

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 49/MP/2021**

**Coram:**

**Shri I.S.Jha, Member  
Shri Arun Goyal, Member  
Shri P.K.Singh, Member**

**Date of Order: 11<sup>th</sup> July, 2022**

**In the matter of**

Petition under Section 61, Section 63 and Section 79(1) (f) of the Electricity Act, 2003 read with the statutory framework and the Transmission Service Agreement dated 2.1.2014 executed between NRSS-XXIX Transmission Limited and its Long-Term Transmission Customers *inter alia* for seeking relief for certain Change in Law events that have impacted the Project and reimbursement of additional expenditure incurred towards necessary use of helicrane for implementation of the Project.

**And**

**In the matter of**

NRSS-XXIX Transmission Limited,  
C-2, Second Floor, The Mira Corporate Suites,  
Ishwar Nagar, Okhla Crossing,  
Mathura Road, New Delhi-110 065

...**Petitioner**

**Vs**

1. U.P. Power Corporation Limited,  
14th Floor, Import Export & Payment Circle,  
Shakti Bhawan Extn. Building,  
14, Ashok Marg, Lucknow-226 001, U.P.

2. AD Hydro Power Limited,  
Bhilwara Towers, A-12, Sector 1,  
Noida 201301, Uttar Pradesh.

3. Haryana Power Purchase Centre,  
Shakti Bhawan, Energy Exchange,  
Room No.446, Top Floor,  
Sector 6, Panchkula- 134109, Haryana

4. Punjab State Power Corporation Ltd.  
Thermal Shed, T 1-A, Thermal design,  
Near 22 No. Phatak,  
Patiala -147001, Punjab

5. Himachal Sorang Power Pvt. Limited,

901 B,9th Floor, Time Tower,  
M.G.Road, Gurgaon-122 009, Haryana

6. Adani Power Limited,  
Mundra, Achalraj, Opp. Mayor Bungalow,  
Law Garden, Ahemdabad-380 006

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

8. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan,Janpath, Jyoti Nagar,  
Jaipur - 302 005.

9. Ajmer Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road, Ajmer – 305 004.

10. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur - 342 003.

11. Lanco Anpara Power Limited,  
Plot No. 397, Udyog Vihar,  
Phase 3, Gurgaon - 122 016, Haryana.

12. Lanco Green Power Private Limited,  
Plot No. 397, Udyog Vihar,  
Phase-III, Gurgaon – 122 016, Haryana.

13. Power Development Department,  
Government of J&K, Srinagar,  
SLDC Building,  
Room No. 1/27, Mini Block,  
Civil Secretariat, Jammu.

14. North Central Railway,  
DRM office, Nawab Yusuf Road,  
Subedarganj, Allahabad - 211 001, U.P.

15. Jaiprakash Power Ventures Limited,  
A Block, Sector-128,  
Noida - 201 304, U.P

16. BSES Yamuna Power Limited,  
2<sup>nd</sup> Floor, B Block, Shakti Kiran Building,  
Near Karkadooma Court, New Delhi – 110 092.

17. BSES Rajdhani Power Limited

2<sup>nd</sup> Floor, B-Block, Behind Nehru Place Bus Terminal,  
Nehru Place, New Delhi - 110 019.

18. Tata Power Delhi Distribution Limited,  
33 KV sub-station Building,  
Hudson Lane, Kingsway Camp,  
New Delhi – 110 009.

19. New Delhi Municipal Corporation,  
NDMC, Palika Kendra,  
Sansad Marg, New Delhi – 110 001.

20. Electricity Wing of Engineering Department,  
Union Territory of Chandigarh, Electricity OP Circle,  
Chandigarh – 160 011.

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

22. PTC (Budhil), PTC India Limited,  
2<sup>nd</sup> Floor, NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi - 110 066.

23. PTC (Everest), PTC India Limited,  
2<sup>nd</sup> Floor, NBCC Tower,  
15, Bhikaji Cama Place, New Delhi - 110 066.

24. Uttrakhand Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun – 248 001.

25. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla - 171 004.

26. REC Transmission Projects Company Limited,  
ECE House, 3<sup>rd</sup> Floor,  
Annexe-II, 28A, KG Marg,  
New Delhi - 110 001.

...Respondents

**The following were present:**

Shri Jafar Alam, Advocate, NTL  
Ms. Harneet Kaur, Advocate, NTL  
Shri Ashwin Ramanathan, Advocate, NTL  
Shri Balaji Sivan, NTL  
Ms. Anisha Chopra, NTL

## ORDER

The present Petition has been filed by the Petitioner, NRSS-XXIX Transmission Limited ('NRSSTL') under Section 61, Section 63, and Section 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') seeking compensatory relief under Article 12 of the Transmission Service Agreement dated 2.1.2014 (in short 'TSA') on account of Change in Law events, which have adversely affected the construction of the 'Northern Region System Strengthening Scheme NRSS-XXIX' (in short, 'the Project').

The Petitioner has made the following prayers:

*“(a) Admit and allow the present Petition;*

*(b) Declare that the unforeseen requirement of seeking forest clearance for the JS Line constitutes a Change in Law Event in accordance with Article 12 of the TSA;*

*(c) Declare that the increase in the rate of service tax and J&K General Sales Tax constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(d) Declare that the increase in the rate of J & K Value Added Tax constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(e) Declare that the imposition of the requirement of acquiring land through PNC Mode constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(f) Declare that the imposition of the requirement of seeking permission for cutting of apple orchards and walnut trees constitutes a Change in Law event in accordance with Article 12 of the TSA;*

*(g) Grant an appropriate increase in transmission tariff from the date of commissioning of the Project as sought in this Petition, so as to offset the adverse impact of the aforesaid Change in Law events; and*

*(h) Direct that the Petitioner is entitled to additional expenditure for use of helicrane for implementation of the SA Line....”*

2. The Petitioner is a fully owned subsidiary of Sterlite Grid Limited ('SGL'), 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 of the Project which requires establishing the transmission system comprising of the following transmission lines and sub-stations:

S.No	Transmission Elements	Scheduled COD in months from the Effective Date
<b>I.</b>	<b>Transmission Lines</b>	
1.	Jullandhar – Samba 400 kV D/C (“ <b>JS Line</b> ”)	34 months
2.	LILO of both circuits of Uri-Wagoora 400 kV D/C line at Amargarh (on multi-circuit towers) (“ <b>LILo</b> ”)	50 months
3.	Samba-Amargarh 400 kV D/C routed through Akhnoor/ Rajouri (“ <b>SA Line</b> ”)	50 months
<b>II.</b>	<b>Sub-Stations</b>	
4.	<p><b>Establishment of 7x105 MVA (1 ph units), with 400/220 kV GIS sub- station at Amargarh. (“Amargarh S/s”)</b></p> <p><b>400 kV</b></p> <ul style="list-style-type: none"> <li>- Line Bays: 6 No.</li> <li>- 400/220 kV ICT: 7 x 105 (1-phUnits)</li> <li>- ICT bays: 2 no.</li> <li>- Line Reactor (50 MVAR): 2 no. (for Amargarh Lines)</li> <li>- Bus Reactor (63 MVAR): 2 no.</li> <li>- Bus Reactor Bay: 1 no. (Two bus reactors on one bay)</li> <li>- Space for line/ICT bays: 4 no.</li> <li>- Space for ICT: 1 no.</li> </ul> <p><b>220 kV</b></p> <ul style="list-style-type: none"> <li>- Line Bays: 6 no.</li> <li>- ICT bays: 2 no.</li> </ul> <p><b>Space for line/ICT bays: 4 nos.</b></p>	50 months

3. The Petitioner was incorporated as a Special Purpose Vehicle (‘SPV’) by Bid Process Coordinator (in short, ‘BPC’), namely, REC Transmission Projects Company Limited (‘RECTPCL’) for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. In the bid process conducted by RECTPCL, SGL participated and emerged as a successful bidder. Letter of Intent (LoI) was issued by RECTPCL to SGL on 23.5.2014. In accordance with the bidding documents, SGL

acquired 100% of the shareholding in the Petitioner company by executing a Share Purchase Agreement with RECTPCL on 4.8.2014. Under the TSA, Uttar Pradesh Power Corporation Limited ('UPPCL') 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 10.12.2014 in Petition No. 221/TL/2014 granted transmission licence to the Petitioner for inter-State transmission of electricity to implement the Project and vide order dated 14.11.2014 in Petition No.220/ADP/ 2014 adopted the transmission charges as quoted by the Petitioner for the Project.

4. According to the Petitioner, as per the TSA, all the elements of the Project were to be completed and commissioned within 50 months from the effective date i.e., by 3.10.2018 and that despite having faced several impediments and challenges on account of certain events beyond the control of the Petitioner, the Project was commissioned earlier on 1.9.2018, in terms of the timelines prescribed in the TSA. However, due to certain Change in Law events, the Petitioner had to incur substantial additional cost for implementation of the Project.

#### **Submissions by the Petitioner**

5. The Petitioner has submitted that the following Change in Law events occurred during the implementation of the Project after the cut-off date under the TSA i.e. 2.5.2014 and a brief about them is provided in the subsequent paragraphs:

- (a) Unforeseen requirement of forest clearance for JS Line;
- (b) Increase in the rate of Service Tax
- (c) Increase in rate of J & K General Sales Tax;
- (d) Increase in J & K Value Added Tax rate;
- (e) Unforeseen higher RoW Compensation
  - Land acquisition through private negotiation committee mode in lieu of

- compulsory acquisition mode; and
  - Compensation towards cutting of apple orchids and walnut trees
- (f) Unforeseen additional expenditure incurred on account of the necessary use of helicrane.

6. As regards unforeseen requirement of forest clearance for Jullandhar-Samba 400 kV D/C transmission line ('JS Line'), the Petitioner has submitted that final survey report provided to the bidders by the BPC categorically mentioned that along with the suggested route(s) for the JS Line, the forest area was 'Nil'. However, while conducting a detailed survey of the route, it came to the knowledge of the Petitioner that the information given in the final survey report with respect to the existence of protected forests along with the route for JS Line was incorrect. It was discovered that protected forest existed along with the route for JS Line in Gurdaspur Division, Jalandhar Division and Pathankot Division in the State of Punjab and there was requirement to seek approval for diversion of 3.749 hectares land in favour of the Petitioner for laying of JS Line, in terms of the Forest (Conservation) Act, 1980. Subsequent to submission of a proposal for diversion of forest land, the Petitioner received stage I (in-principle) approval from the Ministry of Environment, Forest and Climate Change (MoEF&CC) on 21.5.2015. Accordingly, the Petitioner paid Rs. 57,28,559/- and 33,25,664/- towards compensatory afforestation and net present value of the proposed forest land respectively in terms of demand letters dated 29.5.2015 and dated 2.7.2015 raised by the respective Divisional Officers. Subsequently, the Forest Divisional Officers vide their demand notices dated 2.7.2015, 3.7.2015 and 14.7.2015 further raised demand for cost of land in lieu of forest land diverted for construction of JS Line. The Petitioner has submitted that despite demand for payment towards cost of land was untenable, in order to ensure that the implementation of the JS Line does not get stalled on account of the delayed forest clearance, the Petitioner paid Rs. 2,94,35,941/- towards cost of land. On

28.9.2015, the Petitioner received Stage-II approval. The Petitioner has incurred Rs. 3,85,29,864/- towards forest clearance for JS Line. Since, the additional requirement for obtaining a clearance/permit was not required at the time of submission of bid, the same constitutes a Change in Law event in terms of Article 12 of the TSA. The Commission has already recognized the occurrence of such unforeseen requirement for forest clearance as a Change in Law events in its order dated 29.3.2019 in Petition No. 195/MP/2017, order dated 24.8.2016 in Petition No.32/MP/2014 and order dated 8.5.2013 in Petition No. 162/MP/2011.

7. The Petitioner has submitted that the effective service tax rate of 12.36%, prevailing as on cut-off date i.e. 2.5.2014, was increased to 14% through the Finance Act, 2015 with effect from 1.6.2015. Subsequently, Ministry of Finance, Department of Revenue vide Notification No. 21/2015 dated 6.11.2015 levied Swachha Bharat Cess @ 0.5% on taxable services from 15.11.2015. Krishi Kalyan Cess was introduced by Finance Act, 2016 and the effective service tax was further revised from 14.5% to 15% with effect from 1.6.2016. As on cut-of date, i.e. 2.5.2014, J& K General Sales Tax was applicable @ 10% which was revised to 12% from 1.4.2015 by the Finance Department, Government of Jammu and Kashmir vide Notification No. SRO 105 dated 31.3.2015 issued under Section 4 of the J &K General Sales Act, 1962. The Petitioner has submitted that increase in the rate of tax is clearly a Change in Law event in terms of Article 12 of the TSA and the same has been recognized in various orders of this Commission and Appellate Tribunal for Electricity (APTEL). Therefore, increase in the rate of service tax and J&K general sales tax post the cut-off date constitutes Change in Law events in terms of Article 12 of the TSA. The Petitioner has submitted that it has incurred Rs. 42,32,712/- and Rs. 4,43,40,325/- on account of increase in service tax and increase in J & K General Sales Tax.



8. The Petitioner has submitted that the effective J & K Value Added Tax rate of 13.5%, prevailing as on cut-off date, i.e. 2.5.2014 was increased to 14.5% with effect from 1.7.2016 vide Finance Department, Government of Jammu and Kashmir Notification No. SRO-210 dated 29.6.2016. The Petitioner has submitted that total actual impact of increase in VAT rate in J & K on the cost of the Project has been to the tune of Rs. 9,03,523/-. The Petitioner has submitted that revision of VAT rate have been effected through the Notification issued by the Finance Department, Government of J & K. Therefore, the same are Change in Law events in terms of Article 12 of the TSA.

9. As regards unforeseen higher Right of Way (RoW) compensation, the Petitioner has submitted that as per the bid documents, land acquisition in J & K for public purposes and determination of the compensation to be paid for it was governed by the State Land Acquisition Act, 1990 (hereinafter referred to as 'the 1990 Act'). The first disclaimer of the RfP *inter-alia* provides that the purpose of the document is to provide information to the bidding parties to assist in formulation of their bids. Clause 2.14.2.2 of the RfP *inter alia* only provided that every bidder must familiarize themselves with the Land Acquisition Act, 1894. Additional clarification issued by BPC on 19.2.2014 expressly clarified that the acquisition land in J & K is governed by the 1990 Act. Based on the above, it was reasonable on the part of SGL to conclude that compensation to landowners towards acquisition of land in J & K shall be governed by the provisions of the 1990 Act. Therefore, while preparing bid proposal, SGL considered the methodology for computation of compensation prescribed in 1990 Act. The 1990 Act prescribed a compulsory mode of acquisition at the behest of the State Government. The compulsory acquisition mode requires the collector to notify the land sites to be acquired through

public notice *inter-alia* through publication in the Government Gazette and two daily newspapers. As per the provisions of the 1990 Act, the compensation for such acquisition made for public purposes is required to be determined based on the prevalent circle rates in the given localities along with the applicable stamp duty. After grant of transmission licence, the Petitioner conducted a land survey in J & K for acquisition of land for the project. Thereafter, the Petitioner communicated the coordinates of the concerned land to the Collectors and requested them to publish the preliminary notification in terms of Section 4 of the 1990 Act. Pursuant thereto, various notifications dated 4.2.2016 (Marh district), dated 17.12.2015 (Samba district), dated 11.2.2016 (Bhalmal district), dated 25.2.20216 (Bemina district) and dated 21.1.2016 (Jammu south district) were issued. Subsequently, Collectors of above Divisions and Jammu & Kashmir Power Development Department advised the Petitioner to adopt the Private Negotiation Committee Route (PNC mode) for timely and hassle free acquisition of land for the project. PNC mode of acquisition is provided for under the Land Acquisition Rules, 1936 for public purpose notified vide Council order No. 939-C of 1936 dated 8.12.1936 as an alternate method of acquisition of land for public purpose which requires constitution of a Private Negotiation Committee (PNC) for the purposes of determination of compensation amount to be paid to the landowners. On 17.4.2015, Chief Secretary, Power Development Department convened a meeting with the Principal Secretary, representative of Secretary, Revenue and Senior Managers of SGL and in the said meeting, the following was agreed upon:

- (a) The Power Development Department will be the nodal point for placing the indent of land acquisition required for the project;
- (b) Divisional Commissioner, Jammu would ensure submission of land papers in respect of Samba district and Kuthua district to the Administrative

Secretary, Power Development Department and thereafter it will process the land papers and obtain approvals of the competent authority to place indent with the revenue authorities (District Collector Samba and District Collector Kathua). Similar process would be followed for other district later.

10. As per the 1936 Rules, the committee negotiates and settles prices with landowners and communicates the same to the acquirer. The acquirer upon receipt of the demand notices, deposit payment to the District Collector who registers the land in the name of J & K PDD. Thereafter, J&K PDD bestows the right to the acquirer (the Petitioner in the present case), as custodian of land for undertaking its construction activities. The decision taken in the meeting held on 17.4.2015 to abandon the Compulsory Acquisition Mode and follow the 1936 Rules was a Change in Law event which occurred after the cut-off date, in terms of Article 12.1 of the TSA.

11. Requirement of adoption of this alternate mode of acquisition was an entirely new requirement and its imposition could not have been foreseen by the Petitioner at the time of bidding. In fact, the existence of the PNC mode as an alternate mode of land acquisition in J & K was discovered after concluding the bidding process and after requesting the Collectors to initiate the process under the 1990 Act. Until such time, the Petitioner was factoring in the timelines and cost keeping in view the Compulsory Acquisition Mode. Acquisition through the PNC Mode is a clear deviation from bidding documents and could not have been considered or factored in by the Petitioner during submission of the bid.

12. The acquisition of land through PNC Mode has resulted in payment of higher compensation as compared to compensation otherwise payable under the Compulsory Acquisition Mode. PNC while considering the circle rates of concerned location agreed

at an exponentially higher compensation as compared to the circle rates and applicable stamp duties. As a result, the Petitioner has paid an amount of Rs.89,21,73,487/- towards acquiring land for SA Line, JS Line and Amargarh sub-station land in terms of demand notes issued by PNC. Considering that the Petitioner had already factored an amount of Rs.22,85,45,995/- as compensation for land acquisition for these areas on basis of Compulsory Acquisition Mode, it has incurred an additional cost impact of acquisition through PNC Mode to the tune of Rs.66,36,27,491/-

13. Despite paying agreed amount to landowners, the Petitioner could not obtain possession of the land acquired for implementation of Samba-Amargarh 400 kV D/C transmission line ('SA Line'). Clear possession over the acquired land could be obtained only after seeking assistance from the local administration and after paying additional compensation over and above the PNC cost to the landowners, to avoid further delay and local unrest. The Petitioner paid an additional amount of Rs. 9,42,72,020/- to the land owners for SA Line, over and above the compensation decided to be paid at the PNC meetings based on negotiations with the land owners and payment was made against agreements entered into with such land owners. Thus, the Petitioner has suffered total additional impact of Rs.75,78,99,511/- on account of acquisition of land through PNC Mode and payment of settlement compensation.

14. As regards compensation towards cutting of apple orchids and walnut trees, the Petitioner has submitted that there was no mention in the survey report about the existence of apple orchids or walnut trees for JS Line. The existence of orchids and trees could not be discovered by the Petitioner earlier due to the peculiar topography and law and order issues in the State of Jammu & Kashmir. Therefore, at the time of submission of bid, the Petitioner could not have fathomed that it would be required to

seek permission for cutting of such trees and orchids and pay compensation towards them. Such unforeseen requirement of having to seek permission from the concerned authorities for felling of trees and paying compensation towards them constitutes a Change in Law event in terms of Article 12 of the TSA and the same amounts to imposition of a requirement for obtaining a permit which was not required at the time of submission of bid and before the cut-off date. The Petitioner has submitted that it has incurred Rs. 13,83,09,613/- towards cutting of such walnut trees and apple orchards.

15. As regards using of helicrane execution of the Project, the Petitioner has submitted that the construction of the SA Line commenced in the month of August, 2015 and it had to be completed before the onset of winters. However, the pace of construction of the SA Line was severely impacted by force majeure events, including armed conflict and blockade, floods, ceasefire violation and multiple natural force majeure events, namely, unseasonal heavy snowfall, rainfall, landslides and floods, starting from 1.2.2015. The State of J&K experienced unseasonal snow fall, rainfall and landslides in frequent intervals due to which the entire work of check survey, route alignment, forest and wildlife clearances, etc. stopped and it could be resumed only from 23.4.2015 onwards. The Petitioner has submitted that in view of the peculiarity of the route of the SA Line, the force majeure events impacting its implementation and the prescribed timelines under the TSA, it was necessary for the Petitioner to use the helicrane. The Petitioner has submitted that it has incurred Rs. 36,38,26,216 towards the use of the helicrane.

16. The Petitioner has summarized the increase in the cost of Project on account of Change in Law events as under:

<b>S.No.</b>	<b>Change in Law events</b>	<b>Expenditure incurred (Rs.)</b>
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1.	Unforeseen requirement of forest clearance for JS Line	3,85,29,864
2.	Increase in the rate of service tax	42,32,712
3.	Increase in the rate of J & K General Sales Tax	4,43,40,325
4.	Increase in J & K VAT rate	9,03,523
5.	Unforeseen higher RoW compensation	75,78,99,511
	-Land acquisition through private negotiation committee (PNC) mode in lieu of compulsory acquisition mode.	
	-Compensation towards cutting of apple orchids and walnut trees	13,83,09,613
6.	Unforeseen additional expenditure incurred on account of the necessary use of helicrane	36,38,26,216

**Hearing dated 23.7.2021.**

17. The case was admitted on 23.7.2021 and notices were issued to the Respondents to file their replies. However, no reply was filed by the Respondent despite notice. The Petitioner was directed to file the following details/information:

- (i) Schematic diagram of the Transmission System;
- (ii) Route followed by the Petitioner out of the three alternative routes provided by the BPC for 400 kV Jullandhar- Samba 400 kV D/C transmission line or any other route along with necessary proof;
- (iii) Duly audited month-wise Helicrane expenditure incurred and under which provision claim has been made;
- (iv) Element-wise details of claimed cost mentioning the enabling provisions of the TSA vide which claim has been made along with relevant documents; and
- (v) As per the Petition, last element of the Project was commissioned on 1.9.2018. However, the instant petition has been filed on 22.1.2021. Justification for inordinate delay for filing the same.

18. The Petitioner, vide affidavit dated 17.9.2021, has submitted the information called for.

**Hearing dated 14.10.2021**

19. The matter was heard at length on 14.10.2021. During the course of hearing, the learned senior counsel for the Petitioner made detailed submissions in regard to the Petitioner's Change in Law claims towards (a) unforeseen requirement of forest clearance for Jullandhar-Samba 400 kV D/C transmission line, (b) increase in the rate of Service Tax and Jammu and Kashmir (J&K) General Sales Tax, (c) increase in the rate of J&K Value Added Tax, (d) requirement of land acquisition through private negotiation committee mode in lieu of compulsory acquisition mode, and (e) requirement of seeking permission and paying compensation towards cutting of apple orchards and walnut trees. The learned senior counsel also made the submissions on the claim of the Petitioner for reimbursement of unforeseen additional expenditure incurred on account of the necessary use of helicrane and the circumstances which necessitated the use of helicrane.

20. The representative of the Respondent No.1, UPPCL also made his detailed submissions refuting the Change in Law claims of the Petitioner. It was further submitted by the representative of UPPCL that as per the bid document/RfP, the bidders were required to make independent enquiry with respect to all required information, inputs and conditions, etc. which may have any effect on the bid and also to conduct their own survey. Thus, the Change in Law claims of the Petitioner towards requirement of forest clearance and compensation towards cutting of apple orchards and walnut trees are not maintainable. As to the claims towards increases in various taxes, the Petitioner ought to also pass on the benefits due to reduction in the corporate tax/MAT as reduction therein would have also impacted the levelised transmission charges. Also, from the claim of the Petitioner towards expenditure incurred on account of use of helicrane, it is

not clear as to whether such expenditure is merely an incremental expenditure as it had been incurred in lieu of the other modes of transportation. The representative of UPPCL further requested for time to file reply to the Petition.

21. The Commission observed that the Respondents including UPPCL were given an opportunity to file their respective reply, by 24.8.2021 vide Record of Proceedings for the hearing dated 23.7.2021. However, UPPCL has failed to file its reply despite ample opportunity. However, considering the Respondent, UPPCL having already made its oral arguments, the Commission directed the Respondent, UPPCL to file its reply within a week after serving copy to the Petitioner, who may file its rejoinder, if any, within a week thereafter.

### **Reply of Uttar Pradesh Power Corporation Limited (UPPCL)**

22. UPPCL in its reply has submitted the following:

(a) As regards increase in rates of service tax, J & K General Sales Tax and J & K VAT constitute Change in Law events in accordance with Article 12 of the TSA, the Petitioner, being a Section 63 Project, was required to factor various taxes, 'both direct and indirect' and levies while evaluating of bids. The Petitioner in its submission has only considered the impact of indirect taxes viz. service tax, VAT and GST. However, impact of change in direct taxes on the levelised transmission charge, primary criterion for evaluation of bid for the Project, has been ignored. The direct tax rates as per Income Tax Act, 1961 have been reduced w.e.f. financial year 2019-20 with a consequential impact on levelised transmission charges. Bids were invited on 9.12.2013 i.e. during the financial year 2013-14 and the Project achieved actual COD on 1.9.2018. i.e. during financial year 2018-19. Income Tax is levied either at MAT rate or at normal corporate rate. MAT rates have been reduced from 18.5% in financial year 2013-14 to 15% in financial year 2019-20. Corporate income tax rate has reduced from 30% in financial year 2013-14 to 25/22% in financial year 2019-20.



(b) As regards imposition of the requirement of seeking permission for cutting of apple orchards and walnut trees constitutes a Change in Law Event in accordance with Article 12 of the TSA, as per the survey report, out of 310.56 km of proposed route of line, 165.56 km is plain and 145 km is hilly. There is reserved forest area in 116.22 km and wild life sanctuary in 26.90 km. Thus, in 167.44 km (310.56-116.22-26.90) there is no forest, reserved or wild. In India, land would either be a forest land/ Government land or private land. Private land may be used for agricultural or non-agricultural purpose. It would be presumptuous that over non- forest land of 167.44 km, there shall be no agriculture activity. Since in J&K, horticulture is the primary agriculture activity, there is possibility that over 167.44 km there would be horticulture activity wherein apple and walnut orchards are grown. The laws requiring permission to cut trees prevailed on the date of submission of bid. The Petitioner has not put forth any document from which it appears that new law has been promulgated after award of bid because of which cutting of trees required permission from concerned authorities. Thus, claim under Article 12 'Change in Law' is fallacious and is liable to be rejected.

(c) As regard additional expenditure for use of helicrane for implementation of the SA Line, the assertion of the Petitioner that 'bidding documents were clearly myopic for not having foreseen the need of using of an aerial mode of transport to complete the construction of the SA Line, given the terrain and timelines under the TSA' is both false and mischievous and it tries to shift onus of responsibility. As per the survey report, out of 310.56 km of proposed route of line, 165.56 km is plain and 145 km is hilly. As per paragraph 2.14.2.1 of RfP, the bidders are required to make an independent enquiry and satisfy themselves with respect to all required information, inputs, conditions and circumstances and factors that may have any effect on his bid. Bidders were made aware that 145 km of SA Line is hilly terrain. On one hand, the Petitioner is stating that it is technically not feasible to transport material using 'traditional method of mules and men'; on the other, it is citing force majeure terms and conditions to justify use of helicrane. There is nothing on record that the Petitioner had sought clarification on mode of transport and it was advised by BPC that mode of transport envisaged is mules and men. Had the Petitioner made independent enquiry and proper feasibility study before submitting the bid, such requirement

of helicrane should have been envisaged. Thus, it is abundantly clear that in order to win the bid, such expenditure was deliberately excluded by the Petitioner and planned to claim afterwards as force majeure event showing flimsy grounds. The responsibility of assessment of the project through proper feasibility study and survey squarely lies with the Petitioner, which cannot be shifted to so-called shortcoming of bidding document levelling the same as "myopic". The expenditure of Rs. 36,38,26,216/- as claimed by the Petitioner is total expenditure incurred on aerial mode of transportation and the Petitioner had nowhere stated that what is the expenditure it had planned for transportation of material using mules and men and what is the incremental expenditure, if any, that it had to incur. The Petitioner has not stated as to what would be the proposed use of helicrane after the commissioning of the line. If the same is not going to be in use, the salvage value of the asset may be taken into account. Therefore, the Petitioner is not entitled for additional expenditure of Rs. 36,38,26,216/- incurred on this count.

### **Rejoinder of the Petitioner to reply of UPPCL**

23. The Petitioner, in its rejoinder to the reply of UPPCL, has submitted as under:

(a) The contention of UPPCL that while the Petitioner is seeking reimbursement of expenditure incurred on account of change in indirect taxes such as service tax, Value Added Tax (VAT) and Goods and Service Tax (GST), it has ignored the impact of change in direct taxes on levelized transmission charges, is not correct. Article 12.1.2 (b) of the TSA categorically excludes a change "*in any tax applied on the income or profits of the TSA*" from the definition of Change in Law. Minimum Alternative Tax (MAT) and income tax are applied on income/ profits of the transmission service provider.

(b) As per Article 12.2.1 of the TSA, relief for Change in Law occurring during the construction period is available where the Change in Law event causes an increase or decrease in the 'cost' of the Project. Income Tax and MAT are not an expenditure laid out for the purpose of the business of the company. They are applicable only post commissioning of the Project. Therefore, it cannot be considered as impacting the cost of the Project during the construction period,

and any decrease in them cannot be characterized as a Change in Law event impacting the Project during the construction period.

(c) Even otherwise, it is settled law that tax on income cannot be considered as pass through in competitive bidding process under Section 63 of the Act. In the case of tariff determination on a cost-plus basis under Section 62 of the Act, one of the components specifically allowed as tariff under the regulations framed by the Commission is tax on income. Such a provision is absent in case of tariff discovered through competitive bidding, such as the present case, where the bidder is required to quote an all-inclusive tariff. The Commission and the APTEL in their various orders and judgments have held that changes in income tax or increase in MAT in case of tariff discovered through competitive bidding are not Change in Law events. Therefore, change in income tax and MAT are not Change in Law events.

(d) The contention of UPPCL that horticulture is the primary agricultural activity in Union Territory of J&K, and the possibility of encountering apple orchards and walnut trees along the route cannot be negated, is unfounded. The Survey Report provided by the BPC for the JS Line did not mention of the existence of apple orchards or walnut trees along the indicative routes for JS Line. It is not disputed that apple orchards and walnut trees are present in J&K, but its presence along the suggested routes for JS Line should have been mentioned in the Survey Report. The BPC was tasked to provide such details in the Survey Report and it failed to do so. Due to lack of such pertinent details in the Survey Report, the Petitioner was faced with a peculiar situation where after discovering the existence of such walnut trees and apple orchards along the route for JS Line, it had to seek requisite permissions for tree cutting from the concerned authorities and pay heavy compensation. If the Survey Report would have mentioned of the existence of such trees and orchards along the route, it would have enabled the Petitioner to consider the cost of tree cutting during the bidding process.

(e) The Petitioner is not claiming compensation on the basis of ignorance of law. Rather, the Petitioner's claim is based on the fact that the BPC failed to provide requisite information in the Survey Report due to which the Petitioner

had to incur additional costs. The Commission has previously allowed transmission service providers to recoup additional expenditure incurred due to lack of relevant information in the Survey Report, such as discovery of forest along the route for transmission lines, which was not mentioned in the Survey Report.

(f) At the time of submission of bid, the Petitioner could not have foreseen that it would be required to seek permission for cutting of walnut trees and apple orchards and pay compensation towards them. Such unforeseen requirement of seeking permission from the concerned authorities for felling the trees and paying compensation towards the same constitutes a Change in Law event in terms of Article 12 of the TSA.

(g) The Petitioner has paid of Rs. 13.83 crore towards cutting of such trees and is entitled to be compensated for such unforeseen expenditure. Such payment was made in terms of the demand orders issued by the District Office of the Chief Horticulture Officer.

(h) The permits by the concerned Divisional Commissioners under Section 4 of the J&K Preservation of Specified Trees Act, 1969 for felling of trees were issued post verification by revenue, horticulture and intending agencies and assessment by the State Horticulture Department. The Chief Horticulture Officer and Divisional Commissioners are Indian Governmental Instrumentalities as defined under the TSA.

(i) The contentions of UPPCL that the Petitioner was required to satisfy itself on all requisite information, inputs, conditions, circumstances and factors that may have any effect on the bid before placing it and had the Petitioner made an independent enquiry before submitting its bid, it could have foreseen the requirement to use an aerial mode of transport to complete the transmission line, are in complete ignorance of the circumstances detailed in the Petition that caused the Petitioner to use an aerial mode of transport to complete the SA Line.

(j) Adding to the treacherous geography of the route, multiple security issues plagued various locations along the route, and there were frequent militant

actions, civil riots, and law and order situations. At the time of submission of bid, the Petitioner did not foresee that such security issues and multiple force majeure events, as described in the captioned Petition, would severely impact the route of the SA Line and leave the Petitioner with truncated time to implement the Project. The route for the SA Line was affected by floods, armed conflicts, blockades and ceasefire violations and caused the Petitioner to lose time to implement the SA Line using traditional modes of transport like mules and men. With the short time available with the Petitioner, it was not possible for it to use men and mules to carry 8000 kilograms of material for construction of towers on the range. Given the terrain and the force majeure events impacting the location at the relevant time, as a prudent utility, the Petitioner had no choice but to use the helicrane to ensure commissioning of SA Line within the timeline prescribed under the TSA.

(k) Given the terrain and the force majeure events impacting the location at the relevant time, as a prudent utility, the Petitioner had no choice but to use the helicrane to ensure commissioning of the SA line within the timeline prescribed under the TSA. The choice with Petitioner was between following prudent utility practices to commission the Project in time or using traditional methods and later seeking extension to the scheduled commercial operation date of the Project. The Petitioner chose the former considering the importance and need to implement the SA Line in time.

(l) Notably, implementation of the SA Line solved long standing issues of transmission system inadequacy in the Kashmir valley. The Project is delivering over 1000 MW of power from Punjab to the Kashmir Valley. The SA Line was critical for meeting the power requirement of J&K, especially the Kashmir valley which suffers massive load-shedding during the winter when electricity demand rises sharply and generation from hydel-power plants dips. Access to power in the Kashmir valley has been drastically augmented by the Project as it increases J&K's power transmission capacity by at least 33 percent.

(m) The Petitioner is invoking the Commission's regulatory jurisdiction under Section 79(1)(c) of the Act read with its power to remove difficulties under Regulation 115 of the Central Electricity Regulatory Commission (Conduct of

Business) Regulations, 1999 to seek reimbursement of cost incurred towards the use of hellicrane and has submitted the Auditor certificate dated 9.9.2021 providing the details of the expenditure incurred in this regard.

24. The Petitioner vide affidavit dated 20.1.2022 also placed on record its submissions with regard to the non-applicability of Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (hereinafter referred to as “the Change in Law Rules”) as notified by the Ministry of Power, Government of India on 22.10.2021 to the present case and certain additional documents in support of its Change in Law claim i.e. unforeseen Higher RoW Compensation. After issuance of applicability of Change in Law Rules being settled by the Appellate Tribunal for Electricity (‘APTEL’), the matter was heard on 7.6.2022. During the course of hearing, learned counsel for the Petitioner submitted that pleadings in the matter have already been completed. Accordingly, matter may be reserved for order. Accordingly, order in the matter was reserved. The Petitioner vide Record of Proceedings for the hearing dated 7.6.2022 was directed to submit the following information:

- (a) Element-wise SCoD vis-a-vis actual CoD or deemed CoD (if applicable);
- (b) Element-wise CEA energization certificate;
- (c) Element-wise trial operation certificate issued by RLDC for charging element with or without load;
- (d) Element-wise COD certificate or deemed COD certificate issued by the Petitioner on declaration of COD of an element; and
- (e) In case of COD prior to SCOD for any element, necessary approvals from competent authority thereof

25. The Petitioner vide its affidavit dated 17.6.2022 has submitted the information called for as under:

(a) With regard to element-wise SCOD vis-à-vis actual CoD or deemed CoD (if applicable), The Petitioner has submitted the SCOD of each element vis-à-vis the actual or deemed COD are as under:

S. No.	Element	SCOD	Actual COD
1.	LILO of 400 kV Uri1 (NHPC)- Wagoora (PG)-2 at Amargarh	3.10.2018	18.3.2018
	LILO of 400 kV Uri1 (NHPC)- Wagoora (PG)-1 at Amargarh ( <b>LILLO</b> )	3.10.2018	10.4.2018
2.	400/220 kV 2X315 MVA Amargarh sub-station ( <b>Amargarh S/s</b> )	3.10.2018	18.5.2018
3.	400 kV D/C Jalandhar-Samba Transmission Line ( <b>JS Line</b> )	20.5.2017	7.4.2016 (Deemed)
4.	400 kV D/C Samba-Amargarh Transmission Line ( <b>SA Line</b> )	3.10.2018	23.8.2018

(b) With regard to element-wise CEA energization certificate, the Petitioner has submitted the following energization certificates issued by the CEA for the following individual elements:

- a. LILO of both circuits of Uri-Wagoora 400 kV D/C line at 400/220 kV GIS S/s at Amargarh, Srinagar (**LILLO**) – Certificate dated 9.3.2018;
- b. 400/220 kV GIS Sub Station (**Amargarh S/s**) – Certificate dated 9.3.2019;
- c. 400 kV D/C Samba-Amargarh transmission line (**SA Line**) – Certificate dated 20.8.2018;
- d. 400 kV D/C (Twin Moose) Jalandhar-Samba Line (**JS Line**) – certificate dated 17.6.2016;

(c) With regard to element-wise trial operation certificate issued by RLDC for charging element with or without load, the Petitioner has submitted the trial operation certificates issued by RLDC for the following individual elements:

- a. 400 kV Amargarh (NRSS XXIX) - Samba (PG)-1 along with 50 MVAR Non-switchable line reactors at Amargarh (NRSS XXIX) end and associated bay no 401 (main) and 402 (tie) at Amargarh (NRSS XXIX) end.

(SA Line) – Certificate dated 20.9.2018.

- b. 400 kV Uri 1 (NHPC) – Amargarh (NRSS XXIX)– 1 and associated bays 410 (main) & 411 (tie) at Amargarh (NRSS XXIX).

400 kV Amargarh (NRSS XXIX) – Wagoora (PG)-1 and associated bays 409 (main) & 408 (tie) at Amargarh (NRSS XXIX).

**(LILO)** – Certificate dated 22.5.2018;

- c. 400 kV, 3-Ph 63 MVAR Bus Reactor-1 along with associated 400 kV bay 415 (main) & 414 (tie) at Amargarh (NRSS XXIX),

400 kV, 3-Ph 63 MVAR Bus Reactor-2 at Amargarh (NRSS XXIX). **(Bus Reactor 1&2)**- Certificate dated 4.7.2018;

- d. 400/220 kV, 315 MVA-1 (3X105 MVA) along with associated 400 kV bay 403 (main) & 220 kV bay 203 at Amargarh (NRSS XXIX).

400/220 kV, 315 MVA-2 (3X105 MVA) along with associated 400 kV bay 406 (main) & 220 kV bay 209 at Amargarh (NRSS XXX).

220 kV bay no. 202 of Zainkote-Amargarh at Amargarh (NRSS XXIX)

220 kV bay no 206 of Delina-Amargarh at Amargarh (NRSS XXIX);  
**(Amargarh S/s)** – Certificate dated 3.7.2018;

- e. 400 kV Jalandhar (PG) - Samba (PG)-I  
400 kV Jalandhar (PG) – Samba (PG)-II  
**(JS Line)** – Certificates dated 2.8.2016

(d) With regard to element-wise COD certificate or deemed COD certificate issued by the Petitioner on declaration of COD of an element, the Petitioner has submitted the following COD certificates issued by the Petitioner on declaration of COD:

- a. LILO of 400 kV Uri1 (NHPC)-Wagoora (PG)-2 at Amargarh dated 18.3.2018 LILO of 400 kV Uri 1 (NHPC)-Wagoora (PG)-1 at Amargarh dated 1.4.2018

400/220 kV 2X315 MVA Amargarh sub-station dated 18.5.2018

**(LILO and Amargarh S/s)**- Certificate dated 1.6.2018

400 kV D/C Jalandhar-Samba Transmission Line dated 7.4.2016 (Deemed COD) **(JS Line)** – Certificate dated 31.3.2016

- b. 400 kV D/C Samba-Amargarh Transmission Line dated 23.8.2018 **(SA Line)** – Certificate dated 23.8.2018

(e) With regard to COD prior to SCOD for any element, necessary approvals from competent authority thereof, the Petitioner has submitted the Minutes of Meetings wherein approval was given by the competent authority for early commissioning of the project:

- a. 400 kV D/C Jalandhar-Samba Transmission Line **(JS Line)** – Minutes of Meeting dated 6.4.2016



- b. 400 kV D/C Samba-Amargarh Transmission Line, 400/220 kV GIS Substation at Amargarh and LILO of both circuits of 400 kV Uri-Wagoora at Amargarh under NRSS-XXIX Transmission Limited Project (SA Line, Amargarh S/s, and LILO) – Minutes of Meeting dated 28.7.2017

### **Analysis and Decision**

26. Earlier, the matter was heard on 14.10.2021 and reserved for order. However, consequent upon notification of the Change in Law Rules by the Ministry of Power, Government of India on 22.10.2021, it was considered expedient for the ends of justice to rehear the matter. Hence, matters were re-listed for hearing on 11.1.2022 through video conferencing.

27. In the meantime, the Petitioner filed Original Petitions bearing OP No. 1 of 2022 before the Appellate Tribunal for Electricity (in short, 'APTEL') under Section 121 of the Act seeking directions to the Commission to adjudicate and decide the Petitions filed and pending adjudication before the Commission on 22.10.2021 including the present Petition and to pass consequential Order.

28. In terms of the direction of APTEL, the matter was heard on 11.1.2022 on the applicability of the Change in Law Rules to the present case. The Commission, thereafter, vide order dated 4.2.2022 directed the Petitioner to approach the beneficiaries/LTTCs for settlement of Change in Law claims among themselves in terms of the Change in Law Rules and approach the Commission only in terms of Rule 3(8) of the Change in Law Rules.

29. Subsequently, APTEL vide its judgment dated 5.4.2022, *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. Accordingly, the matter was heard on 7.6.2022 and we now proceed to deal with the claims of the Petitioner on the merits in terms of the judgment of APTEL dated 5.4.2022.

30. We have considered the submissions of the Petitioner and the Respondent, UPPCL and perused the documents available on record. Based on the above, 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 Change in Law?**

**Issue No.2: What shall be the COD of the elements in the Petitioner's Project?**

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

**Issue No. 4: 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 Change in Law?**

31. The Petitioner has 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.”*

32. 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 Articles 12.3.1 and 12.3.2 of the TSA shall provide amongst other things, precise details of Change in Law and its effect on the TSP.

33. The Petitioner gave notices to the LTTCs dated 7.11.2014, 2.6.2016, 25.7.2016 and 30.10.2018 under Change in Law events as enumerated in the Petition and briefed as follows.

Event	Occurrence of Event	Date of Intimation
Encountering Forest area in Jalandhar-Samba Line	Not submitted	7.11.2014
Increase in J&K General Sales Tax	31.3.2015 14.5.2016	2.6.2016
Krishi Kalyan Cess		
Increase in J&K VAT rate	29.6.2016	25.7.2016
Land through PNC	17.4.2015	30.10.2018

34. We observe that for the event of land acquisition through PNC mode, the Petitioner issued notice after more than 3 years and reason for same has not been placed on record by the Petitioner. Clause 12.3.1 of TSA requires that TSP shall give notice to Lead Long Term Transmission Customer of such Change in Law event as soon as reasonably practicable after becoming aware of the same. Notice after more than 3.5 years cannot be considered as reasonable and hence, the notice for the said event cannot be construed as fulfilling the requirement of TSA. Further, for use of Helicrane, the Ppetitioner has not issued any intimation or notice to LTTCs.

35. No response was received from the lead LTTC/ LTTCs on intimations issued by Petitioner. Accordingly, in our view, the Petitioner has complied with the requirement of TSA regarding prior notice to the lead LTTC regarding occurrence of Change in Law before approaching the Commission for the events other than land acquisition through PNC mode and use of Helicrane.

36. This issue is answered accordingly.

**Issue No. 2: What shall be the COD of the elements in the Petitioner’s Project?**

37. The Petitioner has submitted SCOD and COD of various elements of its Project as follows:

S. No.	Element	SCOD	Actual COD declared by petitioner
1.	LILO of 400 kV Uri1 (NHPC)- Wagoora (PG)-2 at Amargarh	3.10.2018	18.3.2018
	LILO of 400 kV Uri1 (NHPC)- Wagoora (PG)-1 at Amargarh <b>(LILO)</b>	3.10.2018	10.4.2018
2.	400/220 kV 2X315 MVA Amargarh sub-station <b>(Amargarh S/s)</b>	3.10.2018	18.5.2018
3.	400 kV D/C Jalandhar-Samba Transmission Line <b>(JS Line)</b>	20.5.2017	7.4.2016 (Deemed)
4.	400 kV D/C Samba-Amargarh Transmission Line <b>(SA Line)</b>	3.10.2018	23.8.2018

38. The Petitioner has also relied upon and furnished the following minutes of meeting with regard to declaration of COD prior to SCOD of the elements:

- a. 400 kV D/C Jalandhar-Samba Transmission Line **(JS Line)** – Minutes of Meeting dated 6.4.2016
- b. 400 kV D/C Samba-Amargarh Transmission Line, 400/220 kV GIS Substation at Amargarh and LILO of both circuits of 400 kV Uri-Wagoora at Amargarh under NRSS-XXIX Transmission Limited Project **(SA Line, Amargarh S/s, and LILO)** – Minutes of Meeting dated 28.7.2017

39. We have perused the COD claimed by the Petitioner. We observe that all the

elements of the Project have been declared COD prior to their SCOD as per TSA. We have perused provisions of TSA dated 2.1.2014 and relevant provisions dealing with the commercial operation of the elements/Project provide as follows:

*“Commercial Operation Date” or “COD” shall mean the date as per Article 6.2;*

*Provided that the COD shall not be a date prior to the Scheduled COD mentioned in the TSA, unless mutually agreed to by all Parties;”*

The expression “Parties” have been specified in the TSA as under:

*“Where*

*(Each of the “Long Term Transmission Customer” or “Long Term Transmission Customers” and “TSP” are individually referred to as “Party and collectively as the “Parties”)*

*.....”*

**Schedule: 1**  
**List of Long-Term Transmission Customers**

**Note: As referred to in the recital of this Agreement and in the definition of “Long Term Transmission Customers” in this Agreement**

<b>S. No.</b>	<b>Name of the Long Term Transmission Customer</b>
1.	<i>Ad Hydro Power Limited</i>
2.	<i>Haryana Power Purchase Centre</i>
3.	<i>Punjab State Power Corporation Limited</i>
4.	<i>Himachal Sorang Power Pvt. Ld.</i>
5.	<i>Adani Power Limited, Mundra</i>
6.	<i>Rajasthan Discoms Power Procurement Centre (on behalf of following discoms)</i>
(i)	<i>Jaipur Vidyut Vitran Nigam Limited</i>
(ii)	<i>Ajmer Vidyut Vitran Nigam Limited</i>
(iii)	<i>Jodhpur Vidyut Vitran Nigam Limited</i>
7.	<i>Lanco Anpara Power Limited</i>
8.	<i>Lanco Green Power Limited</i>
9.	<i>Power Development Deptt. Govt. of J&amp;K</i>
10.	<i>North Central Railway</i>
11.	<i>Jaiprakash Power Ventures Limited</i>
12.	<i>BSES Yamuna Power Limited</i>
13.	<i>BSES Rajdhani Power Limited</i>
14.	<i>TATA Power Delhi Distribution Limited</i>
15.	<i>New Delhi Municipal Corporation</i>
16.	<i>Electricity Wing of Engineering Department, Union Territory of Chandigarh</i>
17.	<i>Power Grid Corporation of India Limited (HVDC Rihand &amp; HVDC Dadri)</i>
18.	<i>U.P. Power Corporation Limited</i>
19.	<i>PTC (Budhil), PTC India Limited</i>
20.	<i>PTC (Everest), PTC India Limited</i>
21.	<i>Uttarakhand Power Corporation Limited</i>
22.	<i>Himachal Pradesh State Electricity Board Limited</i>

**“Scheduled COD”** in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 3 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 3 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties;

**Article: 6**

**6 CONNECTION AND COMMISSIONING OF THE PROJECT**

**6.1 Connection with the Inter-Connection Facilities:**

6.1.1 The TSP shall give the RLDC(s) CTU/STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the Project, which date shall be not earlier than its Scheduled COD or Schedule COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees.

**6.2 Commercial Operation:**

6.2.1 An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven (7) days after the date of deferment, if any, pursuant to Article 6.1.2.

Provided that an Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to have achieved COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.

6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.”

**“ Schedule: 3  
Scheduled COD**

**(Note: As referred to in the definition of “Scheduled COD”, and in Articles 3.1.3 (c), 4.1 (b) and 4.3 (a) of this Agreement)**

<b>Name of the Transmission Element</b>	<b>Scheduled COD from Effective Date</b>	<b>% of Quoted Tr. Charges recoverable on scheduled COD of the Element of the Project</b>	<b>Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element</b>
1.0 Jullandhar – Samba 400 kV D/c line	34 months	22.1%	--

<p>2.0 LILO of both circuits of Uri- Wagoora 400 kV D/c line at Amargarh (on multi-circuit towers)</p> <p>3.0 Establishment of 7x105 MVA (1ph units), with 400/220 kV GIS substation at Amargarh</p> <p>4.0 Samba – Amargarh 400 kV D/c routed through Akhnoor/Rajouri</p>	50 months	77.9%	Elements 2.0,3.0 and 4.0 need to be commissioned together
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*The bidders may please note that 400 kV D/c Samba – Amargarh transmission line must be routed from Samba to Akhnoor, then via Siot to Rajouri and thereafter via Bafliaz along Mughal Road corridor to Shopian.”*

40. As per the above provisions, COD of any element shall not be a date prior to SCOD of the said element as mentioned in TSA, unless mutually agreed to by all parties to TSA. The expression “Parties” as specified in the TSA includes TSP as well as all the LTTCs whose list is appended at Schedule 1 of TSA quoted above. There are 22 numbers LTTCs in the instant case including Northern Region distribution licensees, PTC, few generating stations and PGCIL.

41. Further, the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 provides as follows:

*“4. Date of commercial operation in relation to an inter-State Transmission System or an element thereof shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from the sending end to the receiving end:*

*Provided that: (i) In case of inter-State Transmission System executed through Tariff Based Competitive Bidding, the transmission licensee shall declare COD of the ISTS in accordance with the provisions of the Transmission Service Agreement.*

*.....*  
*(v) An element shall be declared to have achieved COD only after all the elements which are pre-required to achieve COD as per the Transmission Services Agreement are commissioned. In case any element is required to be commissioned prior to the commissioning of pre-required element, the same can be done if CEA confirms that such commissioning is in the interest of the power system.”*

42. The Statement of Reasons issued for the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 provided as follows:

*"Under the Policy of Government of India, Ministry of Power dated 15.7.2015, both the licensees executing ISTS under TBCB as well as PGCIL executing ISTS under compressed time schedule are entitled to tariff if they commission the assets prior to the Scheduled COD. Through the above order, the Commission has examined the scheme of incentives for early commissioning in the context of the various provisions of the TSA and has issued directions as to how the said scheme can be implemented within the framework of the TSA. In a meshed transmission network, no single transmission asset can be planned and executed in isolation. The transmission asset being executed has to serve its purpose i.e. to transmit electricity. It cannot serve its basic purpose unless it is connected at both ends to transmit electricity. While planning the transmission systems, CEA and CTU have decided the SCOD on the basis of the projected commissioning or availability of the upstream or downstream assets. The policy incentivises the transmission licensee to commission the transmission assets early in order to earn the transmission charges.*

*In order to avail the incentives, if the transmission licensee decides to advance the commissioning unilaterally without consulting the Long Term Transmission Customers, the planning agencies and the developers of upstream or downstream assets, it will lead to a situation where the asset after commissioning will remain stranded and will not serve the intended purpose and by virtue of the policy, the licensee will demand the transmission charges to be paid. To facilitate implementation of the policy of incentives by the Central Government, the Commission has directed that the licensee intending to advance the date of commissioning from SCOD shall realistically assess the date of early commissioning of its asset, liaise with the developer of the upstream and downstream assets and mutually advance the date of commissioning for the benefits of both. The Commission has further directed that licensee can declare commercial operation of the asset even if the pre-required asset is not ready, if CEA certifies that the asset can be put to useful service after commissioning. Accordingly, appropriate provisions have been made in the regulations."*

43. As per above, we observe that although TSA provides that explicit agreement of all LTTCs is required to declare COD of an element prior to SCOD, however the Grid Code as amended on 6.4.2016 provided that TSA can be declared prior to SCOD keeping in view pre-required elements and upstream, downstream system such that transmission system is put to useful service after commissioning and CEA certifying the requirement of such COD prior to SCOD.



44. The Petitioner has placed minutes of meeting dated 6.4.2016 held at CEA with regard to early commissioning of for Jalandhar-Sambha Line, which are quoted as follows:

*“Minutes of the meeting taken by Member (PS), CEA on 6.4.2016 on the Issue of early charging of Jalandhar-Sambha 400 kV D/C line under NRSS-XXIX Transmission Ltd. By Sterlite Grid Ltd.*

*List of participants is attached at Annexure-I.*

*Member (PS), CEA welcomed the participants and enquired about the progress of the bay extension works at Jalandhar and Samba sub-stations.*

*Chief Engineer (PSP&A-I), CEA stated that during the last meeting held on 7<sup>th</sup> March, 2016, the issue of early charging of Jalandhar-Samba 400 kV D/C line under NRSS-XXIX Transmission Ltd by Sterlite Grid Ltd. Was discussed and PGCIL was requested to expedite the completion of bay extension works at Jalandhar and Samba substations.*

*Subsequent to the meeting M/s Sterlite vide their letter dated 14.3.2016 had proposed that the Jalandhar-Samba 400 kV D/C line is in close proximity to Samba Kishenpur and Jalandhar-Kurukshetra line. Thus, M/s Sterlite Grid Ltd. requested CTU to allow temporary interconnection with these transmission lines and also allow the test charging of the line.*

*PGCIL vide their letter dated 23.3.2016 had responded that the test charging of the line at 220 kV level is feasible but re-orientation of Jalandhar-Kurukshetra line is not a reliable solution.*

*Further, Sterlite had submitted a new proposal that involves opening of one circuit of Jalandhar-Moga 400 kV line at Jalandhar end and connecting it with one circuit of Samba-Jalandhar line thus forming Moga-Samba 400 kV S/C line and opening of one circuit of Samba-Kishempur 400 kV D/C line at Samba end and connecting it with one circuit of Samba-Jalandhar line, thus forming Kishenpur-Jalandhar 400 kV S/C line.*

*The studies were carried out for the above proposal and it was found that there are not constraints in the system with this re-orientation arrangement. From the studies, it was also observed that there was loss reduction of about 4-5 MW in this revised configuration.*

*PGCIL informed that 220 kV outlet from Samba would be ready by April 2016. With this proposed arrangement Samba would have two independent feeds.*

*All the members agreed for the above re-orientation. It was also decided that all the cost of this re-orientation shall have to be borne by M/s Sterlite Grid Ltd and they agreed for the same.*

*Member (PS), CEA stated that the above proposal is agreed in principle and this will be an interim arrangement till the time the bay extension works at Samba and Jalandhar S/Sn's gets completed. He also stated that M/s Sterlite Grid Ltd will co-ordinate with Powergrid's NR-II office for implementation of the above proposal.*

*Meeting ended with thanks to the Chair.”*

**List of participants in the meeting taken by Member (PS), CEA on 6.4.2016 on the issue of early charging of Jalandhar-Samba 400 kV D/C line under NRSS-XXIX Transmission Ltd. By Sterlite Grid Ltd.**

<b>S. No.</b>	<b>Name</b>	<b>Designation</b>
<b>CEA</b>		
	<b>Shri/Ms.</b>	
1.	S.D. Dubey	Member (PS)- in Chair
2.	K.K. Arya	Chief Engineer (PSP&PA-I)
3.	Manjari Chaturvedi	Deputy Director (PSP&PA-I)
4.	Priyam Srivastava	Assistant Director (PSP&PA-I)
<b>Powergrid</b>		
5.	Mukesh Khanna	AGM (CTU-Plg)
<b>NRSS-XXIX Transmission Ltd.</b>		
6.	T.A. Reddy	VP
7.	S.C. Ghosal	VP
8.	Rohit Gera	Engineer

45. Further, the issue of early charging of Jalandhar -Sambha Line was discussed at 38<sup>th</sup> Standing Committee of Northern Region held on 30.5.2016. Relevant portion of said minutes of meeting dated 30.5.2016 is extracted as under:

*32.0 Early charging of Jalandhar – Samba 400 kV D/C line under NRSS-XXIX Transmission Ltd by Sterlite Grid Ltd*

*32.1 Director (PSP&PA-I), CEA stated that NRSS-XXIX Transmission Ltd by Sterlite Grid Ltd vide letter dated 11th February, 2016 intimated CEA for early charging of Jalandhar – Samba 400 kV D/C line as the line was almost ready and also requested CTU to allow temporary interconnection with the existing transmission lines i.e. at Moga - Jalandhar and Samba-Kishenpur transmission lines, in absence of readiness of terminal bays at Jalandhar and Samba. Subsequently, Commissioner/ Secretary to Govt. of Jammu and Kashmir wrote letter dated 19th February, 2016 to Ministry of Power, Govt. of India regarding commissioning of this line as this would improve the quality and transmission capability of J&K State. It may be mentioned that Ministry of Power vide Order No. 15/1/2013-Trans dated 15th July, 2015 issued policy for incentivizing early commissioning of transmission projects. Hence, meetings were convened in CEA for early charging of Jalandhar – Samba 400 kV D/C line.*

*32.2 It was decided that the charging of the line would be carried out through reorientation arrangement which involves opening of one circuit of Jalandhar- Moga 400 kV line at Jalandhar end and connecting it with one circuit of Samba- Jalandhar line, thus forming Moga- Samba 400 kV S/C line and opening of one circuit of Samba- Kishenpur 400 kV D/C line at Samba end and connecting it with one circuit of Samba- Jalandhar line, thus forming Kishenpur- Jalandhar 400 kV S/C line. It was also agreed that this would be an interim arrangement till the time the bay extension works at Samba and Jalandhar S/Sn's gets completed. All the cost of this re-orientation shall have to be borne by M/s Sterlite Grid Ltd and they agreed for the same.*

*32.3 AGM, CTU stated that with the proposed arrangement, there is a reduction in*

transmission losses and hence may be agreed by the members.

32.4 Director (PSP&PA-I), CEA stated that certain observations were made by Powergrid regarding PLCC and communication. **After detailed deliberations the following was decided:**

- Regarding shifting of the PLCC panels, M/s Sterlite Grid Ltd. would shift the communication panels in consultation with the OEM for achieving the protection/communication for the modified transmission scheme. They would also take care about the signal strength for communication as the earlier line length of Samba-Kishenpur 400 kV D/C line was only 35 km, which would now become 215 km for Moga- Samba 400 kV S/C and 170 km for Jalandhar- Kishenpur 400 kV S/C line.
- Regarding operation of 400 kV Jalandhar- Kishenpur line on one PLCC channel, it was stated that as per CEA Standards for Construction of Transmission Lines, each 765kV or 400kV or 220 kV Line shall be provided with two protection channels in addition to one speech plus data channels for each direction. However, this being purely an interim arrangement, it was decided that the lines could be operated with one protection channel till September/ October, 2016 only, as it is anticipated that power in the range of 15-30 MW would flow.
- Power Grid NR-II office would provide the PLCC interconnection drawings, Control and Relay panel schematic drawings for Main-I and Main-II protection for Kishenpur-Samba line.
- On the issue of un-availability of line due to fault on the section of line owned by M/s Sterlite Grid Ltd., which would have financial implication for Powergrid, M/s Sterlite Grid agreed to compensate for the same.
- PLCC to be functional only on Phase-Ground coupling for both the modified lines namely, Moga- Samba 400 kV S/C and Jalandhar- Kishenpur 400 kV S/C line, as Wave traps are presently available only on Y-Ph for Samba- Kishenpur transmission line.
- Both the modified lines are to be made operational with Complete Main-I and Main-II protection and inter-tripping (PLCC) in service.
- All the necessary modifications/ changes being made to facilitate the early charging of Jalandhar – Samba 400 kV D/C line under NRSS-XXIX Transmission Ltd by Sterlite Grid Ltd and restoration back to original transmission system at Samba sub-station (PG) shall be borne by M/S Sterlite.

*Members agreed for the same.”*

The above meeting was attended by representatives of CTUIL, PGCIL, PTCUL, NTPC, RRVPNL, UPPTCL, HPPTCL, HVPNL, NPCIL, POSOCO, NRPC, MOP and CEA.

46. We observe that the usefulness of instant Jalandhar-Sambha Line has been discussed in separate meeting taken by CEA on 6.4.2016 and the Standing Committee meeting. We observe that Jalandhar-Sambha Line completed trial operation on 24.6.2016 as per RLDC certificate dated 2.8.2016. Clause 6.2.1 of the TSA provides that COD can be declared 72 hours after inter-connection with inter-connection facilities.

Considering the date of start of trial run as the date when inter-connection with interconnection facilities was completed, which is 23.6.2016, the COD shall be considered as 27.6.2016.

47. The Petitioner has also placed minutes of meeting dated 28.7.2017 for 39<sup>th</sup> SCM of NR held on 29-30.5.2017 for early Commissioning of 400 kV D/C Samba-Amargarh Transmission Line, 400/220 kV GIS Substation at Amargarh and LILO of both circuits of 400 kV Uri-Wagoora at Amargath and are quoted as follows:

*“29.0 Early Commissioning of 400 kV D/C Samba-Amargarh Transmission Line, 400/220 kV GIS Substation at Amargarh and LILO of both circuits of 400 kV Uri-Wagoora at Amargath under NRSS-XXIX Transmission Limited Project.*

*29.1 CEA stated that the NRSS-XXIX scheme is under implementation through TBCB by NRSS-XXIX Transmission Limited which is 100% subsidiary of Sterlite Power Grid Venture Limited (SPGVL). Element-I of the scheme i.e. Jalandhar-Samba 400kV D/C transmission line has been already commissioned in June 2016. M/s. SPGVL intends to commission remaining elements i.e. Samba-Amargarh 400 kV D/C line, 400/220 kV GIS substation at Amargarh and LILO of both circuits of Uri-Wagoora 400 kV D/c line at Amargarh under NRSS-XXIX by July 2017 instead of scheduled COD of October 2018, which is 15 months ahead of the schedule. The downstream system of 400/220 kV Amargarh S/s is LILO of Zainkote-Delina 220 kV D/C line at 2X315 MVA, 400/220 kV Amargarh (Kunzar) S/s which is to be implemented by JKPDD, however same would not be ready by July 2017 as the same is yet to be awarded by JKPDD.*

*29.2 He added that M/s SPGVL in their proposal has also mentioned that progress of this project has been reviewed in the review meeting on 23.1.2017 chaired by Hon'ble Deputy Chief Minister (Minister I/c Power) of J&K at Civil Secretariat, Jammu. In the review meeting, POWERGRID and Power Development Department Jammu & Kashmir (JKPDD) had confired to meet the schedule of July 2017.*

*29.3 Members of the committee opined that as the scheme is for reliable power supply to J&K, its early commissioning was desirable but in the absence of downstream network at Amargarh, there would be no utilization of Amargarh 400/220 kV S/s.*

*29.4 After deliberations, members agreed for early commissioning of Samba-Amargarh 400kV D/C line, 400/220 kV GIS substation at Amargarh and LILO of both circuits of 400 kV Uri-Wagoora at Amargath under NRSS-XXIX Transmission Limited Project in the matching time frame of the commissioning of downstream system at Amargarh (LILO of Zainkote-Delina 220 kV D/C line at 2X315 MVA, 400/220 kV Amargarh (Kunzar) substation.”*

48. The above SCM meeting was attended by CEA, Ministry of Railways, POSOCO,

HVPNL, DTL, UPPTCL, RVPN, HPPTCL, SJVN, NTPC, Electricity Department of UT of Chandigarh, PTCUL, PGCIL, NRPC and REMCL. We observe that during the above meeting, Members of the committee including CEA, opined that as the scheme is for reliable power supply to J&K, its early commissioning was desirable.

49. We note that the Petitioner has declared COD of Samba-Amargarh 400kV D/C line as 23.8.2018, 400/220 kV GIS substation at Amargarh as 18.5.2018 and LILO of both circuits of 400 kV Uri-Wagoora at Amargarh as 18.3.2018 and 10.4.2018 against SCOD of 3.10.2018. However, we observe that Schedule 3 of the TSA provides as under:

**“ Schedule: 3**

**Scheduled COD**

**(Note: As referred to in the definition of “Scheduled COD”, and in Articles 3.1.3 (c), 4.1 (b) and 4.3 (a) of this Agreement)**

<b>Name of the Transmission Element</b>	<b>Scheduled COD from Effective Date</b>	<b>% of Quoted Tr. Charges recoverable on scheduled COD of the Element of the Project</b>	<b>Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element</b>
<p>2.0 LILO of both circuits of Uri- Wagoora 400 kV D/c line at Amargarh (on multi-circuit towers)</p> <p>3.0 Establishment of 7x105 MVA (1ph units), with 400/220 kV GIS substation at Amargarh</p> <p>4.0 Samba – Amargarh 400 kV D/c routed through Akhnoor/Rajouri</p>	50 months	77.9%	Elements 2.0,3.0 and 4.0 need to be commissioned together

50. In view of above, the Element 2, Element 3 and Element 4 were required to be commissioned together. The Petitioner has placed on record the trial operation

certificates in support of the Commissioning of the said elements. As per the clause 6.2.1 of the TSA, an element of the project shall be declared to have achieved CoD after 72 hours following the connection of the elements with the interconnection facilities. In the instant case, last elements out of Element 2, Element 3 and Element 4 i.e. SA Line has completed trial operation on 1.9.2018 as per the certificate dated 20.9.2018. Since, the inter-connection of SA Line was completed on 31.8.2018, as per Clause 6.2.1 of the TSA, COD of SA Line can be considered as 72 hours following 31.8.2018 which is 4.9.2018.

51. Therefore, we approve CoD for Element 2, Element 3 and Element 4 with effect from 4.9.2018, which is in line with the clause 6.2.1 of the TSA.

52. In light of above discussions, we conclude that COD of the elements of the Petitioner's Project shall be as under:

S. No.	Element	SCOD	COD (claimed by Petitioner)	COD as approved vide this Order
1	LILO of 400 kV Uri1 (NHPC)- Wagoora (PG)- 2 at Amargarh	3.10.2018	18.3.2018	4.09.2018
	LILO of 400 kV Uri1 (NHPC)- Wagoora (PG)- 1 at Amargarh ( <b>LILO</b> )	3.10.2018	10.4.2018	4.09.2018
2	400/220 kV 2X315 MVA Amargarh sub-station ( <b>Amargarh S/s</b> )	3.10.2018	18.5.2018	4.09.2018
3	400 kV D/C Jalandhar-Samba Transmission Line ( <b>JS Line</b> )	20.5.2017	7.4.2016 (Deemed)	27.6.2016
4	400 kV D/C Samba-Amargarh Transmission Line ( <b>SA Line</b> )	3.10.2018	23.8.2018	4.09.2018

53. Consequently, CTUIL is directed to raise adjustment bills to the Petitioner to recover the amounts disbursed to the Petitioner, considering COD as approved vide this Order, within a month of issue of this Order. The transmission charges shall be allowed

only from date of approved COD as per this Order.

54. The issue is answered accordingly.

**Issue No. 3: Whether the claims of the Petitioner are covered under Change in Law in terms of the TSA?**

55. 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.*

56. 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 the seven days prior to the bid deadline and should result into any additional recurring/ non-recurring expenditure by TSP or any income to TSP. The events broadly covered under Change in Law are following:

- (a) Any enactment, coming into effect, adoption, promulgation, amendment, modification or repeal, of any Law;

- (b) Any change in interpretation of any law by a Competent Court of law, or Indian Governmental Instrumentality having the legal power for such interpretation; or
- (c) Imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier;
- (d) A change in terms and conditions prescribed or inclusion of any new terms and conditions for obtaining consents, clearances and permits or the inclusion of new terms and conditions for obtaining such consents, clearances and permits;
- (e) Any change in the Transmission Licence Regulations issued by the Commission;
- (f) Any change in the Acquisition price; and
- (g) Any change in tax or introduction of any tax made applicable for providing transmission service by the TSP as per the terms of the agreement.

“Indian Government Instrumentality” as defined in the TSA is as under:

*“Indian Governmental Instrumentality” shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any State Government or both, any political sub-division of any of them including any court or Appropriate Commission or tribunal or judicial or quasi-judicial body in India but excluding TSP and Long Term Transmission Customers”*

Further, “Law” has been defined in the TSA as under:

*“Law” or “Laws” in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation, notification, order or code, or any interpretation of any of them by an Indian Governmental Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission;”*

57. Thus, “Law” under TSA includes any statute, ordinance, rule, regulation, notification, order or code or any interpretation of any of them by an Indian Governmental Instrumentality having force of law.

58. Cut-off date for Change in Law events i.e. the date which is seven days prior to the bid deadline was 2.5.2014. In the light of the above provisions of Change in Law,



the claims of the Petitioner which have occurred after cut-off date during the construction period have been examined in following paragraphs:

**(a) Unforeseen requirement of forest clearance for JS Line**

59. The Petitioner has submitted that as per the Survey Report enclosed with the RfP documents, issued by BPC, RECTPCL, there were no forest areas in the routes of the JS Line i.e. forest area was 'nil'. However, during the detailed survey of the route of the JS Line, post-acquisition of the SPV, it came to the knowledge of the Petitioner that the information given in the RfP (final survey report) with regards to the protected forest along with route of JS Line was incorrect and it was discovered that protected forests existed along with the route for JS Line in Gurdaspur Division, Jalandhar Division and Pathankot Division in the State of Punjab. This unexpected requirement resulted in the Petitioner seeking approval for diversion of 3.749 hectares of forest land for laying the JS Line in terms of the provisions of the Forest (Conservation) Act, 1980. On 21.5.2015, the Petitioner received Stage-I (in-principle) approval from the Ministry of Environment, Forest and Climate Change (MoEF&CC). Subsequent to demand letters issued by the respective Forest Divisional on 29.5.2015 and 2.7.2015, the Petitioner paid Rs. 57,28,559/- towards Net Present Value (NPV) of proposed forest land. Thereafter, the Forest Divisional officers vide their demand notices dated 2.7.2015, 3.7.2015 and 14.7.2015 raised demand for cost of land in lieu of forest land diverted for construction of the JS Line. Accordingly, on 17.8.2015, the Petitioner paid Rs. 2,94,35,941/- towards cost of land and thereafter, the Petitioner received approval for Stage-II from MoEF&CC on 28.9.2015.

60. According to the Petitioner, it has incurred expenditure Rs. 3,85,29,864/- towards forest clearance for JS Line which details is extracted as under:

S. No.	Divisions	CA	NPV (8.87 lakh per hectare)	Cost of land	Total amount (CA+NPV+Trees + Land)	Other service charges	Total amount
1.	Pathankot	17,05,702	2,93,775	13,99,320	33,98,797	-	33,98,797
2.	Gurdaspur	25,75,819	21,82,907	1,54,05,601	2,01,64,327	40,000	2,02,04,327
3.	Jalandhar	14,47,038	8,48,682	1,26,31,020	1,49,26,740	-	1,49,26,740
	<b>Total</b>	<b>57.28,559</b>	<b>33,25,364</b>	<b>2,94,35,941</b>	<b>3,84,89,864</b>	<b>40,000</b>	<b>3,85,29,864</b>

61. The Respondent, UPPCL has not raised its objection regarding diversion of route.

62. We have considered the submissions of the Petitioner and the Respondents. The BPC Survey Report enclosed with the RfP documents, issued by RECTPCL showing comparison statement of three alternative routes are as under:

**Comparative Statement for three alternative routes**

S. No.	Description	Alternative-I (proposed) (Red)	Alternative-II	Alternative-III
1	Line length	145.930 km	149.041 km	161.674 km
	(a) Plain	145.930 km	149.041 km	161.674 km
	(b) Hilly/Undulated	Nil	Nil	Nil
2	(c) Angle Points	62	142	160
3	Forest			
	(a) Reserve Forest	Nil	Nil	Nil
	(b) Protected Forest	Nil	Nil	Nil
	(c) Social Forest	Nil	Nil	Nil
	(d) Other area	Nil	Nil	Nil

63. The Petitioner has submitted that in all the three alternative routes mentioned in the Final Survey Report indicated forest area as 'Nil' along them. However, post award of the Project to the Petitioner and after the detailed survey of the route, it was found that protected forests existed along all the three routes suggested for JS Line and the information provided in the Final Survey Report was incorrect. The Petitioner found that as a matter of fact that it was not possible to construct the JS Line without passing through forest areas and accordingly, the Petitioner opted for a route that would result in the most relatively expeditious receipt of RoW clearances, diversion of forest land

and contained the least hindrances. The Petitioner has also submitted that in a similar issue, the Commission in its order dated 8.5.2013 in Petition No. 162/MP/2011 in the matter of East North Interconnection Company Limited Vs. Punjab State Transmission Corporation Limited and Ors. had observed that it was the obligation of the BPC to prepare a reliable and accurate survey report. In this regard, the Petitioner has also relied upon the Commission's order dated 24.8.2016 in Petition No. 32/MP/2014 in the matter of East North Interconnection Company Limited vs. Jodhpur Vidyut Vitran Nigam Limited and Ors. and the order dated 29.3.2019 in Petition No. 195/MP/2017 in the matter of NRSS XXXI (B) Transmission Limited vs. U.P. Power Corporation Limited and Ors.

64. We have considered the submission made by the Petitioner. We observe that RFP, submitted by the Petitioner on record, provides as follows:

*“2.14.2.3 Bidders may visit the route of the Transmission 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.*

*2.14.2.4 The BPC has carried out a survey of the Transmission Lines associated with the Project and shall provide each Bidder with its Survey Report of the Project. Bidders in their own interest should carry out required surveys and field investigation for submission of their Bid.*

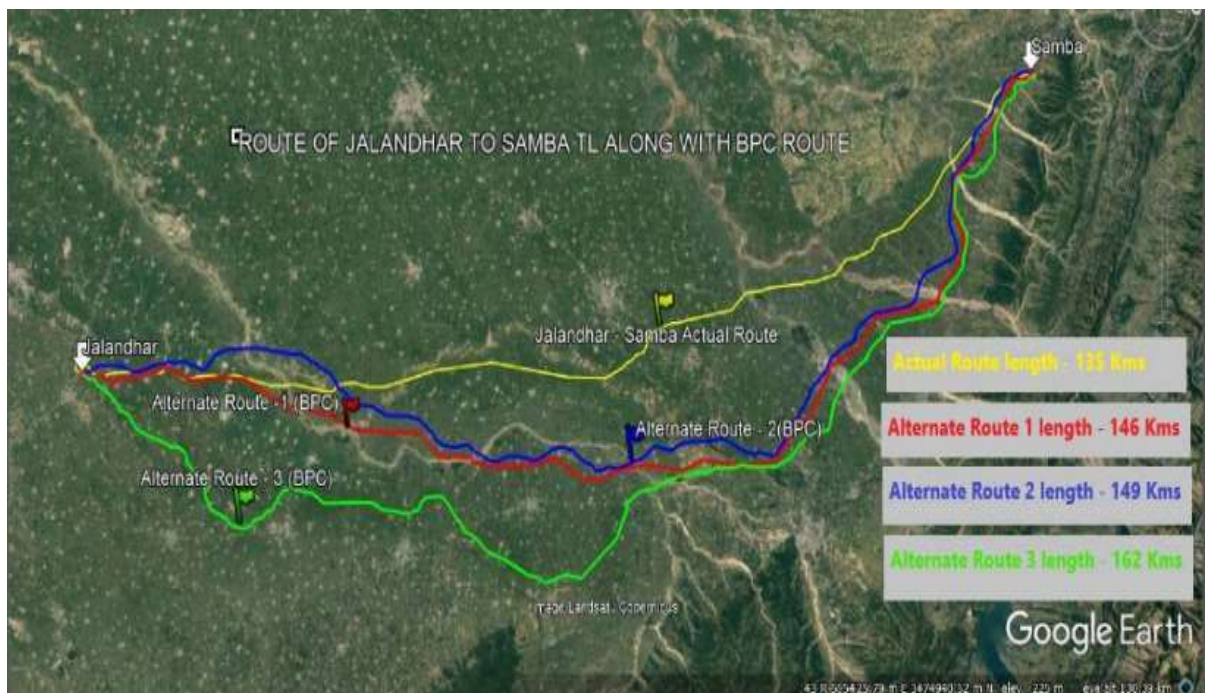
*2.14.2.5 Failure to investigate the route of the Transmission Lines associated with the Project and to examine, inspect site or subsurface conditions fully shall not be grounds for a Bidder to alter its Bid after the Bid Deadline nor shall it relieve a Bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project.*

*2.14.2.6 The Selected Bidder shall obtain all necessary Consents, Clearances and Permits as required. The Bidders shall familiarize itself with the procedures and time frame required to obtain such Consents, Clearances and Permits.”*

As per the above, Petitioner was made clear even prior to bidding that it had to carry out its own survey before submission of the bid and that failure to investigate the route shall not be grounds for a Bidder to alter its Bid after the Bid Deadline nor shall it relieve a Bidder from any responsibility for appropriately eliminating the

difficulty or costs of successfully completing the Project.

65. Further, vide Record of Proceedings for the hearing dated 23.7.2021, the Petitioner was directed to submit route followed out of the three alternative routes provided by the BPC for 400 kV Jalandhar-Samba 400 kV D/C transmission line or any other route along with necessary proof. In response, the Petitioner vide affidavit dated 17.9.2021 has submitted that it opted for a route that would result in relatively the most expeditious receipt of RoW clearances, diversion of forest land and contained the least hindrances/obstructions. The Petitioner has further submitted that a map depicting the route followed by the Petitioner (referred to as Jalandhar-Samba Actual Route – in yellow color) as against the three alternate routes suggested by the BPC. The map depicting the route is given as under:



66. At the outset, it is observed that the Petitioner followed the route length as per its own survey and traversed some route not envisaged under the BPC survey report. It has, however, submitted that it opted for the route (as marked in yellow colour above)

that would result in the most relatively expeditious receipt of RoW clearances, diversion of forest land and contained the least hindrances/obstructions. We observe that the Petitioner, for the ease of implementation of JS Line, has opted for the route of JS Line as per its own survey and does not follow any of three alternate routes mentioned in BPC survey report. Pertinently, the TSA does not mandate the Petitioner to follow the route as provided by BPC, but provides for the Petitioner to carry out its own survey which the Petitioner has carried out and followed its own route. Thus, once having opted route of the line as per its own survey, in departure from the routes mentioned in the Survey Report, the Petitioner cannot claim that it encountered with unforeseen requirement of forest clearance, which was not made known to it earlier in the Survey Report when it has not followed the routes mentioned in the Survey Report. Further, since the Petitioner followed its own route, it is non-consequential as to whether forest existed on BPC suggested routes or not since Petitioner was required to factor in all the requirements as per its own survey prior to placing the bid as per the RFP document. Hence, we are not inclined to consider the aforesaid submission of the Petitioner.

67. We also note that even the routes mentioned in the survey report ranges from 146 to 162 kms, and the route implemented by the Petitioner is about 135 kms, this indicates that as far as length of the line is concerned, the Petitioner implemented lesser length than estimated by BPC, for which Petitioner is not required to reduce the tariff, in case implemented length is less than estimated length as per the TSA. It cannot be the argument of the Petitioner that it should be allowed to keep the savings on reducing the line length for following its own route without comparing with BPC route and at the same time pass on the additional expenditure incurred due to the requirement of forest clearance by comparing it with BPC route. The RfP provided full freedom to Petitioner to choose the route as per its best estimate and hence any comparison with BPC route

which it did not follow does not hold water. We are of the view that the requirement of obtaining forest clearance for implementation of the JS Line, in the facts and circumstances of the present case, is not covered under “Change in Law”. Accordingly, the amount paid by the Petitioner to the forest authorities for obtaining diversion of forest land incurred in connection with forest clearance is not allowed as Change in Law event and deserves to be rejected.

### **Increase in Taxes**

#### **(b) Increase in the rate of Service Tax, Increase in rate of J & K General Sales Tax and Increase in rate of J & K Value Added Tax rate**

68. The Petitioner as regard increase in rate of service tax, has submitted that post cut-off date, in terms of the Finance Act, 2015, the service tax rate increased from 12.36% to 14%. The Ministry of Finance, Department of Revenue vide its notification No. 14/2015-ST dated 19.5.2015 notified such increase to be effective from 1.6.2015. Thereafter, in terms of the Finance Act, 2015, the Ministry of Finance, Department of Revenue vide its Notification No. 21/2015—ST dated 6.11.2015 notified the levy of Swachh Bharat Cess @ 0.5% applicable on all taxable services to be effective from 15.11.2015, thereby increasing the effective service tax rate to 14.5%. Further, the Petitioner has submitted that later, in terms of the Finance Act, 2016, the effective service tax rate was again revised from 14.5% to 15% with effect from 1.6.2016 to additionally provide for 0.5% Krishi Kalyan Cess.

69. The Petitioner as regards increase in rate of J & K General Sales Tax, has submitted that Finance Department, Government of J&K vide its Notification No. SRO 105 dated 31.3.2015 under Section 4 of the J&K General Sales Tax Act, 1962 revised the general sales tax rate from 10% (as on the cut-off date) to 12% with effect from

1.4.2015.

70. The Petitioner as regards increase in rate of J & K Value Added Tax has submitted that the Finance Department, Government of J&K vide its Notification No. SRO – 210 dated 29.6.2016 increased the rate of VAT post the cut-off date from 13.5% to 14.5% with effect from 1.7.2016.

71. The Petitioner has submitted that the total actual impact on account of increase in service tax on the cost of the Project has been to the tune of Rs. 42,32,712/-, the total impact of the increase in J&K General Sales Tax on the cost of the Project has been to the tune of Rs. 4,43,40,325/- and the total actual impact of the increase in VAT rates in J&K on the cost of the Project has been to the tune of Rs. 9,03,523/-.

72. The Respondent, UPPCL has submitted that the Petitioner is required to factor various taxes 'both direct and indirect' and levies while evaluating of bids. The Petitioner has only considered impact of indirect taxes viz. service tax, VAT and GST. Thus, impact on increase in capital cost because of upward revision in rates of indirect taxes is considered. However, impact of change in direct taxes on Levelized Transmission Charges (LTC) has been ignored. Direct tax rates as per Income Tax Act, 1961 have been reduced w.e.f. financial year 2019-20 with a consequential impact on LTC. It has been submitted by UPPCL that bids were invited on 9.12.2013 i.e. during financial year 2013-14. Actual COD of the Project is 1.9.2018. i.e. during financial year 2018-19. Income Tax is levied either at Minimum Alternative Tax (MAT) rate or at normal corporate rate. MAT rates have been reduced from 18.5% in financial year 2013-14 to 15% in financial year 2019-20. Corporate income tax rate has reduced from 30% in financial year 2013-14 to 25/22% in financial year 2019-20. Impact of reduction in income tax rates is a Change in Law event and, therefore, such reduction needs to be

factored into determine levelized transmission charges.

73. *Per contra*, the Petitioner has submitted that Article 12.1.2 (b) of the TSA categorically excludes a change “*in any tax applied on the income or profits of the TSA*” from the definition of Change in Law. MAT and income tax are applied on income/ profits of the transmission service provider. Therefore, the entirety of UPPCL’s submissions is erroneous and is ignorance of the express provisions of the TSA. Under Clause 12.2.1 of the TSA, relief for Change in Law occurring during the construction period is available where the Change in Law event causes an increase or decrease in the ‘cost’ of the Project. Income Tax and MAT are not an expenditure laid out for the purpose of the business of the company and are applicable only post commissioning of the Project. Therefore, it cannot be considered as impacting the cost of the Project during the construction period, and any decrease in them cannot be characterized as a Change in Law event impacting the Project during the construction period. Change in income tax and MAT are not Change in Law events and the arguments raised by UPPCL in this regard ought to be rejected at the outset.

74. We have considered the submissions of Petitioner and the Respondent. The Petitioner has submitted that it is required to bear the statutory taxes and duties on the material, equipment and services during the construction period. The Commission in order dated 1.2.2017 in Petition No. 8/MP/20214, order dated 8.5.2017 in Petition No. 310/MP/2015, order dated 3.4.2018 in Petition No. 110/MP/2016, order dated 26.6.2018 in Petition No 216/MP/2016 and order dated 29.3.2019 in Petition No. 195/MP/2017 has considered the same as Change in Law events. Thus, the Petitioner incurred additional expenditures on account of change in taxes, which is admissible and allowed to be considered under Article 12.2.1 of TSA for granting relief under Change in Law events.



75. As per Article 12.1.1 of the TSA, the Change in Law events should have occurred after the date which is seven days prior to the bid deadline resulting into any additional recurring/non-recurring any expenditure by the TSP or any income to the TSP. The bid deadline has been defined as “the last date and time for submission of the Bid in response to the RFP”. Hence, in terms of TSA, bid deadline was 9.5.2014 Therefore, cut-off date for considering the claims under Change in Law is 2.5.2014. Each of the aforesaid events have taken place after the cut-off date. Accordingly, we proceed to deal with the Petitioner’s claims related to change in taxes under Change in Law under Article 12 of the TSA.

76. The changes in increase in service tax, increase in J&K General Sales Tax and increase in VAT rates in J&K on the cost of the Project falls within the definition of Change in Law under Article 12 of the TSA as they constitute “the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal in India, of any law, including rules and regulations framed pursuant to such Law” and are, therefore, a Change in Law, which came into effect subsequent to cut-off dates and are admissible. The Petitioner has also furnished the certificate from the Chartered Accountant certifying the additional amount paid by it due to change in various taxes and duties. The relief for any additional expenditure incurred by the Petitioner 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 taxes levied thereon, duly supported by invoices and Auditor’s Certificate.

77. As far as the argument of the Respondent, UPPCL that the Petitioner has failed to take into account the impact of direct taxes viz. Corporate Tax/MAT, the rates of which have been reduced from that prevailing as on cut-off date, we find the provisions

of the TSA expressly exclude any tax applied on the income or profits of the licensee will not constitute Change in Law event. Accordingly, the Petitioner is not only required to bear the brunt of increase in the rates of such taxes, but is equally entitled to bear the fruits of decrease in rate of such taxes. Neither the Petitioner nor the LTTCs can seek to pass on the impact due to change in the rates of taxes to be applied on the income or profits of the licensee under the Change in Law.

### **Unforeseen higher RoW compensation**

#### **(c) Land acquisition through private negotiation committee mode in lieu of compulsory acquisition mode**

78. The Petitioner has submitted that as per the bid documents, land acquisition in J&K for public purposes and determination of the compensation to be paid for it, was governed by the State Land Acquisition Act, 1990. The first disclaimer of the RfP *inter alia* provides that the purpose of the document is to provide information to the bidding parties to assist in formulation of their bids. Clause 2.14.2.2 of the RfP which *inter alia* provides that every bidder must familiarize themselves with the Land Acquisition Act, 1894. Further, additional clarification issued by the BPC on 19.2.2014 clarified that the acquisition of land in J&K is governed by the 1990 Act. Based on above, it was reasonable on the part of SGL to conclude that compensation to landowners towards acquisition of land in J&K shall be governed by the provisions of the 1990 Act. Therefore, while preparing its bid proposal, SGL took into account the methodology for computation of the compensation under the 1990 Act.

79. It has been submitted by the Petitioner that as per the provisions of the 1990 Act, the compensation for such acquisition mode for public purposes is required to be determined based on the prevalent circle rates in the given localities along with the applicable stamp duty. After grant of the transmission licence, the Petitioner conducted

a land survey in J&K for the purposes of acquisition of land for the Project. Thereafter, the Petitioner communicated the coordinates of the concerned land to the Collectors and requested them to publish the preliminary notification in terms of Section 4 of the 1990 Act.

80. Pursuant thereto, various notifications dated 4.2.2016 (Marh district), dated 17.12.2015 (Samba district), dated 11.2.2016 (Bhalmal district), dated 25.2.2016 (Bemina district) and dated 21.1.2016 (Jammu south district) were issued. Subsequently, various Collectors and Jammu and Kashmir Power Development Department advised the Petitioner to adopt the Private Negotiation Committee Route (PNC Mode) for timely and hassle-free acquisition of land for the Project. PNC Mode of acquisition is provided for under the Land Acquisition Rules for public purpose notified vide Council order No. 939-C of 1936 dated 8.12.1936 ("1936 Rules") as an alternate method of acquisition of land for public purpose which requires constitution of a Private Negotiation Committee (PNC) for the purposes of determination of the compensation amount to be paid to the landowners. On 17.4.2015, Chief Secretary, Power Development Department convened a meeting with the Principal Secretary, representative of Secretary Revenue and Senior Managers of Sterlite Grid and in the said meeting, it was agreed that (a) Power Development Department will be the nodal point for placing the indent of land acquisition required for the project; and (b) Divisional Commissioner, Jammu would ensure submission of land papers in respect of district Samba and district Kathua to the Administrative Secretary, Power Development Department and thereafter it will process the land papers and obtain approvals of the competent authority to place an indent of land acquisition with the revenue authorities (DC Samba and DC Kathua). Similar process would be followed for other districts later.

81. The Petitioner has further submitted that in the meeting held on 7.9.2015 under the Chairmanship of Divisional Commissioner, Kashmir, directions were issued to the concerned Deputy Commissioners to finalize land for acquisition process, fix a reasonable rate for acquisition of land through PNC route and conduct PNC at earliest after receipt of demand from the concerned Collector. Thereafter, in the Review Meeting of the project held under the chairmanship of the Deputy Chief Minister, J&K on 30.12.2015, the J&K PDD directed to conduct PNC meetings for various sites including in districts Samba, Kathua, Jammu and Rajouri.

82. The Petitioner has argued that as per the 1936 Rules, the committee negotiates and settles prices with landowners and communicates the same to the acquirer. The acquirer upon receipt of the demand notices, deposits and payments to the District Collector who registers the land in the name of J & K PDD. Thereafter, J&K PDD bestows the right to the acquirer (the Petitioner in the present case), as custodian of land for undertaking its construction activities. The decision taken in the meeting held on 17.4.2015 was a Change in Law event which occurred after the cut-off date, in terms of Article 12.1 of the TSA.

83. The Petitioner has further submitted that requirement of adoption of this alternate mode of acquisition was an entirely new requirement and its imposition could not have been foreseen by the Petitioner at the time of bidding. In fact, the existence of the PNC mode as an alternate mode of land acquisition in J & K was discovered after concluding the bidding process and after requesting the Collectors to initiate the process under the 1990 Act. Until such time, the Petitioner was factoring in the timelines and cost keeping in view the Compulsory Acquisition Mode. Acquisition through the PNC mode is a clear deviation from bidding documents and could not have been considered or factored in

by the Petitioner during submission of the bid. Despite paying agreed amount to landowners, the Petitioner could not obtain possession of the land acquired for implementation of the SA line. Clear possession over the acquired land could be obtained only after seeking assistance from the local administration and after paying additional compensation over and above the PNC cost to the landowners, to avoid further delay and local unrest.

84. The Petitioner has submitted that it has paid Rs. 89,21,73,487/- towards acquiring land for the SA Line, JS Line and Amargarh sub-station land, in terms of demands notes issued by the PNC ("PNC Cost"). However, at the time of submission of bid, the Petitioner had factored in an amount of Rs. 22,85,45,996/- as compensation for land acquisition for these areas on the basis of Compulsory Acquisition Mode ("Factored Cost"). Such factored cost was based on the stamp duty rates prevalent for acquisition of land at the relevant time. Accordingly, the additional cost impact of acquisition through the PNC Mode has been to the tune of Rs. 66,36,27,491/-.

85. The Petitioner has submitted that it has paid an additional amount of Rs. 9,42,72,020/- to the land owners for SA Line, over and above the compensation decided to be paid at the PNC meetings based on negotiations with the land owners and payment was made against agreements entered into with such land owners. The Petitioner has suffered an additional impact of Rs. 75,78,99,511/- on account of acquisition of land through the PNC Mode and payment of the settlement compensation.

86. We have considered the submissions made by the Petitioner and examined the documents available on record in support of the aforesaid claim. The Petitioner has sought a declaration that the imposition of requirement of acquiring land through PNC Mode constitutes a Change in Law event in terms of Article 12 of the TSA. The Petitioner

has contended that said imposition has been pursuant to the decision taken in the meeting convened by the Chief Secretary, PDD, J &K along with Principal Secretary, PDD, Divisional Commissioners, Jammu, representative of Secretary Revenue and officials of the Petitioner held on 17.4.2015. The Petitioner has also submitted that PNC Mode was neither a part of the 1990 Act nor was provided in the Bidding Documents or the additional clarifications issued by the BPC. Therefore, requirement of adoption of this alternate mode of acquisition was an entirely new requirement and its imposition could not have been foreseen by the Petitioner at the time of bidding.

87. We have perused the relevant clauses of RfP available with the Petitioner which provide as follows:

*“2.14.2 Bidders to inform themselves fully*

*2.14.2.1 The Bidders shall make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. Once the Bidders have submitted their Bids, the Bidders shall be deemed to have inspected and examined the site conditions (including but not limited to its surroundings, its geological condition and the adequacy of transport facilities to the site), the laws and regulations in force in India, the transportation facilities available in India, the grid conditions, the adequacy and conditions of roads, bridges, railway sidings, ports, etc. for unloading and/or transporting heavy pieces of material and has based its design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the transmission of power. Accordingly, each Bidder acknowledges that, on being selected as Successful Bidder and on acquisition of one hundred percent (100%) of the equity shares of the NRSS XXIX Transmission Limited, the TSP shall not be relieved from any of its obligations under the RFP Project Documents nor shall the TSP be entitled to any extension in Scheduled COD mentioned in this RFP or financial compensation for any reason whatsoever.*

*2.14.2.2 In their own interest, the Bidders are requested to familiarize themselves with all relevant laws of India, including without limitation, the Electricity Act 2003, the Income Tax Act 1961, the Companies Act, 1956, Environment Protection Act 1986 and Forest (Conservation) Act, 1980, the Customs Act, the Foreign Exchange Management Act, Land Acquisition Act, 1894, the Indian Telegraph Act 1885, Labour & Employment Laws of India, [Insurance Act] the regulations/standards framed by Appropriate Commissions and CEA, **all other related acts, laws, rules** and regulations prevalent in India, as amended from time to time. In addition to the above, the Bidders are required to familiarize themselves with all relevant technical codes and standards, including but not limited to the Grid Code / State Grid Code, Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, Central Electricity Regulatory*

*Commission (Open Access in Inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009 along with related amendments brought in from time to time. The BPC shall not entertain any request for clarifications from the Bidders regarding the above laws / acts / rules / regulations / standards. Non-awareness of the same shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidders undertake and agree that, before submission of their Bid, all such factors as generally brought out above, have been fully investigated and considered while submitting their Bids.”*

As per above, at the time of submission of bid, bidder was required to familiarize itself with all related acts, laws, rules and regulations prevalent in India.

88. We have already observed in Issue No.1 that Petitioner has not complied with requirement of Clause 12.3.1 of TSA while issuing notice for the said event of land acquisition through PNC mode. Further, it is to be noted that PNC Mode of acquisition of land was available right from the beginning under the 1936 Rule. Thus, as on the cut-off date, for acquisition of land in the J & K for public purposes, not only the Compulsory Acquisition mode under 1990 Act was in existence but also the PNC mode under the 1936 Rules. All the prospective bidder(s) while placing their bid were required to inform themselves fully with all the prevalent laws of India, which have may have any effect on the bid. Therefore, the Petitioner cannot plead ignorance of prevalent laws for claiming a Change in Law relief by contending that the existence of PNC Mode as an alternate mode of land acquisition was discovered after the bidding process was concluded and when the Petitioner requested the Collectors to initiate the process under 1990 Act. The onus of making oneself aware about available modes of land acquisition, selecting the appropriate mode based on the ground realities and factoring into the expenditure likely to be incurred towards the same were on the Petitioner/prospective bidder(s) and they cannot permitted to resile from their such obligation based on the clarification provided by BPC in response to a query, which in any way did not state that Compulsory Acquisition mode was the only mode for acquisition of land in the J&K.

89. Regardless, we observe that the Petitioner has contended that it was on the basis of the decision taken in the meeting dated 17.4.2015, the Petitioner was required to adopt the alternate mode of acquisition and that the said decision is a Change in Law event in terms of Article 12.1 of the TSA. We have perused the minutes of the said meeting and found nothing so as to indicate that the Petitioner was directed to the opt for the PNC Mode of acquisition of land in place of Compulsory Acquisition under the 1990 Act. The relevant extract of the minutes of the said meeting is as under:

*'Worthy Chief Secretary chaired a meeting on 17.4.2015 at 3.00 PM in his conference room to discuss the issues of connected with the construction of System Strengthening Scheme of Northern Region (NRSSXXIX) being executed by NRSSXXIX Transmission Limited (a subsidiary of Sterlite Grid). Principal Secretary, Power Development Department, Divisional Commissioner, Jammu, representative of Secretary Revenue and Senior Managers of Sterlite Grid (S/Shri Ajay Bhardwaj, President and Business Head, Subhas Chandra Ghosal, Vice President Project and MA.Salroo, J & K Representative) attended. After discussion following action points were arrived at:*

*(a) As opined by the Divisional Commissioner, Jammu and the representative of Secretary Revenue the Power Development Department will be the nodal point for placing the intend for land required for the project of the Ministry of Power, Government of India, who have written to the Secretary, Revenue Department, GoJK, Ministry of Power, Gol in turn can make the land available to NRSSXXIX Limited and developer and licensee.*

*(b) Since the Revenue Department, GoJK, has already written to the Deputy Commissioner concerned for preparation of land papers, Divisional Commissioner, Jammu would ensure submission of land papers in respect of Samba and Kathua District to the Administrative Secretary, Power Development Department, GoJK, by 15<sup>th</sup> May, 2015. Thereafter, Power Development Department will process the land papers and obtain approval of competent authority to place indent with the Revenue authorities (DC Samba and DC Kathua). Similar process would be followed for other District later. First priority districts are Samba and Kathua as stated by representatives of Sterlite Grid.*

*(c) Principal Secretary, Forest Department would take steps for placing the forest clearance cases before the Forest Advisory Committee at the earliest, preferably on 08.06.2015.*

*(d) Action under the Land Acquisition Act shall be taken by the Deputy Commissioners concerned for early handover of land so that time lines of project execution are met.*

*(e) Principal Secretary, Forest Department may take steps for re-constituting the Wild Life Board and place the wildlife related matter before the competent authority."*

90. Evidently, under the para (a) and (b) of the minutes of meeting as quoted above,



only the process for indenting of the land required for the Project has been specified for the early handover of the land and timely execution of the Project. Under para (a), the PDD has been made nodal point for placing the indent for land required for the Project, who in turn can make the land available to the Petitioner. Under para (b), it has been observed that the Divisional Commissioner, Jammu would ensure submission of land papers in respect of Samba and Kathua Districts to the PDD by 15.5.2015 and thereafter, PDD will process the land papers and obtain approval of competent authority to place indent with revenue authorities (DC Samba and DC Kathua). Similar process was to be followed for other Districts as well. Further, under para (d), the concerned Deputy Commissioners were instructed to take the necessary action under the Land Acquisition Act. Based on the above, it appears that subsequently the various notifications were published in the Government Gazette in terms of Section 4 of 1990 Act. However, from none of the points of the aforesaid minutes, it is forthcoming that the Petitioner was directed/mandated to adopt the PNC mode for the land acquisition and the apprehension of the Petitioner about the financial implication of such direction.

91. The Petitioner vide affidavit dated 20.1.2022, has stated that it was orally directed by the various authorities including the Collectors of various districts and J&K PDD to acquire the land only through the PNC route under the 1936 Rules to ensure timely acquisition of land. However, we do not find such submission persuasive and are unable to grasp the fact that the Petitioner having acted upon such oral instructions, which allegedly had considerable impact on the cost of Project, without any demur.

92. Further, the Petitioner has relied on minutes of meeting held on 7.9.2015 under the chairmanship of Divisional Commissioner, Kashmir for review of land acquisition process for execution of said transmission line wherein members of Petitioners were

also present. In the said meeting, basically various action points for decisions and responsibility were assigned for facilitating the Petitioner's Project. In point 5 of the said minutes, it was held that all collectors to fix a reasonable rate through PNC on the direction of Divisional Commissioner, Kashmir. Further, the Petitioner has also relied on record note dated 30.12.2015, wherein review meeting was held under the chairmanship of Dy. Chief Minister. In the said meeting, several issues were flagged by Petitioner regarding support required for PNC for different sites in the districts of Samba, Kathua, Jammu, etc. Also, the decisions were taken to conduct PNC and it was also recorded that in case the landowners don't agree, compulsory acquisition be restored.

93. We note that Petitioner was also part of both above-said meetings as held in furtherance to the meeting dated 17.4.2015 and had willingly agreed to decisions taken therein. Besides, none the minutes of these meetings as relied upon by the Petitioner indicate that it was directed/ mandated to opt for PNC mode of land acquisition in place of Compulsory Acquisition mode under the 1990 Act. They also do not give a slightest indication that the Petitioner had at any stage resisted or expressed its apprehension regarding the change in mode of land acquisition despite being aware of financial implication it may entail. In any case, both the modes of acquisition were available for land acquisition in the State of Jammu & Kashmir before the cut-off date. Nothing on contrary has been placed on record by the Petitioner that the compulsory acquisition mode of acquisition of land compensation were not required as on cut-off date and that need arose only on account of 'Change in Law' as defined in the TSA.

94. Hence, in our view, no case has been brought out by the Petitioner that the PNC mode of land acquisition was not envisaged as on cut-off date and had been necessarily/ mandatorily imposed upon the Petitioner by the Authorities and consequently, such

imposition constitutes a Change in Law. Selection of PNC mode of land acquisition appears to be nothing but a conscious commercial decision of the Petitioner for timely implantation of the Project and the same does not qualify to be an event of Change in Law as per the conditions prescribed in Article 12.1 of the TSA. Therefore, we are not inclined to grant any relief claimed against payment paid for land acquisition through private negotiation committee mode.

95. This issue is answered accordingly.

**(d) Compensation towards cutting of apple orchids and walnut trees**

96. The Petitioner has submitted that there was no mention of existence of apple orchids or walnut trees in the Survey Report provided by the BPC for JS Line. The existence of Apple orchids and walnut trees could not be discovered by the Petitioner earlier due to the peculiar topography and law and order issues in the State of Jammu and Kashmir. Therefore, at the time of submission of bid, the Petitioner could not have fathomed that it would be required to seek permission for cutting of such trees and orchids and pay compensation towards them. Such unforeseen requirement of having to seek permission from the concerned authorities for felling of trees and paying compensation towards them constitutes a Change in Law event in terms of Article 12 of the TSA and the same amounts to imposition of a requirement for obtaining a permit which was not required at the time of submission of bid and before the cut-off date. The Petitioner has incurred Rs. 13,83,09,613/- towards cutting of such walnut trees and apple orchards.

97. The Respondent, UPPCL has submitted that as per the survey report out of 310.56 km of proposed route of line, 165.56 Km is plain and 145 km is hilly. Further, there is reserved forest area in 116.22 km and wild life sanctuary in 26.90 km. Thus in

167.44 km (310.56 – 116.22-26.90) there is no forest, reserved or wild. In India, land would either be a forest land/ Government land or private land. Private land may be used for agricultural or non-agricultural purpose. It would be presumptuous that over non-forest land of 167.44 km, there shall be no agriculture activity. In J&K, horticulture is the primary agriculture activity. So, it is very much possible that over some of this 167.44 km there would be horticulture activity wherein apple orchards and walnut trees are grown. It has been submitted by the Respondent that laws requiring permission to cut trees was in existence at the time of submission of bid. Further, the Petitioner has not put forth any document from which it appears that new law has been promulgated after award of bid because of which cutting of trees requires permission from concerned authorities. Thus, claim under Article 12 'Change in Law' is fallacious and is liable to be rejected.

98. *Per contra*, Petitioner has denied the arguments raised by UPPCL and has submitted that the Survey Report provided by the BPC for JS Line did not mention of the existence of apple orchards or walnut trees along the indicative routes for JS Line. Also, its presence along the suggested routes for JS Line should have been mentioned of in the Survey Report. The BPC, as a specialized agency, was tasked to provide such details in the Survey Report and it failed to do so.

100. We have considered the submissions of the Petitioner and the Respondent. According to the Petitioner, it was not aware about existence of apple orchards and walnut trees at the time of submission of bid. It has been further submitted that survey report provided by the BPC did not mention that apple orchards and walnut trees existed along the indicated routes and it was discovered later which is a Change in Law event as defined in Article 12 of the TSA. It is observed that the consents and permits obtained

towards apple orchids and walnut trees for laying of the transmission line is in the nature of laying of line through agriculture land. As per the TSA, in particular, Article 5.1.4 (d), the Petitioner is required to seek access to the site and other places where the Project is being executed at its own cost including payment of any crop compensation or any other compensation as may be required. In the present case, the Petitioner had to pay compensation towards felling of apple orchids and walnut trees. Indisputably, it is the Petitioner's responsibility to take RoW for laying of the transmission line and pay compensation to the owners of the land including crop and tree compensation. As regards, contention of the Petitioner that BPC did not indicate about presence of apple orchids and walnut trees on the proposed route, we observe that intricate details about each and every property falling along the route cannot be explicitly mentioned in the survey report. It is the Petitioner's responsibility to undertake detailed survey of the route as per the following provisions of the RfP.

101. The Petitioner has contended that the existence of apple orchids and walnut trees could not be discovered by the Petitioner earlier due to the peculiar topography and law and order issues in the State of Jammu and Kashmir. The said contention of the Petitioner is only an afterthought and an attempt to hide the Petitioner's negligence in conducting the survey. We find the said contention of the Petitioner perplexing as in our view, the Petitioner went ahead and submitted the bid despite being fully aware of peculiar topography and law and order issues in the State of Jammu & Kashmir. Thus, the Petitioner cannot blame the BPC for increase in cost on account of the risk it knowingly took while submitting the bid and, thereafter, by acquiring the SPV based on serious oversight during the survey conducted for the Project.

102. In light of the above, compensation paid towards cutting of apple orchids and

walnut trees does not qualify as a Change in Law event in terms of Article 12.1.1 of the TSA. Accordingly, the Petitioner is not entitled for compensation in this regard.

103. The issue is answered accordingly.

**(e) Unforeseen additional expenditure incurred on account of the necessary use of helicrane**

104. The Petitioner has submitted that the peculiar topography of the route along the SA Line *inter alia* consisted of tough terrain and non-existent land route with weather changing frequently and parts of the Pir Panjal range which were at an average elevation of 3000 meter. Adding to the treacherous geography of the route, the security issues plaguing the politically volatile State of J&K was a given. The steep slopes were a major deterrent to any construction activity. The construction of the SA Line *inter alia* required construction of approximately 800 transmission towers. The traditional method of shifting of material is by using mules and people. They could not have possibly been used for carrying material weighing up to 8000 kilogram for construction of the SA Line given the steep slopes, non-existent roads, unpredictable climate and other challenges facing the route. The bidding documents were clearly myopic for not having foreseen the need of using of an aerial mode of transport to complete the construction of the SA Line, given the terrain and timelines under the TSA.

105. The Petitioner has submitted that the construction of the SA Line commenced in the month of August, 2015 and it had to be completed before the onset of winters. However, the pace of construction of the SA Line was severely impacted by force majeure events, including the following:

- (a) Armed Conflict and Blockade: Armed conflict and blockade in the Kashmir Valley surfaced in July 2016 and impacted the implementation of the Project by the Petitioner. Armed conflict and blockade clearly fall under

the definition of indirect non-natural force majeure events under Article 11 of the TSA. The said force majeure event impacted the performance of the Petitioner with respect to the SA Line for a period of 155 days starting 8.7.2016 and ending on 30.12.2016.

(b) Floods: Implementation of the SA Line was gravely impacted by floods and all work in relation to its implementation completely stopped from 5.9.2014 to 15.10.2014. 'Flood' is an act of God and is expressly included as a Natural Force Majeure event in the definition of Force Majeure under Article 11.3 of the TSA. In the present case, the said floods impacted the Petitioner's performance under the TSA for a period of 40 days.

(c) Ceasefire Violation: Implementation of the SA Line was also impacted by major ceasefire violation along the border by Pakistan in the States of J&K & Punjab. The said event is a military action, which is expressly covered under the definition of Force Majeure as an Indirect Non-Natural Force Majeure Event. The said force majeure event impacted the performance of the Petitioner under the TSA for a period of 30 days from 1.10.2014 to 1.11.2014. The Petitioner lost 30 working days otherwise available for implementing the SA Line.

(a) Multiple Natural Force Majeure Events: Implementation of work towards the SA Line was further impacted by a combination of Natural Force Majeure events including unseasonal heavy snowfall, rainfall, landslides and floods, starting from 1.2.2015. J&K experienced unseasonal snow fall, rainfall and landslides in frequent intervals due to which the entire work of check survey, route alignment, forest and wildlife clearances, etc. stopped and it could be resumed only from 23.4.2015 onwards. On account of these force majeure events, the Petitioner lost 82 working days otherwise available for implementing the SA Line.

106. The Petitioner has submitted that in view of the peculiarity of the route of the SA Line, the force majeure events impacting its implementation and the prescribed timelines

under the TSA, it was necessary for the Petitioner to use the helicrane. The Petitioner has incurred a cost of Rs. 36,38,26,216/- towards the use of the helicrane. The use of helicrane was necessary and ideally the bidding documents should have envisaged the use of aerial mode of transport for construction of the SA Line in a timely manner, so as to enable the bidders to account for such necessary costs prior to quoting their bids. Given the peculiarity of the situation, the Petitioner had no option but to use the helicrane. The Petitioner is entitled to seek reimbursement of additional costs incurred in relation to use of helicrane.

107. The Respondent, UPPCL has submitted that 'bidding documents were clearly myopic for not having foreseen the need of using of an aerial mode of transport to complete the construction of the SA Line, given the terrain and timelines under the TSA' is both false and mischievous and it tries to shift onus of responsibility. It is submitted that as per the survey report, out of 310.56 km of proposed route of line, 165.56 km is plain and 145 km is hilly. Bidders were made aware that 145 km of SA Line is hilly terrain. On one hand, the Petitioner is stating that it is technically not feasible to transport material using 'traditional method of mules and men'; on the other it is citing force majeure terms and conditions to justify use of helicrane. There is nothing on record to show that the Petitioner had sought clarification on mode of transport and it was advised by BPC that mode of transport envisaged is mules and men. Therefore, contention of petitioner is false and claim liable to be disallowed. Had the Petitioner made independent enquiry and proper feasibility study before submitting the bid, such requirement of helicrane should have been envisaged. Thus, it is abundantly clear that in order to win the bid, such expenditure was deliberately excluded by the petitioner and planned to claim afterwards as force majeure event showing flimsy grounds. According to UPPCL, responsibility of assessment of the Project through proper feasibility study and survey



squarely lies with the Petitioner, which cannot be shifted to so-called shortcoming of bidding document levelling the same as "myopic". Therefore, the Petitioner is not entitled for additional expenditure of Rs. 36,38,26,216/- in incurred on this count.

108. *Per contra*, the Petitioner has submitted that at the time of submission of the bid, the Petitioner did not foresee that such security issues and multiple force majeure events, would severely impact the route of the SA Line and leave the Petitioner with truncated time to implement the Project. The route for the SA Line was affected by floods, armed conflicts, blockades and ceasefire violations and caused the Petitioner to lose time to implement the SA Line using traditional modes of transport like mules and men. With the short time available with the Petitioner, it was not possible for it to use men and mules to carry 8000 kilogram of material for construction of towers on the range. Therefore, the Petitioner had no choice but to use the hellicrane to ensure commissioning of the SA Line within the timeline prescribed under the TSA. The choice with the Petitioner was between following prudent utility practices to commission the Project in time or using traditional methods and later seeking extension to the scheduled commercial operation date of the Project.

109. We have considered the submissions of the Petitioner and the Respondent. According to the Petitioner, force majeure events added to the need of using an aerial mode of transport to complete SA Line. The Petitioner has submitted that it has not claimed the relief under force majeure events as the Project has commissioned as per the schedule, so we are not dealing force majeure events in the instant case. According to the Petitioner, it is invoking the Commission's regulatory jurisdiction under Section 79(1) (c) of the Act read with its power to remove difficulties under Regulation 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 to

seek reimbursement of expenditure incurred towards use of helicrane to implement the SA Line within the prescribed time specified in the TSA.

110. Hon`ble Supreme Court in Energy Watchdog case *inter alia* has held that the regulatory power under Section 79(1)(b) of the Act can be resorted to only in the absence of Guidelines or the PPA. Where there are Guidelines, as is the present case, power under Section 79(1)(b) of the Act can be exercised only in accordance with the Guidelines. In exercise of power under Section 79(1)(b), there cannot be re-determination of tariff. The Petitioner having quoted tariff under Section 63, it is not entitled to have a re-determination of the tariff. Any increase in tariff on account of Change in Law has to be for admissible claim based on actuals. Paragraph 19 of the judgment of Hon`ble Supreme Court in the case of Energy Watchdog is extracted as under:

*“19. It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes place under the Central Government’s guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission’s power to “regulate” tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with “determination” of tariff, which is part of “regulating” tariff. Whereas “determining” tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is wider source of power to “regulate” tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a*

*given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."*

111. Hon'ble Supreme Court, after analyzing the scope of Section 63 and Section 79(1)(b) of the Act came to the conclusion that even in cases where tariff has been adopted under Section 63 of the Act, this Commission is not divested of its powers under Section 79(1)(b) of the Act to regulate the said tariff. The Commission can exercise its powers to regulate tariff under Section 79(1)(b) of the Act in a scenario where it is not covered by any of the provisions of the Guidelines or where no Guidelines are framed at all or Guidelines do not deal with a given situation.

112. We observe that it was the obligation of the TSP in terms of clause 2.14.2.1 of the RfP to conduct independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his bid. Relevant portion of the clause 2.14.2.1 of the RfP is extracted as under:

*"The Bidders shall make independent enquiry and satisfy themselves with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on his Bid. Once the Bidders have submitted their Bids, the Bidders shall be deemed to have inspected and examined the site conditions (including but not limited to its surroundings, its geological condition and the adequacy of transport facilities to the site), the laws and regulations in force in India, the transportation facilities available in India, the grid conditions, the adequacy and conditions of roads, bridges, railway sidings, ports, etc. for unloading and/or transporting heavy pieces of material and has based its design, equipment size and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the transmission of power."*

In view of the above, we observe that it was the responsibility of the bidders to carry out due diligence before submitting its bid.

113. Paragraph 19 of the judgment dated 11.4.2018 of the Hon'ble Supreme Court in Energy Watchdog v. CERC lays down the principle that "it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given

situation that the Commission's general regulatory powers under Section 79 (1) (b) can then be used.”

114. After considering the facts of the case, the decisions of the Hon`ble Supreme Court with regard to the scope of exercise of regulatory power, we are of the view that the Petitioner cannot be granted relief by way of exercise of our regulatory power under section 79(1)(b) of the Act as there are already RfS or Competitive Bidding Guidelines and it is ordered accordingly.

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

115. 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 Seven Crore Nineteen Lakh Ninety Thousand (Rs. 7.199 Cr) 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.”*

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 seven crore nineteen lakh ninety thousand in the cost of the Project upto the Scheduled COD of the Project on account of Change in Law during the construction period, the Petitioner shall be entitled to be

compensated with increase/ decrease in non-escalable transmission charges by zero point three one three percent (0.313%) of the non-escalable transmission charges.

117. The Petitioner is directed to submit the documentary evidence in support of the Change in Law claims allowed above, along with the Auditor Certificate to the LTTCs while claiming the relief under Change in Law.

118. After 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.

119. This issue is answered accordingly.

120. Based on the above analysis and decisions, the summary of our decision under the Change in Law during the construction period of the project is as under:

<b>S.No.</b>	<b>Change in Law events</b>	<b>Expenditure incurred</b>
1.	Unforeseen requirement of forest clearance for JS Line	Not allowed
2.	Increase in the rate of service tax	Allowed
3.	Increase in the rate of J & K General Sales Tax	Allowed
4.	Increase in J & K VAT rate	Allowed
5.	Unforeseen higher RoW compensation (a) Land acquisition through private negotiation committee (PNC) mode in lieu of compulsory acquisition mode.	Not allowed

<b>S.No.</b>	<b>Change in Law events</b>	<b>Expenditure incurred</b>
	(b) Compensation towards cutting of apple orchids and walnut trees	Not allowed
6.	Unforeseen additional expenditure incurred on account of the necessary use of helicrane	Not allowed

121. The Petition No. 49/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