

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No: 13/MP/2021**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V., Member  
Shri Harish Dudani, Member**

**Date of Order: 17<sup>th</sup> October, 2024**

**In the matter of:**

Petition under Sections 63 and 79 of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relief under Force Majeure, (Article 11) and Change in Law, (Article 12) of Transmission Service Agreement dated 31.8.2015, related to Strengthening of Transmission System beyond Vemagiri.

**And in the matter of:**

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

**....Petitioner**

**Vs.**

- 1) Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),  
Srinivasapuram, Thiruchanoor Road,  
Tirupati- 517503, Andhra Pradesh
- 2) Eastern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),  
P&T Colony, Seethammadhara,  
Visakhapatnam- 530 013, Andhra Pradesh
- 3) Bangalore Electricity Supply Company Limited,  
Krishna Rajendra Circle,  
Bangalore-560001
- 4) Gulbarga Electricity Supply Company Limited,  
Main Road,  
Gulbarga-585102
- 5) Hubli Electricity Supply Company Limited,  
Corporate Office, P.B. Road, Navanagar,  
Hubli- 580025
- 6) Mangalore Electricity Supply Company Limited,

Paradigm Plaza, A.B. Shetty Circle, Pandeshwar,  
Mangalore - 575001

- 7) Chamundeshwari Electricity Supply Corporation Limited,  
No.29, CESC Corporate Office,  
Hinkal, Vijaynagar 2nd Stage,  
Mysuru - 570017
- 8) Tamil Nadu Generation & Distribution Corporation Limited,  
NPKRR Malligai, 144 Anna Salai,  
Chennai – 600 002
- 9) Kerala State Electricity Board,  
Vaidyuthi Bhawanam, Pattom,  
Thiruvananthapuram – 695004
- 10) Southern Power Distribution Company of Telangana Limited,  
6-1-50, Mint Compound,  
Hyderabad – 500 063, Telangana
- 11) Northern Power Distribution Company of Telangana Limited,  
2-5-31/2, Vidyut Bhawan, Nakkalgutta, Hanamkonda,  
Warangal – 506 001
- 12) Electricity Department,  
Government of Puducherry (PED),  
137, Nethaji Subhash Chandra Bose Salai,  
Puducherry – 605 001
- 13) Chief Electrical Engineer,  
Electricity Department, Government of Goa,  
Vidhyut Bhawan, Panaji,  
Goa - 403001
- 14) Chief Executive Officer,  
REC Power Development and Consultancy Limited,  
(Formerly REC Power Distribution Company Limited)  
REC Corporate Head Quarters,  
D Block, Plot No. I – 4, Sec – 29,  
Gurugram – 122 001
- 15) Chief Engineer (PSPM),  
Central Electricity Authority,  
PSPM Division, Sewa Bhawan, Rama Krishna Puram,  
New Delhi-110 066
- 16) Chief Operating Officer,  
Central Transmission Utility of India Limited,  
Saudamini, Plot No.2, Sector -29,  
Gurgaon 122001

**Parties Present:**

**...Respondents**

Shri M. G. Ramachandran, Sr. Advocate, PSITSL  
Shri Shubham Arya, Advocate, PSITSL  
Ms. Reeha Singh, Advocate, PSITSL  
Ms. Pallavi Saigal, Advocate, PSITSL  
Shri V. C. Sekhar, PSITSL  
Shri Prashant Kumar, PSITSL  
Shri S. Vallinayagam, Advocate, TANGEDCO

## **ORDER**

The Petitioner ('PSITSL'), now a wholly owned subsidiary of Power Grid Corporation of India Limited ('PGCIL') was incorporated as a Special Purpose Vehicle ('SPV') by the Bid Process Coordinator ('BPC'), namely REC Transmission Projects Company Limited (now known as 'REC Power Development and Consultancy Limited/RECTPCL') for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. In the bid process, PGCIL emerged as a successful bidder to establish the Project on a Build, Own, Operate, and Maintain (BOOM) basis. In accordance with the bidding documents, PGCIL acquired 100% of the shareholding in the Petitioner Company by executing a Share Purchase Agreement with RECTPCL on 4.12.2015. The Petitioner was required to provide the transmission service to the LTTCs (Respondent Nos. 1 to 13) of the Project, which required establishing the transmission system comprising of the following six transmission elements:

### **Element 1**

- (a) Srikakulam Pooling Station - Garividi 400 (Quad) D/C Line
- (b) 2 number of 400 line bays at Garividi 400 kV S/s of APTRANSCO

### **Element 2**

Cuddapah - Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit.

### **Element 3**

- (a) Chilakaluripeta- Narasaraopeta (Sattenapalli) 400 D/C (Quad) line
- (b) 2 number 400 line bays at Narsaraopeta (Sattenapalli) 400 sub-station of APTRANSCO

### **Element 4**

Establishment of 765/400 sub- stations at Chilakaluripeta with 2x1500 MVA transformers and 2x240 MVAR line reactors each

**Element 5**

Chilakaluripeta-Cuddapah 765 D/C line with 2x240 MVAR switchable line reactor at both ends

**Element 6**

Vemagiri II-Chilakaluripeta 765 KV D/C Line with 2x240 MVAR switchable line reactors at both ends

2. The completion and commissioning of the Project were to be completed by February 2019 and April 2019, respectively, as per the Transmission Service Agreement ('TSA') dated 31.8.2015. However, the Petitioner was not able to discharge its obligations due to Force Majeure and Change in Law events during the construction of the Project and its elements, which resulted in a delay in achieving COD. Therefore, the Petitioner approached the Commission seeking an extension of time and compensation under Article 11 (Force Majeure) and Article 12 (Change in Law) of the TSA and made the following prayers:

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

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

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

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

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

3. The Commission, vide order dated 7.5.2022, examined the Force Majeure and Change in Law claims of the Petitioner. For the sake of brevity, the gist of the findings of the order dated 7.5.2022 are tabulated herein below:

<b>Sr. No.</b>	<b>Change in Law events</b>	<b>Decision</b>
1.	Increase in the acquisition price of SPV by BPC	Allowed

2.	Notification of GST Law with effect from 1.7.2017 by the Government of India	Allowed
3.	Notification of payment of Land compensation for tower base as well as corridor of transmission line by State Governments of Andhra Pradesh and Karnataka	Allowed with respect to Andhra Pradesh only
4.	Additional payment towards Wildlife clearance from NTCA	Not allowed

Sr. No.	Force Majeure events	Decision
1.	Delay due to ROW and law and order problems on account of change in policy regarding land compensation in the State of Andhra Pradesh	Not Allowed
2.	Delay due to General Elections	Not Allowed
3.	Delay due to Heavy Rainfall	Not Allowed
4.	Delay due to Demonetization	Not allowed
5.	Delay due to Notification of GST Act, 2017	Not Allowed
6.	Delay due to wildlife clearance obtained from the National Tiger Conservation Authority	Not Allowed

4. Aggrieved with the Commission's order dated 7.5.2022, the PSITSL filed Appeal No. 194 of 2022 before the Appellate Tribunal for Electricity (the APTEL). In the Appeal, PSITSL challenged the Commission's order dated 7.5.2022 on the following counts:

- (i) Disallowance of the time extension of 289 days in commissioning of Element 6 of the scope of the scope of work and consequently the related cost of the elements;
- (ii) Disallowing the impact of certain Change in Law events and the reliefs on account of the following events:
  - (a) Notification of payment of land compensation for tower base as well as corridor of transmission line in terms of the Orders passed by District Collectors/District Magistrate/District Authorities in the States of Andhra Pradesh and Karnataka.
  - (b) Requirement for obtaining Wildlife clearance from NTCA and the expenditure incurred in regard to the same; and
- (iii) Cost overrun on account of increase in the project cost, including funding cost and overhead cost (IDC and IEDC) due to Force Majeure and Change in Law as mentioned above.

5. The APTEL, vide its judgement dated 12.8.2024 in Appeal No. 194 of 2022, remanded the matter to the Commission for passing fresh order in the matter. Vide its judgement, the APTEL has ordered as follows:

- (i) A delay of 289 days, on account of Force Majeure events, in completion of the project has been condoned.
- (ii) Allowed the land compensation paid by PSITSL for the tower base as well as the corridor of transmission line in terms of the orders passed by the District Collectors/ District Magistrate/ District Authorities as constituting Change in Law.
- (iii) Claim of IDC/IEDC/funding-cost/overhead cost/carrying cost/ interest to be re-examined by the Commission in light of the APTEL's decision to allow an extension of the time upon taking into consideration the Force Majeure and Change in Law events.

6. The relevant extracts of the APTEL's judgement dated 12.8.2024 are as follows:

*"31. Hence, we are unable to accept the findings of the Learned Commission on this issue. It is manifest that the delay in completion of the construction of the transmission line had occurred on account of the agitation of the farmers who were not willing to permit the Appellant to carry on the construction of the transmission line, and the situation was neither within the control of the Appellant nor could have been anticipated by it at the time of execution of the TSA. Such law and order situation created by the farmers had made it not only difficult but also impossible for the Appellant to complete the construction of the transmission line and therefore this untoward as well as unprecedented event shall have to be considered as Force Majeure event which prevented the Appellant from fulfilling its obligations under the TSA. It needs to be appreciated that even the highest Government Authorities failed to control the situation. **Thus, the Appellant had become entitled to claim relief under Article 11.7 of the TSA and the delay of 289 days occasioned in the completion of the construction of the element 6 of the transmission line on account of said "Force Majeure" event is liable to be contained.***

.....  
*36. It is crystal clear that the issuance of guidelines dated 15th October, 2015 by the Govt. of India which were adopted by the State Government vide notification dated 20th June, 2017 qualified as a Change in Law event as per Article 12.1.1 of the TSA. It is true that there was requirement of payment of land compensation even prior to the issuance of these guidelines of the year*

2015 but it cannot be gainsaid that these guidelines made a significant change in the parameters for determination of the compensation payable to the farmers upon whose land the towers for the transmission lines were to be erected. As already noted in foregoing paragraphs of the judgement that these guidelines provided for further compensation to the land owners for tower base area and towards diminution of land value in the width of ROW corridor due to laying of transmission line which involved various further steps. Prior to the issuance of these guidelines, the transmission licensees were only required to pay compensation towards normal crop and tree damages in terms of Section 67 & 68 of the Electricity Act, 2003 read with Section 10 & 16 of the Indian Telegraphic Act. **There was no provision for award of compensation for the tower base area and towards diminution of the land value due to laying of transmission lines. Therefore, patently there was a notable change in the process for determination of compensation payable to the farmers by way of these fresh guidelines, which tantamount to Change in Law event in terms of the said clause 12.1.1 of the TSA.**

.....  
39. It cannot be disputed that the notification dated 15th October, 2015 by the Govt. of India which was adopted by the State Government vide notification dated 20th June, 2017 is a Change in Law event as per Article 12.1.1 of the TSA, any mandatory direction by Government instrumentality is a change in law event. **Thus, the impact of such a change in law event under the TSA has to be accounted for. The Appellant is entitled to the appropriate compensation in this regard.**

**Claim of the Appellant towards increase in the cost of Project amounting to Rs. 488.40 crores during execution and completion of the Transmission Project**

40. According to the Appellant, there was substantial increase in the cost of the project along with funding cost and overhead cost due to various events as under :

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

41. The Learned Commission has allowed the claims at Sl. No. 1 & 2 herein above, has partially allowed claim at Sl. No. 3 and has rejected the claim at Sl. No. 4.

42. So far as increase in the project cost on account of payment of additional compensation to the farmers for tower base area etc., the Learned

Commission has allowed the same in respect of the land acquired for the transmission line in the State of Andhra Pradesh and has rejected the same with respect to the land acquired for the said purpose in the State of Karnataka. While declining the relief for increase in the project cost on account of payment of additional compensation for the acquired land for the transmission line in the State of Karnataka, the Learned Commission has explained as under :-

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

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

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

....

**43. We find ourselves in complete disagreement with the above noted findings of the Learned Commission on this aspect. These findings of the Learned Commission appears to be unjustified both on facts and in law. As already observed the District Authority is the Government Instrumentality. Any direction by such an Authority is a change in law event under the Electricity Act, 2003 read with Works of Licensees Rules, 2006 notified under the Electricity Act, 2003. Therefore, the Appellant is entitled to any additional compensation to be paid by him to the land owners as per the directive of the District Authority.**

44. As regards the additional payment stated to be made by the Appellant towards wild life clearance from NTCA, the Learned Commission has observed as under :-



.....  
45. It is manifest from the perusal of the letter dated 1st January, 2018 of the PCCF, Guntur addressed to NTCA that the NTCA had approved the Wild Life Conservation Plan of Nagarjunsagar Srisaillam Tiger Reserve for the period from the year 2013-14 to 2022-23 vide notification dated 13th October, 2014 which was much prior to the cut off date in this case. The NTCA also had clarified this position vide its letter dated 12th March, 2018, the relevant extract of which has been reproduced herein above. Hence, it does not lie in the mouth of the Appellant to contend that obtaining wild life clearance from NTCA in respect of the portion of the project passing through Nagarjunsagar Srisaillam Tiger Reserve was an additional requirement thrust upon it. It is manifest that had the Appellant made necessary efforts with due diligence in a prudent manner, it would have come to know about the requirement of such a clearance well in advance and, therefore, would have factored the same while computing the time line for completion of the project accordingly. Therefore, it cannot claim increase in the project cost on this Court.

46. We see no reason to interfere in the findings of the Learned Commission on this aspect.

**Claim of the Appellant for funding and overhead cost**

47. The Appellant has claimed funding and overhead cost towards un-commissioned elements of the project from April, 2019 to actual COD owing to the delay on account of Force Majeure. It is argued by the Appellant's counsel that although all the elements of the project except for 40 kilometers stretch of Vemagiri II-Chilakluripeta 765 kV D/C line which were completed by April, 2019, the project could not be commissioned owing to the Change in Law conditions. He submitted that for the elements which were completed but could not be commissioned owing to Force Majeure and Change in Law events, the Appellant incurred funding cost and overheads from April, 2019 till actual COD. According to the Learned Counsel, the additional cost implication owing to funding and overheads for the said period is Rs.174.87 crore and Rs.0.53 crores respectively to which the Appellant is entitled as per the Article 12 of the TSA.

48. The Learned Commission has rejected the said claim of the Appellant only for the reason that it did not condone the delay in completion of the project owing to Force Majeure event.

**49. We find that allowing this claim of the Appellant needs to be re-examined by the Commission in light of our decision to allow an extension of the time upon taking into consideration the Force Majeure events.**

**Conclusion**

**50. In the light of the above discussion, we hereby hold the Appellant entitled for time extension of 289 days in completion of the project on account of Force Majeure events. The Commission shall now, after hearing the parties, pass a fresh order in the light of observations made by us hereinabove. Such exercise shall be completed by the Commission within two months from the receipt of copy of this Order."**

*[Emphasis Supplied]*

7. Pursuant to the APTEL's remand, the matter was listed for the hearing on 20.8.2024 before the Commission. The learned counsel for PSITSL, during the course of the hearing, submitted that in light of the judgement of the APTEL dated 12.8.2024, the Commission is required to determine the applicable rate(s) of carrying cost and claims of IDC incurred on account of the Change in Law and Force Majeure event(s). It was also submitted that as the APTEL has condoned the delay in completion of the Project as Force Majeure, the liquidated damages are to be refunded. The learned counsel for Respondent TANGEDCO sought time for filing its response in the matter. The Commission directed PSITSL to file its affidavit with a copy to be served to Respondents in the matter.

8. The matter was further heard on 9.9.2024. After hearing the learned counsels for the parties, the order in the matter was reserved, and the parties were directed to file their written submissions.

9. The gist of the submissions made by the Petitioners is as follows:

(i) The Commission did not condone the delay of 289 days and disallowed the claim of PSITSL for extension of the SCOD to actual COD of the transmission project awarded to PSITSL under a competitive bid process. Such condonation of delay was sought by PSITSL on the grounds of Force Majeure events and for reasons not attributable to PSITSL.

(ii) The APTEL *vide* Judgment dated 12.08.2024 in Appeal 194 of 2022, has decided that the PSITSL is entitled to the extension of SCOD by the period of 289 days considering the aspects of Force Majeure under Article 11 of the TSA and Change in Law under Article 12 of the TSA. Further, the APTEL has allowed the land compensation paid by PSITSL pursuant to the determination and orders passed by the District Collectors/District Magistrate/District Authorities as payable under Change in Law. The APTEL further directed the Commission to re-examine the claim of PSITSL of funding and overhead cost, namely, IDC/IEDC/funding-cost/overhead cost/carrying cost/ interest in light of its decision.

(iii) The remand made by the APTEL is a limited one. Accordingly, a consequential order has to be passed by the Commission upon considering the following aspects:

(a) To re-examine the claim of PSITSL in regard to IDC/IEDC/funding-cost/overhead cost/carrying cost/ interest in light of the decision of the APTEL allowing extension of the time in achieving COD of the Project for the reasons mentioned above;

(b) To allow the higher cost implication on account of the Force Majeure Events and Change in Law events together causing 289 days delay, which is for reasons not attributable to PSITSL;

(c) To compute and allow the compensatory amount on account of an increase in the cost to PSITSL on account of the impact of Change in Law as per Article 12 of TSA, i.e., in terms of the formula provided therein and the consequent change in the monthly transmission charges effective COD of the project;

(d) Restitution of the amount of Rs 110.04 crores [minus the liquidated damages for delay of 24 days in achieving COD of Element 2- Cuddapah-Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit] paid by PSITSL to the Respondents-LTTCs in lieu of non-encashment of the Contract Performance Guarantee in terms of the interim order dated 17.3.2023 passed by the APTEL in Appeal 194 of 2022 together with applicable interest from 28.3.2023 till restitution.

(e) The Commission may pass consequential Orders to the extension of the SCOD of the project to actual COD by condoning the delay of 289 days and the cost overrun, i.e., land compensation paid by PSITSL for tower base as well as corridor of transmission line in terms of the Orders passed by the District Collectors/District Magistrate/District Authorities to be allowed on account of Force Majeure and Change in Law events i.e., as per the decision of the APTEL.

(f) Furthermore, the carrying cost/interest is also being claimed from the date of COD on account of the above Force Majeure and Change in Law events during the pendency of the proceedings till the determination of the amount payable by the Commission in terms of the Order of the APTEL dated 12.8.2024 and thereafter, until payment in accordance with the applicable rate of interest, including the late payment surcharge.

(g) As regards the issue of carrying cost from the date of the COD till the reimbursement of such amount pursuant to the Orders of the APTEL, PSITSL is

entitled to the same in view of the principle of the time value of money and restitution. Reliance was placed on the order dated 11.3.2023 passed in Petition No. 333/MP/2019.

(h) PSITSL had paid a Liquidated Damages (LD) amount of Rs 110.04 crores as cash equivalent of CPGs provided to the LTTCs. Since the delay has now been condoned by the APTEL, LD is not leviable on PSITSL and hence, the amount paid by PSITSL in lieu of the Performance Bank Guarantee along with applicable interest [minus the liquidated damages for delay of 24 days in achieving COD of Element 2- Cuddapah- Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit] be returned by LTTCs.

### **Submissions of TANGEDCO**

10. TANGEDCO has made the following submissions:

(i) TANGEDCO, in its submissions, has objected to the claims of PSITSL. It was submitted that the APTEL in the order dated 12.8.2024 has considered and allowed the delay of 289 days only in respect of Element No 6, and therefore, the delay in the regular services of Elements 3, 4 and 5 ought not to be considered in the present proceedings. PSITSL did not declare commercial operation of these other elements or otherwise put to use these elements.

(ii) The Petitioner's parent company, PGCIL, and CTUIL do have arrangements to declare the COD of the elements independently on their own or by getting it declared by the Commission. One such similar case is the Raigarh-Pugalur- Trissur HVDC system, in which the elements were not commissioned as per the sequence in view of RoW / Land issues. However, in the present case, the Petitioner did not make any such efforts. Reliance was placed on the minutes of the meeting regarding part commissioning of the Raigarh-Pugalur- Trissur HVDC transmission system held on 21.8.2020.

(iii) As per the trial run certificates, the transmission element under Sl. No. 3,4, and 5 were not ready for declaration of COD on the SCOD, and hence, the Petitioner's claim is wrong and unacceptable.

(iv) Since the project is implemented as a system-strengthening scheme, any of the elements added to the system would have been beneficially utilized as and when it was ready for the commissioning. For instance, the Chilakaluripettah-

Cuddappah 765kV D/c lines, Chilakaluripettah 765/ 400kV substation, and the downstream 400kV lines from Chilakaluripettah could have been brought to beneficial use independent of the Chilakaluripettah- Vemagiri 765kV line. The Petitioner and the planning agencies are well aware of this technical feasibility.

(v) According to the Petitioner, the complete project, including all the elements, has been completed within the prescribed schedule of the TSA, except for a 40 km stretch in the Vemagiri-C’Peta 765 kV D/C line, which held up the commissioning of the project due to Force Majeure and Change in Law conditions which could not have been anticipated and were beyond the control of the Petitioner. If the delay in a section of the project is due to the Force Majeure / Change in Law condition, then the same Force Majeure / Change in Law is not applicable in other elements. Hence, the lame reasons/justifications given by the Petitioner for the delay are unacceptable.

(vi) The Petitioner should be well aware of the route of the transmission lines, land acquisition issues, seasonal rains, wildlife clearances, and other issues that are actually factored into the timeline for completion of the project. The TSP is responsible for the timely completion of the project, and no time extension or cost escalation is allowed as per the RfP.

(vii) The Petitioner’s Force Majeure claims like RoW issues, general elections, heavy rainfall, demonetization, wildlife clearance, and promulgation of GST Act, 2017 stated in paragraphs 13 to 52 are not covered under Natural / Non-Natural Force Majeure conditions as stipulated in the TSA. The contention of the Petitioner that an additional cost to the tune of Rs. 488.40 Cr is incurred on account of Force Majeure and time overrun conditions is highly exorbitant.

(viii) This reveals the truth that the successful bidders coming under the TBCB route tend to escalate their tariff, citing some lame reasons after winning the bidding process, defeating the very purpose of competitive bidding.

(ix) The Petitioner’s duty bound to foresee such eventualities and act accordingly rather than passing the burden of such eventualities on beneficiaries. If the petitioner is granted liberty to claim the cost impact on account of time overrun and associated cost escalations, which are mainly due to the inefficiency of the Petitioner, then the very purpose of the competitive bidding will be defeated and will set a bad precedent.

(x) The Petitioner has submitted that the route Survey Report furnished for the Chilakaluripeta-Cuddapah 765 kV D/C line furnished by the BPC did not indicate the requirement of wildlife clearance and only on inquiry and pursuing with DFO, the Petitioner confirmed that wildlife clearance is required to be obtained even for the route proposed by the Bid Process Coordinator (BPC).

(xi) The requirement of wildlife clearance was in existence even on the date of the bidding. However, the Petitioner is duty-bound to visit the route of lines associated with the Project and the surrounding areas and obtain/verify all information that it deems fit and necessary for the preparation of its bid.

(xii) In addition, the Petitioner should have adhered to the provisions of the RfP wherein it is provided that the bidders, in their interest, should carry out the required survey and field investigation for submission of their bids. The Petitioner's fault in not surveying the route and the delay in getting the clearance cannot be factored into the cost escalation.

(xiii) The provisions of Article 11 of the PPA do not apply to the claim of the Petitioner in the facts of the present case.

(xiv) The increase in the cost of the project on account of relief under Change in Law, if permissible, may be restricted up to the SCOD of the project. Further, the relief applies only to the hard cost of the project, excluding the financing charges/interest and other overheads. It is irrelevant to compare the provisions under Tariff Regulations under the ambit of Section 62 of the Act with the tariff determination process for the TBCB projects under Section 63, which otherwise would defeat the objective of competitive bidding. The applicability of the Tariff Regulations is stated explicitly in the scope of the Tariff Regulations itself. If the Regulations specifically state that it does not apply to Section 63/TBCB projects, the Petitioner is not entitled to the same under the Regulations. Hence, the hard cost of the project alone should be considered in case of eligible relief under Change in Law.

(xv) There is no Change in Law or Force Majeure as far as elements 3, 4, and 5 are concerned. The Petitioner itself has admitted that those elements were ready for commissioning much earlier. The Regulations provide for the declaration of the CoD of elements that were ready. The condition of element no.6 to be commissioned for the use of elements 3, 4, and 5 could have been

waived by approaching the Commission under the relevant Regulations.

(xvi) The provision of Article 12 of the PPA does not apply to the claim of the Petitioner in the facts of the present case.

(xvii) As per Article 11.5 of the TSA, the Petitioner is bound to give notice for any Force Majeure condition and to seek an extension of time. Extension of time is allowable on a 'day for day' basis as per Article 4.4 of the TSA up to a maximum of 180 days only. Since the Petitioner has not sought and obtained any consent from the LTTCs for extension in line with Article 4.4.1, the Petitioner is not entitled to any relief under the provisions of the TSA. The Force Majeure notice was only in respect of element no.6. No notice was sent by the Petitioner for elements 3, 4, and 5.

(xviii) There is a total delay of about 289 days from SCOD up to the actual CoD of elements No. 3,4, 5, and 6. As per Article 6.4.1 of the TSA, liquidated damages are applicable for the delay in declaring commercial operation (CoD) of the element of the project and to permit the LTTCs to recover the LD for the delayed period as per the provisions of the TSA. Since elements 3, 4, and 5 were ready for commissioning but not commissioned by the Petitioner as per the provisions of the Regulations, the LD, in respect of these elements, is required to be paid by the Petitioner for the delay in putting them to beneficial use.

### **Analysis and Decision**

11. We have considered the submissions made by the parties. As noted above, the APTEL has given clear findings on three issues, viz. delay of 289 days in commissioning of Element-6 and extension of the Project SCOD by 289 days till 18.1.2020, allowance of land compensation paid by PSITSL for tower base as well as corridor of the transmission line in terms of the Orders passed by the District Collectors/District Magistrate/District Authorities and disallowed Additional payment towards wildlife clearance from the NTCA and the other issue viz. allowance of IDC/IEDC is to be re-examined by the Commission in light of the APTEL decision to allow an extension of the time upon taking into consideration that the time extension of 289 days on account of Force Majeure and Change in Law events. Now, we proceed

to decide the issue-wise relief to be allowed to the Petitioner under consequential order in light of the APTEL judgement dated 12.8.2024.

### **Extension of SCOD**

12. The APTEL at para 31 of the judgement has held that the PSITSL had become entitled to claim relief under Article 11.7 of the TSA and the delay of 289 days occasioned in the completion of the construction of the Element 6 of the transmission project on account of severe ROW, law & order situation created by the agitating farmers who were not willing to permit the PSITSL to carry on the construction of the Vemagiri II-Chilakaluripeta 765 KV D/C Line as the situation was neither within the control of the Petitioner nor could have been anticipated by it at the time of execution of the TSA.

13. Accordingly, the APTEL has held that PSITSL is entitled to claim relief under Article 11.7 of the TSA and the delay of 289 days occasioned in the completion of the construction of the element 6 of the transmission line on account of said “Force Majeure” event is liable to be condoned. Thus, the APTEL has already condoned the delay of 289 days in the commissioning of Element 6, i.e., Vemagiri II-Chilakaluripeta 765 KV D/C line, and thus, the Petitioner is entitled to an extension of the Project SCOD to actual COD, i.e., 18.01.2020.

14. Insofar as the elements 3, 4, and 5 are concerned, the Petitioner has submitted that these elements were to be commissioned simultaneously with element 6 as element 6 was a pre-requisite for declaring the COD of elements 3, 4 and 5 in terms of Schedule-III of the TSA. Further, the Petitioner completed elements 3, 4 & 5 prior to the SCOD of 4.4.2022 and also obtained the CEA certificates progressively from 15.10.2018 to 29/30.3.2019. However, the Commission *vide* order dated 7.5.2022 approved the commissioning of elements 3, 4 & 5 on 18.1.2020, matching with the



commercial operation of element 6 as the element 6 was a pre-requisite for declaring the COD of elements 3, 4, and 5.

15. *Per contra*, the Respondent, TANGEDCO, had submitted that the Petitioner could have approached the Commission under the Regulations for the declaration of COD of elements 3, 4, and 5 when they were ready for the commissioning without waiting for elements 6. TANGEDCO has also placed reliance on the case of the Raigarh-Pugalur- Trissur HVDC system, wherein the elements were not commissioned as per the original sequence in view of the RoW/land issues and were commissioned as per their readiness and utilisation.

16. We observe that the Raigarh-Pugalur-Trissur HVDC system was implemented under the Regulated Tariff Mechanism (RTM), whose tariff is governed by CERC Tariff Regulations, 2019. Tariff Regulations 2019 provides for the commissioning of the individual elements in a particular project independent of the other elements of the Project. However, in the instant case, PSITSL has implemented the project under Tariff Based Competitive Bidding (TBCB), which is governed by the provisions of the Transmission Service Agreement (TSA) dated 31.8.2015. In terms of Schedule-III of the TSA, elements 3, 4, and 5 were to be commissioned simultaneously with element 6 as element 6 was a pre-requisite for declaring the COD of elements 3, 4, and 5, and accordingly, the Commission had shifted the COD of elements 3, 4 & 5 to 18.1.2020 matching with element 6 in the original order.

17. However, keeping in view the delay of 289 days in achieving the Commercial Operation Date in respect of element 6 has already been condoned owing to the Force Majeure event(s) by the APTEL, a corresponding extension of SCOD will also entail an extension in respect of elements 3, 4 & 5 since as per the provisions of the TSA as the commissioning of element 6 is a pre-requisite for declaring the commercial

operation of these elements. Accordingly, these elements shall also be entitled to an extension of 289 days till their revised Commercial Operation Date of 18.1.2020, and no liquidated damages can be levied on the Petitioner in respect of these elements.

18. PSITSL has further submitted that it had paid the LD amount of Rs 110.04 crores as cash equivalent of CPGs provided to the LTTCs in compliance with the APTEL's interim Order dated 17.3.2024 during the proceedings in Appeal No. 194 of 2022. Accordingly, PSITSL has prayed that since the delay has now been condoned by the APTEL, LD is not leviable on the Petitioner and hence, the Respondent-LTTCs should return the amount paid by the Petitioner in lieu of the Performance Bank Guarantee along with applicable interest [minus the liquidated damages for delay of 24 days in achieving COD of Element 2 Cuddapah – Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit].

19. We find merit in the submissions of the PSITSL since the delay has been condoned by the APTEL, LTTCs are directed to return the amount paid by PSITSL in lieu of the Performance Bank Guarantee along with interest [minus the liquidated damages for delay of 24 days in achieving COD of Element 2- Cuddapah – Madhugiri 400 (quad) D/c line with 50 MVAR switchable line reactors at both ends of each circuit] within 15 days from the issuance of this order. The applicable rate of interest in this regard shall be at the actual rate of interest paid by the Petitioner for arranging funds (supported by an Auditor's Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest.

### **Change in Law: Land Compensation**

20. At para 43 of the judgement, the APTEL held that the District Authority is a Government Instrumentality and any mandatory direction by such an Authority is a

Change in Law event under the Electricity Act, 2003, read with Works of Licensees Rules, 2006 notified under the Electricity Act, 2003. Thus, in the said judgment, the APTEL has already held that the land compensation paid by PSITSL for the tower base as well as the corridor of the transmission line in terms of the Orders passed by the District Authorities in the States of Andhra Pradesh and Karnataka as Change in Law event(s) under the TSA. Accordingly, we hold that PSITSL is entitled to recover the additional compensation paid by it to the land owners as per the directive of the concerned District Authority in terms of Article 12.2 of the TSA. The Petitioner shall submit proof of payment in this regard to the LTTCs in respect of the expenditure incurred supported by relevant documents and the Auditor's Certificate.

### **Funding & Overhead Cost**

21. With regard to the issue of funding (IDC) and overhead cost (IEDC), the APTEL, in its judgement dated 12.8.2024, has held that the claim of the Petitioner needs to be re-examined by the Commission. Relevant extracts are quoted below:

*47. The Appellant has claimed funding and overhead cost towards un-commissioned elements of the project from April, 2019 to actual COD owing to the delay on account of Force Majeure. It is argued by the Appellant's counsel that although all the elements of the project except for 40 kilometers stretch of Vemagiri II-Chilakluripeta 765 kV D/C line which were completed by April, 2019, the project could not be commissioned owing to the Change in Law conditions. He submitted that for the elements which were completed but could not be commissioned owing to Force Majeure and Change in Law events, the Appellant incurred funding cost and overheads from April, 2019 till actual COD. According to the Learned Counsel, the additional cost implication owing to funding and overheads for the said period is Rs.174.87 crore and Rs.0.53 crores respectively to which the Appellant is entitled as per the Article 12 of the TSA.*

*48. The Learned Commission has rejected the said claim of the Appellant only for the reason that it did not condone the delay in completion of the project owing to Force Majeure event.*

***49. We find that allowing this claim of the Appellant needs to be re-examined by the Commission in light of our decision to allow an extension of the time upon taking into consideration the Force Majeure events."***

22. *Per contra*, TANGEDCO *vide* written submission dated 31.8.2024 has submitted the increase in the cost of the project on account of relief under Change in Law, if any, permissible may be restricted up to the SCOD of the project. Further, the relief is applicable only to the hard cost of the project, excluding the financing charges/interest and other overheads. It is irrelevant to compare the provisions under the Tariff Regulations under the ambit of Section 62 of the Act with the tariff determination process for the TBCB projects under Section 63, which otherwise would defeat the objective of competitive bidding. Therefore, the hard cost of the project may alone be considered in case of eligible relief under Change in Law.

23. The Petitioner, PSITSL, has submitted that the Commission may pass consequential orders to the extension of the SCOD of the project to actual COD by condoning the delay of 289 days and the cost overrun, i.e., land compensation paid by PSITSL for the tower base as well as a corridor of the transmission line in terms of the Orders passed by the District Collectors/District Magistrate/District Authorities to be allowed on account of Force Majeure and Change in Law events i.e. as per the decision of the APTEL. The actual funding cost/IDC prudently incurred by PSITSL, overheads/IEDC, till actual COD, inclusive for the periods of delay of 289 days condoned, is to be necessarily allowed as a natural consequence of the extension of SCOD till the actual COD. The Petitioner has submitted that the delay of 289 days was not on account of anything attributable to PSITSL and, as held by the APTEL, it was on account of combination of factors relating to the problems faced in getting right of way, need to deal extensively with the local authorities under the changed dispensation in regard to compensation payable to the landowners and requirement to comply with the directions of the Collectors and Local Authorities on the amount of compensation determined by the authorities after extensive deliberation with the landowners.

24. We have considered the submissions made by the parties. The issue of entitlement of IDC and IEDC incurred on account of Change in Law and Force Majeure events is no longer *res-integra* in view of the judgment of the APTEL dated 20.10.2020 in Appeal No. 208 of 2019 in Bhopal Dhule Transmission Company Limited. v. CERC and Ors. ('Bhopal Dhule Judgment') and the judgment dated 3.12.2021 in Appeal No. 129 of 2020 in NRSS XXXI (B) Transmission Limited v. CERC and Ors. and Appeal No. 276 of 2021 in Darbhanga-Motihari Transmission Co. Ltd. v. CERC and Ors. ('NRSS Judgment'). The relevant extracts of the said judgments are as under:

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

*“8.8 Since the spirit of Article 12 of the TSA is to ensure monetary restitution of a party to the extent of the consequences of Change in Law events, such exceptions cannot be read into Article 12 of the TSA. The Appellant has submitted that a crucial factor for the Appellant whilst bidding for the Project was that uncontrollable Change in Law events would be duly accounted for in accordance with Article 12 of the TSA. By the Impugned Order, the Central Commission has wrongly altered the meaning of the Change in Law clause of the TSA long after award of the bid and commissioning of the Project.*

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

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

***8.15 We are of the view that the Central Commission erred in denying Change in Law relief to the Appellant for IDC and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant's Project in accordance with the TSA. Therefore, the impugned order passed by the Central Commission is liable to be set aside as the same is in contravention of settled law laid down by the***

*Hon'ble Supreme Court (Supra) and also the previous orders passed by the Central Commission in Petition Nos. 73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the Commission differently. In view of these facts, the Appellant is entitled for the change in law relief as prayed for in the instant Appeal. The issue is thus, decided in favour of the Appellant....”*

**Appeal No. 129 of 2020 and Appeal No. 276 of 2021 Dated: 3rd December, 2021 NRSS XXXI (B) Transmission Limited v. CERC**

*“16.10 The Central Commission failed to understand that the IDC and IEDC is not a financial benefit to the Appellant but due to the financial liability to be borne by the Appellant. This Tribunal vide Judgment dated 20.10.2020 in Appeal No. 208 of 2019in –Bhopal Dhule Transmission Company Limited v Central Electricity Regulatory Commission &Ors.*

....

***16.11 Therefore, we are of the opinion that the Appellant is entitled to be fully compensated for the IDC and IEDC incurred on account of Change in Law & Force Majeure Events.”***

*IA Nos. 2098/2021 & 2099/2021 (For Clarification)*

*The Appellants have moved these applications seeking clarification. Having heard the learned counsel for the parties, we are clear in our minds that the Judgment dated 03.12.2021 leaves no scope for doubt that the Appellants have been held entitled to be fully compensated for IDC and IEDC incurred on account of Change in Law and Force Majeure Events and also to receive compensation on account of change in Gantry Coordinates and increase in number of power lines crossing. It is inherent in the findings returned and the directions given that while passing a consequential order in terms of the remit, the Commission will be obliged to grant the reliefs in above nature and also to consider the consequential carrying cost.”*

25. Earlier in the Bhopal Dhule Judgment, the APTEL had observed that the denial of IDC on the admitted Change in Law by the Commission was in contravention of the provisions of Article 12.1.1 of the TSA and, consequently, held that the licensee is entitled to IDC on the admitted Change in Law events. Whereas, in the NRSS Judgment, the APTEL had observed that the Commission erred in not allowing the IDC and IEDC once having held the unforeseen requirement of forest clearance as a Change in Law and having also granted an extension of time for delay in obtaining such clearance as Force Majeure. Consequently, the APTEL therein held that the licensee was entitled to be fully compensated for the IDC and IEDC incurred on account of the Change in Law and Force Majeure events. Further, the Commission, in

its Order dated 11.3.2023 passed in Petition No. 333/MP/2019 and Order dated 13.5.2024 passed in Petition No. 87/MP/2022, has allowed the IDC and IEDC for the Change in Law and Force Majeure events as claimed in the Petition.

26. It is observed in the present case also, the delays on account of Law & Order issues, severe RoW issues, etc., which had affected the implementation of the Project and had arisen due to a change in land compensation policy in the State of Andhra Pradesh have been recognized as force majeure event(s) by the APTEL. Moreover, in the said judgment, the APTEL has not only recognized the AP State Government Notification dated 20.6.2017 as a Change in Law event, the APTEL has also held the direction issued by the District Authorities as a Change in Law event entitling PSITSL to the compensation paid by it to the land owner as per the directives of such District Authorities under Change in Law. Hence, as per the ratio laid down by the APTEL in the NRSS Judgment, we are of the view that the Petitioner is entitled to IDC and IEDC for the period of delay. However, in the instant case, the Petitioner has made the claims under the nomenclature of Funding Cost and Overheads Cost. A perusal of the Auditor's certificate dated 10.12.2020, as furnished by the Petitioner, reveals that Funding cost has been calculated assuming Debt:Equity ratio of 70:30 with cost of debt at 7.7917% and cost of equity @15.5%. However, unlike the IDC, which is only an interest on debt /loan component, the Funding Cost claim of the Petitioner also appears to include a Return on Equity component @ 15.5% therein, which, in our view, cannot be allowed or considered under IDC. Moreover, in regard to the IDC also, the Petitioner can only be held entitled to an incremental IDC. In other words, the delay in implementation of the Project might have also led to a delay in the deployment of capital thereby also shifting the IDC beyond the original SCOD despite having been envisaged in the original financing plan. Hence, such IDC cannot be allowed to be passed on under the TSA in the guise of Change in Law and force majeure relief(s). Accordingly,

as regards the claims of the Petitioner for IDC towards un-commissioned elements for the period from April 2019 (original SCOD) to actual COD, the Petitioner shall be entitled to only incremental IDC, i.e., after adjusting the excess IDC, if any, arrived at after subtracting actual IDC incurred up to the original SCOD from the IDC envisaged in the original financing plan submitted to financial institution(s) or its parent company for availing the debt. As regards the Overhead Cost, it is noted that the Petitioner has sought overhead expenses with regard to charges claimed by PGCIL, with whom the Petitioner has entered into a Consultancy Agreement to establish the Project with Consultancy charges @ 5% + applicable taxes on the Project cost. This shall also be worked out in accordance with additional costs allowed by the Commission based on the order(s) passed by this Commission in the present case and not beyond. In light of the above observations, the Petitioner shall submit a revised auditor certificate in support of the claim of Funding Cost and Overhead Cost, as allowed above, along with necessary details to LTTCs for reconciliation and verification.

### **Relief**

27. Regarding another contention raised by TANGEDCO during the hearing on 9.9.2024 that non-escalable transmission charges on account of Change in Law events cannot be increased, PSITSL has submitted that such contention is contrary to the plain wordings of Article 12.4.1 of the TSA providing for relief on account of Change in Law events. The only remedy available to the TSP under the TSA for Change in Law events is an increase in non-escalable transmission charges as per the formula provided under Article 12.4.1 of TSA. Article 12.4.1 does not create any distinction between escalable and non-escalable transmission charges and uses the word 'any change in Monthly Transmission Charges'.



28. We have considered the submissions made by the parties. Article 12.2 of the TSA provides for relief for Change in Law as under:

*“12.2 Relief for Change in Law*

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

*- For every cumulative increase/decrease of each Rupees Nineteen Crore Seventy Two Lakh Only (Rs 19.72 Crore) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges.*

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

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

29. All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each Rupees Nineteen Crore Seventy-Two Lakh Only (Rs.19.72 crore) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three one three percent (0.313%) of the Non-Escalable Transmission Charges. Thus, the contentions raised by TANGEDCO with regard to the increase in transmission charges have no merit. Therefore, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of the Project, to be supported by a CA certificate, and accordingly, shall be

entitled to a corresponding increase in Non-Escalable Transmission Charges as provided under Article 12.2.1 of the TSA.

### **Carrying Cost**

30. As regards the claim of the Petitioner towards carrying cost, the Commission in its order dated 11.3.2023 in Petition No. 333/MP/2019, had observed as under:

“120. In line with above, the Petitioner shall be eligible for carrying cost from COD till the date of this order at the actual rate of interest paid by the Petitioner for arranging funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per applicable CERC Tariff Regulations or the late payment surcharge rate as per the TSA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the TSA would kick in if the payment is not made by the Respondents.”

In line with the decision dated 11.3.2023 of the Commission in Petition 333/MP/2019, the Petitioner shall be eligible for carrying cost on the increased transmission charges worked out as per Article 12.2 above from COD or date of filing of the present Petition, whichever is later, till the date of this order at the actual rate of interest paid by the Petitioner for arranging the funds (supported by Auditor’s Certificate) or the rate of interest on working capital as per the applicable CERC Tariff Regulations or the Late Payment Surcharge rate in terms of the TSA, whichever is the lowest. Once a supplementary bill is raised by the Petitioner in terms of this order, the provision of Late Payment Surcharge in the TSA would kick in if the payment is not made by the Respondents.

31. However, it is pertinent to mention that in the Parampujya case, the Hon’ble Supreme Court *vide* Order dated 12.12.2022 in Civil Appeal No.8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. v. Parampujya Solar Energy Pvt. Ltd. & Ors. has held as under:

*“2. Pending further orders, the Central Electricity Regulatory Commission (CERC) shall comply with the directions issued in paragraph 109 of the impugned order dated 15 September 2022 of the Appellate Tribunal for*

*Electricity. However, the final order of the CERC shall not be enforced pending further orders.*

Thus, the directions with regard to the carrying cost in this order which were issued in the light of the principles decided by the APTEL in judgment dated 15.9.2022 in Appeal No.256 of 2019 (Parampujya Solar Energy Ltd Vs. CERC) & batch appeals shall not be enforced and will be subject to further orders of the Hon'ble Supreme Court in Civil Appeal No. 8880 of 2022 in the case of Telangana Northern Power Distribution Company Ltd. & Anr. V. Parampujya Solar Energy Pvt. Ltd. & Ors. Thus, the issue is answered accordingly.

32. After the CoD of the transmission system, the Petitioner has been recovering transmission charges for the Project under the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2010. With effect from 1.11.2020, the Central Electricity Regulatory Commission (Sharing of inter-State transmission Charges and Losses) Regulations, 2020 has come into force. Therefore, the compensation 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.

33. With this order, the directions of the APTEL in Appeal No.194 of 2022 stand implemented, and the Petition stands disposed of to the extent of the remand.

Sd/-  
**(Harish Dudani)**  
Member

sd/-  
**(Ramesh Babu)**  
Member

sd/-+9  
**(Jishnu Barua)**  
Chairperson