled to corresponding increase in Non-Escalable Transmission Charges as provided under Article 12.2.1 of the TSA.

117. After the CoD of the transmission system, the Petitioner has been recovering transmission charges for the Project under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2010. With effect from 1.11.2020, the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020 has come into force. Therefore, the impact of Change in Law payable to the Petitioner shall be recovered in accordance with the provisions of Regulation 15(2)(b) (second bill to the DICs) of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020.

118. The issue is answered accordingly.

119. The Petitioner has sought reimbursement of fee paid by it for filing the Petition and legal expenses. The filing fee can be reimbursed in respect of tariff petitions that are filed for (a) determination of tariff, (b) revisions of tariff due to additional capital expenditure, and (c) truing up of expenditure. This Petition being a miscellaneous Petition and not being a tariff petition, reimbursement of filing fee is not allowed. Accordingly, the prayer of the Petitioner for reimbursement of the filing fee is hereby rejected

120. This issue is answer accordingly.

121. The Petition No. 13/MP/2021 is disposed of in terms of the above discussions and findings.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(P. K. Pujari)
Chairperson