

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 266/MP/2022**

**Coram:**

**Shri I.S Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K.Singh, Member**

**Date of Order: 14<sup>th</sup> November, 2022**

**In the matter of:**

Petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Article 4, 11, 12 and 16 of the Transmission Service Agreement dated 13.1.2016 seeking extension of the Scheduled Commercial Operation Date and account of occurrences of Force Majeure Events and Change in Law events which were beyond the control of the Petitioner.

**And**

**In the matter of**

**NRSS XXXVI Transmission Limited,**  
B-10, Essel House, Lawrence Road,  
New Delhi-110 035.

.....Petitioner

Vs.

1. **U.P. Power Corporation Limited,**  
14th Floor, R. No. 1413, Shakti Bhawan Extension,  
14- Ashok Marg, Lucknow, Uttar Pradesh-226001
2. **Electricity Wing of Engineering Department.**  
Union Territory of Chandigarh Secretariat  
Sector-9, Chandigarh-160009
3. **BSES Yamuna Power Limited,**  
02nd Floor, B Block Shakti Kiran Building,  
Near Karkardooma Court, New Delhi – 110032
4. **BSES Rajdhani Power Limited,**  
BSES Bhawan, 2nd Floor, B-Block  
Nehru Place,  
New Delhi – 110019
5. **TATA Power Delhi Distribution Limited,**  
33 kV S/Stn Building  
Hudson Lane, Kingsway Camp,

Delhi-110019

6. **New Delhi Municipal Council (NDMC),**  
Palika Kendra, Sansad Marg,  
New Delhi-110001

7. **Haryana Power Purchase Centre (HPPC)**  
2nd Floor, Shakti Bhawan,  
Sector – 06, Panchkula, Haryana – 134109

8. **Power Development Dept.**  
(Govt. Of Jammu & Kashmir),  
Room No. 1/27, Mini Block  
Civil Secretariat  
Srinager-190 009

9. **Punjab State Power Corporation Limited,**  
D-3 Shakti Vihar  
Thermal Sheds, T 1 – A, Patiala, Punjab-147001

10. **Rajasthan Discoms Power Procurement Centre,**  
Shed No. 5/4, Vidyut Bhawan,  
Janpath, Jyoti Nagar,  
Jaipur, Rajasthan-302 005.

11. **Uttarakhand Power Corporation Limited (UPCL)**  
Urja Bhawan, Kanwali Road  
Dehradun, Uttarakhand-248002

12. **Himachal Pradesh State Electricity Board Limited,**  
Vidyut Bhawan,  
Shimla, Himachal Pradesh-171004

13. **REC Transmission Projects Company Limited,**  
Having its registered office at  
Core 4, Scope Complex  
7, Lodhi Road, New Delhi - 110003

14. **Power Grid Corporation of India Limited,**  
**(Central Transmission Utility)**  
Having its Registered Office at :  
B-9, Qutub Institutional Area  
Katwaria Sarai, New Delhi-110016

...Respondents

**Parties Present:**

Shri Venkatesh, Advocate, NRSS  
Shri V. M. Kannan, Advocate, NRSS  
Shri Mohit Mansharamani, Advocate, NRSS  
Ms. Lakshita, NRSS

Shri V. C. Sekhar, PGCIL  
Shri Prashant Kumar, PGCIL  
Shri Ajay Upadhyay, CTUIL  
Shri Yogeshwar, CTUIL

## ORDER

The Petitioner, NRSS XXXVI Transmission Limited (hereinafter referred to as 'the Petitioner' or 'NTL'), has filed the present Petition seeking extension of Scheduled Commercial Operation Date (SCOD) of the transmission system being developed by it, on account of Force Majeure and Change in Law events. The Petitioner has made the following prayers:

- “(a) Admit the present Petition;*
- (b) Declare that the unforeseen and uncontrollable events/factors pleaded in the Petition that have occurred on account of the events subsequent to the award of the Project, constitute as Force Majeure and Change in Law as per the TSA;*
- (c) Grant an extension of Scheduled Commercial Operation Date (SCOD) as claimed for in the Petition until the adverse impact of the Force Majeure Events and/or Change in Law has ceased to impede the work as under:*
- 1. Extension for 1151 days from 09.11.2016 to 28.04.2017 and from 24.10.2017 till date i.e., 29.06.2020 for Element 3 including (i) Koteshwar Pooling Station-Rishikesh 400 kV D/C (HTLS) Line (ii) 2 nos. of bays at 400 kV Rishikesh Sub-station of PTCUL. The breakup of the extension as sought are as under:*
- A.i Extension of 980 days from 24.10.2017 till date i.e., 29.06.2020 and continuing, due to non-issue of required No Objection Certificate (NoC) by the instrumentalities of the State of Uttarakhand required for processing forest approval in the State of Uttarakhand.*
- A.ii Extension of about 980 days from 24.10.2017 till date i.e., 29.06.2020 and continuing due to Namamay Ganga Project in Tehri District of Uttarakhand State because of which our route was required to be changed as per the instruction of concerned officials of Forest Department.*
- A.iii Extension of 169 days from 11.11.2016 to 28.04.2017 due to change in connection arrangement at Power Transmission Corporation of Uttarakhand Limited Rishikesh Sub-station.*
- A.iv Extension of 55 days from 09.11.2016 to 02.01.2017 owing to Demonetization causing considerable reduction in number of labours at*

*the site and affecting execution of work at site.*

2. *Extension for 1024 days from 09.11.2016 to 02.01.2017, 01.02.2017 to 30.03.2017 and 01.01.2018 till date i.e., 29.06.2020 and continuing - for Element 2 including (i) Babai (RRVPNL) – Bhiwani (PG) 400 kV D/C line and (ii) 2Nos. of bays at 400 kV Babai (RRVPN) sub-station for Babai (RRVPNL)-Bhiwani (PG)-400 kV D/C Line. The breakup of the extension as sought are as under:*

*B.i Extension of 365 days from 14.02.2018 to 14.02.2019 due to delay in receiving Wild Life Approval as the forest area was declared as "Khetri Bansyal Conversion Reserve" after the execution of the TSA.*

*B.ii Extension of about 167 days from 28.12.2018 till 12.06.2019 due to non-receipt of shutdown of associated bays at Babai Substation form RRVPNL*

*B.iii Extension of about 911 days from 01.01.2018 till date i.e., 29.06.2020 and continuing because of court case pending before the Hon'ble High court of Rajasthan and physical obstruction at site.*

*B.iv Extension of 55 days from 09.11.2016 to 02.01.2017 owing to Demonetization causing considerable reduction in number of labours at the site and affecting execution of work at site.*

*B.v Extension of 58 days due to Jat Agitation from 01.02.2017 to 30.03.2017.*

*B.vi Extension of 10 days from 01.11.2018 to 10.11.2018 on account of directions by Environment Pollution (Prevention & Control) Authority for National Capital Region.*

3. *Extension of 8 days from 23.10.2017 to 31.10.2017 for Element 1 including (i) LILO of one Ckt. Of 400 kV D/C Sikar (PG)- Neemrana (PG) line at Babai (RRVPNL) and (ii) 2 Nos. of bays at 400 kV Babai (RRVPN) sub-station for LILO of one Ckt. Of 400 kV D/C Sikar (PG)-Neemrana (PG) line at Babai (RRVPNL). The detailed breakup is as under:*

*C.i Extension of 8 days from 23.10.2017 to 31.10.2017 due to non-completion of work in the scope of Respondent No. 14 ( Power Grid Corporation of India Ltd.) for laying of OPGW.*

4. *Extension of 97 days from 25.03.2020 till date i.e., 29.06.2020 for Element 2 & 3 on account of national lockdown in view of the COVID-19 pandemic.*

*(d) Hold and declare that the Petitioner is exempt from any financial liabilities due to delay in achieving SCOD due to Force Majeure Events and/or Change in Law, including but not limited to the invocation of any performance bank guarantees submitted to the beneficiaries under the TSA and/or any coercive actions;*

(e) Grant liberty to the Petitioner to file further additional Petition for extension of time of the SCOD till Actual Commissioning Date in respect of continuing events of Force Majeure and/or Change in Law;

(f) Grant leave to the Petitioner to file a separate petition seeking compensation on account of time and cost-overflow, prolongation costs, opportunity costs etc. owing to the situations of Force Majeure and Change in Law, as detailed in the Petition; and

**Interim:**

(g) Pass ad-interim ex-parte directions restraining the Respondents from invoking/encashing the Bank Guarantees / Performance Bank Guarantees as given by the Petitioner to the Respondents and restraining the Respondents from taking any coercive action against the Petitioner.

(h) Grant leave to the Petitioner to seek relief (s) including but not limited to relief of compensation on account of time and cost-overflow, prolongation costs, opportunity cost etc., damage on account of loss to reputation, goodwill and credibility, arising out of or based on the cause of action that is the subject matter of the instant Petition.

(i) Grant leave to the Petitioner to file additional documents / letters / communications / monthly progress reports etc.

2. NTL is a fully owned subsidiary of Essel Infraprojects Limited (In short 'Essel Infra') which was selected as a successful bidder through the international tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 ('the Act') to establish the transmission system for "System Strengthening Scheme in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 KV D/C line at Babai (RRVPNL)" (hereinafter referred to as "the Transmission System" or "the Project") on Build, Own, Operate and Maintain (BOOM) basis and to provide transmission service to the Long Term Transmission Customers (LTTCS) of the Project.

3. NTL was incorporated as a special purpose vehicle by the Bid Process Coordinator, REC Transmission Projects Company Limited (RECTPCL) as part of Tariff Based Competitive Bidding process for implementing the Project on BOOM basis. On 13.1.2016, Transmission Service Agreement (TSA) was executed between

NTL and LTTCs of the Project. Essel Infra participated in the competitive bidding process conducted by RECTPCL and upon emerging as the successful bidder, the Letter of Intent (LOI) was issued to Essel Infra on 28.3.2016. In accordance with the bidding documents, Essel Infra acquired 100% of the shareholding in NTL by executing a Share Purchase Agreement with RECTPCL on 22.8.2016. The Commission by its order dated 7.12.2016 in Petition No. 161/TL/2016 granted transmission licence to NRTL for inter-State transmission of electricity.

4. As per the TSA dated 13.1.2016, the Transmission System comprised of six elements. Scheduled Commercial Operation Date (SCOD) for element 1 and element 2 of the Transmission System was 40 months from the effective date, whereas it was December 2016 for element 3 and element 5 of the Transmission System, and was 34 months from the effective date for element 4 and element 6.

5. For the purpose of financing the Project, NTL had requested lender, PTC IFSL to provide financial assistance to the extent of Rs.306 crore as Rupee Term Loan for construction, development and implementation of the Project on the terms and conditions as set out in the Common Facility Agreement dated 7.11.2017 and other financing documents for which PTC IFSL had agreed to. Further, NTL and PTC IFSL executed Security Trustee Agreement dated 7.11.2017 authorizing PTC IFSL to act as Security Trustee for the benefit of lender and its novates, assignees and transferees. NTL had approached the Commission in Petition No. 266/MP/2017 for approval under Section 17(3) and Section 17(4) of the Act read with Article 15.2.2 of the TSA to create security interest over all movable and immovable assets of the Project in favour of PTC IFSL, acting for the benefit and on behalf of the lender. The

Commission by its order dated 8.3.2018 in Petition No. 266/MP/2017 accorded in-principle approval allowing NTL to create security interest in favour of PTC IFSL, acting as Security Trustee pursuant to Security Trustee Agreement by way of mortgage and/or hypothecation and/or assignment and/or substitution and/or charge, as the case may be, on assets of the Project by execution of indenture of mortgage for the Project.

6. The implementation of the project was impeded owing to delay in obtaining approvals, clearances, NOC and various force majeure events faced by the Petitioner. Further, continuous default on part of the Petitioner in its debt repayment, lender, PTC IFSL decided to exercise 'lenders substitution rights as per Article 15.3 of the TSA. Accordingly, the Petitioner and lender approached the Commission by way of Petition No. 267/MP/2021 under Section 17 (3) and (4) of the Act seeking prior approval of 100% shareholding held by Essel Infra or its affiliate in NTL in favour of PTC IFSL's nominee i.e. Resurgent Power Ventures Private Limited (RPVNL). The Commission vide its order dated 8.3.2022 allowed transfer of shareholding of NTL from Essel Infra to RPVPL under Article 15.3.2 of the TSA read with Section 17(3) of the Act.

### **Submissions of the Petitioner**

7. The Petitioner has submitted that the following various force majeure and Change in Law events have impacted execution of the Project and led to delay.

A. Delay in commissioning of Element 3 i.e Koteshwar Pooling Station-Risikesh 400 k V D/C (HTLS) line and 2 nos of bays at 400 kV Rishikesh sub-station of PTCUL:

The Petitioner has submitted due to following reasons the Element 3 was delayed:

(i) Delay in more than 980 days from 24.10.2017 to 29.6.2020 and continuing due to non-issuance of No Objection Certificate by the instrumentalities of the State of Uttarakhand as required for processing forest approval in the State of Uttarakhand.

(ii) Delay in more than 980 days from 24.10.2017 till date i.e 29.6.2020 and continuing, due to Namamay Ganga in Tehri district of Uttarakhand State because of which line route was required to be changed as per instruction of concerned official of Forest Department.

(iii) Delay in 169 days from 11.11.2016 to 28.4.2017 due to change in connection arrangement at Power Transmission Corporation of Uttarakhand Limited Rishikesh sub-station, and

(iv) Delay of 55 days from 9.11.2016 to 2.1.2017 owing to demonetization causing considerable reduction in number of labours at the site and affecting execution of work at site.

B. Delay in commissioning of Element 2, namely (Babi (RRVPNL)-Bhiwani (PG) 400 kV D/C line (ii) 2 Nos of bays at 400 k V Babai (RRVPN) sub-station for Babai (RRVPNL)-Bhiwani (PG)-400 kV D/C line:

The Petitioner has submitted that due to the following reasons the Element 2 was delayed:

(i) Delay in 365 days from 14.2.2018 to 14.2.2019 due to delay in receiving wild life approval as the forest was declared as "Khetri Bansyal Conservation Reserve" after the execution of the TSA;

(ii) Delay of 167 days from 28.12.2018 to 12.6.2019 due to non-receipt of shutdown of associated bays at Babi sub-station from RRVPNL;

(iii) Delay of about 911 days from 1.1.2018 till date i.e. 29.6.2020 and continuing due to court case pending before the Hon`ble High Court of Rajasthan and physical obstruction site.

(iv) Delay of 55 days from 9.11.2016 to 2.1.2017 owing to demonetization causing considerable reduction in number of labours at the site and affecting execution of work at site.

(v) Delay of 58 days from 1.2.2017 to 30.3.2017 due to Jat Agitation.

(v) Delay of 10 days from 1.11.2018 to 10.11.2018 on account of directions by Environment Pollution (Prevention Control) Authority for National Capital Region to closed in Delhi and other NCR district from November, 1.10.2018 which qualifies as a Changi in Law event.

C. Delay in commissioning of Element-1 i.e. (i) LILO of one ckt of 400 kV D/C Sikar (PG)-Neemrana (PG) line at Babai (RRVPNL) and (ii) 2 nos. of bays at 400 kV



Babai (RRVPN) sub-station for LILO of one Ckt. of 400 kV D/C Sikar (PG)-Neemrana (PG) line at Babai (RRVPL):

The Petitioner has submitted that there is delay of 8 days due to non-completion of work in the scope of PGCIL for laying of Optical Fibre Ground Wire (OPGW) which qualifies as force majeure events.

D. Element 2 and Element 3 were delayed upto 97 days on account of national lockdown in view of the Covid-19 pandemic from 25.3.2020 onwards till dated i.e. 29.6.2020 and continuing which qualifies as force majeure event.

**Hearing dated 3.11.2022.**

8. Matter was heard on 3.11.2022. During the course of hearing, the learned counsel for the Petitioner submitted that the completion of the Element 2 & Element 3 of the Petitioner's Project has been delayed on account of various force majeure and Change in Law events and the said elements are still under construction/implementation. In the meantime, the original successful bidder, namely, Essel Infraproject Ltd. defaulted in debt repayment and consequently, the lender having exercised its substitution rights. The Commission vide its order dated 8.3.2022 in Petition No. 267/MP/2021 permitted the transfer of 100% shareholding as held by Essel Infra or its affiliates in the Petitioner licensee in favour of the lender's nominee, namely, Resurgent Power Ventures Pte. Ltd. (RPVPL) and accordingly, RPVPL acquired 100% shareholding of the Petitioner Company on 14.3.2022. Learned counsel submitted that post the takeover of the Petitioner licence by RPVPL, implementation of Element 2 has been taken up on expeditious basis. EPC and conductor supply contracts were placed immediately after the acquisition and all major material and equipment required for completion have been ordered and received on site. The said element is expected to be commissioned by March, 2023. For Element 3, while the major EPC contractor has been appointed and mobilized on site, delivery of conductor required for transmission line is expected by January, 2023. Also, Stage-I forest approval and working permission from Forest Department

and approval from Animal Husbandry Department, Uttarakhand for tower erection at Rishikesh for Element 3 are still pending. He added that in a similar matter, the Commission, vide order dated 7.2.2021 in Petition No. 334/MP/2020 (Warora Kurnool Transmission Ltd. v. TANGEDCO Ltd.), keeping in view that the force majeure events were still continuing and there was uncertainty about the likely COD, granted a liberty to the Petitioner therein to approach the Commission after completion of the project to take a view on the delay due to force majeure and extension of SCOD. In the meantime, the Commission, however, also directed the LTTCs not to take any precipitative actions against the Petitioner as the subsistence of the TSA in the interregnum was vital to the completion of the project therein. Accordingly, similar approach may also be adopted in the present case. Although unlike the above case, the LTTCs in the present case have not proceed with/issued any communication with regard to invocation/encashment of the Bank Guarantee as given by the Petitioner under the TSA, LTTCs have rejected the force majeure notices issued by the Petitioner. Accordingly, interim protection may also be given to the Petitioner in the present case by restraining the LTTCs from taking any coercive action including invocation/encashment of Bank Guarantee till such time the Petitioner approaches the Commission seeking the various reliefs including extension of SCOD on account of the force majeure and Change in Law events after the completion of the Project.

9. The representative of PGCIL submitted that in the present Petition, the Petitioner has alleged the delays in implementation of its elements on account of certain delays on the part of PGCIL, which is contested by PGCIL and accordingly, PGCIL may be permitted to file its reply to the above extent. The representative also added that for some of its interconnecting facilities (to the Elements of the

Petitioner), PGCIL is also seeking approval for the commercial operation under Regulation 5(2) of Tariff Regulations, 2019 in the tariff petitions filed/to be filed by PGCIL. The representative of CTUIL added that if the presence of CTUIL is required at all then the Petitioner may be asked to implead CTUIL separately from PGCIL.

10. Vide Record of Proceedings for the hearing dated 3.11.2022, the Petitioner was directed to submit the progress of Project as on date, including the progress achieved post take-over by RPVPL, the expected COD of these Elements, the course of actions/activities and associated timelines, etc.

11. The Petitioner, vide its affidavit dated 4.11.2022, has submitted the information called for and has submitted as under:

(a) Element-I has been commissioned and is in service since 27.2.2018, Element-II and Element-III are under-construction.

(b) Element-II is likely to be completed and commissioned by March, 2023. With regard to progress in the project during the period after take-over by RPVPL, the summary of works completed, balance works and the works completed post the takeover by Resurgent as under:

<b>Activity</b>	<b>Total Quantity</b>	<b>Completed at the time of Takeover by Resurgent</b>	<b>Balance at the time of Takeover by Resurgent</b>	<b>Progress after takeover by Resurgent</b>	<b>Balance to be completed</b>
Tower Foundation	304	273	31	13	18
Tower Erection	304	248	56	15	41
Tower Earthing	304	248	56	14	42

Stringing of Power Conductors	110.9	36.8	74.1	16.02	58.08
**Balance bay works at Babai	02	@70%	@30%	@5%	@25%

\*\* Installation of Isolators, testing, control cabling, relay setting, protection, automation and communication, bus extension works and civil works such as road, trench covers, metal spreading remain to be completed.

(c) With regard to pending key approval / clearances / permissions which could potentially delay the completion of Element-II of the project, Power & Telecommunication Coordination Committee approval, Stage-II Forest approval and approval from Chief Electrical Inspector for Charging are still awaited

(d) Element-III is likely to be completed and commissioned by December, 2024 subject to all necessary approvals/clearances being received by the Petitioner from the concerned Authorities and no Right of Way issues being faced during execution. Progress and targeted date in Element-III are as under:

Activity	Total Quantity	Completed at the time of Takeover by Resurgent	Balance at the time of Takeover by Resurgent	Progress after takeover by Resurgent	Balance to be completed
Tower Foundation	106	26	80	0	80
Tower Erection	106	0	106	0	106
Tower Earthing	106	26	80	0	80
Stringing of Power Conductors	40	0	40	0	40
**Balance bay works at Rishikesh	02	0%	100%	5%	95%

\*\*Two bays are to be executed at Rishikesh Sub-station of Power Transmission Corporation of Uttarakhand ("PTCUL"). PTCUL has issued

conditional approval pending NOC from Animal Husbandry Department, Government of Uttarakhand.

(e) With regard to pending key approvals / clearances / permissions which could potentially delay the completion of Element-III of the project, Stage-I Forest approval and working permission from Forest Department are still pending. About 65% of the transmission line passes through forest land and any further delay in forest approval will impact the project completion schedule adversely. Approval from Animal Husbandry Department, Government of Uttarakhand for tower erection on land at Rishikesh is still pending.

(f) Since acquisition, approximately Rs. 100 crore has been pumped into NRSS XXXVI for construction (in addition to the OTS amount of Rs. 127 crore paid to erstwhile lender, PTC Financial Services for stressed asset resolution) until October 2022. The Petitioner - NTL has also tied up with Kotak Mahindra Bank to meet nearly half of the debt requirement in relation to the subject transmission project and approval for the balance funding is in progress.

### **Analysis and Decision**

12. We have considered the submissions of the Petitioner and perused the documents available on record. According to the Petitioner, its Project has been affected due to various force majeure events and Change in Law events enumerated in paragraph 7 above.

13. Vide ROP dated 3.11.2022, the Petitioner was directed to submit the progress of Project as on date, including the progress achieved post take-over by RPVPL, the expected COD of these Elements, the course of actions/activities undertaken and their associated timelines, etc. The Petitioner vide its affidavit dated

4.11.2022 has submitted the information called for. The Petitioner has submitted that Element-I has been commissioned and Element-II & Element-III are likely to be completed by March,2023 & December, 2024 respectively. The Petitioner has submitted that for Element-II, approvals of Power & Telecommunication Coordination Committee, Stage-II forest and Chief Electrical Inspector for Charing are awaited. For Element-III, Stage-I forest approval, working permission from Forest Department and approval from Animal Husbandry Department, Government of Uttarakhand are still pending.

14. It is observed that events cited above are still continuing and the Petitioner has approached the Commission for declaration of these events as force majeure events and requested for extension of SCOD of the Project, in advance. Only Element-I has been completed. Therefore, we are of the view that since the project has not been completed by the Petitioner till date and is still under implementation, it would not be appropriate to take a view at this stage on the claimed force majeure, Change in Law issues and extension of SCOD. Accordingly, the Petitioner is granted liberty to approach the Commission to seek the appropriate relief for force majeure events, after completion of the Project.

15. The Petitioner has prayed for restraining the LTTCs from taking any coercive action against the Petitioner in terms of TSA including the encashment of Contract Performance Guarantee (CPG). As in the above paragraph, we have directed the Petitioner to approach the Commission only after completion/ implementation of the Project, it is imperative that no precipitative actions be taken against the Petitioner as the subsistence of TSA in the interregnum is vital to the completion/ implementation

of the Project. Meanwhile, the Petitioner shall make sincere endeavours to complete the Project at the earliest.

16. This order disposes of Petition No. 266/MP/2022.

Sd/-  
**(P.K.Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

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