

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 134/MP/2021**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member**

**Date of Order: 19.05.2024**

**In the matter of:**

Petition under Section 61, Section 63 and Section 79 of the Electricity Act, 2003 read with statutory framework and Article 11 and Article 12 of the Transmission Service Agreement dated 27.12.2016 executed between NER-II Transmission Limited and its Long-Term Transmission Customers for inter alia claiming compensation due to Changes in Law and seeking an extension to the scheduled commissioning date of the relevant elements of the Project on account of *Force Majeure* events.

**And in the matter of:**

NER-II Transmission Limited,  
F-1, Mira Corporate Suits, 1 and 2,  
Mathura Road, Ishwar Nagar,  
New Delhi-110065, India.

**.....Petitioner**

**Versus**

1. Assam Electricity Grid Corporation Limited,  
4<sup>th</sup> Floor, Bijulee Bhawan (Fist Floor), Paltan Bazar,  
Guwahati-I, Assam-781001.
2. Tripura State Electricity Corporation Limited,  
Bidyut Bhawan, Banamalipur, Agartala,  
Tripura-799001.
3. Meghalaya Power Distribution Company Limited,  
Lum Jingshai, Sort Road, Shillong,  
Meghalaya-793001.
4. Manipur State Power Distribution Company Limited,  
Complex, Patta No. 1293 under 87(2),  
Khwai Bazar, Keishampat, District-Imphal West,  
Manipur-795001.
5. Department of Power,  
Government of Arunachal Pradesh.  
Vidyut Bhawan, Itanagar, Arunachal Pradesh-791111.



6. Department of Power,  
Government of Nagaland,  
A.G. Colony, Kohima, Nagaland-797005.
7. Power and Electricity Department,  
Government of Mizoram,  
Mizoram Secretariat, Annexure-II, Treasury,  
Square Aizwal, Mizoram.
8. REC Transmission Projects Company Limited,  
Core – 4, Scope Complex,  
7, Lodhi Road, New Delhi-110003, India.
9. Power Grid Corporation of India Limited,  
"Saudamini", Plot No.2,  
Sector-29, Gurgaon-122001.
10. Central Transmission Utility of India Limited (CTUIL),  
First Floor, Saudamini, Plot No.2,  
Sector 29, Gurugram-122001.
11. Power System Operation Corporation Limited (POSOCO),  
B-9 Qutub Institutional Area,  
Katwariya Sarai, New Delhi, Delhi-110016. ....Respondent(s)

**For Petitioner** : Shri Deep Rao Palepu, Advocate, NER-II TL  
Shri Arjun Agarwal, Advocate, NER-II TL  
Shri Syed Zafar Alam, Advocate, NER-II TL

**For Respondents** : Shri Utkarsh Singh, Advocate, PGCIL  
Shri Prasant Kumar, PGCIL  
Shri Sanny Machal, NLDC  
Shri Alok Mishra, NLDC

### ORDER

The Petitioner, NER-II Transmission Limited (NER-II TL), has filed the instant petition under Section 61, Section 63 and Section 79 of the Electricity Act, 2003 read with statutory framework and Article 11 and Article 12 of the Transmission Service Agreement (hereinafter referred to as the 'TSA') dated 27.12.2016 executed between NER-II TL and its Long-Term Transmission Customers claiming compensation due to "Change in Law" and seeking an extension of the scheduled commissioning date of the relevant elements of the Project on account of *Force Majeure* events.

2. The Petitioner has made the following prayers:



- i. Admit and allow the present Petition
- ii. Hold and declare that the Petitioner was impacted by the Force Majeure events described in the Petition and is therefore entitled to relief in accordance with Article 11 of the TSA
- iii. Condone the delays in the Project's implementation caused due to the aforesaid Force Majeure Events and appropriately extend the SCOD for concerned elements to the date of their actual commissioning/ deemed commissioning, as the case may be
- iv. Direct that the Petitioner ought not be made liable in any manner for the delays caused in Project's implementation due to the aforesaid Force Majeure Events
- v. Direct that no Liquidated Damages may be imposed on the Petitioner for the delays caused in Project's implementation due to the aforesaid Force Majeure Events under the TSA or otherwise
- vi. Hold and declare that the Petitioner was impacted by the Change in Law events described in the Petition and is therefore entitled to relief in accordance with Article 12 of the TSA
- vii. Direct that the Petitioner is entitled to recover Interest During Construction incurred in respect of the periods of delay that were caused due to the unforeseen and uncontrollable events as described in the Petition
- viii. Direct that the Petitioner is entitled to the reimbursement of expenditure incurred by the Petitioner for the construction of downstream network of Respondent No. 2, Tripura State Electricity Corporation Limited
- ix. Grant an appropriate increase of 10.854% of the Non-Escalable Transmission Charges in accordance with Article 12.2.1 of the TSA
- x. Grant the Petitioner compensatory restitution to the same economic position as had existed prior to the occurrence of the Change in Law events described in this Petition with effect 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
- xi. Direct PGCIL to pay the Petitioner transmission charges for periods when PGCIL's upstream transmission elements were delayed but Petitioner had achieved COD for the SM Line and all elements of NERSS-V
- xii. Exercise regulatory powers to grant appropriate relief to the Petitioner in the facts of this case, including by way of condoning any inadvertent delay by the Petitioner, if any; and
- xiii. Pass such other order(s) and/ or direction(s) as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case

The name of Respondent No.11 is changed from National Load Dispatch Center /Power System Operation Corporation Limited (POSOCO) to Grid Controller of India Limited (GRID-INDIA). However, it has been referred to as NLDC/ POSOCO in the instant order to maintain consistency with the Commission's record.

### **Background**

3. The brief facts of the case are as follows:

- (a) Ministry of Power (MoP), Government of India, vide its Notification No. 2454, dated 17.11.2015, notified REC Transmission Projects Company

Limited (hereinafter referred to as 'the RECTPCL') as Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the Project through tariff based competitive bidding process.

- (b) NER-II TL was incorporated on 21.4.2015 under the Companies Act, 2013 as a wholly owned subsidiary of RECTPCL with the objective to establish the 'NER System Strengthening Scheme-II (Part-B) and V' ('the transmission system') on 'Build, Own, Operate and Maintain' basis (BOOM) and to act as the Transmission Service Provider (TSP) after being acquired by the successful bidder.
- (c) The bid process was conducted by RECTPCL, in accordance with the Guidelines issued by Ministry of Power (MoP), Government of India under Section 63 of the 2003 Act and Sterlite Grid 4 Limited emerged as the successful bidder with the lowest levelized transmission charges of ₹4316.53 million/annum. Consequently, Letter of Intent (LoI) was issued by RECTPCL to Sterlite Grid 4 Limited on 22.2.2017.
- (d) Thereafter, Sterlite Grid 4 Limited accomplished all milestones required in terms of the Request for Proposal (RfP) and LoI and acquired the NER-II as its fully owned subsidiary.
- (e) The Petitioner approached the Commission for grant of transmission licence in Petition No. 80/TL/2017 and for adoption of tariff of transmission system in Petition No.81/AT/2017. The Commission vide its order dated 12.6.2017 in Petition No. 81/AT/2017 has adopted levelized tariff of ₹4316.53 million/annum of the transmission system
- (f) The Petitioner, in its capacity as a TSP executed the TSA dated 27.12.2016 with the Long Term Transmission Customers (LTTCS), who are the beneficiaries of the transmission system being developed by the

Petitioner as part of the Project under “NER System Strengthening Scheme II (Part B) and V. The Commission vide its order dated 20.6.2017 in Petition No. 80/TL/2017 granted the Petitioner the transmission license to establish the Project under “NER System Strengthening Scheme II (Part B) and V”.

- (g) Under the TSA, Assam Electricity Grid Corporation Limited (AEGCL), Respondent No.1, has been appointed as the lead LTTC to represent all the LTTCs for discharging the rights and obligations specified therein.
- (h) The Petitioner is seeking a consequential adjustment in the tariff payable to it in terms of Article 12 of the TSA to offset the financial impact of various “*Change in Law*” events that have impacted the Project and to reconstitute the Petitioner to its original financial position. Further, the Petitioner is seeking an extension to the SCOD of the relevant elements of the Project on account of *Force Majeure* events and consequent waiver of any Liquidated Damages (LD) in terms of Article 11 of the TSA.
- (i) The transmission elements along with their SCODs and actual/anticipated commercial operation dates (‘CODs’) as per Schedule: 2 of the TSA are follows:

Sl. No.	Scheme/ Transmission Works	SCOD	Actual (deemed)/ Anticipated COD
<b>NERSS-II (Part-B)</b>			
1.	Element-1:Biswanath Chariyalli (POWERGRID)-Itanagar 132 kV D/C (Zebra Conductor) Line	31.3.2020 (36 months)	25.3.2021
2.	Element-2:2 number 132 kV line bays at Itanagar for termination of Biswanath Chariyalli (POWERGRID)-Itanagar 132 kV D/C (Zebra Conductor) Line	31.3.2020 (36 months)	25.3.2021
3.	Element-3:LILLO of one circuit of Biswanath Chariyalli (POWERGRID)- Itanagar 132 kV D/C (Zebra Conductor) Line at Gohpur (AEGCL)	31.3.2020 (36 months)	25.3.2021
4.	Element-4:Silchar (POWERGRID)-Misa (POWERGRID) 400 kV D/C (Quad) Line	31.11.2020 (44 months)	27.2.2021 (Deemed COD)
<b>NERSS-V</b>			
5.	Element-5:400/132 kV, 7x105 MVA Single Phase (including one spare) at Surajmaninagar	31.7.2020 (40 months)	27.1.2021 (Deemed COD)

Sl. No.	Scheme/ Transmission Works	SCOD	Actual (deemed)/ Anticipated COD
6.	Element-6:400/132 kV, 7x105 MVA Single Phase (including one spare) at P.K. Bari	31.7.2020 (40 months)	27.1.2021 (Deemed COD)
7.	Element-7:Surajmaninagar - P.K. Bari 400 kV D/C Line	31.7.2020 (40 months)	27.1.2021 (Deemed COD)
8.	Element-8:2 number 400 kV line bays at Palatana GBPP switchyard for termination of Palatana- Surajmaninagar 400 kV D/C Line	31.7.2020 (40 months)	27.1.2021 (Deemed COD)
9.	Element-9:AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C Line with high capacity HTLS Conductor (equivalent to single moose ampacity at 85°C)	31.3.2020 (36 months)	21.2.2021 (Deemed COD)
10.	Element-10:2 number 132 kV line bays at AGTPP generation switchyard for termination of AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C Line	31.3.2020 (36 months)	21.2.2021 (Deemed COD)
11.	Element- 11:2 number 132 kV line bays at P.K. Bari (TSECL) Sub-station for termination of AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C Line	31.3.2020 (36 months)	21.2.2021 (Deemed COD)

- (j) Most of the Elements of the project under the scope of present petition, have already been declared under commissioned/ deemed commercial operation/executed in January/February, 2021 in line with Article 6.2.1 of the TSA.

### **The Petitioner's submissions**

4. The Petitioner has claimed to have faced several uncontrollable impediments and challenges while implementing the Project. These reasons are mainly attributable to several *Force majeure* events that hindered the continuous and smooth implementation of the transmission assets, thereby requiring the Petitioner to take additional time in completing its construction activities. Moreover, the instant Project also faced several “*Change in Law*” events which unavoidably escalated the cost of implementing the instant Project. Thus, the Petitioner is seeking various consequential reliefs in terms of the provisions of TSA so that it may be restituted to its original financial position when these events had not occurred.

5. The following are the *Force Majeure* events, which delayed the execution of relevant elements of the Project beyond the SCOD and “*Change in Law*” events which increased the capital cost of the Project:



## **I. FORCE MAEJURE EVENTS**

- (a) Delay in grant of forest clearance
- (b) Unexpected requirement for and non-grant of No-objection Certificate ('NoC') by the Airport Authority of India ('AAI').
- (c) Delay in allotment of Government land
- (d) Protests and unrest in North East due to enactment of the Citizenship (Amendment) Act, 2019 ('CAA Act').
- (e) Outbreak of COVID-19 pandemic.

## **II. "CHANGE IN LAW" EVENTS**

- (a) Notification and Orders for the payment of land compensation/additional forest compensation.
- (b) Requirement to pay additional forest compensation in Arunachal Pradesh.
- (c) "*Change in Law*" expenses on account of Covid-19 and consequent restrictions imposed by Central and respective State Governments.
- (d) Additional Civil, Erection and Supply Cost due to increase in line length due to diversion caused due to the Hollongi Airport.
- (e) Revised forest clearance required due to diversion caused due to the Hollongi Airport.
- (f) Payment to Forest Dwellers
- (g) Interest During Construction (IDC)

## **"FORCE MAEJURE" EVENTS**

6. Under Article 11 of the TSA, *Force Majeure* is defined inclusively, and it is not limited to the events enumerated under clause 11.3 of the TSA but also includes any event or circumstance or combination of events or circumstances that wholly or partly prevents or unavoidably delays an affected party in the performance of its obligations under the TSA. As per Article 11.7 of the TSA, no party shall be considered to be in breach of its obligations pursuant to the TSA where the performance of its obligations was prevented, hindered or delayed due to a *Force Majeure* event. Accordingly, every party, including the Petitioner, is entitled to claim the relief for a *Force Majeure* event



affecting its performance about its obligations under the TSA. In terms of Article 11 of the TSA, the *Force Majeure* events are described as follows:

### **Delay in Grant of Forest Clearance**

7. The construction of the following transmission lines was delayed due to uncontrollable delays in the grant of Forest Clearance by Government Authorities. As such, this was beyond the Petitioner's reasonable control and constitutes a *Force Majeure* event in terms of Article 11 of the TSA. The claims are as follows:

<b>Element</b>	<b>Period</b>	<b>Days</b>
Element-4:Silchar-Misa 400 kV D/C (Quad) Line <b>(SM line)</b>	4.8.2017-6.10.2018	128
Element -7:Surajmaninagar - P.K. Bari 400 kV D/C Line <b>(SP Line)</b>	10.7.2017-2.5.2019	361
Element-9: AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C Line <b>(AP Line)</b>	30.9.2017-5.1.2019	302

8. The Petitioner has made the following submissions on the issue of *Force Majeure*:

### **Element-4: Silchar-Misa 400 kV D/C (Quad) Line (“SM Line”)**

9. As regards Silchar-Misa 400 kV D/C (Quad) Line (“SM Line”), the Petitioner has made the following submissions:

- a) SM Line achieved COD on 1.3.2021 as against the SCOD of 30.11.2020. SM Line crosses the districts of Silchar, Dimahasao, Hamren and South Nagaon in the State of Assam. The Petitioner submitted a proposal for the diversion of 108.62 ha. of forest land before the Nodal Officer, Assam on 4.8.2017. However, Stage-I approval was granted to it on 29.8.2018 with a delay of 90 days which ought to have been issued by 31.5.2018. Tree cutting permission was granted to the Petitioner on 6.10.2018, *i.e.*, after a further delay of 38 days (in total 128 days) as multiple observations were raised by the Nodal Officer while examining the Petitioner's Forest Diversion Proposal. According to the Petitioner, these observations were irrelevant at the stage of processing and



led to a delay in the grant of working permission. This eventually resulted in the delay in the construction of SM Line.

- b) During the processing of application, the Petitioner continuously did liaison with the Nodal Officer, Assam who raised multiple queries/objections and demanded Forest Rights Act, 2006 (FRA) certificate at the time of acceptance of the proposal for forest diversion. As per the procedure prescribed under the Forest (Conservation) Rules (FC Rules), the FRA certificate is required post-acceptance of the forest proposal. The unnecessary requirement imposed by the Nodal Officer in accepting the procedure derailed the timelines of forest approvals provided under the FC Rules.
- c) The FRA certificates were eventually issued to the Petitioner on 23.11.2017 and were subsequently submitted to the Nodal Officer. Thereafter, tree cutting permission was granted on 6.10.2018, after almost 10 months.
- d) On realizing that delay in forest clearance has severely affected the timeline of execution of the Project, the Petitioner, on 27.9.2019, issued *Force Majeure* notice to the LTTCs informing them that there may be some delay in completion of work beyond the original SCOD.

**Element-7: Surajmaninagar - P.K. Bari 400 kV D/C Line (SP Line)**

10. With regard to Surajmaninagar-P.K. Bari 400 kV D/C Line (SP Line), the Petitioner has submitted that 139.93 ha. of forest land was encountered in the route alignment of SP Line in the area of West Tripura, Khowai and Dhalai. SP Line achieved deemed COD on 27.1.2021 as against its SCOD of 31.7.2020. The forest diversion proposal to the Nodal Officer was submitted on 10.7.2017. However, Stage-I approval was granted on 21.1.2019, i.e., after a delay of 260 days and final tree cutting permission was granted on 2.5.2019, i.e., after a further delay of 101 days (in total 361 days) as multiple observations were raised by the Nodal Officer while examining the Petitioner's Forest Diversion Proposal. It is submitted that the forest proposal was mandated to be processed within

a maximum of 300 days (for a land parcel of 100 ha+). The Petitioner has submitted that considerable time was consumed by the District Forest Officer (DFO) in arranging CA land and for completion of field activity including tree enumeration work which consequently led to significant delay in the construction of the SP Line. The Petitioner has claimed 361 days delay on account of forest clearance, 15 days delay on account of CAA protest for the period 6.1.2020-16.1.2020 and six months delay on account of outbreak of Covid-19 pandemic from 25.3.2020 onwards. The SCOD of the SP Line is 31.7.2020 against which its Circuit-I achieved COD on 4.2.2021 while Circuit -II on 11.2.2021. The Petitioner duly intimated the Lead LTTC of the occurrence of the aforesaid *Force Majeure* event vide Notice dated 17.2.2020.

**Element-9: AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C Line (“AP Line”)**

11. As regards the AGTPP (NEEPCO)-P.K. Bari (TSECL) 132 kV D/C Line (“AP Line”), the Petitioner has submitted that AP Line was executed on 23.2.2021, as against its original SCOD of 31.3.2020. The said line crosses West Tripura district in the State of Tripura. The Petitioner submitted proposal for diversion of 17.569 ha. of forest land before the Nodal Officer, Tripura on 30.9.2017. The forest proposal ought to have been issued by 9.3.2018 as against the Petitioner’s application dated 30.9.2017. The Petitioner has submitted that Stage-I approval was granted on 12.10.2018, i.e., after a delay of 217 days and tree cutting permission was granted only on 5.1.2019, i.e., after a further delay of 85 days (in total 302 days) as exorbitant time was consumed by the Nodal Officer and Regional Ministry of Environment and Forest in scrutiny of the proposal and issuance of Stage-I approval, respectively. Pertinently, State Government of Tripura had also consumed extended time for issuance of tree cutting permission which consequently led to a delay in the construction of the AP Line.

12. As per the Guidelines prescribed by the Ministry of Environment, Forest and Climate Change (“MoEFCC”) letter dated 8.12.2014 to the Principal Secretary (Forest),

Government of Haryana, the timeline for forest approval after submission of proposal for more than 100 ha is 180 days by the State Government and a further 120 days by the Regional Empowered Committee of the Central Government. Further, the timeline for approval after submission of the proposal for an area of 5-40 ha is 120 days by the State Government and a further 40 days by the Regional Empowered Committee of the Central Government. The maximum envisaged processing time of forest approval is 300 days. Any additional time taken by the State and/or Central Government(s) beyond 300 days in approving the Petitioner's various forest diversion proposals was uncontrollable and completely beyond the Petitioner's control and an uniform view has been taken by the Commission in its orders dated 23.7.2018 in Petition No. 1/TT/2018; dated 15.5.2018 in Petition No. 108/TT/2016; order dated 5.2.2020 in Petition No. 334/TT/2018 and its order dated 29.7.2019 in Petition No. 257/TT/2018.

13. The Petitioner has duly intimated all the LTTCs (Respondent Nos. 1-7) of the occurrence of the aforesaid *Force Majeure* event vide its Notices dated 27.9.2019.

**Unexpected requirement for and non-grant of No-objection Certificate (NoC) by the Airport Authority of India (AAI)**

14. With regard to unexpected requirement and non-grant of NoC by AAI, the Petitioner has made the following submissions:

a) Construction of Element-1: Biswanath Chariyalli-Itanagar 132 kV D/C (Zebra Conductor) Line ('BI Line') was delayed due to unforeseeable diversion necessitated by the finalised location for the Hollongi Airport and subsequent non-grant of NOC by the AAI. As such, this was beyond the Petitioner's reasonable control and constitutes a *Force Majeure* event in terms of Article 11 of the TSA. The claim is for condonation of delay of approximate 27 months for the period from 26.2.2018 to 28.5.2020.

b) BI Line passes through Hollongi village located within the State of Arunachal Pradesh (near Arunachal Pradesh-Assam border). The Project Survey Report

clearly mentioned 'Nil' as against all 3 proposed routes for the BI Line which signified that no airport exists in the vicinity of BI Line. Thereafter, the Petitioner was granted approval of the route under Section 164 of the Act and the approval was published in Gazette of India dated 31.8.2018 by the Central Electricity Authority, (CEA) in line with statutory guidelines. Public notices were widely published in leading newspapers specifying the route through which the BI Line was to traverse. Stage-II Forest Clearance was given to the Petitioner by MoEF for both Assam and Arunachal Pradesh. At no stage of the bidding, the Petitioner was warned that any airport would be developed in the vicinity of the route of the BI Line.

c) The AAI proposes to set up the airport at Village Holongi, Yupia Tehsil, Papum Pare district in the State of Arunachal Pradesh. On 27.2.2018, the Petitioner wrote to the Secretary, Ministry of Civil Aviation and intimated the co-ordinates with the route approved for the BI Line, with a request to consider those co-ordinates while planning the said airport.

d) On 3.3.2018, the Petitioner submitted its proposal to the Nodal Officer, Arunachal Pradesh for forest clearance seeking forest diversion of an area of 48.147 ha.

e) On 2.7.2018, AAI responded notifying the maximum permissible elevation for towers of BI Line. On 7.8.2018, the Petitioner concluded that for 15 tower locations, the maximum permissible elevation notified by AAI was less than the total elevation envisaged by the Petitioner.

f) On 12.10.2018, the Petitioner submitted its online application for issuance of NoC to the AAI through the NOCAS portal. On 12.3.2019, AAI granted a restricted NoC for the entire route except for 11 number transmission tower angle points. The said 11 number poles received NoC with 'Height Restrictions'. The Petitioner could not proceed with construction of BI Line by complying with such height restrictions. This was because of these 11 tower locations, the maximum permissible height of

tower erection (ground elevation + tower height, including minimum ground clearance) was less than the existing ground elevation (hill-top) height.

g) For instance, at location AP 56, the existing ground elevation is 172.103 metres. The maximum height permitted by AAI is 153.67 metres. Therefore, the present ground elevation itself violates the permissible height restrictions by 19 metres. There is no question of erection of a tower of approximate 29 metres (including 6.1 metres ground clearance as per IS 5613 - Indian Standard for Construction of Transmission Lines). Thus, the Petitioner was constrained to divert the route for the BI Line. In effect, AAI's NoC dated 12.3.2019 made it impossible to construct the BI Line as per the original route conveyed to the Petitioner at the time of placing its bid.

h) The diverted route passes through the other side of National Highway-52, in order to maintain safe distance from proposed airport. The diverted route traversed across the villages of Chimpu, Bandardewa and Daflagarh in the State of Arunachal Pradesh for which the Petitioner was constrained to submit a revised proposal for forest clearance on 13.5.2019 seeking forest diversion of the increased area of 48.987 ha. Such an exercise (of parallelly seeking Forest Clearance for the diverted route) was undertaken to expedite the execution of the BI Line.

i) At the time of re-application, the earlier proposal had already received Stage-I approval on 30.1.2019 (48.147 ha.) and thus the forest clearance of the Petitioner of BI line as per original route was set at naught. Stage-I approval for the said revised proposal was granted on 23.9.2019 while Stage-II approval was obtained only on 28.5.2020.

j) The Petitioner has diligently followed up the matter with the local administration for administrative assistance and the same is as follows:

Date	Correspondence
3.3.2018	The Petitioner wrote to Deputy Commissioner-cum-District Collector of Yupia, Papumpare, Itanagar, Arunachal Pradesh ("DC") requesting (a) a boundary for the

	Project's proposed land required in the district; (b) if the land for Hollongi Airport was still not finalised, Petitioner's proposed coordinates may be considered before finalisation; and (c) if the land for Hollongi Airport was approved, the Petitioner may be provided its boundary and a copy of its GPS coordinates.
15.5.2019	The Petitioner wrote to the DC requesting administrative support for the construction of the BI Line and the BI LILO Line.
7.8.2019	The Petitioner wrote to the DC with a request to expedite tower assessment so that construction activities could go on smoothly.
13.8.2019	The Petitioner wrote to the DC mentioning that it had already obtained tree cutting and permission for commencement of work for the BI Line and the BI LILO Line on 25.4.2019. The Petitioner further requested administrative support for the construction of the BI Line and the BI LILO Line.
12.9.2019	The Petitioner wrote to the Chief Secretary, Arunachal Pradesh requesting all administrative support for dealing with the various Right of Way ("RoW") issues.
20.9.2019	Pursuant to the Petitioner's effort, the DC noted that a Board of Committee (including the Petitioner's representative) would have a joint meeting on 24.9.2019 to finalise the rate of land and assets falling under RoW of the Project.
1.10.2019	The DC intimated the Secretary (Land Management), Government of Arunachal Pradesh that the rates had been finalised.
22.11.2019	While undertaking to pay the compensation determined promptly, the Petitioner wrote to the DC seeking necessary administrative support – especially given the little time left for SCOD of the Project.
17.12.2019	Notification issued by the Secretary (Land Management), Government of Arunachal Pradesh inviting claims for temporary damage to the land falling under RoW of the BI Line and the BI LILO Line.

k) For the construction of the BI Line, the Petitioner had made sincere efforts to follow the route that was mentioned in the bid documents (RfP) by Respondent No. 8, the BPC for the Project. It was based on such route that the Petitioner conducted a survey and applied for approval of the route from the Ministry of Power under Section 164 of the Act. Therefore, the diversion of the route as a consequence of the rejection of NoC from AAI and the submission of a revised forest diversion proposal for the diverted route led to a loss of working time of approximately 27 months (over 800 days), which constitutes a *Force Majeure* event under the TSA. The event, being completely beyond the Petitioner's reasonable control, had additional time as well as cost impact and is therefore squarely covered under Articles 11.3 and 12.1 of the TSA as a *Force Majeure* event and a *Change in Law* event, respectively. The Notice for these events was served by the Petitioner to all LTTCs (Respondent No. 1 to 7) on 27.9.2019.

### **Delay in allotment of Government Land**

15. With regard to delay in allotment of Government land, the Petitioner has submitted that the construction of Elements-6 and 5: P.K. Bari and Surajmaninagar 400/132 kV Sub-stations respectively was delayed due to uncontrollable delays in the grant of two small parcels of Government Khas land by the State Government. This was beyond the Petitioner's reasonable control and constitutes a *Force Majeure* event in terms of Article 11 of the TSA. The claim is for condonation of a delay of 6 months in achieving COD as against the total delay of 27 months and 23 months in allotment of Government land faced by the Petitioner. For the construction of 400/ 132 kV Sub-stations at P.K. Bari and Surajmaninagar, the Petitioner had identified lands at P.K. Bari under Kumarghat Revenue Circle and Purba Noagaon under Jirania Revenue Circle, respectively. These identified lands at P.K. Bari and Purba Noagaon for the construction of P.K. Bari and Surajmaninagar Sub-stations included the Government Khas land measuring approximately 1.17 acres and 1.02 acres, respectively.

16. As per Section 14(2) of the Tripura Land Revenue and Land Reforms Act, 1960, the State Government has the power to allot any such land for an industry or for any purpose of public utility on such conditions as may be prescribed. While no time limit is provided expressly under the aforesaid Act, the Petitioner reasonably expected to obtain the approvals within 180 days. Accordingly, for the allotment of the aforesaid lands, the Petitioner submitted applications to the Revenue Department, Government of Tripura on 31.10.2017 and 12.3.2018. However, the said lands' allotment to the Petitioner was inexplicably delayed despite several reminders dated 12.8.2019, 26.9.2019 and 21.11.2019. Copious time was consumed by the Government of Tripura in allotment of the aforesaid lands, which was beyond the reasonable control of Petitioner. This led to a substantial delay in the construction of the aforesaid sub-stations despite the Petitioner's best efforts. The lands were allotted to the Petitioner only on 20.4.2020 (Surajmaninagar)



and 18.5.2020 (P.K. Bari). There were further delays in raising demand for payment by SDM, P.K. Bari, who raised demand only on 3.7.2020. Similarly, while the payment was promptly deposited for Surajmaninagar on 27.5.2020, the SDM only directed the Deputy Collector to hand over the land on 25.8.2020. This delayed the execution of the aforesaid Sub-stations by approximately 27 and 23 months.

17. At Surajmaninagar, the Petitioner had originally sought 1.02 acres of Government land. However, at the time of a field survey, it was concluded that only 0.69 acres of Government land was required for the Surajmaninagar Sub-station as the remaining portion was adjacent to the Petitioner's boundary. Similarly, 1.16 acres were allotted for P.K. Bari station as the remaining 0.01 acre was already allocated to the Canal Division and was, therefore, not required.

18. The Petitioner duly intimated the Lead LTTC (Respondent No. 1) of the occurrence of the aforesaid *Force Majeure* event vide its Notice dated 17.2.2020.

### **Protests and unrest in the North East due to the enactment of the Citizenship (Amendment) Act, 2019**

19. The protests and unrest in the North East before and after the Citizenship (Amendment) Act, 2019 ('CAA') caused significant delays in the timely completion of the Project. The construction of the Project's elements by the Petitioner was badly affected due to the aforesaid protests and Bandh. This was beyond the Petitioner's reasonable control and constitutes a *Force Majeure* event in terms of Article 11 of the TSA. The claims against CAA are as follows:

<b>Element</b>	<b>Period</b>	<b>Days</b>
SM Line	7.12.2019-2.1.2020	26
BI Line and LILO of one circuit of BI Line at Gohpur (AEGCL)	11.12.2019-9.2.2020	60
AP Line, SP Line and associated Sub-stations	8.12.2019-11.12.2019; and 6.1.2020-16.1.2020	15

## **SM Line**

20. In Silchar area, there were many cases of road blockades along NH-37 and agitations in the Srikona area. In Hojai area, there was a road blockade of NH-27 and agitations in Doboka. Karbi Student Union (KSU) had called for bundh at many places. In all these areas, the Petitioner's workforce was specifically asked to stop the work and leave the work site. On account of this, *Force Majeure* is claimed for 26 days when work in Cachar came to a standstill. Thereafter, there was a prolonged cascading effect since the entire labour force did not join back the work at once. This delayed the construction activities considerably and affected the construction of the associated bays.

## **BI Line and LILO of one circuit of BI Line at Gohpur (AEGCL)**

21. The combined length of BI Line and LILO of one circuit of BI Line at Gohpur (AEGCL) ('BI-LILO') is about 76 km long and most part of this Line passes through Assam and a small portion traverses through the parts of Arunachal Pradesh. In Assam, mainly at Biswanath Chariyali and Gohpur areas, the Petitioner's workforce was asked to stop the work. Movement of men and material was also impacted due to agitation at NH-15 Xing, Baghmari Tea Estate, Borgang Area, BNC Town and Gohpur town. There were major blockades on NH-15 severely impacting the Project's progress. On 11.12.2019, Section 144 of the Cr.P.C. was invoked and a curfew was imposed by District Magistrate, Biswanath, which continued in force for the next 60 days. Thus, the construction activities as regards the BI Line and BI-LILO came to a complete standstill for over 60 days.

## **AP Line, SP Line and associated Sub-stations**

22. This component of the Project consists of 132 kV and 400 kV network which is approximately 102 km long and is located within the State of Tripura. Major impact of the introduction of CAA was seen in Tripura, particularly, in areas like Mandai, Talimura, Salema, Ambassa and Manu. The Petitioner's workforce was being threatened and there was damage to Project equipment along with theft of material. Consequently, the Petitioner was constrained to shift its workforce with TSR (Tripura State Rifles) and the

Petitioner was recommended not to resume work. On this account, *Force Majeure* is claimed for 15 days (8.12.2019-11.12.2019 and 6.1.2020-16.1.2020).

23. The Petitioner duly intimated the Lead LTTC (Respondent No. 1) of the occurrence of the aforesaid *Force Majeure* event vide its Notice dated 17.2.2020.

### **The outbreak of Covid-19 pandemic**

24. The Government of India through the Ministry of Home Affairs ('MHA') Order dated 24.3.2020 ('MHA Order') issued certain unprecedented and unforeseeable guidelines for the containment of the Covid-19 pandemic in the country ('MHA Guidelines'). The MHA Guidelines, *inter alia*, entailed the imposition of a nationwide lockdown with effect from 25.3.2020 for a period of 21 days. During the lockdown, the Government of India permitted the operation of only certain essential services as mentioned in the MHA Guidelines. All the Project activities came to a complete standstill. This was for all types of construction activities, including those for the Project which were not permitted as per the MHA Guidelines. Thereafter, on 15.4.2020, the national lockdown was further extended to 3.5.2020, 17.5.2020 and 30.5.2020. It took around six months for construction to resume at pre-Covid conditions and pace of work. This led to a loss of working time of approximately 6 months for all elements of the Project.

25. Vide an Office Memorandum dated 27.7.2020, the MoP granted a blanket 5 - months extension to all the Transmission Projects under implementation as on the date of lockdown, i.e., on 25.3.2020.

26. In West Tripura district, Section 144 of the Cr.P.C. was also invoked and a curfew was imposed between 16.3.2020 and 31.8.2020. During this period, the work in Tripura, i.e., SP Line, AP Line, at the AGTPP (NEEPCO) switchyard and at the Surajmaninagar Sub-station was stopped. Further, on 22.4.2020, it was clarified that only specific types of construction activities can continue in West Tripura during the imposition of Section

144 Cr.P.C. The construction of the transmission assets was not allowed during the imposition of curfew. On 14.7.2020, the Chief Secretary of Tripura imposed 'Total Lockdown' of 7 days in Tripura. This brought the entire NERSS-V Scheme to a complete standstill. Similarly, all inter-district movements were restricted for 7 days in Assam on 18.7.2020.

27. This led to a substantial loss of working time and, therefore, the same constitutes a *Force Majeure* event under Article 11.3 of the TSA. The Petitioner duly intimated the LTTCs (Respondent Nos. 1-7) of the occurrence of the aforesaid *Force Majeure* event *vide* its Notices dated 19.3.2020.

#### **“CHANGE IN LAW” EVENTS**

28. As per Article 12.1.1 of the TSA, an event constitutes a *Change in Law* event if it occurs after a date, which is 7 (seven) days prior to the bid deadline resulting in any additional recurring or non-recurring expenditure by the TSP or income to the TSP. In the present case, the bid deadline, which is the last date for submission of response to RfP was 18.1.2017. Accordingly, the date 7 days prior to the bid deadline was 11.1.2017 ('cut-off date'). The following events occurred after the cut-off date that have caused the Petitioner to incur additional expenditure towards the Project during its construction period:

#### **Notification and orders for the payment of land compensation/additional forest compensation:**

29. The Government of Assam's Notification dated 10.3.2017 and Arunachal Pradesh Authorities' orders dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.8.2020 amount to *Change in Law* under Article 12 of the TSA.

30. The Government of Assam *vide* Notification dated 10.3.2017, notified the payment of land compensation for the tower base as well as for the corridor of the transmission line, to the landowners. The said Notification was notified after the cut-off date and

required the Petitioner to pay land compensation for the tower base as well as the corridor of the transmission line. Thus, the said Notification qualifies as a *Change in Law* under Article 12 of the TSA. There was no provision of land compensation for the tower base and corridor of the transmission line or any solatium as on the cut-off date. However, the said Notification, the compensation for the tower base @85% of the market value of land and the compensation for the transmission line corridor @15% of the market value of land is required to be paid by the Petitioner and other transmission licensees.

31. Notification issued by the Government of Assam prescribing the rates of land compensation for laying of transmission lines has the force of law. Thus, the Notifications qualify as a *Change in Law* event under Article 12.1.1 of the TSA. On account of the Notification dated 10.3.2017, the Petitioner incurred an additional expenditure of `152825523 for which the Petitioner has submitted audited certificates.

32. For the State of Arunachal Pradesh, the Petitioner was unexpectedly required to pay additional forest compensation which was a separate *Change in Law* event. In April, 2019, the Petitioner already paid `7,80,43,733/-. At the time of bidding for the Project, this was the only compensation contemplated under the applicable forest laws in the State of Arunachal Pradesh.

33. After the cut-off date, in addition to this amount, the Deputy Collectors of Itanagar vide order/demand letters dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.8.2020 sought further payments. These letters demanding additional forest compensation squarely constitute *Change in Law* under Article 12 of the TSA. These were issued by 'Indian Governmental Instrumentalities' and had the force of law. In any case, the requirement to pay such additional forest compensation is a fresh requirement for obtaining a Clearance/ Permit.

Sl. No.	Description of Claims	Total Claim Amount (₹)
1	Compensation towards value of Land and Assets in ROW corridor under Deputy Commissioner, Yupia, Papumpare, Arunachal Pradesh. This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	73760086
2	Additional Compensation towards value of Land and Assets due to construction of BI Line and BI LILO Line under Deputy Commissioner, Yupia, Papumpare, Arunachal Pradesh. This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	3203309
3	Compensation towards value of Land and Assets in ROW corridor under Deputy Commissioner, Itanagar Capital Complex, Papumpare, Arunachal Pradesh. This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	144293334
4	Additional Compensation towards value of Land and Assets due to construction of BI Line and BI LILO Line under Deputy Commissioner, Itanagar Capital Complex, Papumpare, Arunachal Pradesh. This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	6189630

34. The Petitioner intimated the Lead LTTC (Respondent No. 1) of the occurrence of the *Change in Law* events vide its Notices dated 27.2.2019 and 17.11.2020.

35. Despite complying with all applicable forest laws in the State of Tripura, and depositing all monies required thereunder, the Petitioner was required to pay additional compensation to forest dwellers in the area. This was after the identified land was encroached by the local people belonging to tribal settlers of Tripura and forest dwellers. They collectively stopped the work of the Project on several occasions and demanded high compensation amounts. The petitioner faced regular protests and similar situations during construction. At the time of the bidding, there was no such condition/guideline or law requiring the payment of such additional forest compensation in the form of surface damage. Further, the Petitioner could not have proceeded with any construction activities in Tripura over such forest land had it not paid such additional ad-hoc compensation directly to the forest dwellers. As such, the Petitioner was constrained to incur a sum of ₹5,69,74,512/-. The requirement to incur this additional expenditure amounts to a *Change in Law* in accordance with Article 12 of the TSA.

**“Change in Law” expenses on account of Covid-19 and consequent restrictions imposed by Central and respective State Governments**

36. The pandemic occurred long after the cut-off date and was promptly notified to the LTTCs as a *Change in Law* on 19.3.2020. On this account, the Petitioner has claimed the following *Change in Law* compensation:

**A) Idling Charges**

i. To protect the interest of workers and to prevent the movement of migrant workers, the Central Government issued mandatory orders for continued employment and payment of full wages to all workers during the period of lockdown vide addendum dated 29.3.2020 to the MHA Order dated 24.3.2020. These Orders and amendments were issued by Indian Governmental Instrumentalities and, in any case, constitute Law within the meaning contemplated in the TSA. Notably, ‘Notifications’ and ‘Orders’ are expressly recognised as ‘Law’ under the TSA. Further, these were issued by Indian Governmental Instrumentalities and have the force of law. Thus, these orders and amendments thereto constitute a *Change in Law* event under Article 12.1.1 of the TSA. The Petitioner was unable to downsize its resources deployed at its Project’s work sites. This led to the incurrence of substantial, unavoidable, and recurring idling costs for the Project. This was a direct impact of the aforesaid *Change in Law* events.

ii. The Petitioner ensured the payment of full salary and wages to each staff member and all workers employed at the Project. This resulted in additional expenditure due to the idling of manpower for the period of suspension of work. Thus, the Petitioner was compelled to pay these charges for periods when no construction activity could take place. Thereafter, the Petitioner also incurred additional costs for engaging manpower for the extended period of construction due to the delay caused by the outbreak of COVID-19, which was not envisaged at the time of bid submission. These additional expenditures were caused by the aforesaid



*Change in Law* events, namely, MHA Order and its various amendments, especially the order dated 29.3.2020.

iii. The Petitioner is claiming a cumulative *Change in Law* impact of `153589326.97. The Petitioner has duly intimated all LTTCs (Respondent Nos. 1-7) of the occurrence of these *Change in Law* events vide Notices dated 19.3.2020 and 2.3.2021.

**B) Helicopter services**

i) Keeping in view the mandate of fast-track completion of the Project with minimal workforce, the Petitioner was constrained to use the best technologies available to avoid further construction delays and mitigate the impact of various *Force Majeure* and *Change in Law* events. For this, the Petitioner had deployed 1 (number) B3 helicopter for the completion of the remaining construction activities in an expedited and safe manner. The said B3 Helicopter catered to the requirement of material shifting by air, thereby minimizing the on-ground impact. The other alternative, i.e., manual head loading by largescale engagement of the workforce no longer remained a viable option due to the ongoing pandemic outbreak. The helicopter use was necessary to expedite the construction activities and to cut down the time taken for construction from days to hours. The Petitioner had no other option but to use the helicopter and incur additional expenditure in relation to the use of the helicopter for which the Petitioner is entitled to relief under Article 12 of the TSA.

ii) On this account, the Petitioner incurred an expenditure of `12,55,74,300. The Petitioner has duly intimated all LTTCs (Respondent Nos. 1-7) of the occurrence of these *Change in Law* events vide Notices dated 2.3.2021.

**C) Diversion due to the Hollongi Airport**

i) AAI correspondences dated 2.7.2018 and 12.3.2019 that necessitated the Petitioner to divert the BI Line had the force of law. Thus, the Petitioner was uncontrollably prevented from following the originally envisaged route for the BI Line. The requirement to seek permission from the AAI amounts to the imposition of a requirement for obtaining a new clearance/ permit. Therefore, under Article 12.1.1 of the TSA, AAI correspondences dated 2.7.2018 and 12.3.2019 amount to *Change in Law*. On account of the uncontrollable diversion of the BI Line, the Petitioner was required to make additional expenditures.

**D) Additional Civil, Erection and Supply Cost**

i) Due to diversion, the length of the BI Line increased from 67.45 km to 67.93 km. Thus, instead of the earlier requirement of 204 towers, 211 towers had to be erected. This led to an uncontrollable cost escalation of `8639998 as additional civil, erection and supply costs. A comparison of the earlier route and tower requirements against the revised ones is as follows:

Head/ Parameter	No. of Towers	Line Length (in km)
Original Route	204	67.45
Revised Route	211	67.94
Difference	7	0.49

**E) Revised Forest Clearance**

i) Due to the route diversion, the Petitioner was uncontrollably constrained to seek a fresh Forest Clearance for the BI Line. Instead of its earlier proposal for the diversion of 48.147 ha. of forest land, the Petitioner was required to seek forest clearance for 48.987 ha. of forest land. This caused the Petitioner to incur an additional expenditure of `2037650

**“Change in Law” relief**



37. As per clause 12.2.1 of the TSA, the absorption of the impact of increase/decrease in the cost of the Project in the non-escalable transmission charges on account of *Change in Law* events is governed by a prescribed formula. For every cumulative increase of `97 crore in the Project cost up to the Project SCOD, a corresponding increase equal to zero point three one three percent (0.313%) of the non-escalable transmission charges is required to be made in non-escalable transmission charges. Such impact clearly meets the threshold prescribed under Article 12.2.1 of the TSA. The transmission charges ought to be increased in accordance with the terms of the TSA.

### **Lack of Co-ordination with Downstream and Upstream Transmission Elements**

#### **Upstream Elements of PGCIL**

38. PGCIL was developing the upstream elements pertaining to NERSS-II (Part-B). While the Petitioner completed the elements under its scope of work, PGCIL was to commission the upstream elements under its scope. Accordingly, the implementation agency, i.e., POSOCO directed that PGCIL would be bilaterally liable to the Petitioner for transmission charges in respect of its delay period.

#### **Downstream Elements of Tripura State Electricity Corporation Limited (TSECL)**

39. For reasons beyond the Petitioner's control, the downstream transmission elements under the scope of Respondent, TSECL were not being developed in time. The Petitioner learnt that TSECL was not developing the elements within its scope of work due to lack of funds. In order to ensure optimum utilisation of the Project, the Petitioner was constrained to build the said downstream elements on behalf of TSECL and incurred approximately `15 crores for the same. It is prayed that this Commission exercise its regulatory powers to compensate the Petitioner for the same.

40. The Petitioner was constrained to incur additional Interest During Construction (IDC) for the periods of uncontrollable delay of `100 crore approximately.

41. The *Force Majeure* and *Change in Law* claims are as follows:

<b>Force Majeure</b>		
<b>Claim</b>	<b>Elements</b>	<b>Delay</b>
Delay in Grant of Forest Clearance	SM Line	128 days
	SP Line	361 days
	AP Line	302 days
Unexpected requirement for and non-grant of NoC by the AAI	BI Line and BI LILO Line	~27 months
Delay in allotment of Government Land	1. P.K. Bari 400/ 132 kV Sub-stations	~27 months
	2. Surajmaninagar 400/ 132 kV Sub-stations	~23 months
Protests and unrest in the North East due to enactment of the CAA	SM Line	26 days
	BI and BI LILO Lines	60 days
	AP Line, SP Line and associated Sub-stations	15 days
Outbreak of COVID-19 pandemic	All elements	6 months

<b>Change in Law</b>	
<b>Claim</b>	<b>Amount (₹)</b>
Notification dated 10.3.2017 issued by the Government of Assam requiring payment of land and corridor compensation	142472725
Requirement to pay additional forest compensation in Arunachal Pradesh	227446359
Use of helicopter services necessitated by COVID-19 and consequent restrictions	186205624
Idling charges due to COVID-19 and consequent restrictions	150000000
Additional Civil, Erection and Supply Cost due to increase in line length due to diversion caused due to the Hollongi Airport	8639998
Revised forest clearance required due to diversion caused due to the Hollongi Airport	2037650
Payment to Forest Dwellers	6664132.38
Interest During Construction (IDC)	1000000000
<b>Total</b>	<b>1723466488</b>

42. During the course of hearing the matter, various submissions were filed by the Petitioner by way of affidavit dated 10.11.2021 (in compliance with RoP dated 16.11.2021); affidavit dated 20.9.2022 (in compliance with technical validation letter dated 5.8.2022); affidavit dated 12.12.2022 (in compliance with RoP dated 24.11.2022); affidavit dated 6.3.2023 (in compliance with RoP dated 9.2.2023); affidavit dated 15.5.2023 (in compliance with RoP dated 21.3.2023); affidavit dated 9.6.2023 (in compliance with RoP dated 22.5.2023); Written Submissions dated 14.6.2023 (in compliance with RoP dated 22.5.2023) and synopsis dated 29.2.2024. Besides this, the Petitioner has filed rejoinder affidavit dated 25.2.2022 to the reply filed by PGCIL.

CTUIL filed compliance affidavit 25.8.2022 in response to technical validation letter 5.8.2022; PGCIL filed submissions vide affidavit dated 31.3.2023 in response to RoP dated 21.3.2023, and that Grid India filed affidavit dated 9.6.2023 in response to RoP dated 22.5.2023. The Petitioner filed amended memo of parties on 11.8.2022.

43. The submissions and counter submissions in detail have been included in our analysis and decision at the appropriate places in this order while dealing with the issues raised in the petition.

### **Reply of Powergrid Corporation of India Limited (PGCIL)**

44. PGCIL vide affidavit dated 19.1.2022, has made the following submissions with regard to SM Line:

- a) PGCIL filed Petition No. 41/TT/2022 (Diary No.173 of 2021) seeking tariff of the elements completed by it pertaining to NERSS-II (Part-B) as well as tariff Petition No. 167/TT/2022 (Diary No.9 of 2022) pertaining to tariff of assets implemented under NERSS-V.
- b) The Petitioner has claimed deemed COD only for SM Line as 27.2.2021 on the basis that upstream assets of PGCIL are delayed. The Petitioner has not pointed out as to which assets of PGCIL have been delayed. PGCIL has implemented its assets as part of the NERSS-II (Part-B) much before the COD/ deemed COD of various elements of the Petitioner.
- c) PGCIL's Asset i.e. 80 MVAR Bus Reactor at Misa Sub-station was early executed on 23.6.2020 to control the over-voltages, as agreed in the 21st TCC and the NERPC Meeting.
- d) The assets of PGCIL, namely, '2 number 400 kV (GIS) bays at Silchar and 2 number 400 kV (GIS) bays along with 2X80 MVAR Switchable Line Reactors at Misa for 400 kV D/C (Quad) Silchar-Misa Transmission Line' and '2 number 132 kV line bays at Biswanath Chariali Sub-station (for termination

of Biswanath Chariyali – Itanagar (Arunachal Pradesh)’ were ready with proposed COD w.e.f. 13.12.2020 and 30.6.2020 respectively. It is not clear as to why the Petitioner declared the deemed COD of SM Line when its transmission assets were itself delayed and PGCIL’s assets were ready.

- e) No bilateral billing can be done between the Petitioner and PGCIL. However, PGCIL has received a bilateral bill dated 9.12.2021 from CTUIL. According to PGCIL, there was no delay on its part qua its assets under NER-II (Part-B) as they were ready before the COD of the Petitioner’s assets. PGCIL has accordingly questioned the bill dated 9.12.2021 issued by CTUIL on PGCIL as well as the prayer of the Petitioner that PGCIL may be directed to pay the Petitioner transmission charges for the periods when PGCIL’s upstream transmission elements were delayed but Petitioner had achieved COD for SM Line and all elements of NERSS-V.
- f) The assets to be developed by PGCIL under NERSS–V with their SCOD/COD are as follows:

Sl. No	Asset Name	SCOD	COD
1	Additional 400 kV D/C line (Circuit-I) at P.K. Bari end and Silchar end for termination of P.K. Bari- Silchar 400 kV D/C line (initially operated at 132 kV) at 400 kV P.K. Bari and 400 kV Silchar (GIS) end along with 400 kV GIS bay at Silchar Sub-station.	31.7.2020/ (as per IA)/ 31.12.2020 (as per MoP communication dated 27.7.2020 for extension of timelines due to Covid-19 pandemic)	8.3.2021
2	Additional 400 kV D/C line (Circuit-II) at P.K. Bari end and Silchar end for termination of P.K. Bari- Silchar 400 kV D/C line (initially operated at 132 kV) at 400 kV P.K. Bari and 400 kV Silchar (GIS) end along with 400 kV GIS bay at Silchar Sub-station.		13.3.2021
3	Additional 400 kV D/C line at Pallatana and Surajmaninagar ends for termination of 400 kV D/C Palatana - Surajmaninagar line at 400 kV Palatana (Bays under TBCB) and 400 kV Surajmaninagar (Sub-station under TBCB).		20.4.2021 (Proposed)

- g) The delay occurred in the COD of Petitioner’s assets has been for reasons completely beyond the control of PGCIL. PGCIL is seeking COD approval for its Asset-3 (Sl. No. 3 above in the table) under Regulation 5(2) of the 2019

Tariff Regulations. Asset-3 was ready for charging on 20.4.2021 but was finally charged and synchronized on 11.7.2021 and the delay was due to non-availability of shut down of 132 kV Palatana- Surjamaninagar for termination of 400 kV Palatana- Surjamaninagar (ISTS) transmission line at 400 kV bays at Pallatana (OTPC) & Surjamaninagar (ISTS) ends respectively.

- h) With regards to assets covered under NERSS-V, the issues faced by PGCIL during the implementation were mainly *Force Majeure* events beyond its control which led to delay in commissioning of its assets. The detailed reasons for delay are as follows:

**Change in Location of Surjamaninagar Sub-station**

- i) New 400 kV ISTS Sub-station at Surjamaninagar under TBCB scope was initially conceived close to the existing State-owned sub-station which was subsequently shifted to about 10 km away from the originally envisaged location by Petitioner. The intimation of this change in location was not communicated to PGCIL and during commencement of survey of the line, it was found that due to this change in sub-station location, the line length of 400 kV Surajmaninagar- Palatana Transmission Line in PGCIL scope would increase by at least 22 times the originally envisaged line length. Against the initial length of 0.5 km at Surajmaninagar end, the actual line length increased to about 11.5 km. Thus, the Petitioner shifted the location of sub-station without the consent of stakeholders.
- j) Due to this increase in line length, the contractor executing the works, refused to take up works at Surajmaninagar end due to shift in location of the sub-station.
- k) Scope at Surajmaninagar Sub-station (TSECL) was modified during the first Standing Committee Meeting (NERSCT) held on 29.11.2018. Accordingly,



multi-circuit towers in-addition of other changes in BoQ (due to change in line length) were required to be constructed for LILO portion to 400 kV Surajmaninagar (TBCB). In view of this, tendering activities could not be taken up until finalisation of scheme.

- l) Finally, in the second Standing Committee Meeting (NERSCT) held on 8.11.2019, it was decided that 400 kV Palatana Surajmnainagar (TSECL) shall be shifted to 400 kV Surajmaninagar (TBCB) Sub-station. Accordingly, PGCIL could take up finalisation of BoQ only after 8.11.2019. Thereafter, tendering process for revised scheme was taken up. Subsequently, award was placed on a new contractor vide NoA dated 18.8.2020 in spite of various challenges faced due to Covid-19 pandemic.
- m) The whole construction of additional 400 kV D/C Palatana-Surajmaninagar Transmission Line at Surajmaninagar end was completed in 8 months from the date of award.

#### **Change in the Location of P.K. Bari Sub-station**

- n) The new 400 kV ISTS Sub-station at P. K. Bari under TBCB scope was conceived close to the existing State-owned sub-station. However, the new 400 kV Sub-station at P. K. Bari awarded to the NER-II TL/Petitioner under TBCB was located at an entirely different location (at about 10 km from originally envisaged location). The intimation of this change in location was not communicated to PGCIL. Investment Approval for the project was accorded in April, 2018 and award was placed for execution of line length of 2.10 km, considering the originally envisaged location.
- o) During the commencement of survey of line, it was found that due to this change in sub-station location, the line length of 400 kV D/C Silchar P. K. Bari Transmission Line in PGCIL's scope would increase by at least 5 times the originally envisaged line length. Against the initial length of 2.1 km at P. K. Bari

end, the actual line length increased to 10 km. This change in sub-station land was brought into light during the 19th TCC and the 19th NER Power Committee Meetings held on 28th and 29th November, 2018 respectively. In the said meeting, TSECL stated that while finalizing the locations of 400 kV proposed sub-stations, no interaction was made with it by Sterlite which creates an additional burden for Tripura (Page No 47, MoM of the 19th TCC and the 19th NERPC Meeting held on 28th and 29th November, 2018 at Guwahati). Thus, the Petitioner/Sterlite has made shift of location of sub-station without the consent of stakeholders.

- p) There was exorbitant increase in line length and as such the contract had to be amended accordingly for increased quantities of tower, conductor, other line material quantities and civil quantities which severely affected the commencement of construction activities.

**Pallatana – Surajmani Nagar 400 kV D/C line (being operated at 132 kV level) - Multiple Changes in the Scheme**

- q) During execution of the work, scheme of 400 kV Pallatana-Surjamaninagar was changed multiple times in various meeting. During the 1<sup>st</sup> Standing Committee Meeting of NERPC dated 29.11.2018, the scope was modified.

Earlier Scope-Additional 400 kV D/C line at Surajmani Nagar end for termination of Palatana-Surajmani Nagar 400 kV D/C line (operated at 132 kV) at 400 kV Surajmani Naga (ISTS) Sub-station.

Revised Scope-LILO of Palatana-Surajmani Nagar (TSECL) 400 kV D/C line (operated at 132 kV) at Surajmani Nagar (ISTS) Sub-station and operation of Palatana-Surajmani Nagar (ISTS) section at rated voltage level of 400 kV and operation of Surajmani Nagar (TSECL)-Surajmani Nagar (ISTS) section at 132 kV (with provision to operate the line at 400 kV level in future, as and when required).

This change necessitated use of multi circuit towers instead of double circuit towers in addition to additional items in the BoQ. Investment Approval of the project was accorded in April, 2018. Award to the contractor was in made June, 2018 and first scope change was approved in November, 2018.

- r) During the 2<sup>nd</sup> Standing Committee Meeting of NERPC on 8.11.2019, the scheme was further modified. Shifting of Palatana-Surajmaninagar (TSECL) 400 kV D/C line (operated at 132 kV) to the 400/132 kV Surjamaninagar ISTS Sub-station to form 400 kV D/C Palatana-Surjamaninagar (ISTS) Transmission Line. Due to the above changes, PGCIL was not able to finalise the BoQ and scope of works till 8.11.2019 which led to delay in commissioning of assets.

**Delay due to Protests against Citizenship Amendment Bill**

- s) The construction activities of the line were adversely affected due to the protests in the entire North-East India, especially in Assam and Tripura against CAA, 2019. The movement of men and materials had stopped completely and the impact of this was felt strongly in Unakoti and Barak valley where there were reports of severe local disturbance.

**Outbreak of Covid-19 pandemic**

- t) Due to the outbreak of Covid-19 nation-wide lockdown was imposed by Govt. of India w.e.f. 25.3.2020 which continued upto 3.5.2020 through the Government of India order dated 14.4.2020 with some relaxations for construction works with minimum workforce but maintaining SOP for social distancing. Lockdown was further extended up to 17.5.2020 and thereafter up to 31.5.2020, with relaxations. The precious working months typical to NER were lost due to lockdown and peak monsoon with heavy rain had set in resulting in sites being waterlogged and unapproachable.

## **Rainfall**

- u) During the monsoon of 2020, particularly high rainfall was experienced in September, 2020 and October, 2020 in West Tripura and Cachar, Assam where the line sections were under construction. This resulted in inundated, waterlogged, unapproachable sites/locations and the construction work was considerably delayed.

## **Delay in material movement due to crack in Dwar Ksuid Bridge on NH-6 (Shillong Bye Pass) and Subsequent Weight Restriction**

- v. On 30.10.2020, the Deputy Commissioner of Ri Bhoi District (border district of Meghalaya between Shillong and Guwahati), through a press release informed that Dwar Ksuid Bridge has developed cracks and the permissible load is restricted to 10 MT. This bridge is situated on NH-6 in the Shillong Bye Pass and falls on the way to P. K. Bari. The trucks carrying tower parts, conductor, etc. usually have a gross load of 25 to 30 MT. On 3.12.2020, Transport Department of Meghalaya through Press Release restricted the gross weight of Trucks to ply through Umiam Bridge to 20 MT. This led to a deadlock situation where the material movement was stopped completely. Complete material movement had to be re-planned and trucks with lesser gross weight had to be engaged for movement of goods. This situation prevailed till the commissioning of additional 400 kV D/C Silchar- P. K. Bari transmission line.

## **Non-availability of Shut down of 132 kV Pallatana-Surjamaninagar for termination of 400 kV Pallatana-Surjamaninagar (ISTS) Transmission Line at 400 kV bays at Pallatana (OTPC) & Surjamaninagar (ISTS) End**

- w. The work related to the subject transmission line was completed in 1<sup>st</sup> week of April, 2021. The shut down for 132 kV Pallatana-Surjamaninagar I&II was applied from 10.4.2021 to 17.4.2021 for enabling termination of 400 kV Pallatana- Surjamaninagar Transmission Line at existing Loc No. 05 (Pallatana Side) and Loc No. 94 (Surjamaninagar Side) in order to terminate

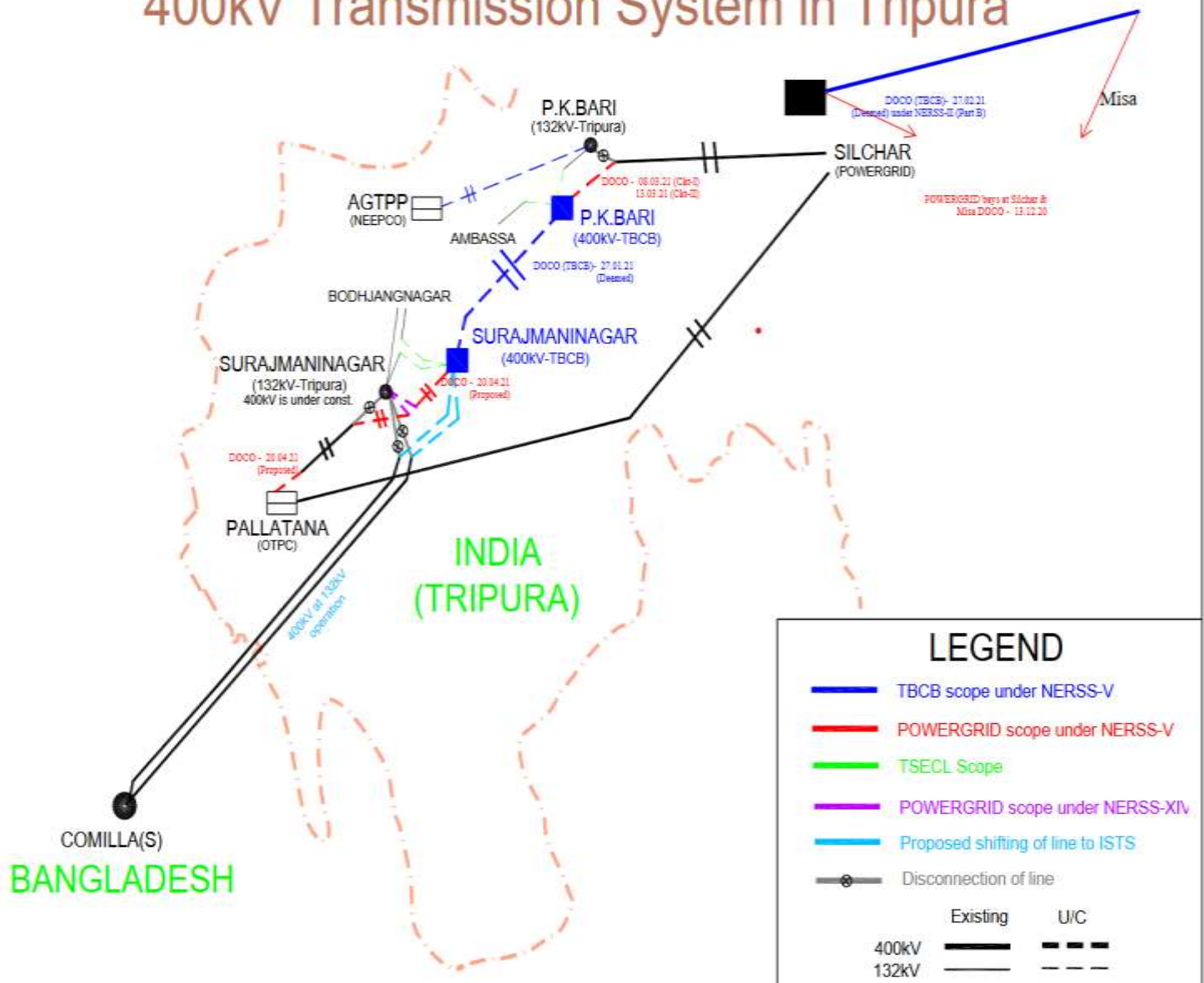
the line at 400 kV gantry of Pallatana and Surjamaninagar (ISTS sub-station). The consent for shut-down was however not accorded by TSECL and they requested Ministry of Power, Govt of India for considering the case for keeping one circuit of 400 kV Pallatana – Surjamaninagar (TSECL) Transmission Line (charged at 132 kV) connected to Surjamaninagar (TSECL). During the meeting held on 18.5.2021 in the presence of Member (Power System), CEA, NERPC, NERLDC, CTU, Powergrid, TSECL, it was decided to keep one circuit of 400 kV Pallatana- Surjamaninagar (TSECL) Transmission Line (charged at 132 kV) and other circuit of 400 kV Pallatana-Surjamaninagar Transmission Line is to be shifted to 400/ 132 kV Surjamaninagar (ISTS) Sub-station. For enabling this and in view of technical requirements, special additional arrangement using ERS towers had to be made at site for retaining a connection between Pallatana (OTPC) and Surjamaninagar (TSECL). Eventually, after additional arrangements as per MOM dated 18.5.2021 were made, consent for shut down of the line was obtained from TSECL and approved by NERPC w.e.f. 25.6.2021 to complete the balance works. The line was charged and synchronized on 11.7.2021. It is evident from above that the scope of work under PGCIL though completed on 20.4.2021 but could not be commissioned due to delay on the part of TSECL till 11.7.2021 and the same was beyond the control of Powergrid.

- x. The non-availability of Powergrid's assets under NERSS-V have not affected the utilisation of any of the assets developed by the Petitioner under NERSS-V. Pallatana (OTPC) power was evacuated to Surajmaninagar (TSECL) Sub-station and was further transmitted through existing 132 kV Palatana–Surajmaninagar line. Surajmaninagar (TSECL) Sub-station was connected to Surajmaninagar (TBCB) 400 kV Sub-station through LILO of

one circuit of 132 kV Surajmaninagar (TSECL)-Bodhjungnagar (TSECL) line at Surajmaninagar (TBCB) which was commissioned on 28.12.2020. This date is prior to the deemed COD claimed by the Petitioner for its NERSS-V assets.

- y. P. K. Bari assets were also put to use on the date of claimed deemed COD by the Petitioner as power from P. K. Bari (TBCB) Sub-station was evacuated through LILO of 132 kV Ambasa (TSECL)-P. K. Bari (TSECL) line at P. K. Bari (TBCB) Sub-station which was commissioned on 2.2.2021. In fact, the elements, LILO of one Ckt of 132 kV Surajmaninagar (TSECL) - Bodhjanagar line (TSECL) at Surajmaninagar Sub-station (TBCB) and LILO of 132 kV Ambasaa (TSECL)-P. K. Bari (TSECL) at P. K. Bari Sub-station (TBCB) were implemented by the Petitioner on behalf of TSECL. Accordingly, the TBCB assets were serving the intended purpose and getting utilised since commissioning.
- z. In view of the discussions in the 3rd meeting of the NERPCTP, it is clear that the assets of the Petitioner under NERSS-V, which are delayed from SCOD and deemed COD have been claimed, were being utilised from the date of claimed deemed COD dates. As the assets were being utilised from the deemed COD dates, recovery for the same should be through the POC pool even if the Commission grants the deemed COD to the Petitioner. In fact, there is no reason to seek any deemed COD approval since effective 27.1.2021 and 21.2.2021(Assets-1 to 4 and Assets-5 to 7 respectively), the assets of NERSS-V implemented by the Petitioner were having power flow.
- aa. The map of the NERSS-II (Part-B) & NERSS-V showing the scope of the Petitioner, PGCIL and TSECL along with the respective dates of COD of the various elements is as follows:

# 400kV Transmission System in Tripura



- bb. The NERSS-V assets being implemented by the PGCIL were delayed for reasons beyond its control. The liability of an upstream or downstream licensee to bear the transmission charges of another licensee in the absence of any law or contract has been decided by the Appellate Tribunal in its recent judgment dated 14.9.2020 in Appeal No. 17 of 2019-NRSS XXXI (B) Transmission Ltd v CERC & Ors. Appellate Tribunal has held that even though there was a mismatch, the entity which has committed the mismatch is not liable to make payment of even IDC and IEDC to the other since the same amounts to imposing damages without there being any contract. PGCIL cannot be saddled with either the transmission charges or the IDC/



IEDC of the Petitioner's assets since the delay in achieving COD of NERSS-V assets within the scope of PGCIL was for the reasons beyond its control. Appellate Tribunal has also held that if the delay in the case of the upstream or downstream licensees is condoned, the IDC or IEDC for mis-match cannot be imposed on such licensees. Therefore, no liability can be cast upon Powergrid.

cc. With regard to bill dated 9.12.2021 issued by CTUIL on Powergrid, it is stated that on account of *Force Majeure* events as detailed above, the delay in commissioning of assets under NERSS-V was beyond the control of PGCIL and as such it is not liable for payment of transmission charges to Petitioner. PGCIL has issued a bill dispute notice dated 6.1.2022 as per the BCD Procedure under the 2020 Sharing Regulations.

45. Respondent No.10, CTUIL vide affidavit dated 25.8.2022 has made the following submissions:

a) CTUIL has recovered the transmission charges for the assets of Petitioner from POC pool w.e.f. the actual COD, the details of which are as follows:

<b>Element No.</b>	<b>Name of the Element</b>	<b>Date from which transmission charges have been considered in the pool</b>
1	400/132 kV, 7x105 MVA Single Phase (including one spare) Sub-station at Surajmaninagar	31.3.2021
2	400/132 kV, 7X105 MVA single phase (including one spare) Sub-station at P.K. Bari	11.3.2021
3	Surajmaninagar - P.K. Bari 400 kV D/C Line	Ckt-1:4.2.2021 Ckt-2:11.2.2021
4	2 number 400 kV line bays at Palatana GBPP switchyard for termination of Palatana- Surajmaninagar 400 kV D/C Line	13.7.2021

b) In respect of the elements; (i) LILO of P.K. Bari (TSECL) to Ambassa 132 kV Line at P.K. Bari (TBCB) and (ii) LILO of Surajmaninagar (TSECL) to Bodhjangnagar 132 kV Line at Surajmaninagar (TBCB), these lines are intra-State



in nature. The work related to the implementation of the above lines was under the scope of Tripura State Electricity Corporation Limited (TSECL). The necessary approval with respect to implementation of these lines was accorded in the Second meeting of North Eastern Regional Power Committee-Transmission Planning (NERPC-TP) held on 25.9.2020, the details of which are as under:

**LILO of P.K. Bari (TSECL) to Ambassa 132 kV Line at P. K. Bari (TBCB) and LILO of Surajmaninagar (TSECL) to Bodhjangnagar 132 kV Line at Surajmaninagar (TBCB):**

- i. TSECL had proposed construction of 'LILO of 132 kV Single Circuit Ambassa P.K. Bari (TSECL) line at P.K. Bari (ISTS) Sub-station' (2.5 km approximate length) and 'LILO of one circuit of 132 kV D/C line from Surajmaninagar (TSECL) to Bodhjungnagar (TSECL) at Surajmaninagar (ISTS) Sub-station (5.5 km approximate length)' vide letter dated 27th May 2020. In this regard, CEA had communicated that it had no objection to the proposed changes [viz. implementation of said LILO in place of earlier agreed P.K. Bari (ISTS)-P.K. Bari (TSECL) 132 kV D/C line and Surajmani Nagar (ISTS)-Surajmani Nagar (TSECL) 132 kV D/C line] in intra-state transmission system vide its letter dated 9.6.2022. With regard to mode of implementation of these transmission works, it was informed that TSECL may decide themselves since these are intra-state transmission system. The above system needs to be commissioned with the commissioning of 400/132 kV P.K. Bari (ISTS) Sub-station and 400/132 kV Surajmaninagar (ISTS) Sub-station.

46. In response to the reply filed by PGCIL, the Petitioner vide affidavit dated 25.2.2022 has made the following submissions:

- a) POSOCO's Notification dated 25.2.2021 directs PGCIL to pay the Petitioner transmission charges bilaterally in terms of Regulation 13(12) of the 2020 Sharing Regulations for certain NERSS-V elements. The relevant NERSS-V elements mentioned in this regard are Surajmaninagar and P. K. Bari Sub-

stations, Surajmaninagar- P. K. Bari 400 kV D/C line and 2 number 400 kV line bays at Palatana GBPP Switchyard. Regulation 13(12) of the 2020 Sharing Regulations specifically encapsulates the well-settled defaulters' payment liability principle.

- b) PGCIL, having delayed its scope of work, is now merely trying to delay the payment of the Petitioner's legitimate dues.
- c) PGCIL was developing the upstream elements pertaining to NERSS-II (Part-B). The Petitioner has completed the elements under its scope of work SM Line and Biswanath Chariyalli (POWERGRID)-Itanagar 132 kV D/C (Zebra Conductor) Line ("BI Line"), which were impacted by the *Force Majeure* events as detailed in the petition.
- d) PGCIL has unilaterally assumed a five months' extension in the SCOD based on Ministry of Power's Office Memorandum dated 27.7.2020. Such unilateral assumption of SCOD extension cannot be countenanced in law.
- e) PGCIL has stated that the assets under NERSS-V were delayed on account of various alleged *Force Majeure* events which are pending adjudication in Petition No. 167/TT/2022 before the Commission.

**Change in location of Surajmaninagar Sub-station and P. K. Bari Sub-station**

- f) Under Article 5.1.4(a) of the TSA, the Petitioner has the sole responsibility and prerogative to acquire land for location-specific sub-stations. While constructing elements in the same transmission scheme, PGCIL was expected to keep itself apprised of the scope of work and obligations of the Petitioner. In this case, there was no requirement for the Petitioner to consult PGCIL or any other party before finalizing its sub-station location. Thus, the alleged change in sub-station location is in no way a *Force Majeure*/ uncontrollable event. Therefore, it is denied that PGCIL was affected by any *Force Majeure*/ uncontrollable event on

this account. The Petitioner had in fact extended its support to PGCIL for the placement of PGCIL's dead end tower inside Petitioner's Surajmaninagar Sub-station.

- g) The Petitioner denied the alleged claims of PGCIL on account of various *Force Majeure* events.
- h) The Petitioner's NERSS-V elements were stranded due to delay by PGCIL in commissioning its inter-connecting elements *viz.* Palatana-Surajmaninagar (ISTS) 400 kV D/C Line, and P. K. Bari-Silchar 400 kV D/C Line.
- i) The reliance placed by PGCIL on the judgement of the Appellate Tribunal for Electricity dated 14.9.2020 in Appeal No. 17 of 2019 in the case of NRSS XXXI (B) Transmission Ltd vs. CERC & Ors. ("NRSS Judgment") is flawed since PGCIL's claims for *Force Majeure* and deemed CODs are both sub judice and have not yet been decided by the Commission.

47. The matter was heard on various dates and after detailed hearing, order in the matter was reserved on 16.2.2024.

### **Analysis and Decision**

48. We have considered the rival submissions.

49. The Petitioner has submitted that there is time over-run in case of the transmission elements under its scope due to *Force Majeure* events like (a) delay in grant of forest clearance, (b) unexpected requirement for and non-grant of NoC by AAI, (c) requirement to obtain forest clearance on account of the unexpected requirement for and non-grant of NoC by AAI, (d) delay in allotment of Government land, (e) protest in the North-East due to amendment of Citizenship (Amendment) Act, 2019, (f) outbreak of Covid-19 pandemic and sought extension of their Scheduled Commercial Operation Date (SCOD) in terms of the Article 11 and Article 12 of the TSA dated 27.12.2016.

50. The Petitioner has further submitted that the instant Project has also faced several *Change in Law* events like (i) payment of land and corridor compensation as per Government of Assam orders/directions, (ii) requirement to pay additional forest compensation in Arunachal Pradesh, (iii) idling charges due to Covid-19 and consequent restrictions, (iv) additional cost due to increase in line length due to diversion caused due to Hollongi Airport, (v) payment to forest dwellers, (vi) revised forest clearance required due to diversion caused due to the Hollongi Airport and (vii) IDC and accordingly sought compensation. Thus, the Petitioner seeks various consequential reliefs in terms of TSA provisions so that it may be restituted to its original financial position had these events not occurred.

51. It is submitted that there was lack of co-ordination with downstream and upstream transmission elements, related with the implementation of Petitioner's elements. It is pointed out that while the Petitioner completed the elements under its scope of work, PGCIL is yet to commission upstream elements under PGCIL's scope. Accordingly, the Petitioner has prayed that PGCIL will be bilaterally liable to the Petitioner for transmission charges in respect of the periods of PGCIL's delay i.e. the mismatch period. Similarly, the downstream transmission elements under the scope of Respondent TSECL were not being developed in time and the Petitioner was constrained to build the said downstream elements on behalf of TSECL, as TSECL was not developing the elements due to lack of funding, and incurred approximately `15 crore for the same and the Petitioner is praying for compensation of the same.

52. PGCIL has submitted that the contention of the Petitioner is incorrect and it is also not clear under which circumstances the direction for bilateral billing has been issued by POSOCO. PGCIL came to know of the liability only when it received a bill dated 9.12.2021 from CTUIL to this effect. Accordingly, without prejudice to the contentions of PGCIL on

the bill dated 9.12.2021 issued by CTUIL, in so far as prayer (k) of the present petition is concerned, there is no delay on the part of PGCIL as assets under NER-II Part (B) were ready before the COD of assets of the Petitioner.

53. We have considered the submissions of the Petitioner and Respondents and have gone through the material available on record. Based on the pleadings of the parties and material record, the following issues arise for our consideration:

**Issue No. 1: What shall be the deemed COD, wherever applicable, and actual COD of the Elements of the transmission project? Who shall be responsible for payment of the transmission charges from the date of deemed COD/COD?**

**Issue No. 2: Is the Petitioner entitled for the reimbursement of expenditure incurred by the Petitioner for the construction of downstream network of Respondent No. 2, Tripura State Electricity Corporation Limited (TSECL)?**

**Issue No. 3: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under *Force Majeure* and “Change in Law ”?**

**Issue No. 4: Whether the ‘*Force Majeure* Events’ claimed by the Petitioner are permissible in terms of TSA and subsequent extension of SCOD of the elements under the scope of the Petitioner?**

**Issue No. 5: Whether the “*Change in Law* ” Events’ claimed by the Petitioner are permissible in terms of the TSA and the Petitioner is entitled for consequential relief in terms of TSA?**

**Issue No. 6: Whether the Petitioner is entitled to recover IDC and IEDC as claimed?**

**Issue No. 7: Liability of liquidated damages on the Petitioner for the delays caused in implementation of the transmission elements.**

**Issue No. 8: Whether the Petitioner is eligible for carrying cost?**

54. Now, we deal with the above said issues.

**Issue No.1: What shall be the deemed COD, wherever applicable, and actual COD of the Elements of the transmission project? Who shall be responsible for payment of the transmission charges from the date of deemed COD/COD?**

55. The Scope of the transmission project as per Schedule 2 of the TSA in the instant Petition is as follows:

**“Schedule: 2  
Project Description and Scope of Project**

**1.0 Project Scope:**

S. No.	Transmission Scheme	Completion Target
<b>NERSS-II (Part-B)</b>		
1.	<p><i>Biswanath Chariyali (POWERGRID) - Itanagar 132kV D/c (Zebra conductor) line</i></p> <p><i>Line Bays:</i></p> <ul style="list-style-type: none"> <li>• <i>Itanagar S/s (Arunachal Pradesh): 2 nos. 132 kV line bays for termination of Biswanath Chariyali (POWERGRID) - Itanagar 132 kV D/c (Zebra conductor) line</i></li> </ul>	36 months
2.	<i>Silchar (POWERGRID) - Misa (POWERGRID) 400kV D/c (Quad) line</i>	44 months
3.	<i>LILO one circuit of Biswanath Chariyali (PG) - Itanagar 132kV D/c line at Gohpur (AEGCL)</i>	36 months
<b>NERSS-V</b>		
1	<p><i>Establishment of 400/132 kV, 7X105 MVA Single phase (including one spare) S/s at Surajmaninagar</i></p> <p><b><u>400 kV</u></b></p> <ul style="list-style-type: none"> <li>• <i>ICTs: 400/132 kV, 7x105 MVA single phase (including one spare)</i></li> <li>• <i>ICTs bays: 2 no.</i></li> <li>• <i>Line bays: 4 no.</i> <i>[2 no. for Palatana -Surajmaninagar and 2 no. for Surajmaninagar- P K Bari 400 kV D/C Line]</i></li> <li>• <i>Bus reactor: 2x125 MVAR</i></li> <li>• <i>Bus reactor bays: 2 no.</i></li> <li>• <i>Space for future line bays (incl. space for sw. line reactor): 6 no.</i></li> <li>• <i>Space for ICT bays: 1 no.</i></li> </ul> <p><b><u>132 kV</u></b></p> <ul style="list-style-type: none"> <li>• <i>ICTs bays: 2 no.</i></li> <li>• <i>Line bays: 2 no.</i> <i>[2 no. for Surajmaninagar (TSECL) – Surajmaninagar (TBCB) 132 kV Line with high capacity / HLTS (equivalent to single moose)]</i></li> <li>• <i>Space for future line bays: 6 no.</i></li> <li>• <i>Space for ICT Bays: 1 no.</i></li> </ul> <p><i>Space for future 400/132 kV, 315 MVA ICT TSP is free to choose the location of Surajmaninagar S/s within a radius of 10 km from the Surajmaninagar (TSECL) S/s</i></p>	40 months
2.	<p><i>Establishment of 400/132 kV, 7X105 MVA Single phase (including one spare) S/s at P.K. Bari</i></p> <p><b>400 kV</b></p> <ul style="list-style-type: none"> <li>• <i>ICTs: 400/132 kV, 7x105 MVA single phase (including one spare)</i></li> <li>• <i>ICTs bays: 2 no.</i></li> </ul>	40months

	<ul style="list-style-type: none"> <li>Line bays: 4 no. [2 no. for Surajmaninagar- P K Bari and 2 no. for P. K. Bari – Silchar 400 kV D/C line]</li> <li>Bus reactor: 2x125 MVAR</li> <li>Bus reactor bays: 2 no.</li> <li>Space for future line bays (incl. space for sw. line reactor): 6 no.</li> <li>Space for ICT bays: 1 no.</li> </ul> <p>132 kV</p> <ul style="list-style-type: none"> <li>ICTs bays: 2 no.</li> <li>Line bays: 2 no. [2 no. for P. K. Bari (TSECL) – P. K. Bari (TBCB) 132 kV Line with high capacity / HLTS (equivalent to single moose)]</li> <li>Space for future line bays: 6 no.</li> <li>Space for ICT Bays: 1 no.</li> </ul> <p>Space for future 400/132 kV, 315 MVA ICT</p>	
3.	Surajmaninagar- P K Bari 400 kV D/C line with Twin ACSR Moose	40 months
4.	AGTPP (NEEPCO) – P.K. Bari (TSECL) 132 kV D/c line with high capacity HLTS conductor (equivalent to single moose ampacity at 85° C)	36 months
5.	2 no. 132 kV line bays each at AGTPP (NEEPCO) and P.K. Bari (TSECL)	36 months
6.	2 no. 400 kV line bays at Paatana GBPP switchyard for termination of Palatana -Surajmaninagar 400 kV D/C Line.	40 months

**Note:**

- CTU (POWERGRID) would provide following:
  - 2 no. 400kV GIS line bays each at Silchar and Misa substations for termination of Silchar - Misa 400kV D/c line (Quad) line
  - 2 no. 132kV line bays at Biswanath Chariyali for termination of Biswanath Chariyali - Itanagar (Zebra conductor) 132 kV D/c line. In case of space constraint GIS bays would be provided
  - 420, 1x80 MVAR bus reactor at Misa (PG) along with GIS bay
  - 80 MVAR switchable line reactor at Misa end of Silchar– Misa 400kV D/C (Quad) line on either circuits.
- DoP, Arunachal Pradesh to provide space for 2 no. 132kV line bays at Itanagar S/s for termination of Biswanath Chariyali – Itanagar (Zebra conductor) 132kV D/C line
- AEGCL to provide 2 No. of 132kV bays at Gohpur 132kV s/s.
- AEGCL to implement the double main bus switching scheme at Gohpur 132 kV GIS s/s before Dec 2019.
- TSECL to provide space for 2 no. 132 kV line bays at P. K. Bari (TSECL) S/s for termination of AGTPP (NEEPCO) – P.K. Bari (TSECL) 132 kV D/C line
- NEEPCO to provide space for 2 no. 132kV line bays at AGTPP generation switchyard for termination of AGTPP (NEEPCO) – P.K. Bari (TSECL) 132 kV D/C line
- OTPC to provide space for 2 no. 400kV line bays at Palatana generation switchyard for termination of Palatana – Surajmaninagar 400kV D/C line (presently charged at 132kV).



56. The Schedule 3 of the TSA dated 27.12.2016 provides as follows:

“ .....

**Schedule: 3  
Scheduled COD**

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

<b>S. No</b>	<b>Name of the Transmission Element</b>	<b>Scheduled CoD from effective date</b>	<b>Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project</b>	<b>Element(s) which are pre-required for declaring commercial operation (COD) of the respective Element</b>
<b>NERSS-II (Part-B)</b>				
1	Biswanath Chariyalli (POWERGRID)-Itanagar 132KV D/c (Zebra conductor) line	36 months	3.38%	Element s at Sl. No. 1& 2 are required simultaneously
2	2 nos. 132KV line bays at Itanagar for termination of Biswanath Chariyalli (POWERGRID)-Itanagr 132KV D/c (Zebra conductor) line	36 months	0.49%	Element at Sl. No. 1& 2 are required simultaneously
3	LILO of one circuit of Biswanath Chariyalli (POWERGRID)-Itanagar 132KV D/c (Zebra conductor) line at Gohpur (AEGCL)	36 months	0.29%	After commissioning of elements at Sl. No. 1& 2
4	Silchar (POWERGRID)-Misa (POWERGRID) 400KV D/c (Quad) line	44 months	53.67%	Nil
<b>NERSS-V</b>				
5	400/132 kv, 7x 105 MVA Single Phase (including one spare) S/s at Surajmaminagar	40 months	8.28%	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
6	400/132KV, 7x 105MVA Single Phase (including one spare) S/s at P.K Bari	40 months	8.28%	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
7	Surajmaminagar-P.K Bari 400KV D/c line	40 months	17.38%	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
8	2 no. 400KV line bays at Palatana GBPP switchyard for termination of Palatana-Surajmaninagar 400 KV D/c line.	40 months	1.51%	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
9	AGTPP (NEEPCO)-P.K.Bari (TSECL) 132KV D/c line with high capacity HTLS conductor	36 months	5.74%	Elements at Sl. No.9, 10 & 11 are





	<i>(equivalent to single moose ampacity at 85°C)</i>			<i>required simultaneously</i>
10	<i>2 no. 132 KV line bays at AGTPP generation switchyard for termination of AGTPP (NEEPCO)-P.K. Bari (TSECL) 132KV D/c line</i>	<i>36 months</i>	<i>0.49%</i>	<i>Elements at Sl. No.9, 10 &amp; 11 are required simultaneously</i>
11	<i>2 no. 132KV line bays at P.K. Bari (TSECL) S/s for termination of AGTPP (NEEPCO)-P.K Bari (TSECL) 132KV D/C line</i>	<i>36 months</i>	<i>0.49%</i>	<i>Elements at Sl. No.9, 10 &amp; 11 are required simultaneously</i>

*The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Elements as mentioned in the above table.  
Scheduled COD for overall Project: 44months form effective date”*

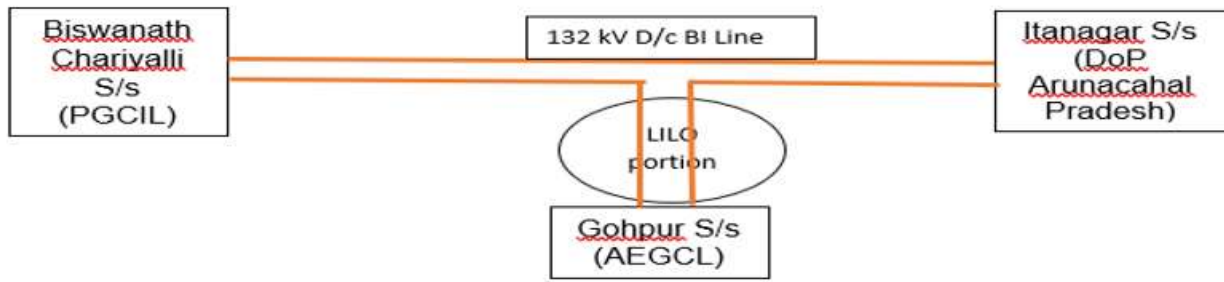
The above schedule provides the prerequisites for each element of the transmission project.

57. In light of above, the discussions in subsequent paragraphs have been divided in following sections, for the purpose of analyzing COD/deemed COD for each of the elements:

**Section 1: Element 1, Element 2 and Element 3: Bishwanath Chariali Agra- Itanagar section comprising of following:**

<b><u>S. No</u></b>	<b><i>Name of the Transmission Element</i></b>	<b><i>Element(s) which are pre-required for declaring commercial operation (COD) of the respective Element</i></b>
1	<i>Biswanath Chariyalli (POWERGRID)-Itanagar 132KV D/c (Zebra conductor) line</i>	<i>Elements at Sl. No. 1&amp; 2 are required simultaneously</i>
2	<i>2 nos. 132KV line bays at Itanagar for termination of Biswanath Chariyalli (POWERGRID)-Itanagr 132KV D/c (Zebra conductor) line</i>	<i>Element at Sl. No. 1&amp; 2 are required simultaneously</i>
3	<i>LILO of one circuit of Biswanath Chariyalli (POWERGRID)-Itanagar 132KV D/c (Zebra conductor) line at Gohpur (AEGCL)</i>	<i>After commissioning of elements at Sl. No. 1&amp; 2</i>

- **Scheduled COD of Section 1: 31.03.2020**
- SLD of Section 1:



- Biswanath Chariyalli (POWERGRID)-Itanagar 132KV D/c line (BI Line), LILo of one circuit of BI line at Gohpur S/s and two no. of 132 kV bay at Itanagar S/s – under Petitioner scope
- 2 no. 132kV line bays at Biswanath Chariali - under PGCIL scope
- 2 no. 132kV line bays at Biswanath Chariali – under AEGCL scope

**Section 2:** Element 4, Silchar-Misa section comprising of following:

<b>S. No</b>	<b>Name of the Transmission Element</b>	<b>Element(s) which are pre-required for declaring commercial operation (COD) of the respective Element</b>
4	Silchar (POWERGRID)-Misa (POWERGRID) 400KV D/c (Quad) line	Nil

**SCOD for Section 2: 31.11.2020**

SLD for Section :2:



- Silchar - Misa 400kV D/c line (SM line) – under Petitioner Scope
- 2 no. 400kV GIS line bays each at Silchar and Misa, 80 MVAR bus reactor at Misa (PG) along with GIS bay and 1x80 MVAR switchable line reactor with GIS bays at Misa end of each circuit of SM line – under PGCIL scope

**Section 3:** Element 5, Element 6, Element 7, Element 8: Surajmaninagar-PK Bari Section

comprising of following:

<b>S. No</b>	<b>Name of the Transmission Element</b>	<b>Element(s) which are pre-required for declaring commercial operation (COD) of the respective Element</b>
5	400/132 kv, 7x 105 MVA Single Phase (including one spare) S/s at Surajmaminagar	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
6	400/132KV, 7x 105MVA Single Phase (including one spare) S/s at P.K Bari	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
7	Surajmaminagar-P.K Bari 400KV D/c line	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously
8	2 no. 400KV line bays at Palatana GBPP switchyard for termination of Palatana-	Elements at Sl. No. 5, 6, 7 & 8 are required simultaneously



	Surajmaninagar 400 KV D/c line.	
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**SCOD for Section 3: 31.07.2020**

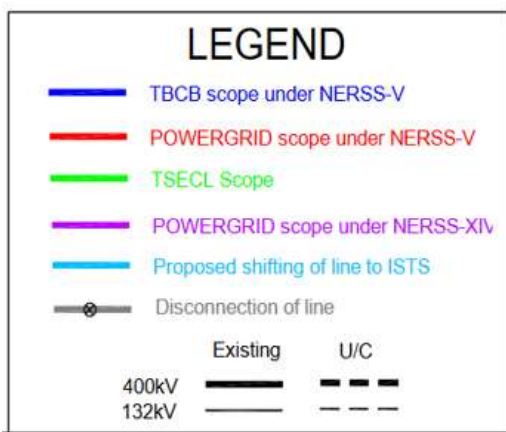
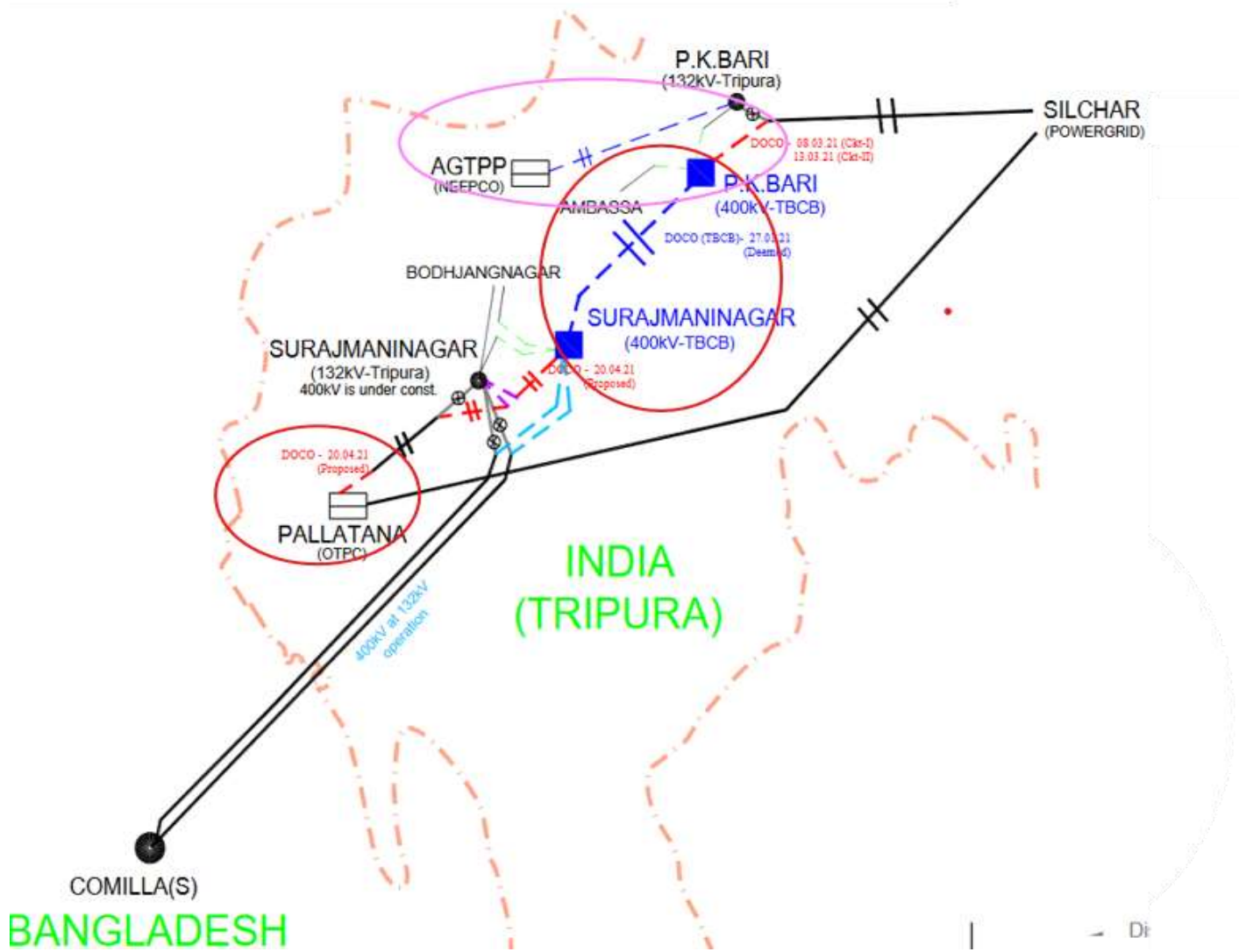
**Section 4:** Element 9, Element 10, Element 11: AGTPP-PK Bari Section comprising of following:

<b><u>S. No</u></b>	<b><i>Name of the Transmission Element</i></b>	<b><i>Element(s) which are pre-required for declaring commercial operation (COD) of the respective Element</i></b>
9	<i>AGTPP (NEEPCO)-P.K.Bari (TSECL) 132KV D/c line with high capacity HTLS conductor (equivalent to single moose ampacity at 85°C)</i>	<i>Elements at Sl. No.9, 10 &amp; 11 are required simultaneously</i>
10	<i>2 no. 132 KV line bays at AGTPP generation switchyard for termination of AGTPP (NEEPCO)-P.K. Bari (TSECL) 132KV D/c line</i>	<i>Elements at Sl. No.9, 10 &amp; 11 are required simultaneously</i>
11	<i>2 no. 132KV line bays at P.K. Bari (TSECL) S/s for termination of AGTPP (NEEPCO)-P.K Bari (TSECL) 132KV D/C line</i>	<i>Elements at Sl. No.9, 10 &amp; 11 are required simultaneously</i>

**SCOD for Section 4: 31.03.2020**

SLD of Section 3: circle in RED

SLD of Section 4: circle in purple

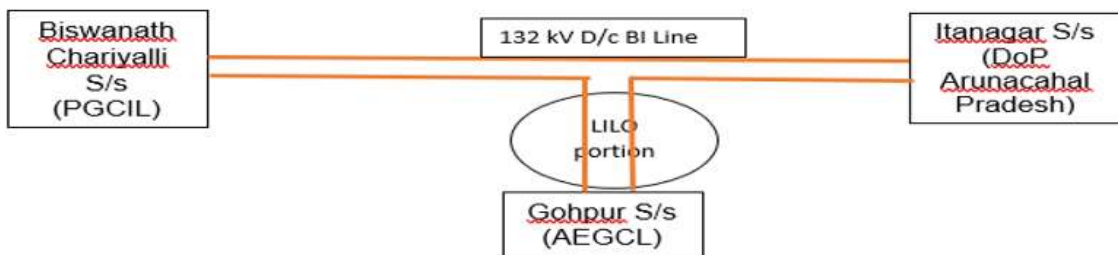


**COD/Deemed COD for elements of Section 1:**

58. The Petitioner has submitted that following details pertaining to the COD of the various elements of the project:

Element No.	Transmission Element	SCOD	Deemed COD claimed by PEtitioner	COD claimed by Petitioner	CEA Energisation certificate dated	As per POSOCO trial run Certificate (Commencement / completion of trial run)
<b>NERSS-II (Part-B)</b>						
1	Biswanath Chariyalli (PGCIL) - Itanagar 132 kV D/C (Zebra Conductor) Line (BI Line)	31.3.2020 (36 months)	N/A	6.4.2021	20.3.2021	Line-1: 1.4.2021 at 14:22 Hrs 2.4.2021 at 14:22 Hrs Line-2: 2.4.2021 at 22:43 Hrs 3.4.2021 at 22:43 Hrs
2	2 number 132 kV line bays at Itanagar for termination of Biswanath Chariyalli (PGCIL) - Itanagar 132 kV D/C (Zebra Conductor) Line (Itanagar Bays)	31.3.2020 (36 months)	N/A	6.4.2021	20.3.2021	Bay-1: 1.4.2021 at 14:22 Hrs 2.4.2021 at 14:22 Hrs Bay-2: 2.4.2021 at 22:43 Hrs 3.4.2021 at 22:43 Hrs
3	LILO of one circuit of Biswanath Chariyalli (PGCIL) - Itanagar 132 kV D/C (Zebra Conductor) Line at Gohpur (AEGCL) (BI LILO)	31.3.2020 (36 months)	4.4.2021	N/A	20.3.2021	

We observe that out of the three elements, deemed COD has been claimed by the Petitioner for the Element 3: LILO of BNC-Itanagar at Gohpur and COD has been claimed for Element 1 and Element 2. The SLD is attached herewith again for clarity:



- Biswanath Chariyalli (POWERGRID)-Itanagar 132KV D/c line (BI Line), LILO of one circuit of BI line at Gohpur S/s and two no. of 132 kV bay at Itanagar S/s – under Petitioner scope
- 2 no. 132kV line bays at Biswanath Chariyalli - under PGCIL scope
- 2 no. 132kV line bays at Biswanath Chariyalli – under AEGCL scope

59. The implementation of two number of 132 kV bays at Gohpur 132 kV Sub-station associated with Element-3 was under scope of AEGCL, which was getting delayed. The



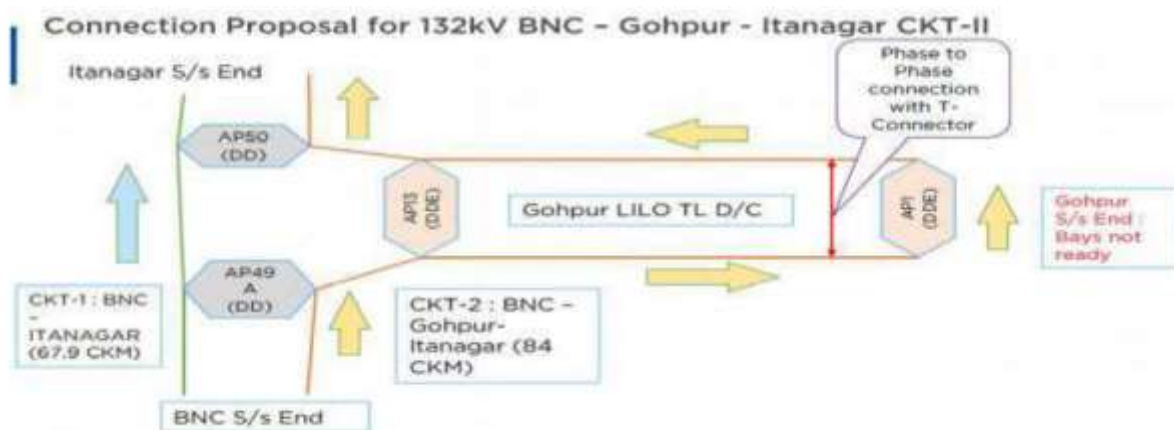
Petitioner has submitted that in the meeting held on 19.3.2021 under the chairmanship of Member (Power System), an interim arrangement was proposed for charging BI LILO by using phase to phase T-connector in already constructed Gohpur LILO section to avoid further delays in the charging and COD of the BI LILO. The relevant extracts of the Minutes of the meeting held on 19.3.2021 is as follows:

*“2. Representative of NER-II Transmission Ltd informed that the North East Region System Strengthening Scheme-II (Part B & V) Transmission Project has achieved 96% of completion status. The project work has been completed for Assam and Tripura and the balance elements in the Arunachal Pradesh stretch of the project are likely to be commissioned. Following transmission elements are under construction:*

- i. Biswanath Chariyalli (PG) – Itanagar 132 kV D/C Line.*
- ii. Two (2) Nos 132 line bays at Itanagar for termination of Biswanath Chariali (PG) – Itanagar 132kV D/C Line.*
- iii. LILO of one circuit of Biswanth Chariali (PG) – Itanagar 132 kV D/C line at Gohpur (AEGCL).*

*As per the scope of work, NER-II Transmission Ltd has to terminate the LILO of one ckt of Biswanath Chariyalli – Itanagar 132 kV D/C Transmission line at Gohpur (AEGCL) Substation, and the line bays have to be constructed by Assam Electricity Grid Corporation Ltd (AEGCL). The element No (i) & (ii) are in advance stage of commissioning and ready for charging since 2nd Mar 2021 but due to unavailability of Gohpur bays, the LILO Line (element no (iii)) couldn't be charged.*

*He requested for approval for charging of the LILO of one ckt (ckt-2) of Biswanath Chariyalli – Itanagar 132 kV D/C Transmission line as interim arrangement by using phase to phase T-connector in already constructed Gohpur LILO section. The planned system would be implemented after readiness of Gohpur Bays. The schematic line diagram & Electrical Phase to Phase connection diagram is given below:*



3. Member (PS), CEA enquired AEGCL about delay in construction of 02 nos. of 132kV bays at Gohpur.

4. AEGCL informed that they had requested Sterlite Power to complete the 02 nos. of 132kV bays on their behalf and the cost will be reimbursed to them. However, Sterlite Power has not accepted the proposal. AEGCL stated that they have no objection in the temporary arrangement as proposed by NTL.

5. Representative of CTU informed that the scheme NERSS-II (Part B & V) under which AEGCL to construct the 02 nos. of 132kV bays at Gohpur was agreed in the year 2016. AEGCL had earlier proposed to upgrade Gohpur S/s to GIS from AIS in previous standing

committee meetings. That could be the reason behind the delay. Whether AEGCL construct the bays itself or through Sterlite Power, is their bilateral matter. However, AEGCL needs to bear the transmission charges of LILO portion till construction of bays at Gohpur S/s.

6. Chief Engineer (PSPA-II), CEA stated that the transmission assets as mentioned by NTL would not be utilized because of non-readiness of bays at Gohpur, though the LILO portion is constructed by NTL. Thus onus of not getting it utilized lies with AEGCL.

7. Member (PS), CEA opined that as the construction of 132kV bays was under the scope of AEGCL, therefore, responsibility of delay lies with AEGCL. Further, as stated by CTU, AEGCL need to bear the transmission charges of LILO portion till commissioning of 2 nos. of 132kV bays as per CERC Regulations. He requested AEGCL for firm commitment on time to complete the bays.

8. Representative of AEGCL informed that these 02 nos. of 132kV bays shall be commissioned within 6 – 8 months of time, from now.

...

**13. After discussion, following were agreed to put the transmission system in use:**

**(i) Charging of LILO of one ckt (ckt-2) of Biswanath Chariyalli – Itanagar 132 kV D/C Transmission line by using phase to phase T- connector in already constructed Gohpur LILO section, as an interim arrangement.**

**(ii) The T-connector of LILO will be removed and LILO will be terminated at bays at Gohpur, as and when made ready by AEGCL.**

**(iii) AEGCL to expedite completion of line bays at Gohpur.**

**(iv) The LILO portion, though completed, could not get utilised as planned because of delay in construction of line bays by AEGCL.”**

As per the above, due to non readiness of the 132 kV bays at Gohpur, which was under the scope of the AEGCL, it was agreed that the charging of LILO of one ckt (ckt-2) of Biswanath Chariyalli-Itanagar 132 kV D/C Transmission line by using phase to phase T-connector in already constructed Gohpur LILO section, as an interim arrangement and the same will be removed and LILO will be terminated at bays at Gohpur, as and when made ready by AEGCL.

60. We have POSOCO trial run certificate dated 10.5.2021 for Circuit-1 and Circuit-2 of Biswanath Chariyali-Itanagar D/C line and bays at Itanagar quoted as follows:

## Trial Run for Circuit 1 of Biswanath Chariyali-Itanagar D/C line and bays at Itanagar

Certificate Number: NERLDC/SOII/TOC/20/1421

दिनांक /Date: 10.05.21

### Certificate of Completion of Trial Operation of Transmission Element

**संदर्भ/Reference:**

1. Sterlite Power application in FTC Portal on 12.03.21
2. NERLDC communication dated 12.03.21 in Format II
3. Provisional approval dated 31.03.21 from NERLDC to Sterlite Power
4. Real time code issued by NERLDC on 01.04.21
5. Application for Trial Operation by Sterlite Power on 08.04.21 in FTC portal
6. NERLDC communication vide mail dated 16.04.21, 22.04.21 and 30.04.21
7. Sterlite Power communication vide mail and in FTC portal dated 03.05.21 and 07.05.21

Based on the above reference, it is hereby certified that the following Transmission elements have successfully completed the trial operation:

Name of the Transmission Asset	<b>132 kV BNC - Itanagar line 1 along with 132 kV BNC 1 Bay (109) at Chimpu (Itanagar) Substation</b>
Owner of the Transmission Asset	NER-II Transmission Limited
Date and Time of Energisation for commencement of successful trial run	01.04.21 at 14:22 Hrs
Date and Time of completion of successful trial run operation	02.04.21 at 14:22 Hrs

This certificate is being issued in accordance with Regulation 5 of CERC (Terms and Condition of Tariff) Regulations, 2019 to certify successful completion of trial operation of transmission element. Usage of this certificate for any other purpose is prohibited.





## Trial Run for Circuit 2 of Biswanath Chariyali-Itanagar D/C line and bays at Itanagar

Certificate Number: NERLDC/SOII/TOC/20/1422

दिनांक /Date: 10.05.21

### Certificate of Completion of Trial Operation of Transmission Element

**संदर्भ/Reference:**

1. Sterlite Power application in FTC Portal on 12.03.21
2. NERLDC communication dated 12.03.21 in Format II
3. Provisional approval dated 31.03.21 from NERLDC to Sterlite Power
4. Real time code issued by NERLDC on 02.04.21
5. Application for Trial Operation by Sterlite Power on 08.04.21 in FTC portal
6. NERLDC communication vide mail dated 16.04.21, 22.04.21 and 30.04.21
7. Sterlite Power communication vide mail and in FTC portal dated 03.05.21 and 07.05.21

Based on the above reference, it is hereby certified that the following Transmission elements have successfully completed the trial operation:

Name of the Transmission Asset	132 kV BNC - Itanagar line 2 along with 132 kV BNC 2 Bay (110) at Chimpu (Itanagar) Substation
Owner of the Transmission Asset	NER-II Transmission Limited
Date and Time of Energisation for commencement of successful trial run	02.04.21 at 22:43 Hrs
Date and Time of completion of successful trial run operation	03.04.21 at 22:43 Hrs

This certificate is being issued in accordance with Regulation 5 of CERC (Terms and Condition of Tariff) Regulations, 2019 to certify successful completion of trial operation of transmission element. Usage of this certificate for any other purpose is prohibited.

Note: As per Minutes of meeting dated 19.03.21 to discuss M/s Sterlite proposal to charge LILO of one circuit of Biswanath Chariyalli – Itanagar 132 kV D/C Transmission line at Gohpur (AEGCL) due to non-readiness of the Gohpur bays, it was agreed that charging of LILO of one circuit (circuit-2) of Biswanath Chariyalli – Itanagar 132 kV D/C Transmission line will be done by using phase to phase T-connector in already constructed Gohpur LILO section, as an interim arrangement. The T-connector of LILO will be removed and LILO will be terminated at bays at Gohpur, as and when made ready by AEGCL.

As per above, it is observed that trial run of Circuit-2 has been completed through T-connector.

61. Considering the CEA Energisation Certificate dated 20.3.2021 and the fact that Circuit-1 of Biswanath Chariyali-Itanagar D/C line and bay at Itanagar got charged on 1.4.2021, Circuit-2 of Biswanath Chariyali-Itanagar D/C line and bay at Itanagar got charged on 2.4.2021 and LILO of Biswanath Chariyali-Itanagar line at Gohpur could not be charged due to non-availability of bays at Gohpur substation under the scope of AEGCL, we approve the COD/deemed COD for Element 1, Element 2 and Element 3 as follows:



- a. Element-1 (132 kV Biswanath Chariyali-Itanagar D/C line) and Element-2 (2 number 132 kV line bays at Itanagar) got connected to interconnection facilities on 1.4.2021 and 2.4.2021 respectively. Considering 02.04.2021 as the date when both circuits can be considered as connected to interconnection facilities is 2.4.2021 since they are prerequisite of each other. Considering 72 hours after 2.4.2021 makes the Element-1 and Element-2 eligible for declaration of COD on 6.4.2021, in terms of the clause 6.2.1 of the TSA. The Petitioner has also declared COD of Element-1 and Element-2 on 6.4.2021.
- b. Element 3- LILO of one circuit of Biswanath Chariyali-Itanagar D/C line at Gohpur got CEA energization approval on 20.3.2021 but couldnot be charged due to non-availability of bays at Gohpur. LILO becomes eligible for deemed COD 7 days after 20.3.2021 which comes out as 28.3.2021. However, Element-3 has a prerequisite of Element-1 and Element-2 and cannot be declared COD prior to COD of Elements 1 and 2. Petitioner has declared deemed COD of Element-3 as 4.4.2021 which is not correct, in light of COD of prerequisites of Element 1 and 2.
- c. Keeping in view above discussions we approve COD of Element-1 and Element-2 as 6.4.2021 and deemed COD of Element-3 as 6.4.2021.

### **Liability of Transmission Charges for Element-3 under deemed COD**

62. The Petitioner has submitted that BI LILO is yet to be put to use on account of the delay in commissioning of the associated elements by the AEGCL and thus from the period from deemed COD till BI LILO is put to use, AEGCL may pay the transmission charges of BI LILO.

63. We have considered the submissions of the Petitioner. As we have already decided above in this order that the deemed COD of the Element 3 as 6.4.2021, we direct

that transmission charges for Element – 3 shall be paid by AEGCL, till the commissioning of the 2 number 132 kV bays at Gohpur bays.

64. We also take note of submissions of PGCIL on the issue payment of transmission charges for the bays at Biswanath Chariyali Sub-station (under scope of PGCIL) from their COD on 30.6.2020 till COD of Element-1 and Element-2. We observe that the issue of payment for PGCIL bays is being dealt with in Petition No. 41/TT/2022, which has already been reserved by the Commission for the order and shall be treated as per decision in Petition No. 41/TT/2022.

## **Section 2: Element-4 (Silchar-Misa 400 kV D/C line)**

### **COD of the Element-4**

65. The establishment of Silchar-Misa 400 kV D/C Line (SM Line) was under the scope of the Petitioner and the associated 2 number 400 kV bays each at Silchar and Misa along with 2X80 MVAR Switchable Line Reactors at Misa were under the scope of the PGCIL.

66. The Petitioner has submitted the details of COD, CEA certificate and POSOCO trial run certificate as follows:

<b>Element No.</b>	<b>Transmission Element</b>	<b>SCOD</b>	<b>Deemed COD</b>	<b>COD declared by Petitioner</b>	<b>CEA Energisation certificate dated</b>	<b>As per POSOCO trial run Certificate (Commencement / completion of trial run)</b>
<b>NERSS-II (Part-B)</b>						
1.	Silchar (PGCIL) - Misa (PGCIL) 400 kV D/C (Quad) Line (SM Line)	31.11.2020 (44 months)	N/A	1.3.2021	Provisional energisation certificate dated 19.2.2021, 27.4.2021, 29.6.2021	Line-1: 25.2.2021 at 16:23 Hrs 26.2.2021 at 16:23 Hrs  Line-2: 25.2.2021 at 15:55 Hrs 26.2.2021 at 15:55 Hrs

67. Petitioner has claimed COD of Element-4 as 1.3.2021. We observe from the POSOCO trial run certificate dated 5.3.2021 that the trial run of Element-4 started on 25.2.2021 and accordingly COD can be declared 72 hours after connecting to interconnection elements, i.e 1.3.2021. Accordingly, we allow the COD of the Element-4 (400 kV of Silchar-Misa 400 kV D/C line) as 1.3.2021, in terms of the clause 6.2.1 of the TSA dated 27.12.2016.

PGCIL has raised issue of transmission charges for bays constructed by PGCIL at Silchar and Misa, which is under adjudication in Petition No. 41/TT/2022, and shall be dealt with in the said petition.

### Section 3:

**Element-5 (Surajmaminagar Sub-station), Element-6 (P.K. Bari Sub-station), Element-7 (Surajmaminagar-P.K. Bari 400 kV D/C line) and Element-8**

### COD of the Element -5, Element-6, Element-7 and Element-8

68. The Petitioner has submitted the following dates for deemed COD/ COD and CEA Energisation certificate in respect of Element-5, Element- 6 and Element-7:

Element. No.	Transmission Element	Deemed COD	COD	CEA Energisation certificate dated
5	400/132 kV, 7x105 MVA Single Phase (including one spare) at Surajmaninagar (Surajmaninagar Sub-station)	27.1.2021	NA	1.12.2020
6	400/132 kV, 7x105 MVA Single Phase (including one spare) at P.K. Bari (P.K Bari Sub-station)	27.1.2021	NA	1.12.2020
7	Surajmaninagar - P.K. Bari 400 kV D/C Line (SP Line)	27.1.2021	NA	Provisional energisation certificate dated 11.1.2021, 31.3.2021, 27.4.2021, 29.6.2021 Final energisation certificate dated 11.10.2021
8	2 number 400 kV line bays at Palatana GBPP switchyard for termination of Palatana - Surajmaninagar 400	27.1.2021		13.1.2021

	kV D/C Line (Palatana Bays)			
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69. The Petitioner has declared deemed COD of Elements 5, 6, 7 and 8 vide its letter dated 22.1.2021, which is as follows:

**Ref: NTL/DOCO/2021/01/16**

**Date: 22-01-2021**

**To,  
Member Secretary,  
North Eastern Regional Power Committee,  
NERPC Complex, Dong Parmaw  
Lapalang, Shillong – 793006 (Meghalaya)**

**Sub:** Declaration of Deemed Commercial Operation (DOCO) of 400/132kV Surajmaninagar & P.K. Bari Substation, 400kV D/C Surajmaninagar – P.K. Bari Transmission Line and 2 nos. 400kV line bays at Palatana GBPP Switchyard (Palatana Bays) pertaining to NER-II Transmission Limited (NTL).

**Ref:** Transmission Service Agreement (TSA) of NER-II Transmission Limited dated 27-12-2016.

Dear Sir,

This is to inform you that the transmission elements, namely 400/132kV Surajmaninagar Substation (Surajmaninagar S/s), 400/132kV P.K. Bari Substation (P.K. Bari S/s), 400kV D/C Surajmaninagar – P.K. Bari Transmission Line (SP Line) and 2 nos. 400kV line bays at Palatana GBPP Switchyard for termination of Palatana – Surajmaninagar 400kV D/C line (Palatana Bays) has received Approval for Energization certificate from Electrical Inspector, CEA on 01-12-2020, 01-12-2020, 11-01-2021 and 13-01-2021 respectively and is ready for energization from 19-01-2021. However, due to non-availability of upstream network, which is being constructed by PGCIL, the aforesaid transmission elements can't be put to use.

Accordingly, Surajmaninagar S/s, P.K. Bari S/s, SP Line and Palatana Bays are declared as Deemed Commissioned w.e.f. 27-01-2021 as per subject provisions of Article 6 of TSA.

This is for your information.

Thanking You,

**Yours faithfully,  
For, NER-II Transmission Limited,**

As per the above, the Petitioner declared deemed COD of elements 5,6,7,8 as 27.1.2021 citing CEA energization certificate dated 13.1.2021 (last certificate).



70. The Petitioner has submitted that Elements 5, 6, 7 were ready to be charged but could not be charged due to the delay in commissioning of the upstream network by PGCIL.

71. We observe from the Petitioner's submission that the COD of the Elements-5, 6, and 7 were delayed from their SCOD i.e., 31.7.2020 and subsequently the Petitioner has claimed deemed COD for these elements as 27.1.2021. The Petitioner has submitted that though deemed COD of these elements has been declared as 27.1.2021, the Surajmaninagar Sub-station could be put to use only from 31.3.2021, the P.K Bari Sub-station was put to use from 11.3.2021, Circuit 1 of the SP Line was put to use from 4.2.2021, Circuit 2 of the SP Line was put to use from 11.2.2021 and Palatana Bays were put to use only from 13.7.2021 on account of the delay in commissioning of the upstream network by PGCIL.

72. We observe that Elements 5, 6, 7 and 8 are prerequisites of each other. In light of CEA Energisation Certificate and the fact that Petitioner was not connected with interconnection facilities due to upstream system of PGCIL not available, we allow deemed COD for Element 5, Element 6 and Element 7 and Element 8 as 27.1.2021.

**Liability of Transmission Charges from deemed COD for Element-5, Element-6 and Element-7**

73. The Petitioner has submitted that Deemed COD for the SP Line is also 27.1.2021, however, Circuit 1 was put to use from 4.2.2021 and Circuit 2 was put to use from 11.2.2021, due to the delay in commissioning of the upstream network by PGCIL. The Petitioner has submitted that it has been receiving transmission tariff from the PoC Pool from 4.2.2021 for Circuit 1 and from 11.2.2021 for Circuit 2 and thus, for the period from 27.1.2021 up to 3.2.2021 for Circuit 1 and from 27.1.2021 to 10.2.2021 for Circuit 2, PGCIL may be directed to pay the Petitioner tariff bilaterally.

74. In response, PGCIL has submitted that the assets to be developed by it under NERSS-V and their SCOD/ COD is as follows:

Petitioner's Assets		PGCIL's assets		
Assets	COD	Assets	SCOD	COD
400/132 kV, 7x105 MVA Single Phase (including one spare) at Surajmaninagar	27.1.2021 (deemed COD) Actual COD – 31.3.2021	Additional 400 kV D/C line at P.K. Bari end and Silchar end for termination of P.K. Bari- Silchar 400 kV D/C line.	31.7.2020/ (as per Investment Approval)	Ckt-I: 8.3.2021 Ckt-II: 13.3.2021
400/132 kV, 7x105 MVA Single Phase (including one spare) at P.K. Bari	27.1.2021 (deemed COD) Actual COD – 11.3.2021		/	
Surajmaninagar - P.K. Bari 400 kV D/C Line	27.1.2021 (deemed COD) Actual – Ckt I 4.2.2021 Ckt II 11.2.2021		31.12.2020 (as per MoP communication dated 27.7.2020 for extension of timelines due to Covid-19 pandemic)	

75. PGCIL has further submitted that the delay in commissioning of the above elements are mainly because of the following reasons:

- a. The Petitioner had changed the location of Surjamaninagar and P.K. Bari Sub-stations by about 10 km and at P. K. Bari about 8 km as compared to the initial locations, without any information to PGCIL which was executing the inter-connected system. The shifting of the location of these sub-stations increased the line length of the works to be completed by PGCIL from initial length of 0.5 km to about 11.5 km (by 22 times) towards Surajmani Nagar and increased from 2.1 km to 10 km (by 5 times) towards P. K. Bari, which further resulted in increase in the quantities of power conductor and other material required and eventually revision in the LoAs issued by PGCIL.
- b. The construction activities were also delayed due to the other reasons like protests against Citizenship Amendment Bill, nation-wide lockdown imposed by Government of India due to the outbreak of Covid-19 pandemic, heavy rainfall causing the sites/ location unapproachable and delay in material movement due to crack in DwarKsuid Bridge on NH-6 (Shillong Bye Pass) and subsequent weight restriction.

76. PGCIL has submitted that non-availability of its assets under NERSS-V did not affect the utilisation of any of the assets developed by the Petitioner under NERSS-V, as Pallatana (OTPC) power was evacuated to Surajmaninagar (TSECL) and Surajmaninagar (TSECL) Sub-station was connected to Surajmaninagar (TBCB) 400 kV Sub-station through LILO of one circuit of 132 kV Surajmaninagar (TSECL) - Bodhjungnagar (TSECL) line at Surajmaninagar (TBCB) which was commissioned on 28.12.2020 and this date is prior to the deemed COD claimed by the Petitioner for its NERSS-V assets. PGCIL has also submitted that P. K. Bari assets were also put to use on the date of claimed deemed COD by the Petitioner as power from P. K. Bari (TBCB) Sub-station got evacuated through LILO of 132 kV Ambasa (TSECL)-P. K. Bari (TSECL) line at P. K. Bari (TBCB) Sub-station which was commissioned on 2.2.2021. Accordingly, the TBCB assets are serving the intended purpose and getting utilised since commissioning.

77. PGCIL has submitted that Petitioner has charged 400/132 kV, 105 MVA Spare ICT at Surajmani Nagar only on 16.3.2021 and 400/132 kV, 105 MVA Spare ICT at P. K. Bari only on 20.4.2021. PGCIL has further submitted that the Petitioner ideally could not have declared the deemed COD on 27.1.2021 since this spare 105 MVA ICT became available only on 20.4.2021 and, therefore, the Petitioner's scope was only completed on 20.4.2021 and no billing should be raised on PGCIL because there is no mismatch.

78. The Petitioner has submitted that spare ICT at both of the sub-stations are expressly mentioned in the list of equipments for which energisation approval was provided by the CEA on 1.12.2020 and thus, the spare ICTs were also ready for energisation from 1.12.2020 onwards, and the same were merely taken into service on 20.4.2021 by way of regular switching. The Petitioner has further submitted that as there was no fault in the main ICTs of P.K. Bari and Surajmaninagar Sub-stations between



March and April, 2021, there was no system requirement to utilise the spare ICTs. However, regular switching of spare ICTs was undertaken to ensure regulatory compliance and, therefore, PGCIL's allegation that the spare ICT was not available on 27.1.2021 is false.

79. The Petitioner has submitted that clause 1.2 of the RfP (as amended on 23.12.2016), RfP Clarifications Nos. 88, 120 and 139 (dated 23.12.2016) and Schedule 2 of the TSA dated 27.12.2016, all of which expressly state that *"the TSP (Petitioner) is free to choose the location of Surajmaninagar Sub-station within a radius of 10 km from the (existing) Surajmaninagar (TSECL) Sub-station"* and similarly, RfP Clarifications Nos. 121 and 140 (dated 23.12.2016) expressly state that *"Bidders are free to select location of proposed sub-station as per their own due diligence. However, TSP (Petitioner) is required to choose site within a radius of 5 km from the (existing) P. K. Bari Sub-station of TSECL"*. The Petitioner has also submitted that under Article 5.1.4(a) of the TSA, the Petitioner has the sole responsibility and prerogative to acquire land for location-specific sub-stations. The Petitioner has further submitted that all 3 locations suggested in the BPC survey report were located within a rubber plantation and had highly undulated land and poor connectivity and, therefore, the locations are unsuitable.

80. PGCIL has submitted that it is not clear that why the bilateral billing has been claimed from PGCIL till 11.3.2021 and 31.3.2021 for P.K. Bari and Surajmani Nagar Sub-stations respectively when power flow in the Petitioner's assets was started from 2.2.2021 and thus the assets were in use from 2.2.2021.

81. The Petitioner has submitted that despite power flow in the P.K. Bari Sub-station on 9.2.2021, there was non-utilisation of its 420 kV 125 MVAr bus-reactors associated with PGCIL Silchar-P.K. Bari Line. The Petitioner also submitted that the bus reactor – 1 and the bus reactor-2 at the P.K. Bari Sub-station were established on 9.3.2021 and on

11.3.2021, respectively, after the commencement of trial run operation for Circuit-1 and Circuit-2 of the said PGCIL Silchar-P.K. Bari Line on 6.3.2021 on 11.3.2021, respectively.

82. The Petitioner has submitted that the 400 kV bays and ICT at the Surajmaninagar Sub-station were charged on 9.2.2021, but it was not put to use because the bus reactor and the main bay could not be taken into service due to non-availability of the PGCIL Surajmaninagar-Palatana Line. The Petitioner has submitted that as per NERLDC's charging instructions dated 7.3.2021, NER-II was required to implement Special Protection Schemes ("SPS") at both Surajmaninagar Sub-station and P.K Bari Sub-station before taking the bus reactors at Surajmaninagar Sub-station into service through inter-connection with the PGCIL Silchar-P.K. Bari Line due to voltage constraints in the grid caused by the non-availability of the PGCIL Surajmaninagar-Palatana Line. Therefore, Surajmaninagar Sub-station could be put to use on 31.3.2021 after charging of 420 kV, 125 MVA bus reactor in terms of the alternate arrangement.

83. The Petitioner has submitted that according to the arrangement approved in a Standing Committee meeting on 5.1.2021, post the interconnection at both ends of the SP line with the LILO of P.K. Bari (TSECL) to Ambassa 132 kV line at P. K. Bari (TBCB) Sub-station (PA LILO) and LILO of Surajmaninagar (TSECL) to Bodhjangnagar 132 kV Line at Surajmaninagar (TBCB) Sub-station (SB LILO) on 2.2.2021, Circuit-1 of the SP Line was put to use on 4.2.2021 and Circuit-2 of the SP line was declared put to use on 11.2.2021. The Petitioner has further submitted that it was accorded the permission to take only one circuit of the SP Line at a time due to voltage constraints in the grid due to unavailability of PGCIL's upstream 400 kV network, i.e., PGCIL Surajmaninagar-Palatana Line and the PGCIL P.K. Bari-Silchar Line and this is why the Petitioner declared Circuit-1 of SP Line as put to use on 4.2.2021 and Circuit-2 on 11.2.2021.

84. The Petitioner has submitted that on 1.5.2018, PGCIL addressed a communication to it seeking engineering details and location of the sub-station and the same were duly handed over to PGCIL officials in person by the Petitioner in June 2018 itself, which was shortly after the Investment Approval for PGCIL's elements in April, 2018. Therefore, the PGCIL's contention that PGCIL came to know of the location of Surajmaninagar and P.K. Bari Sub-stations only in November 2018 is not correct.

85. POSOCO has submitted that for P. K. Bari-Surajmaninagar transmission line, from the date of deemed CoD to its actual put to use, it was not considered part of PoC Pool for the purpose of recovery of its transmission charge and during this period bilateral billing on PGCIL was done for the recovery of its transmission charge as per Regulation 13(12) of the 2020 Sharing Regulations. The Petitioner has further submitted that after the line was put to use and submission of relevant documents as per the criterion mentioned above, the line was included in PoC Pool for the purpose of recovery of its transmission charge.

86. We have considered the submissions of the Petitioner and the Respondents and perused the material on record.

87. Regarding contention of PGCIL about location of Surjamaninagar and P.K. Bari Sub-stations by about 10 km, we have persued the relevant provisions of the RfP. The Amendment-III dated 23.12.2016 in RfP and clarification dated 23.12.2016 issued by the BPC, it is clear that the Petitioner was eligible to select the location of Surajmaninagar (ISTS) Sub-station within the radius of 10 km from the existing Surajmaninagar (TSECL) Sub-station and to select the location of P. K. Bari (ISTS) Sub-station within the radius of 5 km from the existing P. K. Bari (TSECL) Sub-station. Therefore, we are of view that the selection of the location of Surajmaninagar and P. K. Bari Sub-stations by the Petitioner

is in terms of the provision under RfP and subsequent amendment and clarification issued by the BPC.

88. We also observe that PGCIL has contended that the non-availability of PGCIL's assets under NERSS-V have not affected the utilisation of any of the assets developed by the Petitioner under NERSS-V, as Surajmaninagar (TBCB) was connected through LILO of one circuit of 132 kV Surajmaninagar (TSECL)-Bodhjungnagar (TSECL) line at Surajmaninagar (TBCB), which was commissioned on 28.12.2020, i.e., prior to the deemed COD claimed by the Petitioner. Similarly, P. K. Bari assets were also put to use on the date of claimed Deemed COD by the Petitioner as power from P. K. Bari (TBCB) Sub-station is evacuated through LILO of 132 kV Ambasa (TSECL)-P. K. Bari (TSECL) line at P. K. Bari (TBCB) Sub-station, which was commissioned on 2.2.2021.

89. We have perused 2nd meeting of North Eastern Regional Power Committee (Transmission Planning) (NERPCTP) held on 25.9.2020 where it was agreed that TSECL will implement LILO of one circuit of 132 kV D/C line (TSECL) Surajmaninagar (TSECL) - Bodhjungnagar at Surajmaninagar (ISTS) Sub-station and the LILO of 132 kV S/C Ambasa-P.K. Bari (TSECL) line at P.K. Bari (ISTS) Sub-station.

90. The relevant extract of the NERLDC's charging instructions dated 7.3.2021 are as follows:

*“Charging Instruction for 2x125 MVAR Bus Reactors at 400 kV SM Nagar (ISTS) S/s and 2x125 MVAR Bus Reactors at 400 kV PK Bari (ISTS) S/s*

*Prepared on: 07th March 2021*

*Background:*

*Permission for charging one circuit at a time of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C was accorded. 400 kV Silchar (PG) – PK Bari (ISTS) D/C and 400 kV Palatana – SM Nagar (ISTS) D/C were not ready for charging. Charging of the other circuit of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C leads to increase in voltage by about 20 kV at 400 kV SM Nagar (ISTS) node and 400 kV PK Bari (ISTS) node. Also, the 2x125 MVAR Bus Reactors at 400 kV SM Nagar (ISTS) and 2x125 MVAR Bus Reactors at 400 kV PK Bari (ISTS) were not accorded charging clearance as it was found from the studies that charging any one of the reactors reduces the voltage at 400 kV SM Nagar (ISTS)/400 kV PK Bari (ISTS) substations by about 40 kV.*

Subsequent to the above conditions, 400 kV Silchar (PG) – PK Bari (ISTS) D/C have been charged on 06.03.2021. This created a favourable condition for charging of the 2x125 MVAR Bus Reactors at 400 kV SM Nagar (ISTS) Substation and 2x125 MVAR Bus Reactors at 400 kV PK Bari (ISTS). However, all the 4 reactors cannot be put in service as that would reduce the voltage by about 30 kV. Accordingly, the number of reactors to be kept in service, sequence of charging and other requirements has been studied and are mentioned as under.

*Pre-condition:*

- 1) 400 kV Silchar (PG) – PK Bari (ISTS) I or II or both to be kept in service.
- 2) 400 kV SM Nagar (ISTS) – PK Bari (ISTS) I or II to be kept in service.

*System Study:*

1. Under the condition of fulfilment of Pre-condition, charging 1 Bus Reactor out of 2x125 MVAR Bus Reactors at 400 kV PK Bari (ISTS) leads to a voltage reduction of about 10 kV at 400 kV PK Bari (ISTS). Charging the other reactor at 400 kV PK Bari (ISTS) leads to a reduction of another 8 kV at 400 kV PK Bari (ISTS).

2. As per a separate study, under the condition of fulfilment of Pre-condition, charging 1 Bus Reactor out of 2x125 MVAR Bus Reactors at 400 kV SM Nagar (ISTS) leads to a voltage reduction of about 14 kV at 400 kV SM Nagar (ISTS). Charging the other reactor at 400 kV SM Nagar (ISTS) leads to a reduction of another 10 kV at 400 kV SM Nagar (ISTS).

3. As per a separate study, under the condition of fulfilment of Pre-condition, charging all the reactors 2x125 MVAR Bus Reactors at 400 kV SM Nagar (ISTS) and 2x125 MVAR Bus Reactors at 400 kV PK Bari (ISTS) leads to a voltage reduction of 27 kV at 400 kV PK Bari (ISTS) and at 36 kV at 400 kV SM Nagar (ISTS). At this point, charging the other circuit of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C leads to voltage increase of 9 kV at 400 kV SM Nagar (ISTS) Bus and about 3 kV at 400 kV PK Bari (ISTS) Bus.

4. It is to be noted that upon tripping of both circuits of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C and when 1 Bus reactor is in service at 400 kV SM Nagar (ISTS) Bus, the voltage at 400 kV SM Nagar (ISTS) bus drops by about 35 kV. Also, when 2 Bus reactors is in service at 400 kV SM Nagar (ISTS) Bus, the voltage at 400 kV SM Nagar (ISTS) bus drops by about 50 kV. This causes serious low voltage problems at SM Nagar Area of Tripura under tripping of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C. This necessitates the placement of an SPS scheme at SM Nagar (ISTS) in which tripping of both circuits of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C will lead to tripping of both the Bus Reactors at 400 kV SM Nagar (ISTS) Bus. Also, upon tripping of both the Bus Reactors at 400 kV SM Nagar (ISTS) Bus, the SPS scheme should trip one circuit out of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C.

5. Also, upon tripping both circuits of 400 kV Silchar (PG) – PK Bari (ISTS) D/C and when all the 4 Bus reactors are in service, the voltage at 400 kV SM Nagar (ISTS) bus drops by about 62 kV and voltage at 400 kV PK Bari (ISTS) drops by about 67 kV. This necessitates the placement of an SPS scheme at PK Bari (ISTS) in which tripping of both circuits of 400 kV Silchar (PG) – PK Bari (ISTS) D/C will lead to tripping of both the Bus Reactors at 400 kV PK Bari (ISTS) Bus. Also, upon tripping of both the Bus Reactors at 400 kV PK Bari (ISTS) Bus, the SPS scheme should trip one circuit out of 400 kV Silchar (PG) – PK Bari (ISTS) D/C. Under the condition of tripping of both circuits of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C, even presence of one or more reactors at SM Nagar (ISTS) would not be suitable and lead to low voltage.

6. Subsequently, as per system studies, it was found that the following would be the best-case scenario considering all the cases mentioned above.

a. An SPS needs to be designed at 400 kV SM Nagar (ISTS) which would trip both the 2x125 MVAR Bus Reactor I and II at 400 kV SM Nagar (ISTS) upon tripping of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C in order to prevent low voltage at SM Nagar Area. The SPS would also trip one circuit out of 400 kV SM Nagar (ISTS) – PK Bari (ISTS) D/C upon tripping of both the Bus Reactors at 400 kV SM Nagar (ISTS).

*b. An SPS needs to be designed at 400 kV PK Bari (ISTS) which would trip both the 2x125 MVAR Bus Reactor I and II at 400 kV PK Bari (ISTS) upon tripping of 400 kV Silchar (PG) – PK Bari (ISTS) D/C in order to prevent low voltage at PK Bari Area. The SPS would also trip one circuit out of 400 kV Silchar (PG) – PK Bari (ISTS) D/C upon tripping of both the Bus Reactors at 400 kV PK Bari (ISTS).*

*c. Upon successful installation of the SPSs at 400 kV SM Nagar (ISTS) and 400 kV PK Bari (ISTS), any 2 out of the 4 numbers of Bus Reactors at 400 kV SM Nagar (ISTS) and 400 kV PK Bari (ISTS) to be kept in service, the best approach would be to keep 1 Bus Reactor in service at 400 kV SM Nagar (ISTS) and 1 Bus Reactor in service at 400 kV PK Bari (ISTS)”*

91. As per the above, we observe that due to non-readiness of 400 kV Silchar-P. K. Bari line and 400 kV Palatana-SM Nagar, NERLDC has given permission for charging of one circuit at a time of 400 kV SM Nagar-P. K. Bari line because charging of the other circuit of 400 kV SM Nagar (ISTS)-P. K. Bari (ISTS) D/C leads to increase in voltage by about 20 kV at 400 kV SM Nagar and 400 kV P. K. Bari node. Also, the 2x125 MVAR Bus Reactors at 400 kV SM Nagar (ISTS) and 2x125 MVAR Bus Reactors at 400 kV P. K. Bari (ISTS) were not accorded charging clearance as it was found from the studies that charging any one of the reactors reduces the voltage at 400 kV SM Nagar (ISTS)/400 kV P. K. Bari (ISTS) Sub-stations by about 40 kV. Further, to avoid the voltage drop at Bus at 400 kV SM Nagar and P. K. Bari (ISTS) during tripping of both circuits of 400 kV SM Nagar-P. K. Bari line 400 kV, Silchar (PG)- P. K. Bari line and when all the 4 Bus reactors are in service, NERLDC had directed to implement an SPS scheme at SM Nagar (ISTS) and P. K. Bari (ISTS) Sub-stations.

92. In view of the above, we are of view that though the trial run of the elements has been done through the LILO of P.K. Bari (TSECL) to Ambassa 132 kV line and LILO of Surajmaninagar (TSECL) to Bodhjangnagar 132 kV Line, the Elements 5,6,7 cannot be said to be put to regular use. We also note that reactor couldnot be commissioned due to delay of upstream network being developed by the PGCIL.

93. Further we have perused POSOCO trial run certificates with following details:



Element Name	POSOCO trial run certificate dated	Start of trial run	End of trial run
(i) Surajmaninagar-P. K. Bari Line 1 (ii) 400 kV main Bay of P. K. Bari Line-1 at Surajmaninagar (iii) 400 kV Bay of Surajmaninagar Line-1 at P. K. Bari Sub-station (iv) 400 kV Tie Bay of Surajmaninagar (ISTS)-1 and ICT-1 at P. K. Bari Sub-station (v) 400 kV Tie Bay of Surajmaninagar (ISTS)-2 and ICT-2 at P. K. Bari Sub-station (vi) 400 kV Bus I & II at Surajmaninagar and at P. K. Bari Sub-station (vii) 132 kV Bus I & II at Surajmaninaga and at P. K. Bari Sub-station and Bus Coupler at Surajmaninagar Sub-station (viii) 400/132 kV ICT-1 & ICT-2 along with HV & LV side Bay at Surajmaninagar and at P. K. Bari Sub-station (ix) 400/132 kV ICT-2 along with HV & LV side Bay at Surajmaninagar	25.2.2021	2.2.2021 11:08 Hrs	3.2.2021 11:08 Hrs
(x) 400 kV Surajmaninagar-P. K. Bari Line 2 (xi) 400 kV Bay of P. K. Bari Line-2 at P. K. Bari and at Surajmaninagar Sub-station	25.2.2021	9.2.2021 05:00 Hrs	10.2.2021 05:00 Hrs
420 kV 125 MVA Bus Reactor 1 along with 400 kV main Bay at P. K. Bari Sub-station	29.4.2021	9.3.2021 12:16 Hrs	10.3.2021 12:16 Hrs
420 kV 125 MVA Bus Reactor 2 along with 400 kV main Bay at P. K. Bari Sub-station	29.4.2021	10.3.2021 17:16 Hrs	11.3.2021 17:16 Hrs
420 kV 125 MVA Bus Reactor 2 along with 400 kV main Bay at Surajmaninagar Sub-station	29.4.2021	26.3.2021 12:12 Hrs	27.3.2021 12:12 Hrs
420 kV 125 MVA Bus Reactor 1 along with 400 kV main Bay at Surajmaninagar Sub-station	29.4.2021	29.3.2021 13:16 Hrs	30.3.2021 13:16 Hrs

As per the above, the energization of the different elements has been done on different dates, with last element (Bus reactor) to be energised is on 29.3.2021.

94. We observe that PGCIL declared COD of 400 kV P.K. Bari- Silchar 400 kV D/C line on 13.3.2021. Accordingly, we direct that the transmission charges for the Petitioner's Element 6 and 7 shall be billed to the PGCIL from deemed COD of Element 6 and Element 7 on 27.1.2021 to 12.3.2021 (under Regulation 13(12) of the 2020 Sharing Regulations) and thereafter the transmission charges shall be included in ISTS pool.

95. We also observe that Element 5 (Surajmaninagar substation) can be said to be put to use only after all equipments are charged. The last element got charged on



29.3.2021 at Element 5. Accordingly, it can be stated that Element 5 was put to use from 30.3.2021. We also take note of the fact that the reasons for Element 5 not getting charged was delay of Surajmaninagar-Palatana line under the scope of PGCIL. Accordingly, the transmission charges for Element 5 shall be billed to the PGCIL from deemed COD on 27.1.2021 to 29.3.2021 (under Regulation 13(12) of 2020 Sharing Regulations) and thereafter the transmission charges shall be included in ISTS pool.

**Liability of transmission charges for Element-8 (2 number 400 kV line bays at Palatana GBPP switchyard**

96. The Petitioner has submitted that PGCIL had completed construction of the PGCIL Surajmaninagar-Palatana Line on 20.4.2021 but PGCIL could not charge the said line as TSECL was not allowing shut-down of existing line for termination of the PGCIL Surajmaninagar-Palatana Line at the Surajmaninagar ISTS Sub-station. Subsequently, based on the meeting held on 18.5.2021 among CEA, NERPC, CTU, NERLDC, PGCIL and TSECL, PGCIL Surajmaninagar-Palatana 400 kV line achieved COD on 12.7.2021 and thereafter, one of the two 400 kV Bays at Palatana was charged on 13.7.2021 and the other bay at Palatana could not be charged.

97. The Petitioner has submitted that it is clear from the 'Certificate of Completion of Trial Operation of Transmission Element' dated 27.7.2021 issued by POSOCO for the PGCIL Surajmaninagar-Palatana Line that the completion of the trial run operation of the transmission line only took place on 12.7.2021 and not on 20.4.2021 and the date 20.4.2021 was only a deemed COD declared by PGCIL which establishes that there was no power flow in the PGCIL's line and thereby power flow did not take place in the Palatana bays which were associated with the PGCIL lines as on 20.4.2021. The Petitioner has further submitted that PGCIL Surajmaninagar-Palatana Line was put to use on 12.7.2021 and, therefore Palatana bays could only be declared under put to use

after the successful completion of trial run operation of the PGCIL Surajmaninagar-Palatana Line.

98. PGCIL has submitted that 2 number 400 kV line bays at Palatana GBPP switchyard for termination of Palatana-Surajmaninagar 400 kV D/C Line, to be developed by PGCIL under NERSS-V and their SCOD/COD is as follows:

Petitioner's Assets		PGCIL's assets		
Assets	COD	Assets	SCOD	COD
2 number 400 kV line bays at Palatana GBPP switchyard for termination of Palatana - Surajmaninagar 400 kV D/C Line	27.1.2021 (deemed COD) Actual - 13.7.2021	Additional 400 kV D/C line at Palatana & Surajmaninagar ends for termination of 400 kV D/C Palatana- Surajmaninagar line at 400 kV Palatana (Bays under TBCB) and 400 kV Surajmaninagar (Sub-station under TBCB).		COD (proposed) = 20.4.2021

99. PGCIL has submitted reasons for delay of transmission line in its scope.

100. We have considered the submissions of the Petitioner and perused the facts available on record.

101. The relevant extracts of the minutes of the meeting held on 18.5.2021 under Chairmanship of Member (Power system), CEA are as follows:

*“4. Representative of TSECL, Tripura stated that they have already taken up this matter with MoP requesting that only one circuit of Palatana-Surajmaninagar 400 kV D/C line may be terminated at Surajmani Nagar (ISTS) Sub-station till commissioning of state's 400/132 kV Sub-station at Surajmani Nagar (TSECL). The second circuit may remain connected with Surajmani Nagar (TSECL) Sub-station and charged at 132 kV. He added that MoP has informed them that they have referred the matter for consideration of National Committee on Transmission (NCT) in February, 2021. He further said that if both the circuits are charged at 400 kV and delinked from their existing 132 kV Surajmani Nagar Sub-station, there will be constraint in supplying power to Bangladesh as well as to meet their own load.*

.....

*10. On query about completion of 400/132 kV Surajmani Nagar (TSECL) Sub-station, Tripura informed that they have engaged POWERGRID as constituent and also issued Letter of Award (LoA) to M/s Sterling and Wilson (S & W) in January,2021. However, there are some contractual issues between TSECL and M/s S & W with regard to contract performance guarantee (CPG), which are being resolved at Government of Tripura level. It is expected that the contractor may start their work from June, 2021 and complete in one-year time.*

*11. NERLDC stated that with the new proposal, only one 400 kV circuit will be added and this may compromise the (N-1) criteria. However, the arrangement may be agreed for the time being on practical considerations.*

12. *POWERGRID also requested that deemed DOCO for the works carried out by them may be considered by NERPC/NERLDC.*
13. *Member (Power System), CEA stated that as all the participants are agreeing to the proposal of charging only one circuit of Palatana-Surajmani Nagar (ISTS) line at 400 kV level till completion of 400/132 kV level at Surajmani Nagar (TSECL), the same may be accepted. Other circuit may remain connected as Palatana-Surajmani Nagar (TSECL) 132 kV line till the time the 400/132 kV level at Surajmani Nagar (TSECL) is ready. He suggested for close monitoring of the works of the Sub-station by TSECL, so that their 400/132 kV Sub-station is not further delayed. The issue should be discussed in NCT also.*
14. *The suggestions made by Member (PS), CEA were agreed.*
15. *POWERGRID also stated that they had applied to NERLDC for first time charging clearance for the 220 kV bay nos. 211 & 212 at 400/220 kV New Mariani Sub-station (POWERGRID). NERLDC stated that the request of POWERGRID was facilitated on target date (31.3.2021) as all pre-requisites including provisional RIO clearance was in place. As revised RIO clearance has just been submitted by POWERGRID. The necessary clearance will be issued at the earliest. He also mentioned that the targeted transmission lines meant for these bays (Viz LILO of 220kV Samaguri-Mariani TL) are not expected anytime in future, as the said LILO plan is reportedly shelved. Consequently, although the 220 kV bays in question shall be charged and made operational, there will be no power flow established through these elements, until appropriate 220 kV line connectivity are finalised and implemented for these bays, (NERLDC submitted a letter in this regard on 19.5.2021, which is enclosed at Annex-III)."*

102. As per the above, TSECL has requested that only one circuit of the PGCIL Surajmaninagar-Palatana Line may be terminated at Surajmaninagar ISTS Sub-station till commissioning of TSECL's 400/132 kV Sub-station at Surajmaninagar. The second circuit of said line may remain connected with TSECL's Surajmaninagar Sub-station and charged at 132 kV, which was also agreed in the meeting.

103. We observe that reasons for delay of PGCIL line has already been raised by PGCIL before the Commission in Petition No. 167/TT/2022. The same shall be dealt with in the said Petition.

104. We observe that due to the request of the TSECL at later stage, only one bay at Palatana switchyard implemented by the Petitioner could be utilised and commissioned on 13.7.2021, whereas, the second bay could not be utilized and the same can be put to use only after the commissioning of the 400/132 kV Surajmaninagar (TSECL) Sub-station

by the TSECL and subsequent termination of the PGCIL Surajmaninagar-Palatana line at Surajmaninagar (TSECL) Sub-station.

105. As we have already allowed the deemed COD of the Element-8 as 27.1.2021, we are of considered view that transmission charges for Element- 8 shall be billed as follows:

- a. We observe that PGCIL declared deemed COD of assets under its scope on 20.4.2021 which is under adjudication in Petition No. 167/TT/2022. We also observe that one bays at Palatana under Element-8 was put to use on 12.7.2021. Inlight of this we direct that transmission chares for Element 8 shall be born by PGCIL from 27.1.2021, till approved deemed COD of PGCIL in terms of Order in Petition No.167/TT/2022 (COD in case deemed COD is not approved)
- b. From deemed COD of PGCIL Surajmaninagar-Palatana line at Surajmaninagar (TSECL) Sub-station (in terms of Order in Petition No.167/TT/2022) till 12.7.2021, transmission charges for Element-8 shall be billed to TSECL.
- c. From 13.07.2021 onwards transmission charges for Element-8 shall be considered under ISTS Pool.

#### **Section 4: Element 9, Element 10, Element 11**

106. Petitioner has submitted folliwng details for Element 9,10 and 11 which are prerequisite of each other.

<b>Sr. No.</b>	<b>Transmission Element</b>	<b>Deemed COD</b>	<b>COD</b>	<b>CEA (Provisional / final) Energisation certificate dated</b>
9	AGTPP (NEEPCO) – P.K. Bari (TSECL) 132 kV D/C Line with high capacity HTLS Conductor (equivalent to single moose ampacity at 85°C) (AP Line)	N/A	23.2.2021	Provisional energisation certificate dated 11.1.2021, 31.3.2021, 27.4.2021, 29.6.2021

Sr. No.	Transmission Element	Deemed COD	COD	CEA (Provisional / final) Energisation certificate dated
				Final energisation certificate dated 11.10.2021
10	2 number 132 kV line bays at AGTPP generation switchyard for termination of AGTPP (NEEPCO) – P.K. Bari (TSECL) 132 kV D/C Line (AGTPP Bays)	N/A	23.2.2021	1.12.2020
11	2 number 132 kV line bays at P.K. Bari (TSECL) Sub-station for termination of AGTPP (NEEPCO) - P.K. Bari (TSECL) 132 kV D/C Line (P.K Bari Bays)	N/A	23.2.2021	1.12.2020

107. We have perused POSOCO trial run certificate dated 5.3.2021 and note that Element 9, 10, 11 were first time energized on 19.2.2021 at 16:52 hrs. Accordingly, we allow the COD of these elements as 23.2.2021 in terms of Article 6.2.1 of the TSA, as claimed by the Petitioner.

108. Summary of the decisions related to COD/deemed COD and billing of transmission charges are tabulated as follows:

Transmission Element	SCOD	Deemed COD	COD	Bilateral Billing of Transmission Charges for mismatch period
Element-1: Biswanath Chariyalli - Itanagar 132 kV D/C Line (BI Line)	31.3.2020 (36 months)	N/A	6.4.2021	Under ISTS Pool from COD
Element-2: 2 number 132 kV line bays at Itanagar for termination of BI Line	31.3.2020 (36 onths)	N/A	6.4.2021	
Element-3: LILO of one circuit of BI Line at Gohpur (AEGCL)	31.3.2020 (36 months)	6.4.2021	NA	Transmission charges shall be billed to AEGCL from 6.4.2021 till the commissioning of the 2 number 132 kV bays at Gohpur bays. After commissioning of 132 kV bays at Gohpur, Element-3 it shall be included under ISTS pool.
Element-4: Silchar-Misa 400 kV D/C Line (SM Line)	31.11.2020 (44 months)	N/A	1.3.2021	Under ISTS Pool from COD
Element-5: 400/132 kV, 7x105 MVA Surajmaninagar Sub-station	31.7.2020 (40 months)	27.1.2021	NA	Transmission charges shall be billed to PGCIL from 27.1.2021 to 29.3.2021. From 30.3.2021 it shall be included under ISTS pool.
Element-6: 400/132 kV, 7x105 MVA P.K Bari Sub-station	31.7.2020 (40 months)	27.1.2021	NA	Transmission charges shall be billed to PGCIL from 27.1.2021 to 12.3.2021. From 13.3.2021 it shall be included under ISTS pool.
Element-7: Surajmaninagar - P.K. Bari 400 kV D/C Line (SP Line)	31.7.2020 (40 months)	27.1.2021	NA	

Transmission Element	SCOD	Deemed COD	COD	Bilateral Billing of Transmission Charges for mismatch period
Element-8: 2 number 400 kV line bays at Palatana GBPP switchyard (Palatana Bays)	31.7.2020 (40 months)	27.1.2021	NA	Transmission charges shall be: - billed to PGCIL from 27.1.2021 to approved deemed COD of PGCIL Surajmaninagar-Palatana line.  - From date of approved deemed COD till 12.7.2021, shall be billed to TSECL.  -From 13.7.2020 shall be taken under ISTS pool.
Element-9: AGTPP (NEEPCO) – P.K. Bari (TSECL) 132 kV D/C Line (AP Line)	31.3.2020 (36 months)	N/A	23.2.2021	Under ISTS pool
Element-10: 2 number 132 kV line bays at AGTPP generation switchyard for termination of AP Line (AGTPP Bays)	31.3.2020 (36 months)	N/A	23.2.2021	
Element-11: 2 number 132 kV line bays at P.K. Bari (TSECL) Sub-station for termination of AP Line (P.K Bari Bays)	31.3.2020 (36 months)	N/A	23.2.2021	

109. The issue is answered accordingly.

**Issue No. 2: Is the Petitioner entitled for the reimbursement of expenditure incurred by the Petitioner for the construction of downstream network of Respondent No. 2, Tripura State Electricity Corporation Limited (TSECL)?**

110. The Petitioner has submitted it learnt that TSECL was not developing the elements within its scope of work due to lack of funds and, therefore, in order to ensure optimum utilisation of the Project, the Petitioner was constrained to build the said downstream elements on behalf of TSECL and incurred approximately `15 crore and the Petitioner may be compensated for the same.

111. CTUIL has submitted that LILO of P.K. Bari (TSECL) to Ambassa 132 kV Line at P.K. Bari (TBCB) and LILO of Surajmaninagar (TSECL) to Bodhjangnagar 132 kV Line at Surajmaninagar (TBCB) are Intra-state in nature and implementation of the same was under the scope of Tripura State Electricity Corporation Limited (TSECL). The CTUIL has further submitted that the necessary approval with respect to implementation of these

lines was accorded in the second meeting of North Eastern Regional Power Committee-Transmission Planning (NERPC-TP) held on 25.9.2020.

112. We have considered the submissions of the Petitioner, the Respondent and perused the material on the record.

113. The relevant extract of the minutes of the 5<sup>th</sup> Standing Committee meeting held on 8.8.2015 where original project of North-Eastern Region Strengthening Scheme-V (NERSS-V) was decided, are as follows:

***“Further, TSECL and OTPC would implement the following scope of works:***

*i) 1 no. 132 kV bay at Palatana GBPP (by OTPC)*

*ii) Surajmaninagar (TSECL) – Surajmaninagar (TBCB) 132 kV D/C line with high capacity / HTLS (equivalent of single moose) (By TSECL)*

*iii) P. K. Bari (TSECL) – P. K. Bari (TBCB) 132kV D/c line with high capacity / HTLS (equivalent of single moose) (By TSECL)*

*TSECL may plan and inform the utilisation of remaining 2 no. 132 kV bays each at Surajmaninagar and P. K. Bari 400/132kV substation.*

*.....”*

114. As per the above, the implementation of the Surajmaninagar (TSECL)-Surajmaninagar (TBCB) 132 kV D/C line and P. K. Bari (TSECL)-P. K. Bari (TBCB) 132 kV D/C line was under the scope of TSECL.

115. Further, in the 2<sup>nd</sup> meeting of North Eastern Regional Power Committee (Transmission Planning) (NERPCTP) held on 25.9.2020, the changed scope of TSECL for implementation of the downstream network was agreed, i.e. TSECL will implement LILO of one circuit of 132 kV D/C line (TSECL) from Surajmaninagar (TSECL) to Bodhjungnagar at Surajmaninagar (ISTS) Sub-station in place of Surajmani Nagar (ISTS)-Surajmani Nagar (TSECL) 132 kV D/C line, and will implement LILO of 132 kV Single Circuit Ambasa-P.K. Bari (TSECL) line at P.K. Bari (ISTS) Sub-station in place of P.K. Bari (ISTS)-P.K. Bari (TSECL) 132 kV D/C line.



116. From the above discussions, it is clear that the implementation of the downstream network, which are intra-State in nature, were under scope of the TSECL. The Petitioner seems to have constructed these lines on its own accord. Therefore, we do not agree with the claim of the Petitioner to provide the compensation of these elements by the Petitioner on behalf of the TSECL.

The issue is answered accordingly.

**Issue No. 3: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under *Force Majeure* and “Change in Law”?**

117. The Petitioner has claimed relief due to delay in grant of forest clearance, unexpected requirement for and non-grant of NoC by AAI, delay in allotment of Government land, protests and unrest in North East due to enactment of the CAA Act and Covid-19 pandemic as *Force Majeure*” events. Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of *Force Majeure* as soon as reasonably practicable, but not later than 7 days after the date on which the party knew or should have reasonably known of the commencement of the event of *Force Majeure*. It further provides that such notice shall be a pre-condition to the affected party’s entitlement to claim relief under the TSA. The Article 11.5.1 of the TSA provides as follows:

*“11.5 Notification of Force Majeure Event*

*11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement. Provided that such notice shall be a pre-condition to the Affected Party’s entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.*

*11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force*



*Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”*

118. The Petitioner has also claimed reliefs under Article 12 of the TSA for Notification and orders for the payment of land compensation/additional forest compensation, requirement to pay additional forest compensation in Arunachal Pradesh, *Change in Law* expenses on account of Covid-19 and consequent restrictions imposed by the Central and respective State Governments, additional civil, erection and supply cost due to increase in line length due to diversion caused due to the Hollongi Airport, revised forest clearance required due to diversion caused due to the Hollongi Airport, payment to forest dwellers and IDC as *Change in Law* events. As per Article 12.3 of the TSA if the TSP is affected by a *Change in Law* event in accordance with Article 12.1 and wishes to claim relief for such *Change in Law*, it shall give notice to the lead LTTC as soon as reasonably practicable after being aware of the same. It further provides that any notice served pursuant to Article 12.3.1 and Article 12.3.2 of the TSA shall provide amongst the other things, precise details of *Change in Law* and its effect on the TSP. The Article 12.3.1 of the TSA provides as follows:

*“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.”*

119. The Petitioner has submitted the date of serving notice to the lead LTTC for claimed *Force Majeure* events and *Change in Law* events as follows:

***Force Majeure events***

Sl. No.	Particulars of the Activity/ Force Majeure event	Original timeline as per plan of licensee for the activity		Actual Timeline for the activity		Effective delay (excluding the time period planned to execute the event) due to Force Majeure event	Date of serving the notice to LTTC
		From	To	From	To		
1.	Delay in Grant of Forest Clearance for SM Line	4.8.2017	31.5.2018	4.8.2017	6.10.2018	128 days	27.9.2019
2.	Delay in Grant of Forest Clearance for SP Line	10.7.2017	6.5.2018	10.7.2017	2.5.2019	361 days	27.9.2019
3.	Delay in Grant of Forest Clearance for AP Line	30.9.2017	9.3.2018	30.9.2017	5.1.2019	302 days	27.9.2019
4.	Unexpected requirement for and non-grant of NoC by the AAI for BI Line and BI LILO	Requirement not envisaged as per BPC report or otherwise known to NER-II till 26.2.2018.		26.2.2018	12.10.2020	959 days	27.9.2019
5.	Requirement to obtain fresh Forest Clearance on account of the unexpected requirement for and non-grant of NoC by the AAI for BI Line and BI LILO	6.3.2018	17.10.2018	6.3.2018	6.11.2019	385 days	27.9.2019
6.	Delay in allotment of Government Land for P.K. Bari 400/ 132 kV Sub-station ("P.K. Bari Sub-station")	31.10.2017	29.4.2018	31.10.2017	18.5.2020	750 days	17.2.2020
7.	Delay in allotment of Government Land for Surajmaninagar 400/ 132 kV Sub-station ("Surajmaninagar Sub-station")	12.3.2018	8.9.2018	12.3.2018	25.8.2020	717 days	17.2.2020
8.	Protests and unrest in the North East due to enactment of the CAA for SM Line	Work unexpectedly halted due to the agitations and road blockades of NH-27 and NH-37, <i>et al.</i>		7.12.2019	2.1.2020	26 days	17.2.2020
9.	Protests and unrest in the North East due to enactment of the CAA for BI Line and BI LILO	Section 144 of the Indian Penal Code, 1860 was unexpectedly invoked and a curfew was imposed by District Magistrate, Biswanath, which continued in force for the next 60 days.		11.12.2019	9.2.2020	60 days	17.2.2020

Sl. No.	Particulars of the Activity/ Force Majeure event	Original timeline as per plan of licensee for the activity		Actual Timeline for the activity		Effective delay (excluding the time period planned to execute the event) due to Force Majeure event	Date of serving the notice to LTTC
		From	To	From	To		
10.	Protests and unrest in the North East due to enactment of the CAA for AP Line, SP Line and associated Sub-stations	Threats to workforce and equipment following agitations were experienced in areas like Mandai, Talimura, Salema, Ambassa and Manu. NER-II was constrained to shift its workforce with TSR (Tripura State Rifles) and was unable to resume work for a total of 15 days.		8.12.2019	11.12.2019	15 days (4 + 11)	17.2.2020
				6.1.2020	16.1.2020		
11.	Outbreak of COVID-19 pandemic and related restrictions for all elements	Unexpected breakout of the COVID-19 pandemic and consequent unprecedented restrictions.		24.3.2020	27.10.2020	217 days Claimed Relief - 6 months (180 days)	19.3.2020

### Change in Law events

Sl. No.	Particulars of the "Change in Law" event	Date of occurrence of "Change in Law" event	Date by which notice was required to be served to LTTCs as per TSA	Date of serving the notice to LTTCs
1.	Notification dated 10.3.2017 issued by the Government of Assam requiring payment of land and corridor compensation	10.3.2017	Article 12.3.1 of the TSA requires the Transmission Service Provider to serve a notice of <i>Change in Law</i> events on LTTCs "as soon as reasonably practicable after becoming aware of the same". As such, no fixed timeline has been prescribed in the TSA.  In this regard, this Commission has consistently deemed notices served even over a year after (or even more) after the occurrence of <i>Change in Law</i> events to be sufficient notice under Article 12.3.1 of the TSA. Reference may illustratively be made to this Commission's Order dated 11.8.2022 in Petition No. 514/MP/2020 and Order dated 11.7.2022 in Petition No. 49/MP/2021. In these Orders, this Commission has also placed reliance on the fact that the LTTCs therein	27.2.2019
2.	Requirement to pay additional forest compensation in Arunachal Pradesh	22.10.2019 5.8.2020 4.3.2021 8.8.2020		27.2.2019 and 17.11.2020
3.	Use of helicopter services necessitated by COVID-19 and consequent restrictions	24.3.2020 (as amended from time to time) read with addendum order dated 29.3.2020		19.3.2020 and 2.3.2021
4.	Idling charges due to COVID-19 and consequent restrictions	24.3.2020 (as amended from time to time) read with addendum order dated 29.3.2020		19.3.2020 and 2.3.2021
5.	Additional Civil, Erection and Supply Cost due to increase in line length due to diversion caused due to the Hollongi Airport	2.7.2018 and 12.3.2019		27.9.2019



Sl. No.	Particulars of the "Change in Law" event	Date of occurrence of "Change in Law" event	Date by which notice was required to be served to LTTCs as per TSA	Date of serving the notice to LTTCs
6.	Revised forest clearance required due to diversion caused due to the Hollongi Airport	2.7.2018 and 12.3.2019	had not responded to the <i>Change in Law</i> notices in that case while deeming the <i>Change in Law</i> notices sufficient under Article 12.3.1 of the TSA in that case. The same facts are true for the captioned Petition – the LTTCs have neither responded to any of the <i>Change in Law</i> notices, nor filed any reply or objections in the captioned Petition. Further, notices for all <i>Change in Law</i> events claimed herein have been served to LTTCs as soon as reasonably practicable after becoming of such events. Therefore, the <i>Change in Law</i> notices served by NER-II satisfy the requirements set out under Article 12.3.1 of the TSA.	27.9.2019
7.	Payment to Forest Dwellers	The Petitioner was required to pay additional compensation to forest dwellers in the area since the identified land was encroached by local people belonging to the tribal settlers of Tripura and forest dwellers. Work at the project site was collectively stopped by them on a number of occasions and high compensation was demanded by them, which had to be ultimately paid to them in the interest of timely completion of the project.		17.11.2020

120. We have considered the submissions of the Petitioner and note that considering the nature of *Force Majeure* and *Change in Law* events claimed, we are of the view that the Petitioner has largely complied with the requirements of prior notice under the TSA for the *Force Majeure* and *Change in Law* events to the extent noted above.

**Issue No. 4: Whether the 'Force Majeure Events' claimed by the Petitioner are permissible in terms of TSA and subsequent extension of SCOD of the elements under the scope of the Petitioner?**

121. The Petitioner has claimed that the transmission elements were affected by *Force Majeure* events during the construction/ implementation of the Project and sought condonation of the time over-run in case of the elements under Article 11 (*Force Majeure*) of the TSA. As stated above, the Petitioner has attributed the time over-run to outbreak of COVID-19 pandemic, delay in grant of forest clearance, unexpected requirement for and non-grant of NoC by the 'AAI, delay in allotment of government land, protests and unrest in North East due to enactment CAA Act.

122. We now examine whether the instant elements were affected by *Force Majeure* events as claimed by the Petitioner. Article 11 of the TSA, *Force Majeure* is defined inclusively, and is not limited to the events enumerated under clause 11.3 of the TSA but also includes any event or circumstance or combination of events or circumstances that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under the TSA. As per Article 11.7 of the TSA, no party shall be considered to be in breach of its obligations pursuant to the TSA where the performance of its obligations was prevented, hindered or delayed due to a *Force Majeure* event. Accordingly, every party, including the Petitioner, is entitled to claim the relief for a *Force Majeure* event affecting its performance about its obligations under the TSA. The Articles 11.3 and 11.4 of the TSA define *Force Majeure* events as follows:

*“11.3 Force Majeure*

*A ‘Force Majeure ’ means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:*

*(a) Natural Force Majeure Events:*

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

*(b) Non-Natural Force Majeure Events:*

*i. Direct Non–Natural Force Majeure Events:*

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

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

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



*ii. Indirect Non - Natural Force Majeure Events.*

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

*radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non-Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or*

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

*11.4 Force Majeure Exclusions*

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

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

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

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

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

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

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

*i. negligent or intentional acts, errors or omissions;*

*ii. failure to comply with an Indian Law; or*

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

.....

*11.6 Duty to perform and duty to mitigate*

*To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.”*

123. We would deal with the Petitioner's contentions regarding the unexpected requirement for and non-grant of NOC by AAI is a *Force Majeure* event and it led to (a) requirement to pay additional forest compensation in Arunachal Pradesh, (b) increase in the 'Civil Erection and Supply Cost' due to diversion caused because of the increase in the line length due to diversion of the Hollongi Airport and (c) revised forest clearance required due to diversion caused due to Hollongi Airport.

124. The submissions made by the Petitioner in this regard are as follows:



- a) Construction of BI Line, BI LILO and the line bays at Itanagar i.e. Element Nos.1, 2 and 3, were delayed due to unforeseeable diversion necessitated by the finalised location for the Hollongi Airport and subsequent non-grant of NoC by the AAI, which is beyond the Petitioner's reasonable control and constitutes a *Force Majeure* event in terms of Article 11 of the TSA.
- b) BI Line passes through Hollongi village located in the State of Arunachal Pradesh (near Arunachal Pradesh-Assam border). The three proposed routes for the BI Line in the Project Survey Report did not mention about the airport. Thereafter, the Petitioner was granted approval of the route under Section 164 of the Act and the approval was published in Gazette of India dated 31.8.2018 by the Central Electricity Authority (CEA) in line with statutory guidelines and public notices were published in leading newspapers. Stage-II forest clearance was given to the Petitioner by MoEF for both Assam and Arunachal Pradesh. At no stage of the bidding, the Petitioner was warned that airport would be developed in the vicinity BI Line route.
- c) The AAI proposed to set up the airport at Village Holongi, Yupia Tehsil, Papum Pare district in the State of Arunachal Pradesh. On 27.2.2018, the Petitioner wrote to the Ministry of Civil Aviation and intimated the co-ordinates with the route approved for the BI Line, with a request to consider those co-ordinates while planning the said airport.
- d) On 3.3.2018, the Petitioner submitted its proposal to the Nodal Officer, Arunachal Pradesh for forest clearance seeking forest diversion of an area of 48.147 ha.
- e) On 2.7.2018, AAI responded notifying the maximum permissible elevation for towers of BI Line. On 7.8.2018, the Petitioner concluded that for 15 tower locations, the maximum permissible elevation notified by AAI was less than the total elevation envisaged by the Petitioner.

- f) On 12.10.2018, the Petitioner submitted its online application for issuance of NoC to the AAI. On 12.3.2019, AAI granted a restricted NoC for the entire route except for eleven transmission tower angle points. The said eleven poles received NoC with 'Height Restrictions'. The Petitioner could not proceed with construction of BI Line by complying with such height restrictions as the maximum permissible height of tower erection (ground elevation + tower height, including minimum ground clearance) was less than the existing ground elevation (hill-top) height.
- g) The Petitioner was constrained to divert the route for the BI Line as the AAI's NoC of 12.3.2019 made it impossible to construct the BI Line as per the original route conveyed to the Petitioner at the time of placing its bid.
- h) The diverted route traversed across the villages of Chimpu, Bandardewa and Daflagarh in Arunachal Pradesh for which the Petitioner was constrained to submit a revised proposal for forest clearance on 13.5.2019 seeking forest diversion of the increased area of 48.987 ha. Such an exercise (of parallelly seeking forest clearance for the diverted route) was undertaken to expedite the execution of the BI Line.
- i) At the time of re-application, the earlier proposal had already received Stage-I approval on 30.1.2019 (48.147 ha.). The Stage-I approval for the said revised proposal was granted on 23.9.2019 and the Stage-II approval was granted on 28.5.2020.
- j) The Petitioner had made sincere efforts to follow the route that was mentioned in the bid documents (RfP). Based on that route that the Petitioner conducted a survey and applied for approval of the route from the MoP under Section 164 of the Act. The diversion of the route led to a loss of working time of approximately 27 months (over 800 days), which constitutes a *Force Majeure* event under the TSA. This event had additional time as well as cost impact and is covered under Articles 11.3 and 12.1 of the TSA as a *Force Majeure* event and a *Change in Law* event,

respectively. The Notice for this event was served by the Petitioner to all LTTCs on 27.9.2019.

125. The case of the Petitioner is that the construction of the BI Line and the associated Elements-2 and 3 was delayed due to unforeseeable diversion necessitated by the finalized location for the Hollongi Airport and the subsequent non-grant of an NoC by the AAI. The Petitioner has contended that this was beyond its reasonable control and constitutes a *Force Majeure* in terms of Article 11 of the TSA.

126. On perusal of the Survey Report of the BPC placed on record as Annexure P-12 vide affidavit dated 20.3.2021, we note that three routes were suggested in respect of BI Line and they do not mention about the airport. The comparative statement for three alternative routes of BI Line as per the said Annexure P-12 is as follows:

Comparative Statement for 3 Alternative Routes

(Biswanath Chariyalli (Power Grid) – Itanaqar (Zebra conductor) 132 KV D/C line)

Sr. No.	Description	Alt-I(Proposed) (Red)	Alt-II	Alt-III
1	Line Length	65.52 km	69.12 km.	66.33 km.
	b) Hilly	13 km	13	13
	c)Undulated			
	B_Line	53.5 km	53.5 km	53.5 km
2	a) Angle Points	88	90	96
3	Wind Zone	Wind Zone - V	Wind Zone - V	Wind Zone - V
4	Forest	AP48-AP83 (12KM)	AP50 - AP85 (12KM)	AP56 - AP91 (12KM)
5	Power Line crossings (132KV & Above)	AP10-AP11 (132KV D/C) AP18-AP19 (400 KV D/C )	AP10-AP11 (132KV D/C) AP18-AP19 (400 KV D/C )	AP10-AP11 (132KV D/C) AP20-AP21 (400 KV D/C)
6	Railway crossings	AP7 – AP8	AP5 - AP6	AP7 - AP8
7	River crossings	3	3	3
	a) Major	AP15 - AP16 AP29 – AP30 AP42 - AP43 AP48 - AP49	AP17 - AP18 AP31-AP32 AP 32 -AP33 AP44 -AP 45 AP50 - AP51	AP17 - AP18 AP31 - AP32 AP47 -AP48 AP56 - AP57
8	Airport	NIL	NIL	NIL
9	NH Crossings	AP2 – AP3 AP46- AP47 AP52 - AP53 AP55 - AP56 AP59 – AP60	AP2 - AP3 AP48 - AP49 AP54 - AP 55 AP57 - AP 58 AP61 -AP 62	AP2 - AP3 AP54 - AP55 AP60 - AP61 AP63 - AP64 AP67 - AP68
10	SH Crossings	AP10 - AP11	AP10 - AP11	AP12 - AP13
11	Approaches for construction	Sufficient approach is available	Sufficient approach is available	Sufficient approach is available

127. The Petitioner was directed through a Technical Validation letter dated 5.8.2022 to submit whether the route followed was as provided by the BPC route or any other route along with necessary proof, for each of its line. In response, the Petitioner vide affidavit dated 20.9.2022 has made the following submissions:

*“9. The Petitioner has relied on the inputs provided by the BPC’s survey report in preparing its bid and finalising the route for each element. There were certain deviations from the indicative routes mentioned in the BPC survey report for each of the transmission lines on account of NER-II’s survey/ geo-technical investigation and uncontrollable factors. There is no requirement under the RFP or the TSA to identically follow the indicative routes identified by the BPC. While finalising the routes for each of the transmission lines, NER-II took into account the indicative routes provided in the BPC survey report and relied on the information provided in the BPC survey report. After identifying the most appropriate routes*

*for each line, NER-II chose routes that differed from the BPC's suggested indicative routes. In this regard, it may kindly be noted that:*

*9.1 Clause 1.5(a) on pg. 71 of the Request for Proposal ("RFP") expressly states that the BPC survey report will inter alia contain "voltage level line configuration (i.e., S/C or D/C), indicative route alignment, conductor type conductor configuration and type of terrain likely to be encountered". Thus, the routes suggested in the BPC survey report are evidently "indicative" by their very nature.*

*9.2 More importantly, Article 5.1.4(c) of the TSA clearly states that the TSP (NER-II) shall be responsible for "survey and geo-technical investigation of line route in order to determine the final route of the Transmission Lines". Thus, the TSA clearly confers the flexibility and the right to determine the final line route for each of the transmission lines on the TSP (NER-II).*

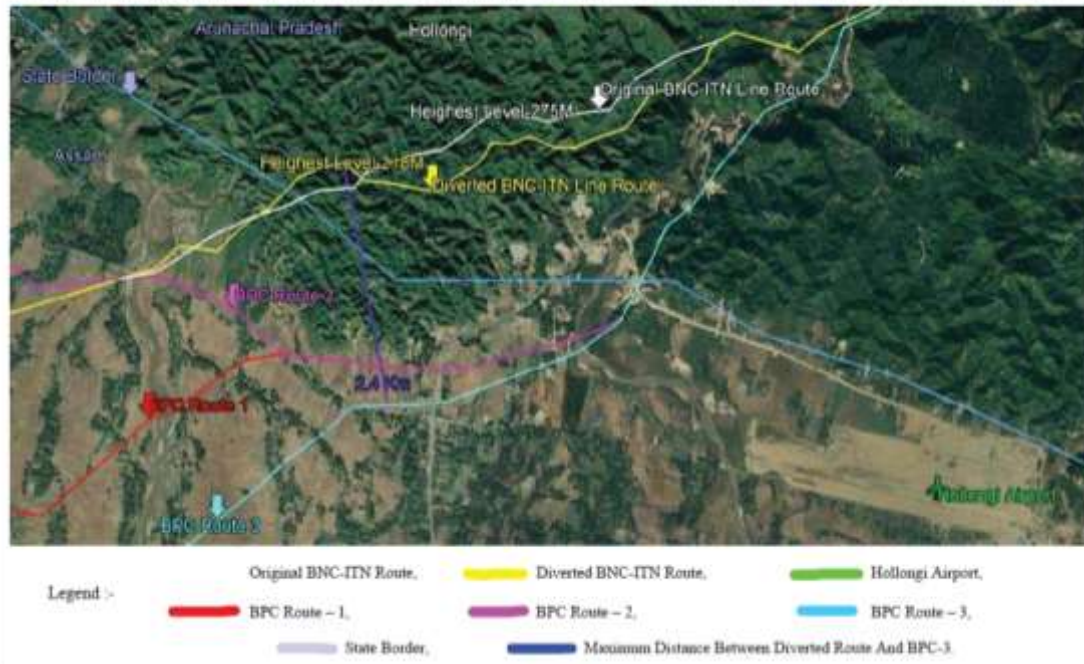
*9.3 In accordance with these provisions, NER-II finalised the final line routes for each of the transmission lines.*

*9.4 The final routes and 3 indicative routes suggested by BPC for each of the transmission lines have been superimposed in relevant maps and annexed herewith (in response to query (vi) below)."*

128. The Petitioner has further contended that as per paragraph 1.5(a) of the RfP, the BPC will provide the information regarding transmission line, voltage level, line configuration, indicative route alignment and type of terrain likely to be encountered etc., and that the routes suggested in the BPC Survey Report are 'indicative' in nature. The Petitioner has further contended that as per Article 5.1.4(c) of the TSA, the TSP shall be responsible for survey and geo-technical investigation of line route.

129. The Petitioner has contended that the three alternative routes given by the BPC are indicative in nature and the Petitioner is required to conduct its own survey and select a route that is most suitable. The Petitioner having selected a route for BI Line and initiated action for execution of the line. The Petitioner approached CEA for grant of approval under Section 164 of the Act and the same was published in Gazette of India on 31.8.2018 specifying the route through which BI Line was to traverse. The Petitioner vide affidavit dated 20.9.2022, has furnished the map showing the original route chosen by it to implement the BI Line which runs parallel to the three BPC routes and the same is as follows:

132KV D/C BISWANATH CHARJALI – ITANAGAR TR. LINE : HOLLONGI AIRPORT DIVERSION (ORIGINAL ROUTE, DIVERSION ROUTE & BPC ROUTE (1, 2, & 3))



130. The Petitioner had also submitted the proposal for forest clearance on 3.3.2018 to the Nodal Officer in Arunachal Pradesh seeking diversion of forest land of 48.147 ha. It is stated that the Stage-I clearance for 48.147 ha was given on 30.1.2019. The Petitioner did not say anything about the Stage-II clearance. In the meanwhile, the Petitioner has submitted that it came to know sometime in the first quarter of 2018 that AAI proposed to set up an airport in Hollongi Village in Yupia Tehsil, Papum Pare district in Arunachal Pradesh and thereafter on 27.2.2018 the Petitioner approached Ministry of Civil Aviation to consider the coordinates of the route approved for the BI Line while planning the airport. The Petitioner has submitted that AAI imposed certain restrictions on the height of the towers and which made it impossible for the Petitioner to continue with the construction of the BI Line and therefore the Petitioner was forced to deviate from the originally proposed route for the BI Line. Accordingly, the Petitioner applied for revised forest clearance of 48.987 ha of land on 13.5.2019 and Stage-I and Stage-II approvals for the revised proposal were granted on 23.9.2019 and 28.5.2020. The Petitioner has submitted that the proposal for setting up of airport was not given in the Survey Report and has contended that this unexpected proposal to set up the airport and the requirement to obtain NoC from AAI is a *Force Majeure* and *Change in Law* event.

131. Let us first discuss about the routes suggested by BPC and the route selected by the Petitioner. There is no dispute over the fact that BPC in its Survey Report provided for three alternate routes for the BI Line. The Petitioner, however, did not choose any of the routes suggested by the BPC in respect of BI line and decided to proceed with the route selected and finalized by it.

132. The Petitioner has contended that bid survey report provided by the BPC to the Petitioner specifically mentioned the details of reserved forests, transmission lines, rivers, etc. which were present alongwith the identified routes for BI Line. However, the said report did not mention that alternate routes proposed by the BPC intersect any airport.

133. From the above map, it is apparent that BPC had given three alternate routes in its Survey Report. However, the Petitioner identified and surveyed a route of its own in respect of the BI line and chose not to follow any of the three alternate routes given in the BPC Survey Report. The Petitioner later found that the route adopted by it is intersecting the airport. Thus, the Petitioner has taken a conscious decision of construction of BI Line based on its own survey report which is a clear departure from the three routes proposed by the BPC. The Petitioner now claims that it has encountered with the airport which was not made known to it earlier in the Survey Report is an event of Force Majeure due to which it had to divert the BI line to avoid intersection of the airport. Now, we proceed to examine whether diversion of BI line to avoid intersection with the airport, in the facts and circumstances of the present case, is an event of Force Majeure?

134. The BPC is required to provide the bidders with a Survey Report of the Project containing, besides other information, the “indicative route alignment” of the transmission line. As regards the “indicative route alignment”, the Commission vide order dated 3.4.2018 in Petition No.110/MP/2016 observed as follows:



“31. Xxxxx

*Perusal of the above provisions of RfP reveals that the BPC is required to provide the bidders with the Survey Report of the project which shall contain information regarding the transmission line. i.e. voltage level, line configuration (i.e. S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered. In the context of the present petition, the term “indicative route alignment” is important. The term has not been defined in the RfP. However, the scope of the term can be gathered from the meaning ascribed in the dictionary. The word “indicative” means “suggestive or giving indication of”, the word “route” means “way taken from one place to another” and the word “alignment” means “to ally; to place in or bring into line” Thus the term “indicative route alignment” in ordinary dictionary meaning would mean suggestive route of the transmission line from one place to another to ally with the existing ones. The “indicative route alignment” in the Survey Report should include the entire route of the transmission lines with both start and end points. The RfP contains a general disclaimer and a specific disclaimer under clause 1.5(a) which seek to exempt the BPC or its authorized representative, any of the LTTCs or their directors, employees or advisors/consultants from any responsibility or liability in respect of the statement or omissions made in the Survey Report or the accuracy, completeness or reliability of information contained in the Survey Report. The perspective bidders are required to carry out their own survey and factor all requirements including the requirement for obtaining forest clearance while quoting the bid. Further, after award of the bid, the TSP is required to finalize the route alignment in consultation with all concerned authorities and execution of the transmission line.”*

135. The RfQ clearly states that BPC shall provide the bidders with a Survey Report of the Project which shall, inter alia, contain the information on “indicative route” alignment of the transmission line. Accordingly, as stated above, the BPC in its survey report provided for three alternate routes for the BI Line. The Petitioner, however, did not choose any of the routes suggested by the BPC in respect of the BI line and wished to proceed with the route selected and finalized by it.

136. As per the RfP, the Petitioner 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 or shall it relieve a Bidder from any responsibility for appropriately eliminating the difficulty or costs of successfully completing the Project.

137. Thus, the 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 a ground 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.

138. In the light of above discussions, we are of the view that once the Petitioner chose a route based on its own survey, ignoring the three alternate routes as suggested by the BPC in its Survey Report, the Petitioner has to face all the consequences whether they are advantageous or disadvantageous to it in respect of the route selected by it. We are of the view that it is the responsibility of the Petitioner to consider all the requirements of the route identified by it and factor them in its bids.

139. The other contention of the Petitioner is that the proposal for setting up the airport was not mentioned in the Survey Report and the Petitioner came to know of this fact only in 2018. Therefore, it is a Force Majeure and Change in Law event.

140. We are required to examine when the Hollongi Airport was proposed and whether this information was available in the public domain and the Petitioner's contention that it came to know about the proposal to set up the Hollongi Airport only in 2018. From the information available in the public domain, it is observed that an airport was proposed in Banderdeva in Arunachal Pradesh in 2007 by the Government of India and the foundation stone was also laid in February, 2007. However, this site was not approved by the AAI due to technical reasons and AAI proposed airport in Hollongi Village in 2011. The Hollongi Village was on a flat land but Banderdeva was surrounded by hilly terrain operation of aircraft from only one direction could have been possible. It is argued that there were certain differences between the Government of Arunachal Pradesh and AAI regarding the new site proposed by AAI. These differences were settled with the intervention of PMO and the airport was finalised in Hollongi Village in July, 2012. Thus, the proposal to set up an airport in Hollongi Village was under consideration since 2011 and this information was also available in the public domain and was also reported in the The Hindu newspaper on 29.7.2012 and also in Project Monitor on 23.5.2014. The

conceptualisation of Hollongi Airport is further corroborated from “The Arunachal Pradesh Gazette (Extraordinary)” No. 59 dated 10.4.2013 as quoted in Paragraph 141 of this Order.

141. The Petitioner has submitted a letter dated 22.10.2019 issued by Deputy Commissioner, Papum Pare District, Yupia regarding the detailed estimate copy of land and assets value falling under its jurisdiction for construction of 132 kV D/C Transmission line from Biswanath Chariali to Itanagr and Gohpur LILO, wherein Board proceeding dated 4.10.2019 for rate fixation in respect of temporary damage to be caused during construction of 132 V D/C Transmission line from Biswanath Chariali to Itanagr and Gohpur LILO at Holangi area under Balijan circle is enclosed. Further, alongwith the Board proceeding dated 4.10.2019, a copy of the Gazette of Arunachal Pradesh dated 10.4.2013 is enclosed regarding notification of the land rates and various assets for the purpose of payment of compensation for land to be acquired for the Greenfield Airport Project at Hollongi, Itanagar under Papum Pare District, Arunachal Pradesh. The Gazette dated 10.4.2013 is as follows:



# The Arunachal Pradesh Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

No. 59, Vol. XX, Naharlagun, Wednesday, April 10, 2013, Chaitra 20, 1935 (Saka)

GOVERNMENT OF ARUNACHAL PRADESH  
DEPARTMENT OF LAND MANAGEMENT  
ITANAGAR

## NOTIFICATION

The 3rd March, 2013

No. LR-43/81(Vol-II) Pt—The Governor of Arunachal Pradesh is pleased to notify the rates of land and various assets for the purpose of payment of compensation for land to be acquired for the Greenfield Airport Project at Hollongi, Itanagar under Papum Pare District, Arunachal Pradesh with immediate effect. The rates of land and the Assets for Airport Project is described in the Schedule-I to VI below :-

### SCHEDULE - I

Sl. No.	Particulars	Rate	Unit
1.	Land (including 30% Solatium)	₹ 507	Per sqm

### SCHEDULE - II RATES FOR STANDING STRUCTURES

Sl. No.	Name of the Items	Rate	Unit
1.	SPT Building (Brick Wall)	₹ 14,200	per sqm
2.	RCC Building	₹ 17,800	per sqm
3.	OBT House (Thatch)	₹ 900	per sqm
4.	OBT House with CGI and Floor Casting	₹ 2,280	per sqm
5.	OBT House with CGI Roofing	₹ 1,797	per sqm
6.	CC Wall/Boulder Wall (2 Mtr H)	₹ 10,600	per sqm
7.	Septic Tank	₹ 3,841	per sqm
8.	MIBT	₹ 4,700	per sqm
9.	RCC Post (1.65 Mtr H)	₹ 1,000	per post
10.	Angle Post	₹ 1,500	per post
11.	Barbed Wire (4 row)	₹ 100	per RM
12.	Chainlink Fencing	₹ 640	per RM
13.	Trashing Floor (Paddy Field)	₹ 600	per sqm
14.	Ring Well	₹ 4,700	per mtr depth
15.	Hand Pump	₹ 15,000	per No
16.	Brck Wall (Boundary)	₹ 4,700	per RM
17.	Iron Gate (A-Class)	₹ 25,000	per gate
18.	Iron Gate (B-Class)	₹ 10,000	per gate
19.	Iron Gate (C-Class)	₹ 5,000	per gate
20.	Fish Pond	₹ 300	per sqm

The above said Gazette dated 4.10.2013 has notified the rates of land and various assets for the purpose of payment of compensation for land to be acquired for the Greenfield Airport Project at Hollongi, Itanagar. It establishes the conceptualisation of the Hollongi Airport was well before the cut-off date of the Petitioner's project.



142. Thus, we are of the view that if the Petitioner, a transmission licensee and the investor, had been a little more diligent, it would have come to know about the proposal initiated in 2011 to set up the airport in Hollongi Village. It is incumbent upon the Petitioner under Article 5.1.4 (c) of the TSA to conduct survey and geo-technical investigations of the line route before finalizing the route of the transmission lines. Therefore, we are of the view that the Petitioner has failed to conduct a proper survey before finalizing the route of BI Line and BI LILO and as such for the fault of the Petitioner, the beneficiaries cannot be burdened/penalized.

143. Thus, Petitioner's contention that the unexpected inter-section of the proposed airport and the requirement for and non-grant of NOC by AAI is a *Force Majeure* event is accordingly rejected.

### **Covid-19 Pandemic**

144. The Petitioner has submitted that the outbreak of Covid-19 pandemic has affected almost all the instant elements. Therefore, we deal with it prior to dealing with the other events that affected the elements. It is submitted that the COVID-19 pandemic and the consequent lockdown/ restrictions imposed affected the execution of the instant elements. The Petitioner has submitted that the MoP vide its order dated 27.7.2020 and dated 12.6.2021 acknowledged the disruption in supply chain and manpower due to COVID-19 pandemic and granted an extension of five months and three months respectively in execution of inter-State transmission projects. The MoP's order dated 27.7.2020 is as follows:

“No. 3/1/2020-Trans  
Government of India  
Ministry of Power  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi- 110001.

Dated: 27th July, 2020

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. COO, CTU-Plg, POWERGRID, Gurugram

*Sub: Extension to TSP/ Transmission Licensees for completion of under construction inter-state transmission projects.*

Sir,

*I am directed to state that transmission utilities have pointed out that construction activities at various transmission project sites have been severely affected by the nationwide lockdown measures announced since 25<sup>th</sup> March, 2020 to contain outbreak of COVID-19 and have requested for extension of Scheduled Commercial Operation Date (SCOD) to mitigate the issues of disruption in supply chains and man power, caused due to outbreak of COVID-19 pandemic.*

*2. It has been, therefore, decided that;*

- i. All inter-state transmission projects, which were under construction as on date of lock-down i.e. 25th March 2020, shall get an extension of five months in respect of SCOD*
- ii. This order shall not apply to those projects, whose SCOD date was prior to 25th March 2020,*
- iii. Start date of Long Term Access granted to a generator by CTU based on completion of a transmission line, whose SCOD is extended by 5 months due to COVID-19 as mentioned above at point (i), shall also be extended by 5 months.*

*3. This issues with the approval of Competent Authority. ....”.*

145. In the aforesaid order, the MoP taking into account the fact that the construction of various transmission systems/ projects was severely affected by the nationwide lockdown measures announced to contain the outbreak of COVID-19 and the request of the transmission licensees for extension of SCOD, extended the SCOD of all the inter-State transmission systems/ projects that were under construction as on the date of lockdown, i.e., 25.3.2020 and whose COD was not prior to 25.3.2020, is by five months. In the instant case, the instant elements of the Petitioner were under construction as on the date of lockdown, i.e., on 25.3.2020 and the SCOD of the transmission project was post 25.3.2020. Accordingly, the extension of SCOD by five months allowed by the MoP in its order dated 27.7.2020 is applicable to all the elements of the Petitioner.

146. The MoP’s order dated 12.6.2021 is as follows:





*“Sub: Extension to TSP/Transmission Licensees for completion of under construction inter-State transmission projects – reg.*

*Sir,*

*I am directed to state that transmission utilities have approached this Ministry stating that construction activity at various transmission projects sites have been severely affected by the current second wave of COVID-19 pandemic and various measures taken by State/UT Governments to contain the pandemic; such as night curfew, imposition of section 144, weekend lockdown and complete lockdown. In this regard they have requested for extension of Scheduled Commercial Operation Date (SCOD) for the undergoing Transmission projects to mitigate the issues of disruption in supply chains and manpower, caused due to COVID-19 pandemic.*

*2. The matter has been examined in the Ministry and it has been noted that unlike last year complete lock-down in the entire country, this time different States/UTs have ordered lock-down in their State/UTs as per their own assessments. Therefore, after due consideration, it has been decided that;*

- i. All inter-state transmission projects, which are under construction with SCOD coming after 01 April 2021 shall get an extension of three (3) months in respect of their SCOD;*
- ii. The commencement date of Long Term Access (LTA) to a generator by CTU based on completion of a transmission line, whose SCOD is extended by three (3) months due to COVID-19 as mentioned above at point(i), shall also be extended by three (3) months*

*3. This issue with the approval of Competent Authority.”*

147. It is observed that the MoP’s order dated 12.6.2021 giving extension of three months to inter-State transmission systems is applicable only to the transmission projects/ systems which are under construction with SCOD after 1.4.2021. The SCOD of all the instant transmission elements is prior to 1.4.2021. Therefore, the MoP’s order dated 12.6.2021 is not applicable in case of the instant transmission elements.

148. The cut-off date in case of the instant transmission elements as per the TSA is 11.1.2017. Accordingly, the SCOD as per the TSA, the extended SCOD as per the MoP order and the deemed COD approved by us, the actual COD and time over-run in case of the instant elements are as follows:

<b>Elements</b>	<b>SCOD</b>	<b>Extended SCOD as per MoP order</b>	<b>Approved deemed SCOD*</b>	<b>Approved COD</b>	<b>Time over-run (in days)</b>
Element-1: Biswanath Chariyalli-Itanagar 132 kV D/C Line (BI Line)	31.3.2020 (36 months)	31.8.2020	N/A	6.4.2021	218
Element-2: 2 number 132 kV line bays at	31.3.2020 (36 months)	31.8.2020	N/A	6.4.2021	218





Itanagar for termination of BI Line					
Element-3: LILO of one circuit of BI Line at Gohpur (AEGCL)	31.3.2020 (36 months)	31.8.2020	6.4.2021	N/A	222
Element-4: Silchar - Misa 400 kV D/C Line (SM Line)	31.11.2020 (44 months)	1.3.2021 or 30.4.2021 whichever is earlier	N/A	1.3.2021	nil
Element-5: 400/132 kV, 7x105 MVA Surajmaninagar Sub-station	31.7.2020 (40 months)	31.12.2020	27.1.2021	N/A	27
Element-6: 400/132 kV, 7x105 MVA P.K Bari Sub-station	31.7.2020 (40 months)	31.12.2020	27.1.2021	N/A	27
Element-7: Surajmaninagar - P.K. Bari 400 kV D/C Line (SP Line)	31.7.2020 (40 months)	31.12.2020	27.1.2021	N/A	27
Element-8: 2 number 400 kV line bays at Palatana GBPP switchyard (Palatana Bays)	31.7.2020 (40 months)	31.12.2020	27.1.2021	N/A	27
Element-9: AGTPP (NEEPCO)-P.K. Bari (TSECL) 132 kV D/C Line (AP Line)	31.3.2020 (36 months)	31.8.2020	N/A	23.2.2021	176
Element-10: 2 number 132 kV line bays at AGTPP generation switchyard for termination of AP Line (AGTPP Bays)	31.3.2020 (36 months)	31.8.2020	N/A	23.2.2021	176
Element-11: 2 number 132 kV line bays at P.K. Bari (TSECL) Sub-station for termination of AP Line (P.K Bari Bays)	31.3.2020 (36 months)	31.8.2020	N/A	23.2.2021	176

\* The deemed COD is approved under Issue No.1.

149. It is observed that there is no time over-run in case of Element 4, i.e., Silchar-Misa transmission line. Accordingly, we examine the time over-run in case of the other ten elements in the subsequent paragraphs.

### **Elements-1, 2 and 3**

150. The Elements-1, 2 and 3 are related and the reasons given by the Petitioner for their time over-run are also similar. Moreover, the number of days of time over-run in case of these elements are more or less the same. Therefore, we deal with them together.

The Petitioner has attributed the time over-run in case of the instant elements to Covid-19 pandemic, blockade and imposition of curfew.

### **Analysis and Decision**

151. We have considered the submissions of the Petitioner and have perused the record. The SCOD of BI Line, i.e. Element- 1 and the associated Elements-2 and 3 is 31.3.2020. The extended COD of these elements as per the MoP order dated 27.7.2020 is 31.8.2020. The Elements-1 and 2 were put into commercial operation on 6.4.2021 and we have approved the deemed COD of Element-3 as 10.4.2021. Thus, there is time over-run of 218 days in case of Elements-1, 2 and 3.

152. We have already extended the SCOD of the transmission elements on account of Covid-19 pandemic as per the MoP order by five months. As regards forest clearance, it is observed that the route selected by the Petitioner traversed across the villages of Chimpu, Bandardewa and Daflagarh in Arunachal Pradesh and submitted a proposal for forest clearance on 13.5.2019, seeking diversion of 48.987 ha. The Stage-I approval was granted on 23.9.2019 and Stage-II approval was granted on 28.5.2020. Thus, it took 381 days for the Petitioner to obtain the forest clearance. As per the Forest (Conservation) Amendment Rules, 2004 notified by the Ministry of Environment & Forests on 3.2.2004, the timeline for forest approval after submission of proposal is 210 days by the State Government and 90 days by the Forest Advisory Committee of Central Government, leading to processing time of 300 days. In the instant case, it took 381 days for the Petitioner to obtain the approval. Thus, there is a delay of 81 days in granting the forest approval. This delay in grant of forest clearance by 81 days is beyond the control of the Petitioner and it affected the implementation of the Elements-1, 2 and 3. Therefore, we condone the 81 days of time over-run in case of Elements-1, 2 and 3. The remaining 137 days of time over-run in case of Elements-1, 2 and 3 is not condoned.

### **Elements-5, 6, 7 and 8**

153. The Elements-5, 6, 7 and 8 are related and the time over-run in case of these elements is 27 days. The Petitioner has attributed the time over-run in case of these elements to delay in grant of forest clearance, delay in allotment of the Government land and protests against the CAA, which are *Force Majeure* events under Article 11.3 of the TSA.

154. The Petitioner has further submitted that the construction of the P.K. Bari and Surajmaninagar Sub-stations was delayed due to delays in grant of two small parcels of government land by the State Government. The Petitioner has submitted that the applications for the allotment of the Government land were submitted on 31.10.2017 and 12.3.2018 to the Revenue Department, Government of Tripura under Section 14(2) of the Tripura Land Revenue and Land Reforms Act, 1960. The Petitioner has submitted that no time limit is provided in the said Act but, the Petitioner expected to obtain the approvals within 180 days. However, the directions to hand over the land was issued only on 25.8.2020 leading to a substantial delay of approximately 27 and 23 months in allotment of the land.

155. It is observed from the submissions of the Petitioner that the Petitioner had originally sought 1.02 acres of Government land, however, only 0.69 acres of Government land was required for Surajmaninagar Sub-station and only 1.16 acres of land was required for P. K. Bari Sub-station. The Petitioner has not submitted the details of how the delay in allotment of such a small amount of Government land affected the execution of Elements-5, 6, 7 and 8. Therefore, we are not inclined to consider the delay in grant of Government land as a *Force Majeure* event leading to time over-run in case of Elements-5, 6, 7 and 8.

156. The Petitioner has submitted that AP Line, SP Line and associated Sub-stations consist of 132 kV and 400 kV network which is approximately 102 km long and is located within the State of Tripura. The Petitioner has contended that major impact of the

introduction of CAA was seen in Tripura, Mandai, Talimura, Salema, Ambassa and Manu due to which the Petitioner's workforce was unable to work on account of threats, damage to project equipment with theft of material. The Petitioner has claimed *Force Majeure* on account of these events for 15 days (from 8.12.2019 to 11.12.2019 and from 6.1.2020 to 16.1.2020).

157. We have considered the above contentions of the Petitioner and have perused the record. The Petitioner has placed on record newspaper clippings without corroborating the same with proper documentary evidence. We are, therefore, not inclined to consider the period commencing from 8.12.2019 to 11.12.2019 and from 6.1.2020 to 16.1.2020 (15 days) as *Force Majeure* event in respect of SP Line and AP Line. Accordingly, the claim of the Petitioner for *Force Majeure* on account of CAA is rejected for the said 15 days.

158. As regards delay in grant of forest clearance, the Petitioner has submitted that 139.93 ha. of forest land was encountered in the route alignment of SP Line and the Petitioner submitted the forest diversion proposal on 10.7.2017 and the Stage-I approval was granted on 21.1.2019, i.e., after a delay of 260 days and final tree cutting permission was granted on 2.5.2019, i.e., after a further delay of 101 days resulting in total delay of 361 days. The Petitioner has contended that the instant delay of 361 days in grant of forest approval as an uncontrollable *Force Majeure* event.

159. As stated above, as per the Forest (Conservation) Amendment Rules, 2004 notified by the Ministry of Environment & Forests on 3.2.2004, the timeline for forest approval after submission of proposal is 210 days by the State Government and 90 days by the Forest Advisory Committee of Central Government, leading to processing time of 300 days. In the instant case, the Petitioner submitted its proposal on 10.7.2017 and the final clearance was given on 2.5.2019. It took 661 days for obtaining the approval. Thus, there is a delay of 361 days in granting the forest approval as stated by the Petitioner. This delay in grant of forest clearance is beyond the control of the Petitioner and it has

cascading effect on the implementation of the Elements-5, 6, 7 and 8. However, the time over-run in case of the Elements-5, 6,7 and 8 is only 27 days. Therefore, we condone the time over-run of 27 days in case of the said elements as the delay in grant of forest clearance is beyond the control of the Petitioner.

### **Elements-9, 10 and 11**

160. The time over-run of 176 days in case of the Elements-9, 10 and 11 are taken up together as they are related. The Petitioner has attributed the time over-run in case of these elements to delay in grant of forest approval and the protest against CAA.

161. As regards the forest approval, the Petitioner has submitted that the AP Line crosses West Tripura district in the State of Tripura and the Petitioner submitted a proposal for diversion of 17.569 ha. of forest land with the Nodal Officer, Tripura on 30.9.2017. The Stage-I approval was granted 12.10.2018, i.e., after a delay of 217 days and tree cutting permission was granted only on 5.1.2019, i.e., after a further delay of 85 days (in total 302 days). The Petitioner has submitted that the additional time of 302 days taken in approving the forest diversion proposals was uncontrollable and completely beyond the Petitioner's control and has consequently delayed the construction of the said elements and has led to a loss of working time in the execution of the AP Line, despite Petitioner's sincere efforts. Therefore, the delay in grant of forest clearance constitutes a *Force Majeure* event under Article 11.3 of the TSA.

162. As stated above, as per the Forest (Conservation) Amendment Rules, 2004 forest clearance has to be given in 300 days. In the instant case, the Petitioner submitted its proposal on 30.9.2017 and the final clearance was given on 5.1.2019. It took 462 for obtaining the forest clearance against the mandatory period of 300 days. Therefore, we are of the view that the additional time of 162 days taken for grant of forest clearance is beyond the control of the Petitioner. As we have already rejected the Petitioner's contention that the AP Line was affected by the protests against CAA, as discussed above in this order, we condone the time over-run of 162 days due to the delay in grant

of forest clearance, out of 176 days in case of Elements-9, 10 and 11 and the remaining time over-run of 15 days is not condoned.

163. Accordingly, the details of the time over-run condoned/ not condoned in case of the instant transmission elements is as follows:

Srl. No.	Elements	Time over-run	Time over-run condoned	Time over-run not condoned
1.	Elements-1, 2 and 3	218 days	81	137 days
2.	Elements-5, 6, 7 and 8	27 days	27 days	-
3.	Elements-9, 10 and 11	176 days	162	15

**Issue No. 5: Whether the “Change in Law” Events’ claimed by the Petitioner are permissible in terms of the TSA and the Petitioner is entitled for consequential relief in terms of TSA?**

### **CHANGE IN LAW EVENTS**

**(a) Notification and orders for the payment of land compensation/additional forest compensation:**

164. The Petitioner has made the following submissions in support of its claim for payment of land compensation/ additional forest compensation as per the notifications of Government of Assam and Arunachal Pradesh:

- (a) The Government of Assam’s Notification dated 10.3.2017 and Arunachal Pradesh Authorities’ orders dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.8.2020 amount to “Change in Law” under Article 12 of the TSA.
- (b) The Government of Assam vide Notification dated 10.3.2017, notified the payment of land compensation for tower base as well as for corridor of transmission line to the land-owners. The said notification was issued after the cut-off date i.e. 11.1.2017 and required the Petitioner to pay land compensation for tower base as well as the corridor of the transmission line.
- (c) There was no provision of land compensation for the tower base and corridor of the transmission line or any solatium as on the cut-off date. However, the Notification dated 10.3.2017, provides for compensation for the tower base @85% of the market value of land and the compensation for

the transmission line corridor @15% of the market value of land to be paid by the Petitioner and other transmission licensees.

- (d) Prior to Financial Year 2018-19, no orders for payment of land compensation were issued by the Government of Assam/concerned District Administrations and as such no land compensation was paid by the Petitioner prior to Financial Year 2018-19.
- (e) The Notification was issued by the Power Department of Assam which is covered by the term 'Indian Governmental Instrumentality' under the TSA, would qualify to be a newly enacted 'Law' under the TSA. 'Notifications' and 'Orders' are expressly recognised as 'Law' under the TSA. Thus, the Petitioner was bound by Law to comply with the aforesaid Notification in order to develop the Project.
- (f) The said Notification issued by the Government of Assam prescribing the rates of land compensation for laying of transmission lines has the force of Law. Thus, the said Notifications qualify as a *Change in Law* event under Article 12.1.1 of the TSA and the same is in line with Commission's order 25.1.2021 in Petition No. 265/MP/2020.
- (g) On account of the Notification dated 10.3.2017, the Petitioner incurred an additional expenditure of `14,24,72,725/- as on date.
- (h) For the State of Arunachal Pradesh, the Petitioner was unexpectedly required to pay additional forest compensation which was a separate *Change in Law* event. In April, 2019, the Petitioner already paid `7,80,43,733. At the time of bidding for the Project, this was the only compensation contemplated under the applicable forest laws in the State of Arunachal Pradesh.



- (i) After the cut-off date i.e. 11.1.2017, in addition to this amount, Deputy Collectors of Itanagar Capital Complex and Yupia, Papumpare *vide order/* demand letters dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.8.2020 sought further payments of the amounts given in the table hereunder. The said letters demanding additional forest compensation squarely constitute *Change in Law* under Article 12 of the TSA. These were issued by 'Indian Governmental Instrumentalities' and had the force of Law. In any case, the requirement to pay such additional forest compensation is a fresh requirement for obtaining a Clearance/ Permit.

Sl. No.	Description of Claims	Total Claim Amount (₹)
1	Compensation towards value of Land and Assets in ROW corridor under Deputy Commissioner, Yupia, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	7,37,60,086
2	Additional Compensation towards value of Land and Assets due to construction of BI Line and BI LILO Line under Deputy Commissioner, Yupia, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	32,03,309
3	Compensation towards value of Land and Assets in ROW corridor under Deputy Commissioner, Itanagar Capital Complex, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	14,42,93,334
4	Additional Compensation towards value of Land and Assets due to construction of BI Line and BI LILO Line under Deputy Commissioner, Itanagar Capital Complex, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	61,89,630

### **Analysis and Decision**

165. The Petitioner has submitted that *vide* Notification dated 10.3.2017, the Government of Assam notified land compensation for tower base as well as for corridor

of transmission line to the land-owners. Since the said Notification was issued after the cut-off date i.e. 11.1.2017, consequently the Petitioner is required to pay the land compensation for tower base @ 85% of market value of land and compensation for transmission line corridor @15%. The Petitioner has also submitted that prior to 2018-19, no orders for payment of land compensation were issued by the Government of Assam/ concerned District Administrations and as such no land compensation was paid by the Petitioner prior to 2018-19.

166. We have considered the submissions of the Petitioner and have gone through the record. We think it appropriate here to refer to the order dated 10.3.2017 of the Government of Assam, Power Electricity Department, Dispur, Guwahati:

Annexure-I

GOVERNMENT OF ASSAM  
POWER (ELECTRICITY) DEPARTMENT  
DISPUR, GUWAHATI-6

NOTIFICATION

Dated Dispur the 10<sup>th</sup> March, 2017

No. PEL.219/2015/91 : The Governor of Assam is pleased to notify the following rates for payment of compensation towards damages in regard to Right of Way for transmission lines. In accordance with the Guidelines of Ministry of Power, Govt. of India, vide Ref. No. 03/07/2015-Trans, dtd. 15.10.2015 for maintaining uniformity in compensation payment to the affected land owners during construction of transmission lines, it has been decided that a similar payment methodology towards compensation shall also be adopted in the State of Assam. These guidelines of payment methodology of compensation towards "damages" as stipulated in Section 67 & 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act 1885 shall be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66KV.

- Compensation @85% of land value as determined by Deputy Commissioner / BTC or any other competent authority based on Circle rate / Guideline value / Stamp Act rates for tower base area (between four legs at ground level) impacted severely due to installation of tower / pylon structure.
- Compensation towards diminution of land value in the width of Right of Way (ROW) corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on Circle rate / Guideline value / Stamp Act rates.

For this purpose, the width of ROW corridor shall not be more than that prescribed in table at Annexure-I and shall not be less than the width directly below the conductors.

- In areas where land owner / owners have been offered / accepted alternate mode of compensation by concerned corporation / Municipality under Transfer Development Rights (TDR) policy of State, the licensee/utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation / Municipality / Local Body or the State Government.

The above guidelines shall be effective from the date of issuance of the above mentioned Government of India guidelines and shall be applicable for only those new transmission line / projects where construction have started after this date, i.e. 15.10.2015. This guideline shall not be applicable for existing transmission lines which are already in service or under construction before the aforesaid date, or for maintenance of any existing transmission line.

*hm*

Annexure -J

ROW width for different voltage level\*

Transmission Voltage	Width of Right of Way (in Meters)
66KV	18
110 KV	22
132KV	27
220 KV	35
400KV S/C	46
400KV D/C	46
+/-500KV HVDC	52
765 KV S/C (with defn configuration)	64
765 KV D/C	67
+/-800KV HVDC	69
1200 KV	89

\* Width of Right of Way is as per Ministry of Environment & Forests (MoEF) guidelines dttd. 05.05.2014.

This issues with the concurrence of Revenue & Disaster Management Department, Govt. of Assam, as well as the Finance Department, Govt. of Assam.

-Sd/-

(Srl. Rajiv Kr. Bora, I.A.S.)  
Additional Chief Secretary to the Govt. of Assam,  
Power (Electricity), etc. Department

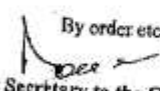
Meanc No.PEL.219/2015/91-A

Copy to:

Dated Dispur the 10<sup>th</sup> March, 2017

- (1) The Managing Director, Assam Electricity Grid Corp. Ltd. (AEGCL), Bijulee Bhawan, Guwahati - 1
- (2) The Executive Director, Power Grid Corp. of India Ltd. (PGCIL), Monal Tower, Dispur, Guwahati - 6
- (3) P.S. to Hon'ble Chief Minister, Assam, Dispur, Guwahati - 6
- (4) P.S. to Hon'ble Minister of State, Assam, Power, etc., Dispur, Guwahati - 6
- (5) P.S. to the Addl. Chief Secretary to the Govt. of Assam, Revenue & Disaster Management Department, Dispur, Guwahati - 6
- (6) P.S. to the Chairman, APDCL, AEGCL, APGCL, Bijulee Bhawan, Guwahati - 1
- (7) P.S. to Secretary to the Govt. of Assam, Power (Elect.), etc. Department, Dispur, Guwahati-6
- (8) The Director, Assam Government Press, Bamunimaidan, Guwahati-21, Assam, for necessary action.

By order etc.,

  
Joint Secretary to the Govt. of Assam,  
Power (Elect.) Deptt.

167. A perusal of the said Notification dated 10.3.2017 of the Government of Assam, shows that as per the Guidelines of Ministry of Power, Government of India dated 15.10.2015, for maintaining the uniformity in compensation payment to the affected land-owners during construction of transmission lines, the rates were notified for payment of



compensation towards damages in regard to Right of Way for transmission lines. The said Notification dated 10.3.2017, *inter alia*, provided the following:

- a) This amount will be payable only for transmission lines supported by tower base of 66 kV and above, and not for sub-transmission and distribution lines below 66 kV.
- b) As per the said notification compensation is payable @85% of land value as determined by Deputy Commissioner/ BTC or any other competent authority based on Circle Rate/ Guideline Value/ Stamp Act rates for tower base area (between four legs at ground level) impacted severely due to installation of tower/ pylon structure.
- c) Compensation towards diminution of land value in the width of Right of Way (RoW) corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on Circle rate/Guideline Value/Stamp Act rates.
- d) The said guidelines were effective from the date of issuance of GOI Guidelines and shall be applicable for only those new transmission line/ projects where construction have started after this date, i.e. 15.10.2015. This guideline shall not be applicable for existing transmission lines which are already in service or under construction before the aforesaid date or for maintenance of any existing transmission line.

168. From the above discussions, we note that the Government of Assam vide Notification No. PEL. 219/201/91 dated 10.3.2017, adopted a methodology for payment of compensation towards damages with regard to Right of Way for transmission lines on the lines of Ministry of Power Guidelines dated 15.10.2015 and this was made applicable for the new transmission lines/ projects where construction started after 15.10.2015. Applying the conditions laid down in the said Notification dated 10.3.2017 of Assam Government to the case of the Petitioner, we note that the Petitioner's case is squarely covered by it.

169. We think it appropriate here to refer to the definition of 'Government Instrumentality' as defined in the TSA which is as follows:

*“Indian Governmental Instrumentality’ shall mean Government of India, Government of any State in India or any ministry, department, board, authority, agency, corporation, commission under direct or indirect control of the 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;”*

170. The term ‘Law’ as has been defined in the TSA is as follows:

*“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;”*

171. In view of above, the Government of Assam is an Indian Government Instrumentality and the Notification dated 10.3.2017 is a Law under the TSA. Since the said Notification dated 10.3.2017 has been issued after the cut-off date is a *Change in Law*. Accordingly, the Petitioner is entitled to *Change in Law* relief as provided in the TSA.

172. The Petitioner has claimed land compensation to the affected land owners present in 400 kV D/C (Quad) Silchar-Misa Transmission Line and 132 kV D/C Biswanath Chariyali of `14,53,54,957/- and `74,70,586/- respectively. The Petitioner has submitted that the said payment is made as per the Notification dated 10.3.2017 issued by Government of Assam and is certified by Chartered Accountant on 18.3.2023. The details of the land-owners and payment made to them and Report of the Chartered Account is placed on record.

173. We have perused the above claims of the Petitioner. According to the Petitioner, the payments made by the Petitioner to the land-owners are as per the Notification dated 10.3.2017 issued by Government of Assam and are certified by the Chartered Accountant.

174. The Notification dated 10.3.2017 of Government of Assam is a *Change in Law* event as per the TSA and it provides for compensation on two accounts, i.e. compensation for tower base @85% of land value for tower base area (between four legs



at ground level) impacted severely due to installation of tower/ pylon structure and a compensation at a maximum rate of 15% of the land value towards diminution of land value in the width of RoW corridor due to laying of transmission line. As we have held that the Notification dated 10.3.2017 is a *Change in Law* event, the Petitioner is required to be compensated on this account. Accordingly, while the Government Notification has been allowed as Change in Law, only additional expenditure incurred by the Petitioner over and above the applicable compensation rates considered by the concerned authorities as on cut off date, shall be allowed under Change in Law.

175. In light of the above, the Petitioner, while claiming the additional compensation on account of the aforesaid Notification of the State Government (after the bid submission) shall furnish an undertaking to the LTTCs on an affidavit disclosing the applicable compensation rates being considered by the concerned authorities as on the cut-off date or in the absence of the notified compensation rates, the compensation having been factored in by the Petitioner at the time of placing of its bid. It would be incumbent upon the Petitioner to deduct such amount from its total compensation claims based on the Notifications/ Orders existing at the time of bid submission.

**(b) Requirement to pay additional forest compensation in Arunachal Pradesh**

176. According to the Petitioner, the amount of Rs 7,80,43,733 had already been paid as compensation by it in April 2019. The Petitioner has contended that it was the only compensation that was contemplated under the applicable forest laws in the State of Arunachal Pradesh. The Petitioner has submitted that for the State of Arunachal Pradesh, the Petitioner was unexpectedly required to pay additional forest compensation which was a separate *Change in Law* event.

177. The case set up by the Petitioner is that besides the aforesaid amount, Deputy Collectors of Itanagar, Capital Complex and Yupia, Papumpare after the cut-off date vide



order/demand letters dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.8.2020 (wrongly recorded, correct date is 8.10.2020) sought further payments of the amounts whose details are given hereunder. According to the Petitioner, the aforesaid letters demanding additional forest compensation constitute a *Change in Law* under Article 12 of the TSA as they were issued by 'Indian Governmental Instrumentalities' and have the force of Law. The requirement to pay such additional forest compensation is a fresh requirement for obtaining a Clearance/ Permit.

Sl. No.	Description of Claims	Total Claim Amount (in `)
1	Compensation towards value of land and assets in RoW corridor under Deputy Commissioner, Yupia, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	7,37,60,086
2	Additional Compensation towards value of land and assets due to construction of BI Line and BI LILO line under Deputy Commissioner, Yupia, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	32,03,309
3	Compensation towards value of land and assets in RoW corridor under Deputy Commissioner, Itanagar Capital Complex, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	14,42,93,334
4	Additional Compensation towards value of Land and Assets due to construction of BI Line and BI LILO Line under Deputy Commissioner, Itanagar Capital Complex, Papumpare, Arunachal Pradesh.  This is in addition to payment done towards Forest Diversion Proposal in Arunachal Pradesh.	61,89,630

178. The Petitioner duly intimated the Lead LTTC (Respondent No. 1) of the occurrence of the aforesaid *Change in Law* events vide its Notices dated 27.2.2019 and 17.11.2020.

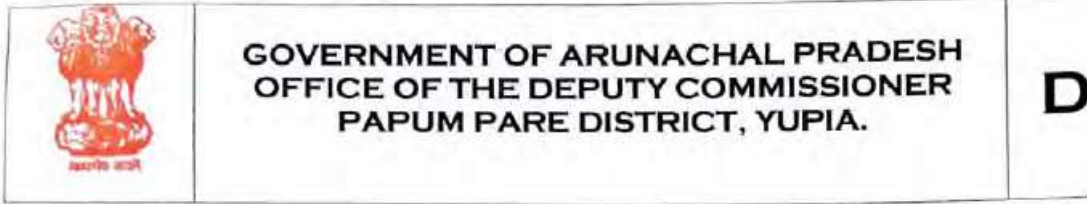
### **Analysis and Decision**

179. The Petitioner has contended that for the construction of 132 kV D/C Transmission Line from Biswanth-Chariyali to Itanagar in the State of Arunachal Pradesh, it

contemplated and paid in April, 2019 a sum of `78043733 towards forest clearance charges/ compensation. The trigger point for invoking the *Change in Law* under Article 12 of the TSA in the present petition by the Petitioner under the head of 'additional forest compensation' is that after the cut off dated, i.e., 11.1.2017, additional demands were made by Deputy Collectors of Itanagar, Capital Complex and Yupia, Papum Pare vide letters dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.10.2020, whose details have been given hereinabove in the submissions of the Petitioner.

180. It is, therefore, necessary for us to advert to the above letters to figure out whether the aforesaid letters actually fall within the ambit of Article 12 of the TSA. We are discussing hereunder regarding the said letters dated 22.10.2019, 5.8.2020, 4.3.2021 and 8.10.2020 issued by the Deputy Collectors of Itanagar and Yupia, Papumpare.

181. The Petitioner has relied on letter dated 22.10.2019, issued by Deputy Commissioner-cum-District Collector on the subject of 'Detail Estimate Copy of Land and Assets value falling under the jurisdiction of Papum Pare (Hollongi) to Chimpu Stretch [Tower Nos. 54 to 83] for 'Construction of 132 kV D/C Transmission Line from Biswanth Chariyali to Itanagar and Gohpur LILO amounting to `73760086, quoted as follows:



NO. DLRSO/PP/NER-978/19

Dated Yupia the 22nd October, 201

To,

The Project Head,  
NER-II 132KV BNC-Itanagar Transmission Line  
Camp- Biswanath Chariali, Assam.

**Sub:- Forwarding of Detail Estimate Copy of Land and Assets value falling under jurisdiction of Deputy Commissioner, Papum Pare [Hollongi to Chimpu Stretch (Tower No. 53 to 80)] for 'Construction of 132 KV D/C Transmission Line from Biswanath Chariali to Itanagar & Gohpur LILO'.**

Please find enclosed herewith a Detail Estimate Copy of Land and Assets value falling under the jurisdiction of Deputy Commissioner, Papum Pare [for Hollongi to Chimpu Stretch (Tower No.54 to 83)] amounting to **Rs. 7, 37, 60,086/= (Rupees Seven Crores Thirty Seven Lakhs Six Thousand Eighty Six) only** for 'Construction of 132 KV D/C Transmission from Biswanath Chariali to Itanagar & Gohpur LILO' as annexed below:-

1. Rate Fixation : ANNEXURE "I"
2. Market Value of land  
(Land for Tower locations and  
Surface Damage area) : ANNEXURE "II" & "III"
3. Value of assets attached to land or building : ANNEXURE "IV"

Hence, the above amount may be deposited into the joint account **DC AND DLR AND SO** with the following details to be disbursed to the actual affected land owners:

Account Number : 4783000100010985  
Account Name : DC AND DLR&SO YUPIA  
Bank Name & Branch : Punjab National Bank, Itanagar Branch-791113  
RTGS/NEFT IFS Code : PUNB0478300

Enclosed:

1. As stated above.

(Dign. Sign)

As per above, the basis of estimate is recorded as (i) rate fixation: Annexure-I; Market value of land (land for tower locations and surface damage area): Annexures-II and III and (iii) Value of assets attached to land or building-Annexure-IV attached with the said letter. Alongwith the said letter, the Petitioner has annexed 'Board proceedings for rate fixation in respect of temporary damage to be caused during 'Construction of 132 kV D/C Transmission Line from Biswanth Chariyali to Itanagar and Gohpur LILO at Hollangi Area

under Balijan Circle'. In the said Board Proceedings of Rate Fixation of BI Line and BI LILO is recorded which is as follows:



Dated: 4<sup>th</sup> Oct' 2019

**BOARD PROCEEDING FOR RATE FIXATION IN RESPECT OF TEMPORARY DAMAGE TO BE CAUSED DURING 'CONSTRUCTION OF 132 KV D/C TRANSMISSION LINE FROM BISWANATH CHARIALI TO ITANAGAR & GOHPUR LILO', AT HOLLONGI AREA UNDER BALIJAN CIRCLE.**

A letter was received from the NER-II Authority regarding assessment of temporary damages of land and assets at Hollongi Village area under Balijan Circle, Papum Pare District in Arunachal Pradesh Itanagar to be caused during 'Construction of 132 KV D/C transmission line from Biswanath Chariali to Itanagar & Gohpur LILO'.

A stretch of land meant for the said purpose has been identified by the Assessment Board Team as per design alignment submitted by the requiring agency at Hollongi and nearby Villages area. The assessment team verified the ground physically and found that the ROW of said project has been under the occupation of private individuals engaging in various cultivation activities at their respective plot.

In this connection, a meeting was convened on 14<sup>th</sup> September 2019 at 3:00 PM in the Office Chamber's of Chief Secretary, Government of Arunachal Pradesh in presence of Commissioner (Power) GoAP, Secretary (Land Management) GoAP, Head of Project NER-II and various Officers & Officials in connection with the 'Construction of 132 KV D/C Transmission line from Biswanath Chariali to Itanagar & Gohpur LILO' in which the conclusions were drawn that 03 (three) types land rates shall be fixed.

Accordingly, a **Rate Fixation Board/ Negotiation Board Members** was constituted by the Deputy Commissioner, Yupia Vide Order No. DLR&SO/PP/NER-978/19 Dated Yupia the 1<sup>st</sup> Oct' 2019 for final fixation of land & assets rates. And the **Board** had **JOINT SITTING** on 4<sup>th</sup> Oct' 2019 at 10<sup>AM</sup> at the Office Chamber of the DLR&SO, Yupia.

In the meeting, the following Board Members and GBs of both the villages were present:

- |  |            |
|--|------------|
| 1. Extra Assistant Commissioner[EAC], Balijan  | - Chairman |
| 2. NER-II Project Rep.                         | - Member   |
| 3. Agriculture Development Officer (DAO) Yupia | - Member   |
| 4. Horticulture Development Officer(HDO)       | - Member   |
| 5. District Fishery Development Officer(DFDO)  | - Member   |
| 6. Range Forest Officer(RFO), Balijan          | - Member   |
| 7. GBs of Concern villages                     | - Member   |

The DLR&SO, Yupia explained to the **Board Members** the present prevailing Land Rates in the district with reference to Land subject that had already been procured for other central and state projects in past. The Board Members thoroughly examined the Rates of Land with concerned GBs of affected

Cont..P:2





villages of Hollongi area to which the payable rates have been worked out & specified as described below.

After long threadbare discussion, Negotiation Board Members and GB of affected village had agreed the following resolutions:

1. That, the Negotiation Board Members decided that mode of payment/calculation of compensation shall be adopted as per Notification issued by Government of Arunachal Pradesh Vide No. PWRSE-2462/2013(Pt-II) Dated, Itanagar the 29<sup>th</sup> August, 2019.
2. That, the Negotiation Board Members, in due consultation and agreed scheduled rate for the temporary possession of Land, conclusively fixed payable amount per square mtrs. (without Solatium) as shown below; and these rates are applicable under Hollongi Circle for this particular project only.

Sl. No	Category of Land	100% Land Rate(Not Payable)	85% Land Rate(Payable)	15% Land Rate of RoW (Payable)
<i>I</i>	<i>II</i>	<i>III</i>	<i>IV</i>	<i>V</i>
1	WRC Land/Agri	Rs. 1194/- per Sqmtr.	Rs.1014/-@85% Tower Area	Rs.179/-@15% RoW.
2	Developed Land/Horti	Rs. 200/- per Sqmtr.	Rs.170/-@85% Tower Area	Rs.30/- @15% RoW
3	Jhum/Fallow/ Grazing Rocky/ Marshy Land	Rs. 150/- per Sqmtr.	Rs.127/-@85% Tower Area	Rs.22/-@15% RoW

3. The Board Members decided that Assets compensation rates will be remain as per Notified Rate of Green Field Airport Hollongi rate and payment will be made without Solatium.
4. That, in addition to land value there shall be compensation on Assets that is to be affected & damaged during acquisition of land for this particular project.
5. That, there shall be no claim for re-fixation and escalation of any kind of rates in respect of this project, and such claim will not be entertained in future.
6. That, the Board has asserted that the Govt. approval has to be obtained for the above-negotiated rate before preparation of final compensation of land. In addition to that, the rates shown are only applicable in this particular project and same rate will not be applicable in the other project in the District.

Handwritten signature and stamp: *Handwritten signature*  
 District Engineer, T. Com. Office  
 Hollongi District  
 2023

Cont P/3

182. On perusal of the said Board Proceedings of Rate Fixation of BI Line and BI LILO dated 4.10.2019, we note that a Rate Fixation Board/ Negotiation Board Members was constituted. The basis for formation of the said Rate Fixation Board was a letter written by the Petitioner for assessment of temporary damages of land and assets at Hollongi village near Balijan Circle, Papum Pare District in Arunachal Pradesh Itanagar to be caused during construction of BI Line and BI LILO. The said Board proceedings show that the Negotiation Board Members in consultation agreed for scheduled rate with respect to the temporary possession of land, conclusively fixed payable amount as per square mtrs. (without solatium) whose details are given in the said Board proceedings.

183. Letter dated 4.3.2021, issued by the Deputy Commissioner cum District Collector, Papum Pare District, Yupia (Annexure-16 Page No. 823) acknowledged that a payment of ₹7,37,60,086 was received from the Petitioner towards construction of 132 kV D/C Transmission Line from Biswanath Chariyali to Itanagar and Gohur LILO under Paum Pare jurisdiction. The said letter further shows that the said payment was collected by the District Collector towards land and assets value falling under the jurisdiction of DC, Yupia, Paum Pare, located in between Tower Nos. 53 to 80 at Hollongi for the construction of 132 kV D/C Transmission Line from Biswanath Chariyali to Itanagar and Gohur LILO.

184. There is another letter dated 4.3.2021, issued by the Deputy Commissioner cum District Collector, Itanagar on the subject 'additional compensation estimate on surface damage against 132 kV transmission line from BNC to Itanagar, Gohpur LILO' (Page No. 821) wherein it is stated that Tower Nos. AP 97- to AP 100 which were missed out during the last assessment were amounting to ₹61,89,630 and this amount was to be deposited by the Petitioner with the concerned authority.



185. Letter dated 8.10.2020 was issued by the Deputy Commissioner/ District Collector, Itanagar addressed to the Petitioner on the subject 'Detail Estimate copy of Land and Asset value' falling under his jurisdiction with respect to Chimu area to Itanagar and Gohpur LILO (Tower Nos. AP-80 to AP-105) amounting to `14,42,93,334 which was required to be paid by the Petitioner to the concerned authority for the construction of BI Line and BI LILO. Alongwith the letter dated 8.10.2020, the Petitioner has annexed Board Proceedings dated 14.09.2020 for Rate Fixation in respect of Temporary Damage to be caused during construction of BI and Gohpur LILO.

186. Letter dated 5.8.2020, issued by the Deputy Commission/ District Collector, Papum Pare District, Arunachal Pradesh is on the subject 'additional compensation estimate copy for surface damage for Hollongi to Chimpu Stretch, Tower Nos. 53-80 for construction of BI Line and BI LILO amounting to `32,03,309 which was required to be paid to the concerned authority and this demand for surface damage was in addition to the demand raised vide letter dated 22.10.2019 for `7,37,60,086.

187. The Petitioner has placed on record Notification dated 17.12.2019 issued by Government of Arunachal Pradesh, Department of Land Management, Itanagar (Page No. 581) on the issue of Board constituted for fixation of rate of compensation comprising of the respective representatives of the Deputy Commissioner, Papum Pare for the Petitioner's project on 4.10.2019 wherein it was resolved that the compensation shall be as per the Government of Arunachal Pradesh Notification dated 29.8.2019. However, it was clarified in this Notification that the payment of compensation for land value is not permissible inside the Reserve Forest.

188. The Petitioner has placed on record the Notification dated 29.8.2019 issued by Government of Arunachal Pradesh, Department of Power (Page No. 2159) whereby rates of payment of compensation towards damages in regard to Right of Way for the transmission lines in accordance with Guidelines of MoP, Government of India dated 15.10.2015 was allowed for maintaining uniformity in compensation of payment to the affected land owners during construction of transmission lines. The said Notification of Government of Arunachal Pradesh allowed 85% of land value as determined by the District Magistrate or any other competent authority based on Government approved rates etc. for tower base area (between four legs at ground level) impacted severely due to installation of tower/ pylon structure. The compensation towards diminution of land value in the width of RoW corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on circle rate/guidelines value/stamp rates. The Notifications of Government of Arunachal Pradesh are quoted as follows:

**GOVERNMENT OF ARUNACHAL PRADESH**  
**A.P CIVIL SECRETARIAT :: DEPARTMENT OF POWER**  
**BLOCK NO.3,5<sup>TH</sup> FLOOR, ROOM NO.1::ITANAGAR**

No. PWRS/E-2462/2013(Pt-II)

Dated, Itanagar the 29<sup>th</sup> August, 2019.

**NOTIFICATION**

The Governor of Arunachal Pradesh is pleased to adopt and notify the following rates of payment of compensation towards damages in regard to Right of Way(RoW)) for the transmission lines, in accordance with the Guidelines of the Ministry of Power, Govt. of India, vide Ref.No. 03/07/2015-Trans, dtd. 15.10.2015 for maintaining uniformity in compensation payment to the affected land owners during construction of transmission lines, it has been decided that a similar payment methodology towards compensation shall also be adopted in the State of Arunachal Pradesh. These guidelines of payment methodology of compensation towards "damages" as stipulated in Section 67 & 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act 1885 shall be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by tower base of 66 kV and above, not for sub-transmission and distribution lines below 66 kV.

- (i) Compensation @ 85 % of land value as determined by District Magistrate or any other competent authority based on Govt. approved rates, Circle rate/ Guidelines value/Stamp Act rates for tower base area (between four legs at ground level) impacted severely due to installation of tower/pylon structure.
- (ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction at a maximum rate of 15% of land value as determined by Deputy Commissioner or any other competent authority based on Circle rate/ Guidelines value / stamp At rates.

For this purpose, the width of RoW corridor shall not be more than that prescribed in table A at Annexure-I and shall not be less than the width directly below the conductors.

- (iii) In areas where land owner / owners have been offered / accepted alternate mode of compensation by concerned corporation / Municipality under Transfer Development Rights (TDR) policy of State, the licensee/utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation / Municipality / Local Body or the State Government.

The above guidelines shall be effective from the date of issuance of the above mentioned Government of India guidelines and shall be applicable for only those new transmission line / projects where construction have started after this date, i.e. 15.10.2015. This guideline shall not be applicable for existing transmission lines which are already in service or under construction before the aforesaid date, or for maintenance of any existing transmission line

**GOVERNMENT OF ARUNACHAL PRADESH  
DEPARTMENT OF LAND MANAGEMENT  
ITANAGAR**

No. LM – 417/2019

Dated Itanagar, the 17<sup>th</sup> Dec'2019.

**NOTIFICATION**

**WHEREAS**, the land at Hollongi under the possession of following persons in the locality more fully described in the schedule below is urgently required for 'Construction of 132 KV D/C Transmission line from Biswanath Chariali to Itanagar & Gohpur LILO'.

**WHEREAS**, section 67, section 68 and section 164 of the Electricity Act – 2003 read with section 10 and section 16 of the Indian Telegraph Act, 1885 provides for payment of compensation towards damages caused due to laying of transmission line in the land falling in the Right of Way of the transmission line.

**WHEREAS**, the Board constituted for fixation of rate of compensation comprising of the respective representatives of the office of the Deputy Commissioner, Papum Pare, NER-II Project, department of Agriculture, Horticulture, Fishery and Forest in a joint sitting with the GBs of concern villages on 4<sup>th</sup> October, 2019 resolved that mode of payment/calculation of compensation shall be as per the government of Arunachal Pradesh notification no. PWRS/E-2462/2013(Pt-II) dated 29.08.2019. However, the payment of compensation for land value is not permissible inside the Reserve Forest.

**AND NOW THEREFORE**, any person who has any claims to the temporary damage of said land for the said purpose may file such claims in writing to the office of the Deputy Commissioner, Papum Pare District within 30 (Thirty) days from the date of Publication of this Notification by clearly stating the reason for such claims; and the Deputy Commissioner, Papum Pare District in his capacity shall dispose off the same after giving reasonable opportunity to extinguish the claim.

**SCHEDULE**  
***(Specification of land)***

Sl. No	Tower No.	Purpose	Location	Area(SqMtr)	Remark
1.	AP54	Foundation , Tower erection & stringing corridor along with the approach to locations	E'=555531.00 N'=2981342.00	81.333	
2.	54/1	-do-	E'=555708.26 N'=2981626.84	40.449	
3	AP55	-do-	E'=555885 N'=2981910	49.681	
4	AP-56	-do-	E'=556161.67 N'=2982240.45	52.975	
5	AP-57	-do-	E'=556298.04 N'=2982424.06	96.064	
6	AP-57A	-do-	E'=556452.23 N'=2982863.37	103.652	
7	AP-58	-do-	E'=556601 N'=2983020	56.376	
8	AP-59	-do-	E'=556816	122.016	





Sd/-[S.K Jain]IAS  
Secretary to Government of Arunachal Pradesh  
Department of Land Management.

Itanagar,  
Dated Itanagar, the 20<sup>th</sup> Dec'2019.

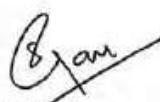
Memo No. LM - 417/2019/1390

Copy to:

1. The Deputy Commissioner, Yupia for information and necessary action. This is with reference to his letter No. DLRSO/PP/NER-978/19 Dated Yupia the 9<sup>th</sup> Oct '2019. He is requested to notify the substance of the notification for public notice at convenient places in the locality along with translation in the local dialect immediately. The administrative and other expenses will have to be borne by the requiring agency and approval for release of compensation must be sought from the Government.
2. The Director (Printing), Government of Arunachal Pradesh, Naharlagun for information and necessary action. He is requested to publish the above Notification in the next issue of the Arunachal Pradesh Gazette Extra - Ordinary and forward 30 spare copies of the Gazette Notification to the Director Land Management, Government of Arunachal Pradesh, Itanagar.
3. The Director, IPR Government of Arunachal Pradesh, Naharlagun for information and necessary action please. He is requested to publish the above Notification in 2 (two) daily local newspaper and submit the bills (along with the relevant newspapers) to Deputy Commissioner, Papum Pare District, Yupia in Arunachal Pradesh for making necessary payment with intimation to this office.

✓ 4. Office copy.

Issued  
on 20/12/19

  
[S.K Jain]IAS  
Secretary to Government of Arunachal Pradesh  
Department of Land Management.  
Itanagar.

189. We have taken into consideration the above Notifications dated 17.12.2019 and dated 29.8.2019 of the Government of Arunachal Pradesh and are of the view that Government of Arunachal Pradesh is a Government Instrumentality and the said Notifications are laws under the TSA. The said Notifications have been issued after the cut off date, therefore they are a Change in Law. Accordingly, while the Government Notifications have been allowed as Change in Law, only additional expenditure incurred by the Petitioner over and above the applicable compensation rates considered by the concerned authorities as on cut off date, shall be allowed under Change in Law.

190. In light of the above, the Petitioner, while claiming the additional compensation on account of the aforesaid Notifications of the State Government (after the bid submission) shall furnish an undertaking to the LTTCs on an affidavit disclosing the applicable compensation rates considered by the concerned authorities as on the cut-off date or in the absence of the notified compensation rates, the compensation having been factored in by the Petitioner at the time of placing of its bid. It would be incumbent upon the Petitioner to deduct such amount from its total compensation claims based on the Notifications/ Orders existing as on cut off date.

**(c) Expenses on account of COVID-19 and consequent restrictions imposed by Central and respective State Governments**

191. The Petitioner has submitted that Covid-19 pandemic caused substantial and unavoidable time and cost over-run due to the avoidable restrictions imposed by the Indian Government Instrumentalities. The pandemic occurred long after the cut-off date and immediately notified to the LTTCs as a *Change in Law* on 19.3.2020. On this account, the Petitioner seeks *Change in Law* compensation on account of the following aspects of cost over-run.

**Idling Charges**

192. The Petitioner has submitted that imposition of national lockdown w.e.f. 25.3.2020 had a severe impact on the progress of the Project. In compliance of the order issued by Ministry of Home Affairs (MHA) dated 24.3.2020 with addendum dated 29.3.2020, the Petitioner ensured the payment of full salary and wages to each staff member and all the workers employed in the Project. This resulted in additional expenditure due to idling of manpower for the period of suspension of work. The Petitioner was compelled to pay these charges for the periods when no construction activity could take place. Thereafter, the Petitioner incurred additional costs for engaging manpower for the extended period of construction due to the delay caused by outbreak of Covid-19 which was not considered by the Petitioner at the bid submission stage. Due to this, the Petitioner is

claiming a cumulative *Change in Law* impact of ₹15 crore. According to the Petitioner, the additional expenditure was incurred due to *Change in Law* events of the said MHA orders. The Petitioner duly intimated all the LTTCs (Respondent Nos. 1-7) of the occurrence of the *Change in Law* events vide Notices dated 19.3.2020 and 2.3.2021.

193. We have considered the above submissions of the Petitioner and have perused the record. Various orders were issued during Covid-19 pandemic by the MHA including orders dated 24.3.2020 and addendum dated 29.3.2020. The Government of India, Ministry of Home Affairs in its addendum order dated 29.3.2020, directed that all the employers, be it in the Industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their work places, on the due date, without any deduction, for the period their establishments are under closure during the lockdown. The above guidelines were indeed issued by Government of India as a benevolent measure in order that no worker suffers on account of impact of Covid-19. As regards the additional expenditure incurred by the Petitioner during Covid-19 on account of MHA order dated 24.3.2020 and addendum dated 29.3.2020, we are of the view that this event has been recognised as *Force Majeure* and not a *Change in Law* event. For this reason, we are disallowing the additional impact of ₹15 crore on account of Covid-19 MHA orders dated 24.3.2020 and addendum dated 29.3.2020 as an event of *Change in Law*.

### **Helicopter Services**

194. The Petitioner has submitted that various orders of Indian Governmental Instrumentalities imposed various restrictions due to Covid-19. The Petitioner was required to complete the work with minimal workforce on fast track. To avoid delay in completion of the Project and mitigate the impact of various *Force Majeure* and *Change in Law* events, the Petitioner deployed one B3 helicopter for the expeditious completion of the remaining construction activities. The said B3 helicopter catered to the requirement



of material shifting by air and minimized the on-ground impact. The use of helicopter reduced the manpower requirement by 75%-80%, which helped in effectively managing the disaster at work sites and also in curbing the further spread of Covid-19. The Petitioner has submitted that on account of additional expenditure incurred on the use of helicopter by the Petitioner, it is entitled to reliefs under Article 12 of the TSA. The Petitioner has claimed an amount of `186205624 for use of helicopter services. Further, the Petitioner has duly intimated all LTTCs (Respondent Nos. 1-7) of the occurrence of these *Change in Law* events *vide* Notices dated 2.3.2021.

195. We have considered the submissions of the Petitioner and have perused the record carefully. Suffice it to say here in the present situation that it is for the bidder to take into consideration how and in what manner a particular work is to be done of the Project. However, we are not agreeable with the Petitioner that the use of helicopter services qualify as a *Change in Law* event under Article 12.1.1 of the TSA and as such all the contentions of the Petitioner on this count are rejected. Accordingly, the claim of the Petitioner made on account of use of helicopter services for `18,62,05,624 is rejected.

**(d) Additional civil, erection and supply cost due to increase in line length due to diversion caused due to the Hollongi Airport and (e) Revised forest clearance required due to diversion caused due to the Hollongi Airport.**

196. We have already held that as the Petitioner chose a route based on its own survey, ignoring the three alternate routes given in the Survey Report, the Petitioner has to face the consequences and that the proposal to set up the airport in Hollongi Village is not an uncontrollable *Force Majeure* event. Accordingly, the Petitioner's prayer to consider the additional civil, erection and supply cost on account of increase in line length and the revised forest clearance required owing to diversion caused due to the Hollongi airport

as a *Change in Law* event and to reimburse the expenditure made in this regard to the Petitioner is disallowed.

**(f) Payment to forest dwellers in Tripura**

197. The Petitioner has submitted that having complied with all the applicable forest laws in Tripura State and having deposited the requisite payments thereunder, the Petitioner was required to pay additional compensation to forest dwellers in the area. The Petitioner has submitted that the identified land was encroached by the local people belonging to tribal settlers of Tripura and forest dwellers. They collectively stopped the work of the Project on a number of occasions and demanded high compensation amounts. The Petitioner was never put to notice at the time of bidding that such additional forest compensation would be applicable. The Petitioner could not have proceeded with any construction activities in Tripura over such forest land had it not paid such additional ad-hoc compensation directly to the forest dwellers. The assessment of such compensation took a significant amount of time. As such, the Petitioner was constrained to incur a sum of `66,64,132.38. With regard to payment to forest dwellers in Tripura, the Petitioner has placed reliance various documents placed on record.

198. We have considered the submissions of the Petitioner and have gone through the record carefully. On perusal of the correspondences placed on record by the Petitioner, we note that the Petitioner wrote letters to the Government Authorities to assist it as some forest dwellers who illegally occupied the forest land were creating hindrances to it in laying the transmission line/ execution of the project. The Petitioner has contended that the identified land was encroached by the local people belonging to tribal settlers of Tripura due to which the Petitioner was required to pay additional compensation to the forest dwellers of `6664132.38. The Petitioner has also claimed carrying on this amount.

199. The Petitioner has given the details of compensation made to the Tripura Forest Dwellers/tree/crops. The Petitioner has placed on record the letter of the Government of Tripura Notification dated 28.8.2019 and corrigendum dated 30.8.2019, regarding the revision of rates as damage cost for standing trees, crops etc.; letters dated 8.1.2020, 10.1.2020, 14.1.2020, 17.1.2020 and 20.1.2020 for identification of ROFR Patta holders for compensation to the eligible inhabitants for the damage that may be caused to them due to construction of the transmission line by the Petitioner in the forest land in Tripura.

200. On consideration of the above letters, we are of the view that the aforesaid letters are for revision of rates as damage cost for standing trees/crops and identification of RoFR patta holders for compensation to the eligible inhabitants for the damage that may be caused to them due to construction/ lying of transmission line by the Petitioner in the forest land, and that the said letters nowhere direct the Petitioner to pay any additional compensation on the identified land encroached by the local people and tribal settlers of Tripura. Therefore, we are of the view that the additional compensation on the identified land encroached by the local people and tribal settlers of Tripura cannot be said to be an event of *Change in Law* under Article 12 of the TSA. Accordingly, we reject the Petitioner's claim of `66,64,132.38 towards additional compensation to forest dwellers in Tripura alongwith carrying cost.

**Issue No. 6: Whether the Petitioner is entitled to recover IDC and IEDC as claimed?**

201. The Petitioner has submitted that it was constrained to incur additional Interest During Construction (IDC) for the period of uncontrollable delay as detailed by it in the petition. The Petitioner has claimed IDC of approximately `100 crore and has made the following submissions:

- a) *Change in Law* events, namely, (i) Hollongi Airport, (ii) Covid-19 pandemic also delayed the commissioning of the Project and have been claimed as both *Change in Law* and *Force Majeure* events. Therefore, the said

*Change in Law* events entitle the Petitioner to claim consequential reliefs in the form of monetary relief and for extension of time including in the form of IDC, IEDC and carrying cost until the recovery of such amounts by the Petitioner.

- b) *The Petitioner had no option but to incur additional IDC for the periods when the commissioning of the Project was delayed both due to Change in Law and Force Majeure events as detailed in the petition. Such additional IDC is an additional expenditure as it is an outflow from the Petitioner to its lenders. This additional interest is an inevitable consequence of the delay caused due to Change in Law and Force Majeure events.*
- c) The uncontrollable time and cost over-run caused in the Project is due to *Change in Law* and *Force Majeure* events that were faced by the Petitioner during the construction phase.
- d) The issue of entitlement of IDC and IEDC incurred on account of *Change in Law* and *Force Majeure* has been settled in view of the APTEL's Judgement dated 20.10.2020 in Appeal No. 208 of 2019 in Bhopal Dhule Transmission Company Limited v. CERC and Ors. and the Judgment dated 3.12.2021 in Appeal No. 129 of 2020 in NRSS XXXI (B) Transmission Limited v. CERC and Ors.
- e) Pursuant to the aforesaid judgment of the APTEL, the Commission vide order dated 11.3.2023 in Petition No. 333/MP/2019 has granted IDC and IEDC to a Section 63 transmission licensee on account of the events that constituted both *Change in Law* and *Force Majeure*.
- f) The Petitioner vide affidavit dated 6.3.2023, in compliance with the Commission Record of Proceedings dated 9.2.2023, has submitted the details of IDC and IEDC claimed. The Petitioner has submitted that the Petitioner had to incur IDC and IEDC on account of the delay due to the

unexpected requirement for and non-grant of NoC by the AAI and outbreak of Covid-19 Pandemic and related restrictions. The Petitioner has claimed the following element-wise, computation of IDC and IEDC incurred up to original SCOD, from original SCOD to deemed COD and from deemed COD to actual COD:

(Amount in `)

Element	SCOD	Period of IDC covered	Total IDC Amount of Project for the Delay Period	IDC Proportion	Deemed/ Actual COD	Period of IDC covered	Additional IDC Proportion
BI Line	31.3.2020	September, 2017 to March, 2020	2188316897	156634252	6.4.2021	April, 2020 to March, 2021	147469043.82
Itana-gar Bays	31.3.2020	September, 2017 to March, 2020	2188316897	6976235	6.4.2021	April, 2020 to March, 2021	6568031.12
BI LILO	31.3.2020	September, 2017 to March, 2020	2188316897	16553725	4.4.2021	April, 2020 to March, 2021	15585109.57
SM line	30.11.2020	September, 2017 to March, 2020	3502285674	1576937414	1.3.2021	December, 2020 to February, 2021	245830503.41
Surajmanin agar Sub-station	31.7.2020	September, 2017 to March, 2020	2810910126	298848098	27.1.2021	August, 2020 to January, 2021	107271442.75
PK Bari Sub-station	31.7.2020	September, 2017 to March, 2020	2810910126	316535212	27.1.2021	August, 2020 to January, 2021	113620227.44
SP Line	31.7.2020	September, 2017 to March, 2020	2810910126	461083709	27.1.2021	August, 2020 to January, 2021	165505870.53
Palatana Bays	31.7.2020	September, 2017 to March, 2020	2810910126	30442647	27.1.2021	August, 2020 to January, 2021	10927379.62
AP Line	31.3.2020	September, 2017 to March, 2020	2188316897	136461870	23.2.2021	April, 2020 to February, 2021	109847081.27
NEEPCO-PK Bari Line 132 kV Bays	31.3.2020	September, 2017 to March, 2020	2188316897	8563848	23.2.2021	April, 2020 to February, 2021	6893601.11
PK Bari-AGTTPP Bays	31.3.2020	September, 2017 to March, 2020	2188316897	14520433	23.2.2021	April, 2020 to February, 2021	11688446.29
<b>Total</b>				<b>3023557441</b>			<b>941206736.93</b>

- g) The Petitioner has claimed the following additional expenditure that the Petitioner incurred due to *Change in Law* events and the consequent IDC:



Change in Law events and Impact on the Project			
Sl. No.	Claim	Amount incurred/ estimated till date as per Petition filed on 23.3.2021 and Submissions dated 12.12.2022 (`)	Amount incurred with inclusion of IDC component (`)
1.	Additional expenditure due to diversion of the approved route of the BI Line due to unexpected requirement and non-grant of NoC by the Airport Authority of India:	Approximate 1.06 crore	180222184/- (Additional IDC paid for BI Line and associated elements, i.e. Itanagar Bays and BI LILO.)
	Additional civil, erection and supply cost due to increase in line length due to diversion	~86 lakh	
	Revised forest clearance required due to diversion	Approximate 20 lakh	
2.	Change in Law expenses on account of COVID-19 and consequent restrictions imposed by Central and respective State Governments	279163626	914475106/- (Additional IDC paid for 5 months on account of Covid-19 and consequent restrictions for all elements except BI Line, Itanagar Bays and BI LILO)
	i. Idling Charges	153589326.97	
	ii. Use of helicopter services necessitated by COVID-19 and consequent restrictions	125574300	
3.	Additional expenditure on account of orders by the Deputy Collector of Itanagar Capital Complex and Yupia, Papumpare for payment of additional forest compensation in Arunachal Pradesh	22.74 crore	
4.	Additional expenditure on account of introduction of land and corridor compensation by the Government of Assam	~15.90 crore	
5.	Additional expenditure on account of payment made to Forest Dwellers in Tripura	5.69 crore	

h) The Petitioner has also claimed the following IEDC of `279163626 and the consequential IDC of `914475106 on the said IEDC:

Event	IEDC Incurred (in `)
Additional Expenditure incurred on use of Helicopter Services necessitated by Covid-19 and related restrictions	125574300
Idling Charges	153589326.97
<b>Total</b>	<b>279163626</b>

### **Analysis and Decision**

202. We have considered the submissions of the Petitioner. The Petitioner has claimed the Hollongi airport and Covid-19 pandemic delayed the commissioning of the Project and has claimed both as *Change in Law* and *Force Majeure* events. The Petitioner has



submitted that it is entitled to claim monetary relief and extension of time including IDC and IEDC and the carrying cost till the recovery of IDC and IEDC. In this regard, the Petitioner has relied upon the APTEL's judgment dated 20.10.2020 in Appeal No. 208 of 2019 in the matter of Bhopal Dhule Transmission Company Limited (BDTCL) and judgment dated 31.12.2021 in Appeal No. 129 of 2020 in the case of NRSS XXXI (B).

203. 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. The relevant extracts of the said judgments are as follows:

***“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 2019 in –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.”*

204. Earlier in the Bhopal Dhule Judgment, the APTEL observed that the denial of IDC on the admitted *Change in Law* by this 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 NRSS Judgment, the APTEL 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 a Force Majeure. Consequently, the APTEL therein held the licensee entitled to be fully compensated for IDC and IEDC incurred on account of the *Change in Law* and *Force Majeure* events. However, in the present case, the plea of the Petitioner that Hollongi Airport issue and Covid-19 pandemic being both the *Change in Law* and *Force Majeure* events, have not been accepted by us in the foregoing paragraphs. While the issue of Hollongi Airport has not been considered either a *Force Majeure* or a *Change in Law*, the Covid-19 Pandemic has only been considered as a *Force Majeure* event. Hence, in the present case, no event(s) have been declared as both the *Change in Law* and *Force Majeure* events as alleged by the Petitioner triggering its entitlement towards IDC and IEDC as per the NRSS Judgment.

205. Moreover, insofar as the entitlement of IDC and IEDC solely on account of force majeure event(s) is concerned, the Commission in its various orders has already taken a view that no financial relief in the form of IDC and/ or IEDC can flow to the licensee under the provisions of Article 11 of the TSA. In this regard, we may gainfully refer to the Commission's order dated 25.7.2022 in Petition No. 210/MP/2017 in the matter of Kudgi Transmission Limited v. Bangalore Electricity Supply Company Limited and Ors., wherein the Commission has observed as follows:

*39. We have considered submissions of the Petitioner and the Respondents. The available reliefs for Force Majeure event are provided under the Article 11.7 of the TSA, which reads as under:*

*"11.7 Available Relief for a Force Majeure Event Subject to this Article 11*

*(a) No party shall be in breach of its obligations pursuant to this Agreement to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;*

*(b) Every Party shall be entitled to claim relief for a Force Majeure Event affecting its performance in relation to its obligations under this Agreement.*

*(c) For the avoidance of doubt, it is clarified that the computation of Availability of Element(s) under outage due to Force Majeure Event as per Article 11.3 affecting the TSAP shall be as per Appendix IV to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 as on seven (7) days prior to the Bid Deadline. For the event(s) for which the Element(s) is/are deemed to be available as per Appendix IV to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009, then only the Non-Escalable Transmission Charges as applicable to such Element(s) in the relevant Contract Year shall be paid by the Long Term Transmission Customers as per Schedule 5, for the duration of such event(s). (d) For so long as the TSP is claiming relief due to any Force Majeure Event under this Agreement, the Lead Long Term Transmission Customer may, from time to time on one (1) day notice, inspect the Project and the TSP shall provide the Lead Long Term Transmission Customer's personnel with access to the Project to carry out such inspections, subject to the Lead Long Term Transmission Customer's personnel complying with all reasonable safety precautions and standards.*

*40. As per Article 11.7(a), the affected party shall not be in breach of its obligation pursuant to the agreement to the extent its performance of its obligations was prevented, hindered or delayed due to Force Majeure event and as per Article 11.7(b), the affected party shall be entitled to claim relief for Force Majeure event affecting its performance in relation to its obligations under the agreement. Under the TSA, the obligations of the licensee, among the others, include achieving the commercial operation of the Project/elements within the SCOD specified in the TSA. Further, in the event of performance of the said obligation is affected by Force Majeure event, Article 4.4.2 of the TSA provides as under:*

*“4.4.2 In the event that an Element or the Project cannot be commissioned by its Scheduled COD on account of any Force Majeure Event as per Article 11, the Scheduled COD shall be extended, by a ‘day for day’ basis, for a maximum period of one hundred and eighty (180) days. In case the Force Majeure Event continues even after the maximum period of one hundred and eighty (180) days, the TSP or the Majority Long Term Transmission Customers may choose to terminate the Agreement as per the provisions of Article 13.5.”*

*41. Thus, the relief available to the licensee in the event its obligation to achieve the commercial operation of the Project within the stipulated time is affected by the occurrence of Force Majeure event is an extension of SCOD of the Project and consequently, non-applicability of liquidated damages for such delay under the TSA. As noted above, the Commission vide order dated 24.1.2019 has already held that the Petitioner is entitled to revision of SCOD in respect of Element 2 & Element 3 from 31.12.2015 till the date of actual COD of these elements and has also directed the lead LTTC to return the bank guarantee submitted by the Petitioner towards the claim of liquidated damage. The contention of the Petitioner that it is also entitled to IDC and IEDC for the extended construction period under Article 11.7(b) of the TSA, in our view, is misplaced. It is well settled that a party cannot claim anything more than what is covered by the terms of contract for the reason that the contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. The contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meaning unless there is some ambiguity. Moreover, the terms of the contract have to be construed strictly without altering the nature of the contract as it may affect the interest of either of the parties adversely. In our view, the clear language of the Article 11.7(b) of the TSA does not entitle the Petitioner to claims the financial reliefs in the form of IDC and IEDC for the Force Majeure event.*

*42. The Petitioner has relied upon the APTEL's judgement dated 20.10.2020 in Bhopal Dhule Case and has submitted that in the said judgment, the APTEL has held that a licensee is entitled to relief in the event for reasons beyond its control, the SCOD prescribed*

in the TSA is revised to the actual COD. The relevant extract of the said judgment reads as under:

*“8.7 The Central Commission’s reasoning in the Impugned Order reads in two exceptions to the grant of Change in Law relief under Article 12.1.2 of the TSA namely: (a) that IDC is not a direct consequence of the Change in Law events and therefore must be denied; and (b) that no relief can be allowed for additional IDC incurred since IDC is not a component that is disclosed or evaluated at the time of bidding. CERC has in the same breath held that uncontrollable events in the form of Changes in Law have impacted the Project, but that the Appellant deserves no compensation for the same. Neither of these find any mention in the text of Article 12 of the TSA.*

*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. ....*

*1.11. 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*

2. Issue No. 2: 9.1 The Change in Law relief as prescribed under Article 12.2.1 of the TSA is as follows:

.....

*Since the Change in Law events approved by the Central Commission in the Impugned Order took place during the construction period of the Project i.e. before all the elements of the project were declared under commercial operation. **Hence, the Appellant is squarely covered by Article 12.2.1 of the TSA which provides for a formula in accordance with which the Non-Escalable Transmission Charges of the Appellant is to be increased.***

*9.2 The Appellant has submitted the total IDC incurred on original project cost. The Appellant has also placed on record copy of Certificate dated 04.08.2016 issued by the*



*Appellant's Chartered Accountant certifying that the increase in IDC incurred by the Appellant was Rs. 84.01 Crores, as submitted to the Commission. Therefore, **we are of the opinion that in terms of Articles 12.2.1 and 12.2.3 of the TSA, the Appellant is entitled to claim the relief regarding the Change in Law (during the construction period) as allowed in this order as per the provisions laid down under the TSA....***

43. Noticeably, in the aforesaid judgment, APTEL has held the licensee's entitlement for IDC on account of the Change in Law event after reaching a conclusion that Change in Law events adversely affected the licensee's Project in accordance with the TSA. It is pertinent to note that in the said case, the Commission vide order dated 24.4.2019, inter alia, had held that the delay in grant of forest clearance to the licensee therein was on account of change in MoEF Guidelines dated 13.2.2012 and the change in the format to be issued by District Collectors in lieu of FRA clearances by MoEF vide letter dated 5.7.2013 constituted Change in Law events. However, the Commission vide said order rejected the claim of the licensee therein for IDC on the ground that IDC is not a direct consequence of the Change in Law event and that no relief can be allowed for additional IDC since IDC is not a component that is disclosed at the time of bidding. However, such denial of IDC by the Commission in the order dated 24.4.2019 came to be set-aside by the APTEL in the aforesaid judgment, inter alia, on the ground that such denial of IDC is in contravention of the provision of Article 12.1.1 of the TSA. Evidently, the APTEL in the aforesaid judgment has held that the licensee is entitled to IDC under Article 12 of the TSA and had allowed the appropriate relief under Article 12.2 of the TSA. The APTEL, however, has not examined the entitlement of the licensee to IDC and IEDC on account of the Force Majeure events. Therefore, the judgment of APTEL in the said Appeal is not applicable in the present case.

44. The Petitioner has further relied upon the judgment of APTEL dated 13.10.2021 in Appeal No. 445 of 2019 in the matter of PGCIL v. CERC and Ors. to contend that in the said judgment, the APTEL has held that the licensee/Appellate therein is entitled to IEDC as per actuals after the prudence check especially when the delay was not attributable to the licensee. It is noted that in the said judgment, the issue was pertaining to condonation of time over run and consequent to IDC while determination of tariff under Section 62 of the Act. Whereas in the present case, the transmission project has been conceived through competitive bidding process and is governed by the Section 63 of the Act. Therefore, the above judgment dated 13.10.2021 is not applicable in the present case."

206. Moreover, in order dated 31.12.2023 in Petition No. 237/MP/2021, the Commission has reiterated its views on the entitlement of IDC solely on account Force Majeure events and observed as follows:

"140. We have considered the submissions of the Petitioner and MPPMCL. We have perused the provisions of TSA with respect to Force Majeure and Change in Law. As per TSA, compensation is provided for a Change in Law event, whereas for Force Majeure event there is no compensation except for relief in the form of extension of SCOD and hence levying of liquidated damages. In the instant case, two events have been allowed under Change in Law which are construction of concrete wall and compensation for land due to Government Orders. We observe that Petitioner has not claimed any delay on account of both the events allowed under Change in Law. Accordingly, the Petitioner's prayer for grant of IDC, is rejected."

207. In view of the above, the plea of the Petitioner for financial reliefs in the form of IDC and IEDC, solely on account of Force Majeure events, cannot be considered.

**Issue No. 7: Liability of Liquidated Damages (LD) on the Petitioner for the delays caused in implementation of the transmission elements.**

208. The Petitioner has prayed that the Petitioner should not be held liable in any manner for the delays caused in implementation of the transmission elements due to the aforesaid *Force Majeure* events.

209. The Articles 6.4 and 6.5 of TSA provide as follows:

*“6.4 Liquidated Damages for Delay in achieving COD of Project:*

*6.4.1 If the TSP fails to achieve COD of any Element of the Project or the Project, by the Element's / Project's Scheduled COD as extended under Articles 4.4.1 and 4.4.2, then the TSP shall pay to the Long Term Transmission Customer(s), as communicated by the Lead Long Term Transmission Customer, in proportion to their Allocated Project Capacity as on the date seven (7) days prior to the Bid Deadline, a sum equivalent to 3.33% of Monthly Transmission Charges applicable for the Element of the Project [in case where no Elements have been defined, to be on the Project as a whole] / Project, for each day of delay up to sixty (60) days of delay and beyond that time limit, at the rate of five percent (5%) of the Monthly Transmission Charges applicable to such Element / Project, as liquidated damages for such delay and not as penalty, without prejudice to Long Term Transmission Customers 'any rights under the Agreement.*

*6.4.2 The TSPs maximum liability under this Article 6.4 shall be limited to the amount of liquidated damages calculated in accordance with Article 6.4.1 for and up to six (6) months of delay for the Element or the Project.*

*Provided that in case of failure of the TSP to achieve COD of the Element of the Project even after the expiry of six months from its scheduled COD, the provisions of Article 13 shall apply.*

*6.4.3. The TSP shall make payment of the liquidated damages calculated pursuant to Article 6.4.1 within ten (10) days of the earlier of:*

- a. the date on which the applicable Element achieves COD; or*
- b. the date of termination of this agreement.*

*The payment of such damages shall not relieve the TSP from its obligations to complete the project or from any other obligation and liabilities under the Agreement.*

*6.4.4. If the TSP fails to pay the amount of liquidated damages within the said period of ten (10) days, the Long Term Transmission Customers shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of liquidated damages payable by the TSP to the Long Term Transmission Customers under this Article 6.3, the TSP shall be liable to forthwith pay the balance amount.*

*6.5 Return of Contract Performance Guarantee*

*6.5.1 If the TSP fails to achieve COD of any of the Elements on their respective Scheduled COD specified in this Agreement, subject to conditions mentioned in Article 4.4, the Long Term Transmission Customers shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Article 6.4.1, without prejudice to the other rights of the Long Term Transmission Customers under this Agreement.*





6.5.2 *The Contract Performance Guarantee as submitted by TSP in accordance with Article 3.1.1 shall be released by the Long Term Transmission Customers within three (3) months from the COD of the Project. In the event of delay in achieving Scheduled COD of any of the Elements by the TSP (otherwise than due to reasons as mentioned in Article 3.1.1 or Article 11) and consequent part invocation of the Contract Performance Guarantee by the Long Term Transmission Customers, the Long Term Transmission Customers shall release the Contract Performance Guarantee if any, remaining unadjusted, after the satisfactory completion by the TSP of all the requirements regarding achieving the Scheduled COD of the remaining Elements of the Project. It is clarified that the Long Term Transmission Customers shall also return/release the Contract Performance Guarantee in the event of (i) applicability of Article 3.3.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees Seventy Three Crores Eighty Five Lakhs only (Rs. 73.85 Crores) or (ii) termination of this Agreement by any Party as mentioned under Article 3.3.4 of this Agreement.*

6.5.3 *The release of the Contract Performance Guarantee shall be without prejudice to other rights of the Long Term Transmission Customers under this Agreement.”*

210. As per Article 6.5.1 of the TSA, if the TSP fails to achieve COD of any of the transmission elements on their respective scheduled COD specified in this Agreement, subject to conditions mentioned in Article 4.4, the LTTCs shall have the right to encash the Contract Performance BG and appropriate it in their favour as LD amount specified in Article 6.4.1, without prejudice to the other rights of the LTTCs under this Agreement.

211. Accordingly, the LTTCs will be at liberty to take an appropriate course of action in terms of the Article 6.5.1 of the TSA, keeping in view time over-run/ delays condoned in respect of each Elements in the foregoing paragraphs and the balance delays in achieving the deemed COD (as approved in this order)/ actual COD for the such Elements.

#### **Issue No. 8: Whether the Petitioner is eligible for carrying cost?**

212. The Petitioner vide affidavit dated 6.3.2023 has prayed that it may be granted compensatory restitution to the same economic position as existed prior to the occurrence of *Change in Law* events, so as to offset the adverse impact of the *Change in Law* events. The Petitioner has submitted that the Petitioner is entitled to appropriate carrying cost. In this regard, the Petitioner has referred to the Commission's orders dated 15.2.2023 in Petition No. 453/MP/2019, order dated 25.3.2023 in Petition No. 164/MP/2021 and order dated 27.3.2023 in Petition No. 533/MP/2023. The Petitioner

has further submitted that the Petitioner is eligible for carrying cost at the actual rate of interest paid by the Petitioner for arranging funds or the rate of interest on working capital as per the Tariff Regulations or the Late Payment Surcharge rate as per the TSA whichever is the lowest. The Petitioner has claimed carrying cost of `16,00,41,462 on account of various *Change in Law* events. The issue of carrying cost has been dealt by the Commission in various orders and it has been held that carrying cost where entitled shall be 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 Tariff Regulations or the LPS rate as per the TSA, whichever is the lowest. However, the carrying cost shall be permissible only for the Change in Law events allowed in the instant order.

213. In view of the above and as the Petitioner has not been allowed any IDC in the instant petition, the Petitioner shall be eligible for carrying cost, to cover the period starting from the date when the actual payments were made to the authorities on account of *Change in Law* event allowed till the date of issue 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 Tariff Regulations or the LPS rate as per the TSA, whichever is the lowest. Accordingly, the Petitioner shall work out carrying cost after reconciliation of additional expenditure on account of *Change in Law* event allowed after exhibiting clear and one-to-one correlation with the projects and the invoices raised supported with auditor certificate.

#### **Admissibility of increase in transmission charges**

214. The Petitioner has prayed for grant of an appropriate increase of 10.854% of the non-escalable transmission charges in accordance with Article 12.2.1 of the TSA.

215. It is observed that the reliefs claimed by the Petitioner is on account of *Change in Law* during the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/ decrease of each ₹4,97,00,000 (rupees four crore ninety seven lakh only) in the cost of the Project up to the revised SCOD 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 an amount equal to 0.313% (zero point three one three percent) of the non-escalable transmission charges. Thus, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of Project, to be audited and supported by CA certificate, and accordingly, shall be entitled to corresponding increase in non-escalable transmission charges as provided under Article 12.2.1 of the TSA. The Petitioner shall provide documentary proof of such increase/ decrease in cost of the Project/ revenue to LTTCs.

216. Accordingly, the Petition No. 134/MP/2021 is disposed of in terms of the above.

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

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

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**