

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 216/MP/2023

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

Date of Order: 03.10.2024

In the matter of:

Petition under Section 79(1)(c), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 before this Commission seeking to set aside the monthly bilateral bills for transmission charges raised by CTUIL on the Petitioner since August, 2021 onwards.

And

In the matter of

Petition under Section 79(1)(c), Section 79(1)(f), and Section 79(1)(k) of the Electricity Act, 2003 seeking direction to restrain CTUIL from raising further monthly bilateral bills for transmission charges raised on the Jharkhand Urja Sancharan Nigam Limited (JUSNL).

And

In the matter of:

Jharkhand Urja Sancharan Nigam Limited
JUSNL Building, Kusai Colony, Doranda,
Ranchi, Jharkhand 834002

.....Petitioner

Versus

- 1. North Karanpura Transco Limited**
Adani Corporate House, Shantigram, Ahmedabad, Gujarat 382421
- 2. Central Transmission Utility of India Limited**
Plot No. 02, Sector-29, Gurugram, Haryana 122001
- 3. Jharkhand Bijli Vitran Nigam Limited**
Engineer's Building, HEC Colony, Dhurwa, Ranchi, Jharkhand, 834001

.....Respondent(s)



Parties Present:

Shri Puneeth Ganapathy, Advocate, JUSNL
Shri Sankalp Udgata, Advocate, JUSNL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Divya Sharma, Advocate, CTUIL
Shri Swapnil Verma, CTUIL
Ms. Kavya Bhardwaj, CTUIL
Shri Hemant Singh, Advocate, NKTL
Ms. Ankita Bafna, Advocate, NKTL
Shri Harshit Singh, Advocate, NKTL
Shri Shailender Singh, Advocate, NKTL
Shri Nishant Kumar, Advocate, NKTL
Ms. Lavanya Panwar, Advocate, NKTL

ORDER

The instant petition has been filed by the Petitioner Jharkhand Urja Sancharan Nigam Limited (JUSNL), under Section 79(1)(c), Section 79(1)(f), and Section 79(1)(k) of the Electricity Act, 2003 seeking to set aside the monthly bilateral bills for transmission charges raised by CTUIL on the Petitioner since August 2021 onwards and seeking direction to restrain CTUIL from raising further monthly bilateral bills for transmission charges raised on the Petitioner.

2. The Petitioner has made the following prayers:

- i. *Admit the present petition*
- ii. *Declare that JUSNL had no obligation to match the timelines for completion of its downstream asset with the commissioning of NKTL's asset*
- iii. *Set aside the invoices raised by CTUIL on JUSNL declaring that the same have been raised without any basis and hence, null and void;*
- iv. *Restrain CTUIL from raising any further monthly bilateral bills on JUSNL in terms of the CERC Sharing Regulations 2020;*
- v. *Restrain CTUIL from taking any coercive actions during the pendency of the present Petition; and*
- vi. *Pass such other and further orders/ directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case.*

Submissions of the Petitioner:

3. The Petitioner has submitted as follows:
 - a) Petitioner Jharkhand Urja Sancharan Nigam Limited (JUSNL) is a company registered under the Companies Act, 1956, and has been vested with the business of transmission and wheeling of electricity in the State of Jharkhand subsequent to the unbundling of the erstwhile Jharkhand State Electricity Board (JSEB), as its wholly owned subsidiary in the context of liberalization in terms of Jharkhand State Electricity Reforms Transfer Scheme, 2013. The Petitioner also discharges the function of the State Transmission Utility (STU) of Jharkhand.
 - b) The Transmission Project of Respondent No.1 North Karanpura Transco Limited (NKTL) consists of the following elements to be executed through Tariff Based Competitive Bidding on a Build, Own, Operate, and Maintain (BOOM) basis and provide transmission services to the Long-Term Transmission Customers (LTTCs) of the NKTL Project:
 - i. North Karanpura-Gaya 400 kV D/C transmission line with quad moose conductor.
 - ii. North Karanpura-Chandwa (Jharkhand) 400 kV D/c transmission line along with 400 kV Pooling Station with quad moose conductor.
 - iii. Loop In Loop Out ("**LIL**O") of both circuits of Ranchi-Maithon RB 400 kV D/c line at Dhanbad.
 - iv. Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad
 - c) The Commission, in its Order dated 06.09.2016 in Petition No. 121/AT/2016, adopted the transmission charges for the Project and, vide its Order dated 29.09.2016 in Petition No. 116/TL/2016, granted the transmission license to NKTL for inter-state transmission of electricity.
 - d) NKTL obtained certificates dated 19.08.2021 from the Power System Operation Corporation Limited (POSOCO) in accordance with Regulation 6.3 (A) (5) of CERC (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as "2010 Grid Code") certifying successful completion of trial operation of Elements 3 and 4 of the NKTL Project. Thereafter, NKTL informed the LTTCs, CTUIL, POSOCO, and the ERLDC that it had completed the construction of its 400/220 kV grid sub-station at Dhanbad vide its letter dated 19.08.2021 thereby declaring the commercial operation of the NKTL Project.

- e) Since 19.08.2021, CTUIL, on behalf of NKTL, has started raising monthly bilateral bills of approximately INR 1 Crore per month on JUSNL for the asset- ICTs at 400/220 kV, 2x500 MVA Dhanbad Sub-station citing the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020 (hereinafter '2020 Sharing Regulations').
- f) With respect to the bilateral bills for transmission charges being raised by CTUIL on the Petitioner from August 2021 onwards, JUSNL, vide its letter dated 04.01.2022, asked for the following information from CTUIL:

"....to examine the bilateral bill, it is requested to submit following documents:

- a) Basis of calculation of bilateral transmission charges applicable to JUSNL as claimed by NKTL Transmission Licensee.*
- b) Correspondence from NKTL regarding COD of its asset.*
- c) Intimation provided to JUSNL for readiness of downstream network to avoid any penalty due to non-commissioning of downstream network.*
- d) Any agreement or document related to allocation of asset and imposing of bilateral transmission charges to JUSNL.*
- e) Order of appropriate regulatory commission for imposing of Transmission charges due to delay in commissioning in downstream network.*
- f) COD certificate of NKTL system.*
- g) Copy of intimation to JUSNL regarding start of work of GSS by NKTL."*

- g) In response to JUSNL's letter dated 04.01.2022, CTUIL vide letter dated 10.01.2022 stated that the transmission charges have been billed to the Petitioner on the basis of Regulation 13 (12) of the 2020 Sharing Regulations. It was also stated by CTUIL that NKTL was not required to intimate the Petitioner about the start of work in Dhanbad GSS as per the Transmission Service Agreement (TSA).
- h) JUSNL, vide letter dated 06.12.2022 to CTUIL, stated that it should have been timely intimated about the initiation of the work by NKTL so that the construction of the connecting downstream network would have also been started by the Petitioner in synchronization with the works started by NKTL, thereby, ensuring a holistic approach for timely completion of work. Further, it was also pertinently pointed out by the Petitioner that basic information like the exact location of the GSS, ITS coordinates, SCOD, etc., was never supplied to the Petitioner and, therefore, the timelines were never actually agreed by JUSNL. It was also highlighted by the Petitioner that there is no existing legal agreement between the Petitioner and NKTL regarding the construction of the downstream network by the Petitioner and any timelines associated with such construction. In the absence of any contract binding the parties, the liability towards the transmission charges cannot be fastened onto the petitioner. Neither CTUIL nor NKTL has issued any response to JUSNL's letter dated 06.12.2022.

- i) NKTL raised the issue of the pending NOC to be obtained from CMPDI / CCL before this Commission in Petition No. 194/MP/2017. The Commission, vide its Order dated 20.03.2019, held that CMPDI / CCL shall issue the NOC to NKTL within a week from the date of the order. The petitioner was not a party in Petition 194/MP/2017 and, hence, was unaware of the developments on the NOC issue raised before this Commission. NKTL never intimated JUSNL about:
- i. The status of the pending NOC
 - ii. When the NOC was finally issued to NKTL by CMPDI / CCL
 - iii. When the work on the North Karanpura- Chandwa and North Karanpura- Gaya transmission lines was finally initiated by NKTL.
- j) No information was provided by NKTL to the Petitioner in a timely manner; it was not possible for the Petitioner to fix the end coordinates for the downstream network. Clearly, it was due to fault on NKTL's part that there has been a mismatch of timelines. Now, CTUIL sought not to unilaterally impose liability of transmission charges on the Petitioner when it was NKTL that failed to provide any details of the NKTL Project to the Petitioner.
- k) The APTEL in the judgment of Punjab State Transmission Corporation Limited v. CERC & Ors. (Appeal No. 109 of 2021) held that the liability to pay transmission charges cannot be fastened upon the STU least on the ground that it had been remiss in the development of the downstream system.
- l) As of now, there is only the LILO of one circuit of the 220 kV Dumka-Govindpur transmission line, which has been proposed for providing the downstream connectivity at 400/220 kV GSS at Dhanbad for which the LOA has also been issued by the Petitioner. Apart from the said LILO, one more proposal for the second bay is pending administrative approvals from the Energy Department, Jharkhand, which may be employed for providing downstream connectivity to NKTL's Project. Although the Petitioner is taking steps to provide and develop the necessary infrastructure for NKTL's Project, there was never a formal agreement encapsulating the manner and timelines for the same to be done.
- m) The CERC, in its Order dated 21.09.2016, passed in the case of Petition No. 43/MP/2016, that the ISTS licensee executing the project under TBCB route should enter into an Implementation Agreement with the CTU, STU, inter-State transmission licensee, or the concerned LTTC, as the case may be, who are responsible for executing the

upstream/ downstream transmission system and clearly provide the liability for payment of transmission charges in case of the transmission line or upstream/downstream transmission assets. In Order dated 24.02.2017 in Petition No.85/TT/2015, the CERC has yet again observed that the ISTS transmission licensees and the STU should sign an Implementation Agreement for the development of ISTS and downstream network in a coordinated manner and to avoid mismatch.

- n) NKTL, vide its letter dated 10.01.2022 issued to the Petitioner has stated that the transmission charges have been billed by it to the Petitioner in accordance with Regulation 13(12) of the 2020 Sharing Regulations. Regulation 13(12) clearly shows that the same is applicable to ISTS licensees only. In the instant case, the Petitioner is an intra-state transmission licensee in the state of Jharkhand and therefore, the said Regulation 13 (12) is not applicable to the petitioner. Hence, the basis sought by NKTL to impose on the bilateral transmission charges the Petitioner is wholly misplaced.
- o) JUSNL's downstream network is planned to pass through dense forest areas in the state of Jharkhand, and, therefore, the downstream network of the Petitioner will require clearances from the concerned State Departments in this respect, which may take a certain amount of time. Further, even right-of-way issues may arise for the Petitioner during the development of the downstream network. Therefore, it is difficult to project any timeline within which the Petitioner would be able to complete its downstream network. JUSNL has already issued the Letter of Award(s) dated 17.05.2023 to M/s Vits Total Power Solutions Private Limited JV with M/s HAAD Industries Private Limited for *the 'Design, Engineering, Supply of Materials / Equipments, erection, testing and commissioning of LILO of one circuit from 220 kV Dumka – Govindpur Transmission line (18 Km.) at 400 / 220 kV GSS, Dhanbad (Adani) on turnkey basis'*. Hence, the downstream network of the Petitioner is under development.

Hearing Dated 22.09.2023:

4. Petition was admitted. The Commission directed CTUIL to submit a copy of the Minutes of Meeting of the Standing Committee wherein the request for an instant transmission scheme was made by the Petitioner and the same was finalized and approved.
5. Respondent, NKTL was directed to provide the following information:
- a) A copy of the Transmission Service Agreement (TSA) signed with the LTTCs.



- b) A copy of the Implementation Agreement signed with the entities responsible for executing the upstream/ downstream transmission system, if any.
- c) A copy of the CEA energization certificate in respect of each Element.
- d) Whether NKTL declared deemed COD of the ICTs or 'COD' as per the provisions of the TSA. Submit a copy of the declaration of COD in respect of these ICTs.
- e) A copy of the POSOCO trial run certificate issued for "400 kV, MVAR Bus Reactor- 1 along with the associated bay no. 403" at the Dhanbad substation.

Submission of the Respondent CTUIL

- 6. Respondent CTUIL, vide affidavit dated 13.10.2023, has submitted the minutes of the 17th meeting of the Standing Committee on Power System Planning of Eastern Region held on 25.05.2015.

Submission of the Respondent NKTL

- 7. Respondent NKTL vide affidavit dated 20.10.2023 submitted as under:
 - a) NKTL executed the Transmission Service Agreement (TSA) dated 14.03.2016 with the Long-Term Transmission Customers (LTTCS) who shall avail the transmission services from the Inter-State Transmission System developed by NKTL. These LTTCS are Jharkhand Bijli Vitran Nigam Limited, South Bihar Power Distribution Company Limited, North Bihar Power Distribution Company Limited, Gridco Limited, and West Bengal State Electricity Distribution Company Limited.
 - b) On 22.03.2021, NKTL, by way of advance notice of 60 days in terms of Article 6.1.1 of TSA, issued a letter to the LTTCS and intimated about the readiness of the Elements-3 and Element-4 for charging/ commissioning by 31.05.2021. NKTL requested the LTTCS to expedite the completion of associated upstream and downstream elements which were essential to energize the elements of the transmission system. NKTL also requested LTTCS to keep the Interconnection Facility ready in terms of Article 4.2.1 (b) of TSA. NKTL vide letter dated 22.03.2021 also notified the LTTCS that in the even the Interconnection Facilities were not ready to charge/ connect the element no. 3 and 4 of the transmission projects, the said element(s) of the project shall be declared as deemed commissioned in terms of Article 6.2.1 of TSA. Consequently, on account of the failure

of such elements of the Project to be connected to the Interconnection Facilities for reasons not attributable to NKTL, it is entitled to claim monthly transmission charges and liquidated damages in terms of Article 6.2.2 and 6.3.1 of TSA, respectively.

- c) Since the elements of the Project were at the advanced stage of completion, NKTL, vide letter dated 05.08.2021, requested JUSNL to furnish the name of the connecting substation so that the same may be intimated to the ERLDC as the 4 nos. of 220 kV line bays were dedicated to JUSNL lines for terminating at the Dhanbad sub-station of NKTL.
- d) On 06.08.2021, NKTL achieved the COD of Elements-3 and 4 of the transmission projects after 72 hours of the connection of the elements with the Interconnection Facilities, in terms of Article 6.2.1 of TSA. ERLDC issued the Commissioning Certificate dated 19.08.2021 in accordance with Regulation 6.3 (A) (5) of the 2010 Grid Code, certifying the successful completion of trial operation of Element No. 3 and 4 under Schedule 3 of TSA.
- e) NKTL vide letter dated 19.08.2021, while providing the element-wise charging details, intimated the LTTCs along with ERLDC and POSOCO regarding the achievement of COD of the Elements 3 and 4 with effect from 00:00 hours of 06.08.2021 in terms of Article 6.2.1 of TSA. NKTL also informed LTTCs that it was entitled to payment of Transmission Charges since COD of Element- 3 and 4 from 06.08.2021, in proportionate to 29.98% and 3.95%, respectively, of total Transmission Charges payable as per Schedule 6 of TSA. NKTL, vide email dated 31.08.2021, submitted the Yearly Transmission Charges (YTC) data of Transmission Project/ ISTS asset to the Implementing Agency POSOCO for claiming the applicable transmission charges out of the POC pool for the month of August 2021 in terms of the provisions of the 2020 Sharing Regulations.
- f) POSOCO vide e-mail dated 13.09.2021 informed that since there was no power flow in the Inter Connecting Transformers (ICTs) of Dhanbad Substation of Element-3 due to non-availability of the downstream network to be developed by another transmission licensee (i.e., JUSNL), therefore, the transmission charges shall be paid by the said licensee whose downstream network/ transmission system was delayed, in terms of Regulation 13(12) of the 2020 Sharing Regulations and not out of the POC pool. Accordingly, POSOCO asked NKTL to furnish details of bilateral billing for Element-3 of the Project.

- g) NKTL vide letter dated 18.09.2021 apprised POSOCO that the power flow was started in 400 kV bus of Dhanbad substation (Element-3) through LILO of Ranchi - Maithon- RB 400kV D/c line at Dhanbad (Element-4). Therefore, being an Inter-State Transmission Licensee (ISTS) under Section 63 of the Act, NKTL was not responsible for planning, coordination, and operationalisation of the downstream transmission system of the Dhanbad substation, which was to be developed by another transmission licensee, i.e., Respondent No. 6/ JUSNL. In view of this, NKTL requested POSOCO for the inclusion of transmission charges of Element-3 and 4 in the POC pool.
- h) JUSNL vide letter dated 29.09.2021 belatedly replied to the NKTL's letter dated 05.08.2021 that the survey work for LILO of 220 kV D/C Govindpur - Dumka line at Dhanbad substation was completed for which 2 Nos. of 220 kV bays were required at Dhanbad Substation and also stated that presently, the said scheme was under approval stage before BoD, JUSNL level which will take minimum 2 years to complete after getting approval of Government of Jharkhand. As such, the Load Flow Study for the remaining 2 nos. of 220 kV bays was under progress. In view of this, it was evident that the downstream system, which was mandatorily required to be completed by JUSNL, was delayed, which impacted the operationalization of the concerned Element of the Project NKTL.
- i) In view of the completion of Element 3 of the transmission project being developed by NKTL, the CTUIL raised the bilateral bills on JUSNL, on behalf of NKTL, for payment of transmission charges for 4 No. of bays at 400/220 kV and 2x500 MVA Dhanbad Substation in terms of Regulation 13 (12) of the 2020 Sharing Regulations.
- j) NKTL, vide letter dated 10.01.2022, furnished the point-wise response to CTUIL and JUSNL letter dated 4.1.2022, which is set out hereinbelow:

“[...]

a) Basis of calculation of bilateral transmission charges applicable to JUSNL.

NKTL has claimed Yearly Transmission charges for the month of Oct '21 and Nov '21 of Rs. 2.01 Cr and Rs. 1.94 Cr respectively. CTUIL has worked out the Transmission Charges corresponding to Dhanbad S/s, levied some portion to JUSNL and balance to the Pool in terms of CERC (Sharing of Inter-State Transmission charges and Losses) Regulation 2020.

b) Correspondence regarding CoD:

As per Article 6.2.1 read with Article 6.1.1 of TSA, NKTL is required to provide intimation of CoD to Long Term Transmission Customers, CTU and RLDC. Accordingly, NKTL vide letter dated 19.08.2021 intimated about declaration of CoD to all of them. [...]

c) Intimation provided to JUSNL for readiness of downstream network: -

- i. NKTL by its letter dated 05.08.2021 requested JUSNL to intimate name and location of JUSNL S/s where 220 Kv line connected at Dhanbad S/s end, which will terminate at another end so that the same can be communicate to ERLDC, Kolkata. JUSNL by its letter dated 29.09.2021 conveyed that the scheme is under approval stage at BoD, JUSNL level, it will take minimum 2 years for completion after approval of GoJ. The Load Flow/System Study for connecting remaining 02 nos. 220 kV bays is under progress. [...]
- ii. NKTL issued a notice under Article 6.1.1 of TSA dated 22.03.2021 inter-alia requesting LTTCs to ensure upstream and downstream system ready. [...]
- d) Any agreement or document related to allocation of asset and imposing of bilateral transmission charges to JUSNL: -
- a. The Allocation of transmission charges are worked out by CTUIL as manner specified in point no (a) above.
- b. Transmission Charges are billed to JUSNL by CTUIL on bilateral basis in accordance with Regulation 13 (12) of CERC (Sharing of Inter-State Transmission charges and Losses) Regulation 2020 which is reproduced as below.
- "In case of a transmission system where COD has been approved in terms of proviso (ii) of Clause (3) of Regulation 4 of the Tariff Regulations, 2014 or Clause (2) of Regulation 5 of the Tariff Regulations, 2019 or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff based Competitive Bidding, the Yearly Transmission Charges for the transmission system shall be:*
- (a) paid by the inter-State transmission licensee whose transmission system is delayed till its transmission system achieves COD, -----" (Emphasis provided)*
- e) Order of appropriate regulatory commission for imposing of Transmission charges due to delay in commissioning in downstream network: -
- As seen from Regulation 13(12) extracted above, it may be noted that in the event of deemed CoD by Transmission Licensee, defaulting entity is liable to pay Transmission Charges.*
- f) CoD certificate of NKTL system
- Copy of certificates issued by ERLDC, Kolkata are marked and enclosed [...]*
- g) Copy of intimation to JUSNL regarding start of work of GSS by NKTL
- NKTL is ISTS licensee, the project is to be executed with Tariff based Competitive Bidding guidelines with scope to establish 400/220 kV Dhanbad S/s. NKTL is not required to intimate JUSNL about start of work GSS as per TSA. However, NKTL by its letter dated 05.08.021 as specified in point no (c) above sought name and location of JUSNL S/s where 220 KV line connected at Dhanbad S/s end, which will terminate at another end. [...]"*
- k) NKTL seeks to make reference to events that establish the obligation of JUSNL to commission the downstream system to Dhanbad Substation, i.e., LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s.
- i. In the 18th Standing Committee Meeting of Power System Planning in the Eastern Region held on 13.06.2016, JUSNL informed that the line would be commissioned matching with S/s.

- ii. During the 39th Technical Coordination Committee (TCC) and Eastern Regional Power Committee (ERPC) meeting held on 16th and 17th November 2018, the representative of the JUSNL stated that the Tenughat – Govindpur 220kV D/c line would be built by JUSNL and the LILO of this line shall be completed at Jainamore and Dhanbad in future.
 - iii. During the 40th TCC and ERPC meeting held on 16.03.2019, the JUSNL submitted that the target date for completion of LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s was November 2018.
 - iv. Thereafter, JUSNL revised the target completion date of LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s to April 2020 in the 41st TCC and ERPC meeting held on 27.08.2019.
 - v. During the 43rd TCC and ERPC meeting held on 26.03.2021, JUSNL submitted that LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s would be completed by March 2023.
 - vi. During the Eastern Region Power Committee (Transmission Planning) (ERPCTP) meeting held on 14.02.2020, the JUSNL submitted that the proposal to build LILO at Dhanbad Substation was withdrawn. However, JUSNL was requested to reconsider their decision to drop 220kV LILO at Dhanbad and accordingly update CEA and CTU regarding 220kV downstream network at 400/220 kV Dhanbad S/s.
 - vii. Further, JUSNL submitted during 2nd and 3rd Meeting of ERPCTP held on 30.09.2020 and 09.02.2021 that LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s was expected to complete in FY 2024-25.
- l) In view of the above, it is evident that JUSNL admitted its obligation to commission the downstream system to Dhanbad Substation, i.e., LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s. Despite admitting its obligation to complete the associated downstream system, JUSNL not only failed to timely commission the said system but also failed to pay the bilateral transmission charges on account of such delay in commissioning of associated system.
 - m) Being aggrieved by non-payment of transmission charges, NKTL approached CTUIL vide letter dated 30.09.2022 and apprised that no payment had been received from the

JUSNL against the bilateral bill of INR 10.46 Crore as raised by CTUIL since the COD of Elements 3 of the Project in August 2021 till July 2022. NKTL duly brought to the attention of CTUIL the financial difficulty being witnessed by the licensee while managing the operations on account of non-payment of huge outstanding transmission charges and Late Payment Surcharge ("LPS") by JUSNL.

- n) JUSNL vide letter dated 06.01.2023 and 24.05.2023 to CTUIL disputed its liability towards payment of bilateral transmission charges to NKTL and stated as follows:
- i. JUSNL was not timely intimated regarding the initiation of work by NKTL in order to enable it to synchronize the work of the downstream system with that of the transmission system being developed by NKTL. Further, JUSNL was also not supplied with adequate information in relation to the exact location of GSS, ITS Coordinate, SCOD, etc., so that the COD could be mutually agreed upon and timely action could have been taken;
 - ii. There is no legal agreement between JUSNL and NKTL regarding the construction of the downstream system. In the absence of any contractual relationship, no liability can be fastened upon JUSNL;
 - iii. Regulation 13(12) of the 2020 Sharing Regulations is not applicable on JSUNL, which is an intra-state licensee, whereas the said regulation addresses the issue of mismatch of transmission assets of two inter-state licensees;
 - iv. As per Order dated 15.09.2022 passed by the APTEL in Appeal No. 109 of 2021 [PSTCL Vs. CERC & Ors.], "in the absence of any contract binding the parties to the dispute herein, the liability towards transmission charges cannot be fastened on the STU (PSTCL), not at least on the ground that it had been remiss in development of the transmission system".

The aforementioned letter of JUSNL was forwarded by CTUIL to NKTL on 10.01.2023.

- o) NKTL, vide its letter dated 21.01.2023, furnished the following clarification with respect to the issue of liability of JUSNL for payment of bilateral transmission charges:
- i. Implementation Agency ("IA") vide the email dated 13.09.2021 intimated NKTL that since there was no flow in the Inter Connecting Transformers (ICTs) of Dhanbad Substation of Element-3 due to non-availability of downstream network to be developed by other transmission licensee (i.e., JUSNL), therefore, the transmission

charges shall be paid by the said licensee whose downstream network/ transmission system was delayed, in terms of Regulation 13 (12) of the 2020 Sharing Regulations and not out of the POC pool;

- ii. NKTL vide letter dated 18.09.2021 submitted that it had completed its scope of work in August 2021 in terms of the TSA and, therefore, entitled to payment of transmission charges from the POC pool;
 - iii. Despite the claim made by NKTL towards transmission charges from the POC pool, the Implementation Agency vide email dated 22.09.2022 reiterated that due to the non-availability of 220kV downstream network of JUSNL, the transmission charges were to be paid on a bilateral basis by the licensee (JUSNL) whose transmission system was delayed;
 - iv. In view of the communications of the Implementation Agency, Respondent No. 7/ CTUIL raised the bilateral bills on JUSNL, on behalf of NKTL, for payment of transmission charges in terms of Regulation 13(12) of the 2020 Sharing Regulations;
 - v. With respect to the contention of JUSNL regarding the non-applicability of Regulation 13 (12), it was submitted that although there was no provision in the 2020 Sharing Regulations to claim transmission charges from intra-state licensee/ JUSNL, NKTL requested CTUIL to pay transmission charges from Pool under POC Mechanism in terms of Article 6.2.2 read with Note to Schedule-1 of TSA.
- p) JUSNL is liable to make payment of transmission charges to NKTL on account of the following grounds:
- i. JUSNL, in several meetings convened by ERPC and TCC, admitted the obligation to commission the downstream system to Dhanbad Substation i.e., LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad Substation. However, it failed to commission the said line in a timely manner due to which the transmission system of NKTL could not be operationalized/ put to regular use.
 - ii. By virtue of this principle of '*defaulter's pay*' as recognized under Regulation 13 (12), JUSNL, being the other licensee who defaulted in commissioning of the associated downstream transmission system, which caused non-utilization of the transmission elements of NKTL, is liable to pay the transmission charges to NKTL.

- iii. The applicability of the principle of *defaulter's pay*, as recognized under Regulation 13(12), cannot be limited to the defaulting inter-state transmission licensee only while excluding the intra-state transmission licensee from the ambit of law who committed the similar default of delaying the associated transmission system. The commission also has regulatory powers under Section 79 (1) (c) of the Electricity Act, 2003, for applying the principle to the intra-state licensees as well. JUSNL cannot take benefit of a hyper-technical argument to deny the payment of transmission charges.
- iv. It is a settled position of law that the legal provision cannot be interpreted in a manner that accords discriminatory treatment to two licensees (i.e., inter-state and intra-state) upon the commitment of analogous default who otherwise have similar obligations to implement the transmission system in order to evacuate power from the respective beneficiaries. In view of this, JUSNL, despite being an intra-state licensee, cannot take the defence of non-applicability of Regulation 13(12) upon an intrastate licensee and thereby wriggle out of its obligation to pay transmission charges for delaying the commissioning of the associated system.
- v. The liability of defaulting intra-state licensee has been duly upheld by this Commission vide CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023 (hereinafter referred to as "First Amendment to the 2020 Sharing Regulations") (effective from 01.10.2023) wherein as per Regulation 13 (12) (d), the transmission charges shall be paid by the respective drawee DIC(s) of the State whose intra-state transmission system is delayed, till such intra-State transmission system achieves COD. This has also been upheld by the APTEL in the judgment dated 02.05.2023 passed in Appeal No. 352 of 2022 (Fatehgarh Bhadla Transmission Company Limited Vs. CERC & Ors).
- vi. The principle of 'defaulter's pay' has been duly affirmed by the Appellate Tribunal of Electricity ("APTEL") vide judgment dated 27.03.2018 passed in Appeal No. 390 of 2017, titled as Punjab State Power Corporation Limited vs. Patran Transmission Company Limited & Ors ("Patran Judgment"), and judgment dated 02.05.2023 passed in Appeal No. 352 of 2022, titled as Fatehgarh Bhadla Transmission Company Limited Vs. CERC & Ors. In the said judgments, the Tribunal specifically affirmed the principle in a context where there exists no contractual agreement between the party who has commissioned its transmission element (in this case, NKTL) and the defaulting party who is responsible for the delay (in this case, JUSNL).

In the Patran Judgment, the Tribunal agreed with the Commission's judicial principle of holding that the defaulting party must be held liable for transmission charges. It further held that where statutory regulations were silent on a certain aspect, then this Commission can exercise its regulatory powers under Section 79(1) of the Act to mold a suitable remedy for a party who has been wrongfully prejudiced for no fault of its own.

- vii. The absence of a specific contractual relationship between the NKTL and JUSNL is wholly irrelevant for not holding JUSNL liable for payment of bilateral transmission charges, as this Commission, in exercise of its wider regulatory powers to regulate inter-state transmission of electricity under section 79(1)(c) of the Act, is empowered to issue directions to defaulting party to pay the transmission charges for causing delay in commissioning of the associated downstream system and thereby obstructing the system of NKTL for putting to regular use.
- q) It is also a settled tenet of law in terms of Energy Watchdog Judgment, reported in (2017) 14 SCC 80, that mandates the exercise of regulatory powers by this Commission where the regulations or statutory documents are silent qua a particular issue. In the present case, the aforesaid 2020 Sharing Regulations are silent qua the manner of treatment of transmission charges in a situation where the COD of associated transmission assets is delayed by an intra-state transmission licensee.
- r) Reference may also be made to the judgment dated 18.01.2019 passed in Appeal No. 332 of 2016 (Nuclear Power Corporation of India Limited Vs. CERC & Ors.) wherein the Appellate Tribunal of Electricity considered the identical facts as that of the present case wherein the 2020 Sharing Regulations were silent to deal with the situation in hand, and there existed no contractual relationship between the transmission project developer and the defaulting licensee. In such a case, the Tribunal held as follows:

"10.6 It is clear that the liability to pay transmission charges by the Appellant to the Respondent No. 2 from SCOD till downstream system is commissioned does not arise from the Regulations of the Central Commission. Our most relevant decision matching to the circumstances of the present case is our judgment dated 27.3.2018 in Appeal No. 390 of 2017(Patran judgment) where the principles were laid down clearly that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/ downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it emerges that NPCIL is the defaulting party and should have been made liable to pay the said transmission charges. However, we find that there is no contractual relation between the Respondent No. 2 and NPCIL.

10.7 From the decision of the Standing Committee on Power System Planning (a statutory committee), it is clear that it was only the Appellant who was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. This is irrespective of any relation between the Appellant and Respondent No.2. Accordingly, as per the principles laid down by the Central Commission vide its Order dated 21.9.2016 which are judicial in nature the defaulting entity in the present case is the Appellant.

10.8 In view of the foregoing discussions, we are of the considered opinion that there is no infirmity in the decision of the Central Commission by holding that the Appellant is liable to pay transmission charges from SCOD of the Transmission Asset until commissioning of the downstream system alongwith applicable charges as per TSA which was already raised by CTU.”

- s) In view of the above facts and circumstances, it is evident that this Commission while exercising regulatory power can hold that NKTL is entitled to recover the transmission tariff/ charges along with LPS by way of bilateral billing from JUSNL in terms of the Defaulter’s liability principle contained in the Regulation 13(12) of the 2020 Sharing Regulations which was subsequently clarified/ included in the First Amendment to 2020 Sharing Regulations for 4 No. of 220 kV bays at Dhanbad S/s, for the period from 06.08.2021 till commissioning of downstream assets by JUSNL.
8. Respondent NKTL vide affidavit dated 23.10.2023 had submitted the additional information as under:
- a) Copy of the TSA executed between NKTL with the LTTCs.
- b) NKTL has not executed an Implementation Agreement with JUSNL for the implementation of the downstream stream network. However, JUSNL, in various meetings, itself admitted its obligation to commission the downstream system to Dhanbad Substation, i.e., LILO of 220kV Tenughat – Govindpur D/c line at Dhanbad S/s.
- c) Central Electricity Authority (CEA), on 12.07.2021 and 15.07.2021, granted approval to NKTL to energize the new 400/220 KV NKTL sub-station at Dhanbad and LILO of 400 kV Maithan RB-Ranchi D/C line (1.35 km x 2 approx) at NKTL substation, Dhanbad, under Regulation 43 of CEA (Measures Relating to Safety and Electric Supply) Regulations, 2010.

On 19.08.2021, the NKTL vide its letter addressed to LTTCs, ERLDC, POSOCO, and CTUIL declared the achievement of the Commercial Operation Date (“COD”) of Element 3 and Element 4 of Transmission Project with effect from 00:00 hrs of 06.08.2021, in terms of Article 6.2.1 of TSA. NKTL also furnished the Certificates dated 19.08.2021

issued by POSOCO in accordance with Regulation 6.3(A) (5) of the 2010 Grid Code, thereby certifying the successful completion of trial operation of elements No.3 and No. 4 of the Project as per Schedule 3 of TSA.

Submission of Petitioner

9. Petitioner vide affidavit dated 19.11.2023, has filed its Rejoinder to the reply filed by Respondent No.1 NKTL as follows:

a) From the TSA dated 14.03.2016, it is evident that the Petitioner is not an LTTC and is not a party to the TSA and is, therefore, not bound by the terms of the same.

b) NKTL has referred to Clause 4.2.1 of TSA in its reply to submit that it was the obligation of the LTTCs to make available “Interconnection Facilities” to NKTL. It is submitted that this clause does not cast any obligation on the Petitioner herein.

c) Clause 1.1.1 of the TSA defines a ‘Connection Agreement’ as follows:

“Connection Agreement” shall mean the agreement between the CTU/STU and the TSP, setting out the terms relating to the connection of the Project to the Interconnection Facilities and use of the Inter State Transmission System as per the provisions of the IEGC / State Grid Code, as the case may be;”

d) NKTL has omitted reference to Clause 4.1 of the TSA, which makes it clear that it is, in fact, NKTL that is in breach of its obligations under the TSA, which resulted in the delay in the commissioning of the downstream transmission line. Clause 4.1 of the TSA provides as follows:

“4.1 TSP’s obligations in development of the Project: Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

...

(c) for entering into a Connection Agreement with the CTU/STU (as applicable) in accordance with the Grid Code.”

e) The purpose of entering into this Connection Agreement was to inter-alia ensure the coordinated commissioning of the downstream transmission line with the commissioning of the Dhanbad sub-station by NKTL. NKTL failed to enter into such a Connection Agreement with the Petitioner. Even otherwise, NKTL failed to apprise the Petitioner of necessary information pertaining to the commissioning of the Dhanbad sub-station by it. In the absence of any contract, the Petitioner cannot be held to have defaulted on any obligation to commission the downstream transmission line by a particular date.

- f) NKTL is not coordinating with the Petitioner in relation to the setting up of a downstream transmission line is also an independent failure by NKTL to perform its contractual obligations. As provided in Clause 4.1(e) of TSA, NKTL was further mandated:
- “4.1. ...e. to coordinate and liaise with concerned agencies and provide on a timely basis relevant information with regard to the specifications of the Project that may be required for interconnecting the Project with the Interconnection Facilities;”*
- g) Squarely contrary to its contractual obligation under Clause 4.1(e) and prudent practices, NKTL, in its letter dated 10.01.2022 to JUSNL, NKTL has admitted that it did not inform the Petitioner about even the start of its work on the Dhanbad sub-station, to which a downstream transmission line connection was required.
- h) A letter dated 05.08.2021 referred to by NKTL was written to JUSNL for the first time informing it of the readiness of NKTL’s sub-station, which, as per NKTL’s, was one day before the COD of the sub-station as per NKTL, i.e., 06.08.2021. NKTL did not contractually coordinate with the Petitioner and/or give it a sufficient advance intimation of the exact time when it would commence or complete work on the substation.
- i) NKTL failed to act prudently and in conformity with the terms of TSA by not notifying the Petitioner of the commencement of work on the Dhanbad sub-station. Such notification was particularly important since the implementation of the TSA by NKTL had been affected by several delays and uncertainties. As per Schedule 3 of the TSA, the substation was to be commissioned and the COD achieved by March 2019. However, NKTL achieved COD for the sub-station on 06.08.2021, i.e., after a delay of 2.5 years, without ever intimating to the Petitioner when and how the execution schedule for the Dhanbad sub-station had been extended.
- j) Commission in Order dated 20.03.2019 passed in IA No. 23/2019 in Petition No. 194/MP/2019, filed by NKTL, to lay emphasis on the severe uncertainties that NKTL itself had with respect to the commissioning of the Dhanbad sub-station. The scope of performance of the TSA was also rendered uncertain for a considerable period of time due to NKTL apparently terminating the TSA and subsequently withdrawing its termination. CERC Order also records that NKTL had terminated the TSA by notice dated 13.04.2018, which was, however, withdrawn by NKTL on 10.12.2018, i.e., after a lapse of approximately 8 months.
- k) NKTL had itself issued a Termination Notice on 13.04.2018 and then withdrawn the same 8 months later. Petitioner cannot be held responsible for the delay in the

commencement of power flow, and it is, in fact, NKTL's own lapses that have resulted in the present situation. Given that there was no certain timeframe for commencing or completing the Dhanbad sub-station, it was prudent and necessary for NKTL to inform the Petitioner as to (i) whether and when the NOC was issued, (ii) the schedule decided by the CEA and (iii) commencement of work and the location of the Dhanbad Sub-station – for the Petitioner to be sufficiently put to notice as to the requirement of the downstream transmission line connecting to the Dhanbad sub-station.

- l) The Petitioner has now perused the Minutes of Meeting of the CEA dated 23.04.2019 held in pursuance of the above-mentioned CERC Order, wherein the timeline of commissioning of the Dhanbad sub-station was expressly made “subject to” receipt of forest clearances by NKTL. NKTL did not make the Petitioner aware of the aforesaid decision of the CEA. In any event, the contingent nature of the execution schedule decided by the CEA necessitated that NKTL inform the Petitioner as to the receipt of the relevant NOCs, forest clearance and the final execution schedule. NKTL instead chose to act imprudently and in default of its obligations under the TSA in not informing the Petitioner when any of (i) the aforesaid NOCs were obtained, (ii) forest clearances were met, and (iii) when a final execution schedule had been ascertained or even (iv) when it commenced work on the Dhanbad sub-station.
- m) While NKTL has submitted that it made the requisite notification under Clause 6.1.1 by letter dated 22.03.2021, it is submitted that this letter does not comply with the requirements of Clause 6.1.1, which requires that the TSP shall provide advance notice to the STU and any other agencies as required. The said letter dated 22.03.2021 was thus required to be sent to the Petitioner. However, NKTL did not address the same to the Petitioner. In fact, NKTL extracted clause 6.1.1 in the said letter, which curiously omits the word ‘STU’ from the said clause. Therefore, in the absence of the mandatory notice under Clause 6.1, no default can be alleged by NKTL qua the Petitioner.
- n) The said letter, dated 22.03.2021, notifies the LTTCs that the Dhanbad substation would be ready for commissioning by 31.05.2021. As per Clause 6.1.1 the date notified by NKTL on which it would intend to connect to the interconnection facility (i.e., downstream transmission line) cannot “be earlier than its scheduled COD”.
- o) Commission vide above mentioned Order dated 20.03.2019 had directed as follows:

“(c) SCOD of the transmission system shall be considered for extension after the grant of NOC by MoC/CCL and the revised time schedule for execution of the transmission system is decided by CEA.”

Thus, NKTL could not have sought interconnection at a date earlier than the SCOD, in terms of Clause 6.1.1. Accordingly, having itself sought an extension in the SCOD before the CERC, NKTL could not unilaterally set a date for interconnection without obtaining the CERC’s decision on its application for extension in the SCOD. The letter dated 22.03.2021, therefore, is squarely contrary to the terms of Clause 6.1.1. As a consequence, no default can be alleged by NKTL in relation to the interconnection facility, i.e. downstream transmission line required to connect the Dhanbad sub-station.

- p) Clause 6.1.3 reiterates that the Dhanbad sub-station could only be connected to a downstream transmission line when the same has been completed in accordance with the terms of a “Connection Agreement.” NKTL cannot seek interconnection of its Dhanbad sub-station with a downstream transmission line without entering into a Connection Agreement with the Petitioner. The letter dated 22.03.2021 cannot be treated as a valid notice under Clause 6.1.1 of the TSA.
- q) NKTL has resorted to various statements of the Petitioner in ERPC meetings held on 13.06.2018, 16.11.2018, 16.03.2019, 14.02.2020, 30.09.2020, 09.02.2021 and 26.03.2021 to submit that the Petitioner “admitted to its obligation to commission the downstream system to Dhanbad Sub-station.” At the time these statements were made, there was no clarity or intimation by NKTL to JUSNL, identifying precisely when the Dhanbad sub-station would be commissioned.
- r) As per the decision of the APTEL in Punjab State Transmission Corporation Ltd. v. CERC 2022 SCC OnLine APTEL 78 (‘PSTCL’), no transmission charges for delay in the commissioning of a transmission system can be imposed without a contractual arrangement. The APTEL relied on its previous decisions in NRSS XXXI (B) Transmission Ltd. v. CERC (Appeal No. 17 of 2019) and PSPCL v. Patran Transmission Company Limited 2018 SCC OnLine APTEL 66, (‘Patran’) to hold the same. In Patran, the APTEL had held that although a downstream transmission licensee had delayed the execution of its transmission line, no transmission charges could be imposed upon it in the absence of a contract. After holding that no transmission charges could be levied in the absence of a contract, the APTEL in PSTCL specifically held that statements at

meetings of regional power committees do not constitute an agreement between the parties.

- s) NKTL has submitted that vide Regulation 13(12)(d), introduced in the First Amendment to the 2020 Sharing Regulations, CERC has recognized the liability of the Petitioner for the transmission charges. which were made effective from 1.10.2023. Therefore, they can have no application in the facts of the present case, which occurred much prior to 1.10.2023.
- t) Regulations with respect to an intra-state transmission licensee have, in fact, been introduced as Regulation 13(12)(f) for the first time vide the CERC (Sharing of Inter-State Transmission Charges and Losses) (Second Amendment) Regulations, 2023 (hereinafter referred as “Second Amendment to the 2020 Sharing Regulations”), with effect from 1.11.2023. The Second Amendment to the 2020 Sharing Regulations is not applicable to the present case. Accordingly, no liability to pay transmission charges could have been fastened on the Petitioner on the basis of the 2020 Sharing Regulations as existent at the relevant time.
- u) Without prejudice to the Petitioner’s submission that even Regulation 13(12)(f) is not applicable to the facts of the present case, it is submitted that assuming without admitting that these Regulations are applicable to the facts of the case, the same came into effect only from 01.11.2023. Therefore, the claims made by Respondent No. 1 prior to 01.11.2023 deserve to be dismissed on this ground alone. Even the said Second Amendment to the 2020 Sharing Regulations recognizes that an intra-State transmission licensee can only be held liable for payment of 50% of the YTC if it is held “responsible for the delay in commencement of power flow in the inter-state transmission system”.
- v) NKTL, by letter dated 18.09.2021, did not seek for monthly bilateral billing qua the Petitioner and only sought for inclusion of the transmission charges in the PoC pool, which would be borne by the various transmission customers, which does not include the Petitioner. However, based on communications between NKTL and POSOCO, monthly bills were raised by CTUIL on the Petitioner on the basis of Regulation 13(2) of the 2020 Sharing Regulations. The Petitioner repeatedly disputed the monthly invoices raised on it, including by a letter dated 06.01.2023 addressed to CTUIL.
- w) The scope of the regulatory powers of this Commission has been explained in various decisions, including the decision of the Supreme Court in PTC India Ltd. v. CERC (2010)

4 SCC 603 ('PTC India Ltd.'). It is submitted that for the reasons explained below, these powers cannot be exercised in the present case to suit the requirements of NKTL without any justification.

- x) APTEL, after considering the decision of the Supreme Court in PTC India Ltd., has held that regulatory powers can only be exercised in the absence of express provisions in a contract. In the present case, the TSA squarely contained a mechanism for the downstream transmission lines, which required NKTL to execute a contract (i.e., 'Connection Agreement') with the Petitioner to implement the project in a coordinated manner.
- y) The regulatory powers of the present Commission under Section 79 of the Electricity Act, 2003, only apply in relation to inter-state transmission and inter-state generation of electricity. This Commission does not have any regulatory power over intra-state transmission licensees such as the Petitioner.
- z) NKTL has not demonstrated the impact of any delay in the commissioning of the downstream transmission lines by the Petitioner (connecting to Element 3) on transmission through the two transmission lines (Element 1 and 2). NKTL has also not demonstrated the status of the commissioning of the two transmission lines to be commissioned by it (Elements 1 and 2).

Submission of Respondent NKTL

10. The Respondent NKTL, vide affidavit dated 22.12.2023, has reiterated his earlier submissions.

Submission of Petitioner

11. Petitioner vide affidavit dated 29.11.2023 has filed a Rejoinder to the submission of NKTL, wherein Petitioner has reiterated his earlier submissions.

Hearing dated 03.01.2024

12. The Commission directed the Petitioner to implead Jharkhand Bijli Vitran Nigam Ltd (JBVNL) as party to this Petition and JBVNL to file the details of action taken by him for timely implementation of downstream network in terms of NKTL's letter dated 22.3.2021

and Clause 4.2.1 of the TSA. Further, the Petitioner was also directed to file the status of implementation of a downstream network of 2 no. 220 kV D/C lines required for the drawl of power from Dhanbad S/S, one each to Govindpur and Jainamore 220 kV S/S.

13. The Commission directed the Respondent, NKTL, to file the information, whether it has entered into a Connection Agreement with the CTUIL/STU (as applicable) in terms of Article 4.1 (c) of the TSA and, if not, the reason for not signing of such Connection Agreement.

Submission of Respondent NKTL

14. Respondent NKTL vide affidavit dated 11.01.2024 has submitted as under:

- a) The following Connection Agreements were executed with Central Transmission Utility (i.e., Power Grid Corporation of India Limited) for seeking connection of the Element 1, 2, 3, and 4 with the CTU's Transmission System:

Name of the Transmission Element	Connection Agreement
Element-1: North Karanpura - Gaya 400 kV D/c transmission line with quad moose conductor	Connection Agreement dated 18.11.2020 executed with CTU (i.e., Power Grid Corporation of India Ltd.)
Element-2: North Karanpura - Chandwa (Jharkhand) 400 kV D/c transmission line along with 400 kv Pooling Station with quad moose conductor	
Element-3: Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad	<i>Connection Agreement dated 28.12.2020 executed with CTU (i.e., Power Grid Corporation of India Ltd.)</i>
Element-4: LILO of both circuits of Ranchi-Maithon RB 400 kV D/c line at Dhanbad	

- b) NKTL, being a Transmission Service Provider (TSP), has duly fulfilled its contractual obligations under Article 4.1 of the Transmission Service Agreement dated 14.03.2016 by entering into the requisite Connection Agreement with the CTU in terms of the Grid Code.

Submissions of Petitioner

15. Petitioner vide affidavit dated 11.01.2024 has filed "Revised Memo of Parties" by impleading Jharkhand Bijli Vitran Nigam Ltd (JBVNL) as a party to this Petition.

16. Petitioner vide affidavit dated 18.01.2024 has submitted as under:

- a) The status of the downstream network for utilization of 04 nos of 220kV Feeder Bay at 400/220 GSS Dhanbad (NKTL) is as below:

Sl.	Description	Nos. of 220kV Feeder Bays to be Utilized	Present Status
1	Construction of LILO of 220kV D/C Govindpur-Dumka TL at 400/220kV GSS Dhanbad (NKTL)	02	After receiving internal approvals, releasing a tender/request for proposal, and further necessary processes, the said work has been awarded to a sub-contractor by Letter of Award dated 17.05.2023. The Petitioner anticipates completion of the said works in 12 months, and the work is in progress.
2	Construction of 220kV D/C Dhanbad (NKTL)-Baliyapur TL	02	After receiving internal approvals, releasing a tender/request for proposal, and further necessary processes, the said work has been awarded to a sub-contractor by Letter of Award dated 07.11.2023. The Petitioner anticipates completion of the said works in 24 months, and the work is in progress.

Submission of Respondent CTUIL

17. Respondent CTUIL vide affidavit dated 25.01.2024 has submitted as under:
- a) In order to facilitate drawl of power by the distribution companies in the State of Jharkhand, it was agreed in the 17th Meeting of the Standing Committee on Power System Planning of Eastern Region held on 25.5.2015 to establish a 2x500 MVA 400/220 kV sub-station at Dhanbad by LILO of both circuits of Ranchi-Maithon line at Dhanbad for implementation through the TBCB mode and the Petitioner undertook to build 2 nos. of 220kV D/c lines at Govindpur and Jainamore 220 kV sub-stations respectively.
- b) Respondent No.1 entered into the Transmission Service Agreement (TSA) with its long-term transmission customers (LTTCs) on 14.3.2016 being Jharkhand Bijli Vitran Nigam Limited, South Bihar Power Distribution Company Limited, North Bihar Power Distribution Company Limited, GRIDCO Limited, and West Bengal State Electricity Distribution Company Limited.
- c) The LTTCs of Respondent No.1 were contractually obligated under Article 10 of the above TSA to pay Respondent No.1 monthly transmission charges for each of the elements of the transmission system from their respective commercial operation dates (CODs). It was also agreed upon by the LTTCs under Article 4.2.1(b) that they would keep the 'Interconnection Facility' ready.

- d) For the purpose of adjudication of the present Petition, it is pertinent to mention here that so far as Element-3 being implemented by Respondent No.1, i.e., the Dhanbad sub-station, was concerned, the Petitioner, being the State Transmission Utility (STU) of the State of Jharkhand as agreed under the 17th Meeting of the Standing Committee on Power System Planning of Eastern Region held on 25.5.2015, was required to keep the downstream system, being the LILO of the 220 kV Tenughat – Govindpur D/c line at Jainamore and at Dhanbad (resulting in the formation of Tenughat – Jainamore – Dhanbad – Govindpur 220kV corridor), ready matching with the COD of the said Element-3.
- e) In terms of the Commission Order in Petition No. 194/MP/2017, Respondent No.1 was required to implement the project after the issuance of the NOC by MoC in a compressed timeframe, and the SCOD of the transmission system was to be considered for extension after the grant of such NOC and the revised time schedule for execution of the transmission system as decided by the CEA. This Commission also granted liberty to Respondent No. 1 to approach the Commission with a change in scope of work along with its impact on cost and time overrun to be dealt with in accordance with law. Importantly, this Commission also directed the LTTCs of Respondent No.1, including the present Petitioner, not to take any coercive action against Respondent No.1 in terms of the TSA till the SCODs were revised by the Commission, taking into account the events of force majeure. The said Order being in the public domain, the Petitioner could not subsequently feign ignorance to the extended timelines for the transmission system being implemented by Respondent No.1 and also that Respondent No.1 was required to complete the said transmission system post-issuance of NOC in a compressed timeframe.
- f) The interconnected transmission elements being implemented by the Petitioner and Respondent No.1 had regularly been monitored in the following meeting;
- i. 18th Standing Committee Meeting of Power System Planning in the Eastern Region held on 13.06.2016
 - ii. In the 39th Technical Coordination Committee (TCC) and the Eastern Regional Power Committee (ERPC) Meeting held on 16th and 17th November 2018, the representative of the Petitioner stated that the Tenughat–Govindpur 220kV D/c line

would be built by it and the LILO of the said line would be completed at Jainamore and Dhanbad in future as under:

“JUSNL informed that they are in the process of constructing a no. of 220kV lines for evacuation of Tenughat Power. Of these, Tenughat – Govindpur D/C line would be commissioned in March 2019. Hence, JUSNL did not envisage any evacuation constraint for Tenughat generation”

iii. During the 40th TCC and ERPC Meeting held on 15/16th March 2019, the Petitioner stated that the target date for completion of LILO of 220kV Govindpur-Jainmore D/c line at Dhanbad sub-station was November 2018.

iv. Pursuant to the Order passed by this Commission in Petition No.194/MP/2017, a Meeting was held at the CEA on 23.4.2019 wherein the status of the transmission system of Respondent No.1 was reviewed, and the following was agreed with regard to the revised scope of the project:

“a. NKSTPP – Common point would be 13 km multi circuit 400kV line (quad moose conductor).

b. Common point – Chandwa would be 25 km 400kV D/c line (quad moose conductor).

c. Common point – Gaya would be 98 km 400kV D/c line (quad moose conductor).

d. New 400/220kV, 2x500MVA Dhanbad Substation.

e. 1.2 km D/c LILO of Ranchi-Maithon RB 400kV D/c line at Dhanbad.

ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.”

v. The aforesaid revised scope of works and their respective new SCODs were also agreed upon in the 2nd Meeting of the Eastern Regional Standing Committee on Transmission (ERSCT) held on 5.7.2019, wherein representatives of the Petitioner were also present.

vi. Thereafter, the Petitioner revised the target completion date of LILO of 220kV Govindpur-Jainmore D/c line at Dhanbad sub-station to April 2020 in the 41st TCC and ERPC Meeting held on 27.8.2019. The revised schedule was approved in the 42nd ERPC Meeting held on 12/13th December 2019.

- vii. In the 1st Eastern Region Power Committee (Transmission Planning) (ERPCTP) Meeting held on 14.2.2020, the Petitioner informed that the proposal to build LILO at Dhanbad sub-station had been withdrawn. In that regard, it was informed that such a withdrawal was to leave the upstream asset being constructed by Respondent No.1 stranded. Besides, as per the Orders of this Commission, for the non-availability of its down-stream system, the Petitioner was to become liable to pay applicable transmission charges.
- viii. In the 2nd and 3rd Meeting of ERPCTP held on 30.9.2020 and 9.2.2021, the Petitioner stated that LILO of 220kV Tenughat–Govindpur D/c line at Jainmore and Dhanbad sub-station was expected to be completed in FY 2024-25.
- ix. During the 43rd TCC and ERPC Meeting held on 23/26th March 2021, the Petitioner stated as under:

“i. LILO of 220 kV Tenughat - Govindpur D/c line at Jainamore and Dhanbad : 220 kV Tenughat-Govindpur D/c would be commissioned by June’21 and the LILO work of the line at Jainamore & Dhanbad would be completed by March’23”

- g) In this manner, both the Petitioner and Respondent No.1 were aware of their respective obligations to ensure the matching of CODs of their interconnected transmission elements so as to achieve regular service and power flow under the transmission system.
- h) Since Element-3 of the transmission system implementation by Respondent No.1 had declared COD in terms of the TSA, but the same was charged on no-load condition owing to the non-availability of the downstream elements to be implemented by the Petitioner, accordingly, the Implementing Agency had started levying the monthly transmission charges for the same on the Petitioner. As such, from 05.10.2021, Respondent No.2 started raising monthly transmission charges invoices onto the Petitioner for transmission charges of Element 3 on behalf of Respondent No.1, based on the Notification of Transmission charges for DICs for billing month October 2021 onwards by NLDC and subsequent RTAs published by ERPC.
- i) Petitioner failed to make any payments towards the bills raised on it, and as such, no disbursement of transmission charges could be made to Respondent No.1 on this account. Being aggrieved by non-payment of transmission charges, Respondent No.1 approached Respondent No.2 and, vide its letter dated 30.9.2022, informed that no

payment had been received from the Petitioner against the bilateral bills of almost Rs.10.46 Cr.

- j) The bilateral bills being disputed by the Petitioner before this Commission have rightly been raised upon it based on the Notification of Transmission charges for DICs for billing month October 2021 onwards by NLDC and subsequent RTAs published by ERPC, and as such, the Petitioner is liable to make payment of the same so as to service the stranded transmission assets commissioned by Respondent No.1.
- k) Under coordinated transmission system planning of which the Petitioner has very much been a part, the implementation of the transmission system by the Petitioner, as also by Respondent No.1, has regularly been monitored in various Meetings as set out above and wherein timelines for execution of the elements to be implemented by the Petitioner and Respondent No.1 have been intimated to all stakeholders to ensure that commissioning schedules for interconnected elements match with each other. Pertinently, as is evidenced from a perusal of the Minutes, during the said Meetings, there has never been any lack of consensus ad idem between the Petitioner and Respondent No.1 as regards their obligations to implement the respective elements. Despite being aware of the required timelines for implementation of the downstream elements to enable the drawl of power by the distribution utility in Jharkhand, the Petitioner, for reasons best known to it, has lagged behind and failed to implement the same matching with the commissioning of the Dhanbad sub-station by Respondent No.1 leading to stranding of transmission assets under ISTS which are necessary to be serviced from their CoD.
- l) Reliance of the Petitioner on Proviso (iii) to Regulation 5.4 of the 2010 Grid Code (as amended by its Fourth Amendment) and the Orders dated 21.09.2016 and 24.02.2017 passed in Petition No.43/MP/2016 and 85/TT/2015 respectively to contend that in the absence of any 'Implementation Agreement' between the Petitioner and Respondent No.1, no liability can be fastened onto it, is wholly misplaced and erroneous.
- m) The Proviso (iii) to Regulation 5.4 of the 2010 Grid Code requires interconnected transmission licensees to endeavor to match the commissioning of their respective elements *as far as practicable* through an Implementation Agreement. From a bare reading of the provision, it is apparent that the same is only a directory and not a mandatory provision mandating execution of an Implementation Agreement in every

case where transmission systems of two licensees are inter-connected. Further, in the absence of any such Implementation Agreement, the said provision cannot, under any stretch of the imagination, grant an interconnected transmission licensee complete immunity from all liabilities arising out of a mismatch between itself and another transmission licensee. Similarly, under its Orders dated 21.09.2016 and 24.02.2017 passed in Petition No.43/MP/2016 and 85/TT/2015, while this Commission has expressed that it would be a prudent practice to execute such an Implementation Agreement, for cases where no such Implementation Agreement is available, this Commission has categorically held in its Order dated 21.9.2016 as follows:

“24..... In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.”

- n) The reliance of the Petitioner on the judgement of the Appellate Tribunal dated 15.9.2022 (Punjab State Transmission Corporation Limited (PSTCL) V. CERC & Ors. to contend that liability to pay transmission charges cannot be fastened upon an STU is concerned, the same is also wholly fallacious and is borne out of the selective reading of the findings of the Tribunal. In the said case, the case of the STU of the State of Punjab, i.e., Punjab State Power Corporation Ltd. (PSTCL), had been that the charges imposed upon it for the mismatch between the interconnected transmission elements could not have been imposed upon it since the implementation of elements, which were held to have been delayed by PSTCL, were neither required to be implemented by it nor was there any agreement, concurrence or communication between the parties as regard its implementation. In such a scenario where charges were imposed upon PSTCL for delayed implementation of an asset that was not even required to be implemented by it, the Tribunal had held that the liability imposed upon it was erroneous. However, in the present case, the proposal for implementation of the Dhanbad sub-station was proposed by the Petitioner itself in the 17th Meeting of the Standing Committee on Power System Planning of Eastern Region held on 25.5.2015 wherein it also undertook to implement the downstream network for drawl of power by the distribution utility in Jharkhand. Petitioner can in no way contend to have any parity with the case of PSTCL in the above judgment, and as such, the findings of the Tribunal, given in the facts and circumstances

of the said case, can have no bearing on the case of the Petitioner. It is settled law that a precedent is what a Court holds in the facts and circumstances of a given case, and reliance on any decision cannot be made by any party completely divorced from the facts in which the said decision has been rendered.

- o) Under the 'Billing, Collection and Disbursement of Transmission Charges' (BCD Procedure) notified under the 2020 Sharing Regulations, there is a provision as regards raising of a 'Bill Dispute' by a DIC with Respondent No.1 within 30 (Thirty) days of presentation of the bill. Raising a billing dispute with Respondent No.2 is a mandatory obligation of a DIC, in the absence of which the said bill is to be considered as '*correct, complete, and conclusive.*' In the present case, the Petitioner has not raised any dispute regarding the bills with Respondent No.2 as provided for under the Regulations nor has made a pre-deposit of the bill amount, without prejudice to its dispute, within 30 (Thirty) days of presentation of the bill. However, the Petitioner is now only attempting to circumvent the procedure as established by law by raising issues with regard to "*accepted*" bills as a clear afterthought, and as such, the present Application filed by the Petitioner is liable to be dismissed on this ground alone. The Petitioner, thus, cannot be allowed to continue without making the payment of the bills while at the same time raising a challenge to the same.
- p) As regards the contention of the Petitioner that it is an 'intra-state' transmission licensee, no liability under Regulation 13(12) could be imposed upon it, Respondent No.1 submits as under:
- (i) The principle contained in Regulation 13(12) is that if one transmission licensee declares its COD in terms of the TSA but the other licensee delays in achieving the COD of the interconnected transmission system, then in such a case, the transmission tariff/charges are to be paid by the other licensee who causes such delay in utilization of the said inter-connected system. Regulation 13(12), therefore, deals with the scenarios of mismatch in the commissioning of inter-connected transmission systems. Further, in this regard, reference may also be made to Paragraphs 38.3.3 and 38.3.4 of the Statement of Reasons:

"38.3.3 All charges for the transmission system covered under Regulations 5 to 8 are being paid by drawee DICs or injecting DICs with untied LTA. In case a particular system is not put to use, it cannot be included under the pool of charges of Regulations 5 to 8 and the transmission licensee or generating company whose transmission system or generating station or unit thereof is delayed should pay the transmission

charges of the transmission system till the generating station or unit thereof or the transmission system achieves COD. This shall encourage coordinated effort between the generating station, transmission licensee and owner of downstream system so that assets are utilised once commissioned.”

“38.3.4 Liability under this clause arises due to delay of upstream and downstream system thereby preventing use of assets....”

- (ii) The said Regulation has been framed by the Commission on the basis of the principle of ‘defaulter’s pay’ as has been recognized by this Commission in various Orders whereunder, the Commission has imposed bilateral transmission charges on an interconnected transmission licensee whose delay has caused non-utilization of the transmission elements of the other inter-connected transmission licensee. This principle of ‘defaulter’s pay’ as recognized under Regulation 13(12), therefore, cannot be limited only to the defaulting ‘inter-state transmission licensee’, while excluding the ‘intra-state transmission licensee’ who may, while undertaking coordinated transmission system planning, commit a similar default of delaying the associated transmission system;
 - (iii) if the interpretation of Regulation 13(12) were to mean that it would only apply to inter-state transmission licensees, it would lead to not only discrimination between two similarly situated transmission licensees but would also lead to the absurdity inasmuch as despite being a defaulter licensee, the Petitioner would be relieved of any liability merely on account of it being ‘intra state licensee’.
- q) In terms of the amended provision of Regulation 13(12) of the 2020 Sharing Regulations vide First Amendment (effective from 1.10.2023) and further subsequent amendment in Regulation 13(12) vide Second Amendment to the 2020 Sharing Regulations (effective from 01.11.2023), in cases of mismatch, as in the present case, the transmission charges for the delayed period have been mandated to be paid by the respective drawee DIC(s) of the State whose intra-state transmission system is delayed, till such intra-State transmission system achieves COD. In view of various amendments to the 2020 Sharing Regulations and Notification of transmission charges for DICs issued by NLDC and subsequent RTA published by ERPC, Respondent No.2 is raising the bills on drawee DIC, i.e., Jharkhand Bijli Vitran Nigam Ltd (JBVNL) with effect from January 2024 billing month onwards.

Submission of Petitioner

18. Petitioner, vide affidavit dated 20.02.2024, has filed its Rejoinder to the reply filed by Respondent No.2 CTUIL and has submitted as under:
- a) In response to the reliance placed by CTUIL on the 17th regional committee meeting dated 25.05.2015, it is submitted that assuming (without admitting) that this meeting evidenced any agreement by the Petitioner to construct downstream transmission lines, such agreement was specifically subject to the certainty of commissioning of the Dhanbad sub-station by NKTL. As submitted by CTUIL itself, such a requirement of establishing a downstream line would only be to ensure that it was “ready matching with the COD of the said element 3” (i.e., the Dhanbad sub-station). Therefore (assuming without conceding), at the highest, an obligation to commission a downstream transmission line could only have been cast upon the Petitioner if it was made aware by NKTL, sufficiently in advance, of its date of commencing works at (and intended date of commissioning) the Dhanbad sub-station.
 - b) CTUIL has relied upon statements allegedly attributable to the Petitioner in regional power committee meetings dated 13.6.2018, 16-17.11.2018, 15-16.03.2019, 05.07.2019, 27.08.2019, 14.02.2020, 30.09.2020, 12/13.12.2019, 09.02.2021, 23/26.03.2021 to make a submission that by virtue of the meetings “both the Petitioner and Respondent No. 1 were aware of their respective obligations to ensure matching of CODs of their interconnected transmission elements so as to achieve regular service and power flow under the transmission system.” It is submitted that the commissioning of the Dhanbad s/s was uncertain and contingent as late as April 2019 (and even thereafter).
 - c) The bills in dispute in the instant case are bilateral bills raised under Regulation 13(12) of the 2020 Sharing Regulations. BCD Procedures sets out a separate provision for disputes relating to such bilateral bills under Clause 9.1(g). Petitioner has actively engaged with CTUIL to resolve issues relating to the bilateral bills and, upon failure of any mutually acceptable settlement, has filed this petition. Pertinently, CTUIL has been raising bilateral bills since 19.08.2021, and the Petitioner has repeatedly disputed the same, including by letters dated 04.01.2022, 06.12.2022, and 04.01.2023 wherein it sought clarifications with respect to the basis of raising such bills and reiterated that Regulation 13(12) of the 2020 Sharing Regulations did not apply to the Petitioner.

- d) After the filing of the Petitioner's Rejoinder to the Reply by NKTL (filed in November 2023), CTUIL in its Reply dated 01.02.2024, has sought to rely on Regulation 13(12(d)) of the Second Amendment to the 2020 Sharing Regulations to submit that it has commenced raising bills on Jharkhand Bijli Vitran Nigam Ltd. ('JBVNL') since January 2024. It is understood by the Petitioner that CTUIL has accordingly (correctly) chosen not to raise any bills on the Petitioner since January 2024. This submission of CTUIL fortifies that the Petitioner was never a defaulting entity as per Regulation 13(12) of the 2020 Sharing Regulations and was never liable for payment of any charges under the 2020 Sharing Regulations.

Hearing dated 06.03.2024

19. The Commission reserved for order on hearing held on 06.03.2024.

Submission of Respondent

20. The Respondent CTUIL has filled a Written submission dated 20.03.2024 by reiterating its earlier submission.

Submission of Petitioner

21. The Petitioner has filed a Written submission dated 22.03.2024 by reiterating its earlier submissions

Submission of Respondent NKTL

22. Respondent NKTL has filled a Written submission on 04.04.2024 by reiterating its earlier submissions.

Hearing dated 09.09.2024

23. Since the order in the Petition (which was reserved on 06.03.2024) could not be issued prior to the Members of the Commission, who formed part of the Coram, demitted office, the matter was re-listed for hearing. Learned counsels for both sides submitted that the parties have already made detailed submissions in the matter and have also filed their respective written submissions and accordingly requested the Commission to consider them and reserve the matter for Order. Considering the above, the Commission reserved the matter for Order.

Analysis and decision:

23. We have considered the submissions of the Petitioner and the Respondents.
24. Petitioner has submitted that CTUIL has incorrectly raised the invoices for bilateral transmission charges on JUSNL starting from the month of August 2021 as there is (i) no formal legal agreement that has been executed between the parties which imposes responsibility on JUSNL to construct the downstream network in synchronization with the NKTL's Project, (ii) no information was provided by NKTL to the Petitioner in a timely manner, (iii) Regulation 13 (12) of the 2020 Sharing Regulations is applicable for ISTS licensees only and not on the Petitioner, which is an intra-state transmission licensee, (iv) Petitioner is not an LTTC under TSA dated 14.03.2016 and is not bound by the terms of the same. Petitioner has submitted that CTUIL has stopped raising monthly bills on the Petitioner from January 2024 onwards, after coming into effect of the Second Amendment to the 2020 Sharing Regulations and as such, the relief sought by the Petitioner at prayer (d) in the present Petition has been rendered redundant post the period January 2024. There is no factual or legal basis to sustain the bills raised even prior to December 2023, i.e., between October 2021 and December 2023.
25. NKTL has submitted that on 22.03.2021, NKTL, by way of advance notice of 60 days in terms of Article 6.1.1 of TSA, issued a letter to the LTTCs and intimated about the readiness of the Elements-3 and Element-4 for charging/ commissioning by 31.05.2021, and NKTL also requested the LTTCs to expedite the completion of associated upstream and downstream elements and also to keep the Interconnection Facility ready in terms of Article 4.2.1 (b) of TSA.
26. CTUIL has submitted that being the participants in deliberations held in the various meetings, both the Petitioner and NKTL were aware of their respective obligations to ensure the matching of CODs of their interconnected transmission elements so as to achieve regular service and power flow under the transmission system.
27. We have considered the submission of the Petitioner and the Respondents and perused the facts on the record. The following issues arise for our consideration:

Issue No. 1: Whether the JUSNL was obligated to implement the downstream asset under his scope, matching with the Commissioning of the NKTL's asset?

Sub-Issue A: Whether the Petitioner was aware of the revised SCOD of the NKTL project?

Sub-Issue B: Whether forest clearance for NKSTPP-Chandwa and NKSTPP-Gaya lines have any bearing on the SCOD of the Dhanbad substation as agreed in the CEA meeting held on 23.04.2019?

Sub-Issue C: Whether Connection Agreement should have been signed with the Petitioner under TSA?

Sub-Issue D: Whether Notice was required to be given to Petitioner under Clause 6.1.1 of the TSA?

Issue No. 2: Who shall be responsible for the payment of transmission charges for Element 3 (Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad) for the period from deemed COD to 31.10.2023?

The issues have been dealt with in the subsequent Paragraphs.

Issue No. 1 : Whether the JUSNL was obligated to implement the downstream asset under his scope, matching with the Commissioning of the NKTL's asset?

28. Petitioner has submitted that the Transmission Project of the NKTL consists of the following elements, to be executed through TBCB on a BOOM basis and provide transmission services to the LTTCs of the NKTL Project:

Element 1: North Karanpura-Gaya 400 kV D/C transmission line with quad moose conductor.

Element 2: North Karanpura-Chandwa (Jharkhand) 400 kV D/c transmission line along with 400 kV Pooling Station with quad moose conductor.

Element 3: Loop In Loop Out ("LILO") of both circuits of Ranchi-Maithon RB 400 kV D/c line at Dhanbad.

Element 4: Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad.

29. Petitioner has submitted that post commissioning of Element 3 (including prerequisite Element 4), NKTL informed the LTTCs, CTUIL, POSOCO, and the ERLDC that it had

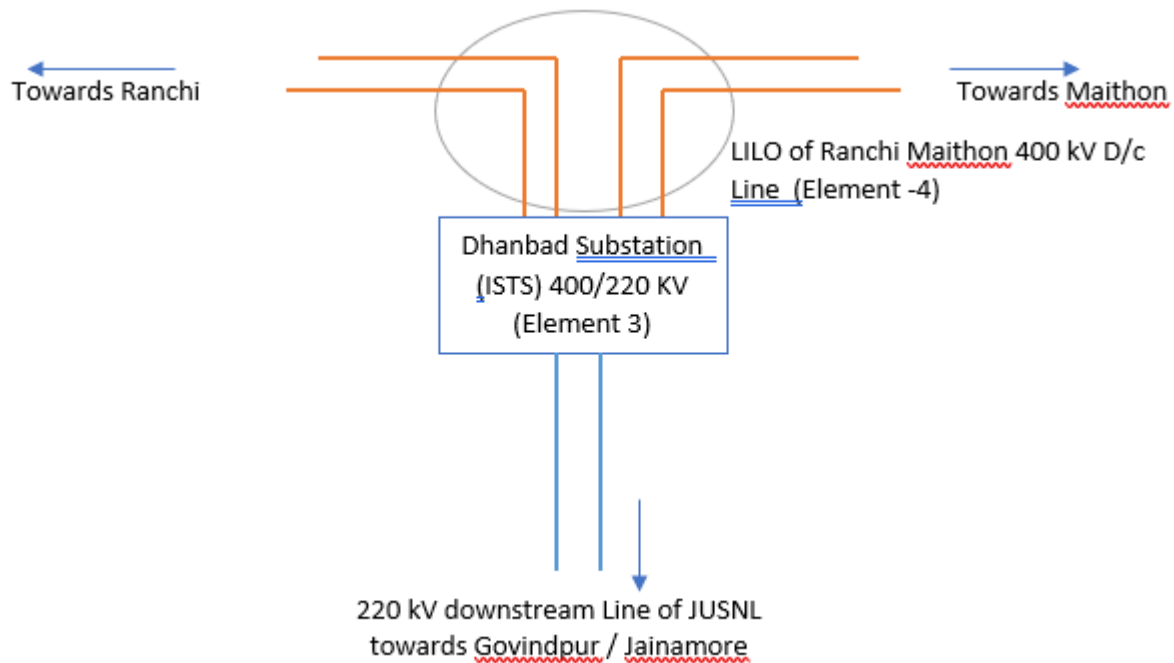
completed the construction of its 400/220 kV grid sub-station at Dhanbad vide its letter dated 19.08.2021 thereby declaring the commercial operation of the Element 3 and 4 as 06.08.2021 (deemed COD). Accordingly, CTUIL, on behalf of NKTL, started raising monthly bilateral bills of approximately INR 1 Crore per month on JUSNL for the asset-ICTs at 400/220 kV, 2x500 MVA Dhanbad Sub-station citing the 2020 Sharing Regulations. Petitioner, by placing reliance on the following contention, has submitted that he was not obligated to implement the downstream network to match with the commissioning of the corresponding Elements of the NKTL Project, citing the following points:

- a) The SCOD of the Elements under instant Petition was under adjudication in Petition 194/MP/2017 in light of NOC from the coal company for associated transmission lines of the NKTL project. The petitioner was not a party in Petition 194/MP/2017 and, hence, was unaware of the developments on the NOC issue raised before this Commission. Commission vide Order dated 20.03.2019 in Petition No. 194/MP/2017 had directed that SCOD of the entire scheme shall be decided by CEA. NKTL did not make the Petitioner aware of the CEA meeting held on 23.04.2019 in pursuance of the above mentioned CERC Order, wherein the SCOD of Element 3 was finalized. NKTL never intimated JUSNL as to when the NOC was finally issued to NKTL by CMPDI / CCL and when the work on the North Karanpura- Chandwa and North Karanpura- Gaya transmission lines was finally initiated by NKTL. Further, NKTL did not make the Petitioner aware of the CEA meeting held on 23.04.2019, where the timeline of commissioning of the Dhanbad sub-station was expressly made “subject to” receipt of forest clearances by NKTL. Petitioner has submitted that the contingent nature of the execution schedule decided by the CEA necessitated that NKTL inform the Petitioner as to the receipt of the relevant NOCs, forest clearance, and the final execution schedule, which NKTL did not do.
- b) NKTL failed to enter into a Connection Agreement with the Petitioner in terms of Clause 4.1 of the TSA to inter-alia ensure the coordinated commissioning of the downstream transmission line with the commissioning of the Dhanbad sub-station by NKTL. Under Clause 6.1.3 of the TSA dated 14.03.2016, the Dhanbad sub-station could only be connected to a downstream transmission line when the same has been completed in accordance with the terms of a “Connection Agreement,” and therefore NKTL cannot

seek interconnection of its Dhanbad sub-station with a downstream transmission line, without entering into a Connection Agreement with the Petitioner.

- c) NKTL failed to act prudently and in conformity with the terms of TSA by not notifying the Petitioner of the commencement of work on the Dhanbad sub-station. A letter dated 05.08.2021 referred to by NKTL was written to JUSNL for the first time informing it of the readiness of NKTL's sub-station, which, as per NKTL, was one day before the COD of the sub-station as per NKTL, i.e., 06.08.2021.
30. NKTL has submitted that on 22.03.2021, NKTL, by way of advance notice of 60 days in terms of Article 6.1.1 of TSA, issued a letter to the LTTCs and intimated about the readiness of the Elements-3 and Element-4 for charging/ commissioning by 31.05.2021, and requested the LTTCs to expedite the completion of associated upstream and downstream elements and also to keep the Interconnection Facility ready in terms of Article 4.2.1 (b) of TSA. NKTL submitted that vide letter dated 05.08.2021, NKTL requested JUSNL to furnish the name of the connecting substation, and on 06.08.2021, NKTL achieved the COD of the Elements-3 and 4 of the transmission projects after 72 hours of the connection of the elements with the Interconnection Facilities, in terms of Article 6.2.1 of TSA. JUSNL, despite admitting its obligation to complete the associated downstream system in various meetings, not only failed to timely commission the said system but also failed to pay the bilateral transmission charges on account of such delay in the commissioning of the associated system.
31. CTUIL has submitted that in order to facilitate the drawl of power by the distribution companies in the State of Jharkhand, it was agreed in the 17th Meeting of the Standing Committee on Power System Planning of Eastern Region held on 25.5.2015 to establish a 2x500 MVA 400/220 kV sub-station at Dhanbad by LILO of both circuits of Ranchi-Maithon line at Dhanbad for implementation through the TBCB mode and the Petitioner undertook to build 2 no. of 220kV D/c lines at Govindpur and Jainamore 220 kV sub-stations respectively. CTUIL submitted that the Petitioner, being the STU of the State of Jharkhand was required to keep the downstream system ready matching with the COD of the said Element-3. CTUIL submitted that it also was agreed upon by the LTTCs under Article 4.2.1(b) that they would keep the 'Interconnection Facility' ready.

32. We have considered the submission of Petitioner and Respondents and the facts on record. Now, we proceed to discuss the contention of the Petitioner one by one in subsequent paragraphs.
33. The diagram of the interconnection of Element 3 and Element 4 of the NKTL project and the downstream network of the Petitioner is as under:



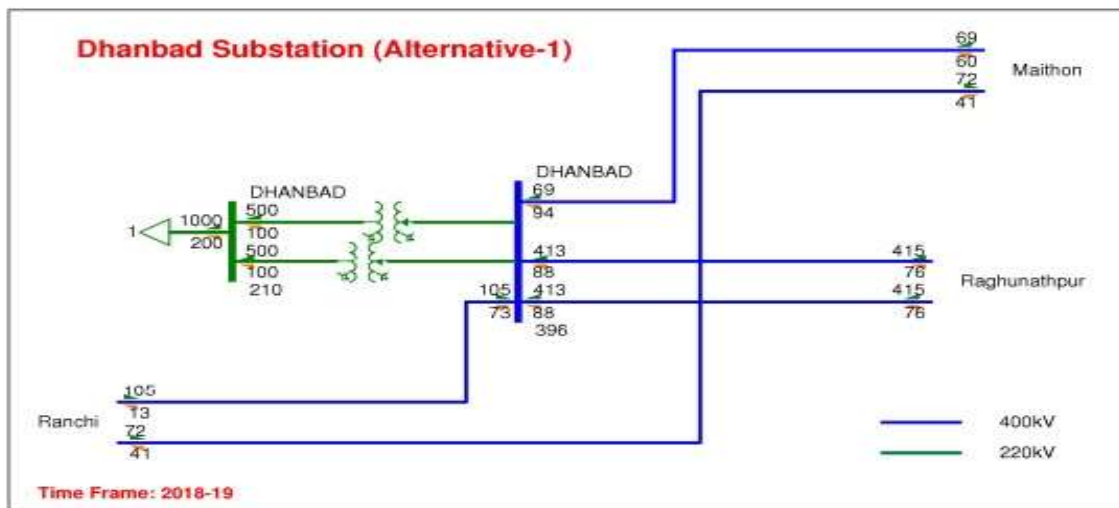
34. The relevant extracts of the 17th meeting of the Standing Committee on Power System Planning of Eastern Region held on 25.05.2015 are as under:

“16.0 Creation of 400/220 kV sub-station at Dhanbad - Proposal of JUSNL

16.1 Director, CEA stated that JUSNL has informed that under 24x7 power for all scheme, their distribution company has projected a requirement of about 1000 MW in Dhanbad region. To meet the load requirement of Dhanbad region, JUSNL is also constructing 220/132 kV sub-stations each at Govindpur and Jainamore (Bokaro). In order to feed these 220 kV substations, JUSNL has proposed the establishment of 400/220 kV sub-station at Dhanbad by LILO of Maithon-Ranchi 400 kV D/C line. Two alternatives along with power flows as given below have been studied for interconnection with Dhanbad 400kV substation.

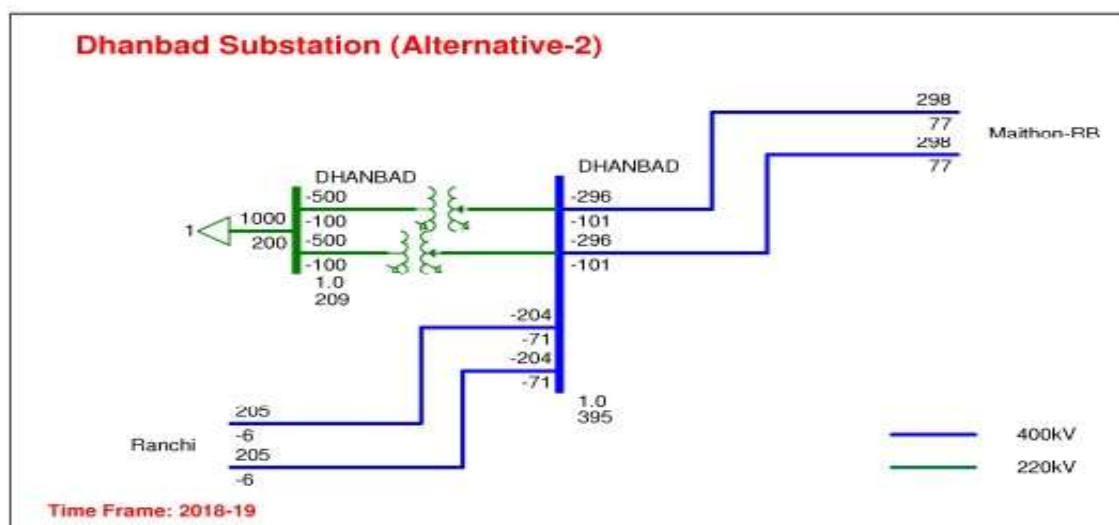
Alternative-1

- a) LILO of LILO portion of Maithon-Ranchi line at Raghunathpur so as to form Raghunathpur-Dhanbad 400 kV D/c line and Dhanbad-Maithon and Dhanbad-Ranchi 400kV S/c lines.



Alternative-2

a) LILO of Maithon RB – Ranchi 400kV D/c line at Dhanbad



16.2 AGM, POWERGRID stated that out of the two alternatives studied, the alternative two i.e. LILO of both circuits of Ranchi-Maithon RB 400 kV D/C line at Dhanbad is more suitable.

16.3 After further discussion, establishment of 2x500 MVA 400/220 kV sub-station at Dhanbad by LILO of both circuits of Ranchi-Maithon RB 400 kV D/C line at Dhanbad was agreed as Eastern Region strengthening scheme-19 (ERSS19) to be implemented as ISTS scheme to be built under TBCB. For drawl of power from Dhanbad, JUSNL would construct 2 no 220kV D/C lines, one each to Govindpur and Jainamore 220 kV sub-stations.

.....”

As per the above, based on the requirement of the JUSNL, it was decided in the 17th Standing Committee meeting of ER region held on 25.05.2015 to implement the 2x500 MVA 400/220 kV sub-station at Dhanbad by LILO of both circuits of Ranchi-Maithon RB 400 kV D/C line at Dhanbad as ER strengthening scheme under ISTS and to be built

under TBCB. Further, for drawl of power from Dhanbad, JUSNL would construct 2 no. 220kV D/C lines, one each to Govindpur and Jainamore 220 kV sub-stations.

35. We note that as per the Order dated 20.03.2019 in Petition 194/MP/2017, a meeting was held at CEA on 23.04.2019 to decide revised SCOD for execution of the transmission system in consultation with NTPC and the Petitioner. The relevant extract of the minutes of the above-mentioned meeting is as under:

“12. After the deliberations, following were decided:

i. Revised scope of the project:

a. NKSTPP- Common point would be 13 km multi circuit 400kV line (quad moose conductor).

b. Common point – Chandwa would be 25 km 400kV D/c line (quad moose conductor).

c. Common point – Gaya would be 98 km 400kV D/c line (quad moose conductor).

d. New 400kV Dhanbad Substation. e. 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line.

ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

.....

List of the participants of Meeting regarding evacuation system for North Karanpura (3x660MW) generation project of NTPC w.r.t. Petition no. 194/MP/2017 of NKTL in CERC held on 23.04.2019 at CEA, New Delhi.

S. No.	Name	Designation	Organisation
1.	P.S. Mhaske (In –chair)	Chairperson & Member(PS)	CEA
2.	Pardeep Jindal	Chief Engineer(PSP&A-II)	CEA
3.	Ishan Sharan	Director (PSP&A-II)	CEA
4.	B. S. Bairwa	Director(PSP&A-II)	CEA
5.	U. M. Rao	Dy. Director(PSP&A-II)	CEA
6.	Ashok Pal	CGM (CTU-PIg)	POWERGRID
7.	Deepak Trehan	GM	NTPC
8.	Subhash Thakur	AGM	NTPC
9.	V S Dubey	AGM	NTPC
10.	L. N. Mishra	Sr. V.P.	NKTL
11.	Vivek Singla	Joint President	NKTL
12.	Sameer Ganju	AVP	NKTL
13.	Praveen Tamak	Manager	NKTL

...”

As per above, CEA, in coordination with the NTPC and NKTL, extended the timeline of the SCOD of the NKTL Project. However, we also observed that neither any of the LTTCs nor the JUSNL was a participant in this meeting. Further the SCOD of Dhanbad substation was decided as October 2020.

36. It is also noted that Petitioner had referred to Order dated 20.3.2019 in Petition No. 194/MP/2017 to state that since the SCOD of the NKTL was uncertain, Petitioner was not aware as to when NKTL decided to commission its project.

Sub-Issue A: Whether the Petitioner was aware of the revised SCOD of the NKTL project?

37. We now analyse whether Petitioner was aware of the revised SCODs of the NKTL project as an outcome of the CEA meeting held on 24.04.2019.
38. We have perused the minutes of the 7th meeting of the Standing Committee on Transmission Planning for State sectors held on 01.07.2019 (taken from the ERPC

website) and the minutes of the 2nd meeting of the Eastern Region Standing Committee on Transmission held on 05th July 2019, quoted as follows:

7th meeting of the Standing Committee on Transmission Planning for State sectors held on 01.07.2019

“15. Modification in transmission system associated with North Karanpura (3x660MW) generation project of NTPC

The evacuation system for North Karanpura (3x660MW) generation project of NTPC is under implementation through TBCB route by M/s NKTL (subsidiary of Adani). The scope of works inter alia includes construction of following two transmission lines:

- (a) North Karanpura – Gaya 400kV D/c (Quad) line*
- (b) North Karanpura – Chandwa 400kV D/c (Quad) line*

In a meeting held at CEA on 23-04-2019, wherein the status of above mentioned transmission system was reviewed and following was agreed.

i. Revised scope of the project:

- a. NKSTPP- Common point would be 13 km multi circuit 400kV line (quad moose conductor).*
- b. Common point – Chandwa would be 25 km 400kV D/c line(quad moose conductor).*
- c. Common point – Gaya would be 98 km 400kV D/c line(quad moose conductor).*
- d. New 400kV Dhanbad Substation.*
- e. 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line.*

ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

Members may discuss & agree the revised scope of NKTL.

Deliberation in the meeting

Members noted.

.....

17	ANUR NAYAK	GM (e+m) JUSNL	9431747672	catjusni@jonusl.co	
18	Ajit Kr. Bhagwat	So. Manager/JUSNL	8340599939	,	
19	C. R. Mishra	DGM	9438907305	ele.comishra@optel.co.in	
20	A. K. Bandy	AGM	9438507352	ele.akbandy@optel.co.in	

"Coming together is a beginning, staying together is progress, and working together is success." –Henry Ford

[Page 1]

Participants in 7th SSCM Meeting

Venue: ERPC Conference Hall, Kolkata

Time: 11:00 hrs

Date: 01.07.2019 (Monday)

Sl No	Name	Designation/ Organization	Contact Number	Email	Signature
21	Krushna Ch. Samantray	AGM, OPQC	9338715428	Krushna.Samantray@opqc.co.in	
22	Ritwik Mishra	GM, OPQC	9937022477	ritwik.mishra@aes.com.	
23	B. K. Das	DGM, J&W	9589007000	binrajakinhar.das@j&w.in	
24	B. SARKHEL	Consultant ERPC	9433065724	binrajakinhar.das@j&w.in	
25	A. Banerjee	PRDC (JUSNL)	9433634273	anirban.b@prdcinfotech	
26					

2nd meeting of the Eastern Region Standing Committee on Transmission was held on 05th July 2019

"22. Modification in transmission system associated with North Karanpura (3x660MW) generation project of NTPC

22.1 Director (PSPA-II), CEA informed that the evacuation system for North Karanpura (3x660MW) generation project (of NTPC) and ERSS-XIX schemes together was to be implemented by M/s NKTL (subsidiary of Adani) under TCB route with following scope of works:

- North Karanpura – Gaya 400kV D/c (Quad) line
- North Karanpura – Chandwa 400kV D/c (Quad) line

(c) Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad

(d) LILO of both circuits of Ranchi-MaithonRB 400 kV D/c line at Dhanbad

22.2 However, the work was not progressed. CERC, in its order dated 20.03.2019 in Petition no. 194/MP/2017 has directed CEA to decide revised Scheduled Commercial Date of Operation (SCoD) for execution of the transmission system in consultation with NTPC and the Petitioner.

22.3 Accordingly, a meeting was held at CEA on 23-04-2019, wherein the status of transmission system of NKTL was reviewed and following was agreed.

i. Revised scope of the project:

a. NKSTPP – Common point would be 13 km multi circuit 400kV line (quad moose conductor).

b. Common point – Chandwa would be 25 km 400kV D/c line (quad moose conductor).

c. Common point – Gaya would be 98 km 400kV D/c line (quad moose conductor).

d. New 400/220kV, 2x500MVA Dhanbad Substation.

e. 1.2 km D/c LILO of Ranchi-Maithon RB 400kV D/c line at Dhanbad.

ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.

22.4 Members agreed to the revised scope of works mentioned above at para 22.2, which is to be implemented by M/s NKTL within above mentioned revised Scheduled Commercial Date of Operation (SCoD).

.....

Annexure-I

List of the participants of 2nd Meeting of Eastern Region Standing Committee on Transmission (ERSCT) held on 05.07.2019 at Siliguri, West Bengal

Sl. No.	Name	Designation
-----	-----	-----
	JUSNL	
1	C M Sharma	GM(SLDC)
2	Shailesh Prakash	DGM (operation)
3	Shailesh Prakash	Sr. Manager

We observe from the above that the decisions taken in the meeting convened by CEA on 23.04.2019 regarding the extension in the timeline of the SCOD of the NKTL Project, were also deliberated in the 7th meeting of the Standing Committee on Transmission Planning for State sectors held on 01.07.2019 and 2nd meeting of Eastern Region

Standing Committee on Transmission held on 05th July 2019, where members (including Petitioner) agreed with the revised scope and revised schedule of the NKTL project. The said meetings were attended by representatives of the Petitioner. Therefore, we do not agree with the contention of the Petitioner that Petitioner was not aware of the outcome of the CEA meeting held on 23.04.2019 and the revised SCOD of the NKTL project.

39. We have also perused minutes of the meeting of various other meetings which were held post-issuance of Order dated 20.3.2019 in Petition No. 194/MP/2017 and post-issuance of CEA minutes of the meeting held on 23.04.2019 quoted as follows:

(a) Relevant extract of the minutes of the 41st TCC and ERPC meeting held on 26th and 27th August 2019 is as under:

“JHARKHAND

The following downstream network is being constructed by JUSNL to draw power from 220kV & 132kV levels from Daltonganj (PG) :

220 kV Level :

- *Daltonganj (POWERGRID) – Latehar 220 kV D/C*
- *Daltonganj (POWERGRID) – Garhwa 220 kV D/C*

132 kV Level :

- *Daltonganj (POWERGRID) – Daltonganj (JUSNL) 132 kV D/C*
- *Daltonganj (POWERGRID) – Chatarpur/Lesliganj 132 kV D/C*

In 160th OCC, JUSNL updated the latest status as follows:

<i>Sl. No.</i>	<i>Name of the transmission line</i>	<i>Completion schedule</i>
<i>1.</i>	<i>Daltonganj 400/220/132kV S/s:</i>	
<i>----</i>	<i>----</i>	<i>-----</i>
<i>----</i>	<i>-----</i>	<i>-----</i>
3	<i>Dhanbad400/220kVS/s</i>	
A	<i>LILO of Govindpur–Jainamore/TTPS 220kVD/c at Dhanbad.</i>	<i>ROW issues. Target date April 2020</i>

As per the above, it was noted in the 41st TCC Meeting that the target date of completion schedule of LILO of Govindpur–Jainamore/TTPS 220kV D/c at Dhanbad was April 2020. We also observe from the list of participants of this meeting that the JUSNL and JBVNL were also the participants of this meeting.

(b) Relevant extract of the minutes of the 1st ERPCTP meeting held on 14th February 2020 is as under:

“7. Status of downstream 220kV or 132kV network by STUs from the various commissioned and under-construction ISTS substations

7.1 Director (PSPA-II), CEA informed that numbers of ISTS sub-stations have been commissioned and some are under construction for which the downstream system is being implemented by the STUs. Based on the information provided by the states, updated information on planned/under-construction downstream system is as follows:

.....

B. Under Construction substations:

.....

(k) Dhanbad 400/220kV S/s: expected by Oct 2020

i. JUSNL informed that the proposal was to make LILO of the 220 kV Tenughat – Govindpur D/c line at Jainamore and at Dhanbad. Out of this LILO at Jainamore would be completed by June’ 20 and the proposed LILO at Dhanbad is being dropped.

It was stated that establishment of Dhanbad 400/220kV, 2x500MVA substation was planned for Jharkhand under ISTS scheme in the 17th meeting of Standing Committee on Power System Planning of ER held on 25-05-2015. Dropping of LILO at Dhanbad will result into establishment of Dhanbad S/s without any 220kV downstream network and stranded investment under ISTS. The 400/220 kV Dhanbad S/s is already being constructed by Adani under TBCB (ERSS-19). It is pertinent to note that as per CERC order dated 21-09-2016 and 04-01-2017 in petition no. 43/MP/2016 and 155/MP/2016 respectively, it has been directed that in case of non-availability of upstream / downstream system the applicable transmission charges will be paid by the defaulting party to the ISTS Licensee for the period from SCOD till the actually commissioning of interconnecting elements for optimum utilization of the system.

Therefore, JUSNL was requested to reconsider their decision to drop 220kV LILO at Dhanbad and accordingly update CEA and CTU regarding 220kV downstream network at 400/220 kV Dhanbad S/s.

7.2 Members noted the same.”

As per above, JUSNL proposed to drop the LILO of the 220 kV Tenughat – Govindpur D/c line at Dhanbad, which was to be implemented by JUSNL. However, it was stated in the meeting that the establishment of the Dhanbad 400/220kV, 2x500MVA substation was planned for Jharkhand under the ISTS scheme in the 17th meeting of the Standing Committee of ER held on 25.05.2015. The Committee noted that dropping of LILO at Dhanbad will result in the establishment of stranded investment under ISTS, and further, the defaulting party will be liable to pay applicable transmission charges to the ISTS Licensee for the period from SCOD till the actual commissioning of interconnecting elements. Accordingly, the Committee requested JUSNL to reconsider their decision to

drop 220kV LILO at Dhanbad and accordingly update CEA and CTU regarding the 220kV downstream network at 400/220 kV Dhanbad Substation.

(c) Relevant extract of the minutes of the 2nd ERPCTP meeting held on 30th September 2020 is as under:

“D. ToR 2(iv) – REVIEW OF UPSTREAM AND DOWNSTREAM NETWORK

“12. Status of downstream 220kV or 132kV network by STUs from the various commissioned and under-construction ISTS substations

12.1 Director (PSPA-II), CEA stated that 220kV and 132kV network was to be implemented by STUs from the various commissioned and under-construction ISTS substations in ER. He requested respective STUs to update the status of the same.

12.2 The updated details as per the information provided by STUs is enclosed at ANNEXURE-VII.

.....

ANNEXURE-VII

Status of downstream 220kV or 132kV network by STUs from the various commissioned and under-construction ISTS substations

<i>Sl. No.</i>	<i>Substation/Location</i>	<i>Transformation Capacity/ Element</i>	<i>Date of Award</i>	<i>Updated Completion Schedule</i>
<i>----</i> <i>---</i>	<i>-----</i>	<i>-----</i>	<i>-----</i>	<i>-----</i>
<i>B</i>	<i>Under Construction Substations:</i>			
<i>----</i> <i>-</i>	<i>-----</i>	<i>-----</i>	<i>-----</i>	<i>-----</i>
<i>B4</i>	<i>Dhanbad</i>	<i>400/220kV</i>		<i>expected by Oct 2020</i>
<i>i)</i>	<i>LILO of the 220 kV Tenughat – Govindpur D/c line at Jainamore and at Dhanbad.</i>	<i>220kV</i>	<i>(Approval expected in next budget)</i>	<i>2024-25</i>

.....”

As per the above, JUSNL submitted the completion schedule of LILO of the 220 kV Tenughat – Govindpur D/c line at Jainamore and at Dhanbad as 2024-25. It is also noted that since the status of implementation of LILO of 220 kV Tenughat – Govindpur D/c line at Dhanbad is provided, it can be construed that JUSNL has agreed to connect to Dhanbad in continuation to 1st ERPCTP meeting held on 14.2.2020.

(d) Relevant extract of the minutes of the 43rd TCC and ERPC meeting held on 23rd and 26th March 2021 is as under:

“Deliberation in the TCC meeting:

TCC concurred and referred it to ERPC.

ITEM NO. B.25: Status of downstream 220kV or 132kV network by STUs from the various commissioned and under-construction ISTS substations

Numbers of ISTS sub-stations have been commissioned and some are under construction for which the downstream system is being implemented by the STUs. Based on the information provided by the states, updated information on planned/under-construction downstream system is given below, however, the same be verified/updated by the respective states:

.....
B. Under Construction substations:

.....
(c) Dhanbad 400/220kV S/s

i. LILO of 220 kV Tenughat - Govindpur D/c line at Jainamore and Dhanbad

Deliberation in the TCC meeting:

Concerned members updated as follows:

.....
B. Under Construction substations:

.....
(c) Dhanbad 400/220kV S/s

i. LILO of 220 kV Tenughat - Govindpur D/c line at Jainamore and Dhanbad : 220 kV Tenughat-Govindpur D/c would be commissioned by June'21 and the LILO work of the line at Jainamore & Dhanbad would be completed by March'23."

As per the above, in the 43rd TCC meeting, it has been updated by the concerned member that LILO work of the 220 kV Tenughat - Govindpur D/c line at Jainamore & Dhanbad would be completed by March 2023.

40. In light of the discussions above, we note the following:

- a) planning for implementation of 400/220 kV Dhanbad substation and LILO of both circuits of Ranchi-Maithon RB 400 kV D/c line at Dhanbad was decided in the 17th Standing Committee meeting of ER region held on 25.05.2015, only at the request of the JUSNL. JUSNL had agreed to construct LILO of Govindpur and Jainamore at 400/220 kV Dhanbad substation for drawl of power from Dhanbad substation.
- b) JUSNL continued to commit to the timeline for construction of JUSNL's downstream network during the above-referred meetings.

Therefore, we are of the view that though the NKTL has not intimated to the Petitioner regarding the initiation of work by NKTL post-Order in 194/MP/2017 the Petitioner being one of the participants of the above-quoted meetings, we conclude that the Petitioner was well aware of the progress of the NKTL project from time to time.

Sub-Issue B: Whether forest clearance for NKSTPP-Chandwa and the NKSTPP-Gaya lines have any bearing on SCOD of the Dhanbad substation as agreed in the CEA meeting held on 23.04.2019?

41. Petitioner has submitted that NKTL did not make the Petitioner aware of the CEA meeting held on 23.04.2019, where the timeline of commissioning of the Dhanbad substation was expressly made “subject to” receipt of forest clearances by NKTL. Petitioner has submitted that the contingent nature of the execution schedule decided by the CEA necessitated that NKTL inform the Petitioner as to the receipt of the relevant NOCs, forest clearance, and the final execution schedule, which NKTL did not do.
42. We have perused the relevant portion of the minutes of the CEA meeting dated 23.04.2019, quoted as follows:

“ii. NKSTPP-Chandwa 400kV D/c line would be completed in 14 months, i.e. by June 2020 and NKSTPP-Gaya 400kV D/c line would be completed in 23 months, i.e. by March 2021. New 400kV Dhanbad S/s with 1.2 km D/c LILO of Ranchi-Maithon 400kV D/c line would be completed in about 18 months, i.e. by October 2020.

iii. Representative of NKTL agreed for the above time lines subject to getting forest clearance for NKSTPP-Chandwa 400kV D/c line within 200 days and for NKSTPP-Gaya 400kV D/c line within 300 days.”

We observe that the subjectivity of SCOD of NKSTPP-Chandwa and NKSTPP-Gaya is with respect to forest clearance for NKSTPP-Chandwa 400kV D/c line and for NKSTPP-Gaya 400kV D/c line. Such subjectivity is not linked to the agreed extended SCOD of the 400kV Dhanbad S/s.

43. We have also perused Schedule 3 of the TSA dated 14.03.2016, quoted 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]

Sr. No	Name of the Transmission Element	Scheduled COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
1	North Karanpura – Gaya 400kV D/c line with quad moose conductor	40 months # (September 2019)	44.01%	Nil
2	North Karanpura – Chandwa (Jharkhand) Pooling Station 400kV D/c line with quad moose conductor	16 months # (September 2017)	22.06%	Nil
3	Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad	34 months	29.98%	Elements at Sl. No. 3 & 4 are required simultaneously
4	LILO of both circuits of Ranchi – Maithon-RB 400kV D/c line at Dhanbad	34 months	3.95%	Elements at Sl. No. 3 & 4 are required simultaneously

We agree that the payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after the successful commissioning of Element(s) which are pre - required for declaring the commercial operation of such Element as mentioned in the above table.

Scheduled COD for overall Project: 40 months from Effective Date #.

As per above, Element 3 and Element 4 of the NKTL project are not linked to SCOD for NKSTPP-Chandwa and NKSTPP-Gaya lines.

44. In light of the above discussions, the Petitioner’s contention that extended SCOD of the 400kV Dhanbad S/s was subject to forest clearance for NKSTPP-Chandwa and NKSTPP-Gaya line is found to be incorrect.

Sub-Issue C: Whether Connection Agreement should have been signed with the Petitioner under TSA?

45. Petitioner has submitted that NKTL failed to enter into a Connection Agreement with the Petitioner in terms of Clause 4.1 of the TSA to inter-alia ensure the coordinated commissioning of the downstream transmission line with the commissioning of the Dhanbad sub-station by NKTL. Under Clause 6.1.3 of the TSA dated 14.03.2016, the

Dhanbad sub-station could only be connected to a downstream transmission line when the same has been completed in accordance with the terms of a "Connection Agreement," and therefore NKTL cannot seek interconnection of its Dhanbad sub-station with a downstream transmission line, without entering into a Connection Agreement with the Petitioner.

46. NKTL has submitted that Connection Agreements have been executed with CTU for seeking connection of Elements 1, 2, 3, and 4 with the CTU's Transmission System.

47. We have perused TSA dated 14.03.2016 quoted as under:

1.1 *Definitions:*

1.1.1

"Connection Agreement" shall mean the agreement between the CTU/STU and the TSP, setting out the terms relating to the connection of the Project to the Interconnection facilities and use of the Inter State Transmission System as per the provisions of the IEGC /State Grid Code, as the case may be;

.....

4.1 *TSP's obligation in development of the Project:*

Subject to the terms and conditions of this Agreement, the TSP at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

.....

c. for entering into a Connection agreement with the CTU/STU (as applicable) in accordance with the Grid Code.

.....

6.1 *Connection with the Interconnection Facilities:*

6.1.3 *Subject to Articles 6.1.1 and 6.1.2, any element of Project may be connected with the Interconnection Facilities when:*

a. It has been completed in accordance with this Agreement and the Connection Agreement;

....."

As per the above, the TSP is required to enter into a Connection Agreement with CTU/STU (as applicable) in accordance with the Grid Code, setting out the terms relating to the connection of the Project to the Interconnection facilities and use of the ISTS as per the provisions of the IEGC /State Grid Code.

48. We have also perused provisions of the 2010 Grid Code, in respect of the Connection Agreement quoted as follows:

"2. Definitions

.....

o) “Connection Agreement” means an Agreement between CTU, inter-state transmission licensee other than CTU (if any) and any person setting out the terms relating to a connection to and/or use of the Inter State Transmission System;

.....

4.5 Connection Agreement

A Connection agreement shall be signed by the applicant in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009.”

As per above, the Connection Agreement is required to be signed in accordance with the 2009 Connectivity Regulations.

49. We have also perused the 2009 Connectivity Regulations quoted as follows:

“(5) The applicant or inter-State transmission licensee, as the case may be, shall sign a connection agreement with the Central Transmission Utility or inter-State transmission licensee owning the sub-station or pooling station or switchyard or the transmission line as identified by the nodal agency where connectivity is being granted:

Provided that in case connectivity of a generating station, including captive generating plant or bulk consumer is granted to the inter-State transmission system of an inter-State transmission licensee other than the Central Transmission Utility, a tripartite agreement as provided in the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 shall be signed between the applicant, the Central Transmission Utility and such inter-State transmission licensee.”

As per above, the Connection Agreement is linked to Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, quoted as follows:

“(7)(1) Every connection of a requester’s system to the grid shall be covered by a connection agreement between the requester and

(a) Appropriate Transmission Utility in case of connection to Inter-state transmission system or intra state transmission system as the case may be;

(b) Distribution licensee in case of inter-connection to distribution licensee’s system; and

(c) Transmission licensee and Appropriate Transmission Utility, in case of inter-connection to a transmission licensee (tri-partite agreement).

(2) The connection agreement shall contain general and specific technical conditions, applicable to that connection.”

As per above, a Connection Agreement is required to be signed between the Transmission licensee and the Appropriate Transmission Utility in case of inter-connection to a transmission licensee (tri-partite agreement).

50. A combined reading of TSA, 2010 Grid Code, 2009 Connectivity Regulations, and referred CEA Standards leads us to the conclusion that a Connection Agreement is required to be signed with STU in case of interconnection with STU. We also observe that the purpose of signing the Connection agreement is to set the terms relating to the connection of the Project to the Interconnection facilities. Thus, the Connection agreement is to set out the technical requirement for interconnection with the Grid and thereby ensures Grid security.
51. The issue of the Connection Agreement has also been included in the 2023 Grid Code, quoted as follows:

“9. CONNECTIVITY AGREEMENT

(1) In case of users seeking connectivity to the ISTS under GNA Regulations, Connectivity Agreement shall be signed between such users and CTU. In case of multiple transmission licensees connected at same station, the Site Responsibility Schedule including the responsibility for operation & protection coordination and data sharing among the licensees, shall be specified in the Connectivity Agreement.

(2) In case of an inter-State transmission licensee, Connectivity Agreement shall be signed between such licensee and CTU after the award of the project and before physical connection to ISTS.

(3) In case of intra-State transmission system getting connected to inter-State transmission system, Connectivity Agreement shall be signed between intra-State transmission licensee, CTU and inter-State transmission licensee after the award of the project and before physical connection to ISTS.”

As per the above, where an intra-State transmission system is getting connected with the inter-State transmission system, the Connectivity Agreement shall be signed between the intra-State transmission licensee, CTU, and the inter-State transmission licensee after the award of the project and before physical connection to ISTS.

52. We observe that a Connection Agreement has been signed between the transmission licensee NKTL and CTU and there is no Connection Agreement between NKTL and STU. We are of the considered view that the Connection Agreement is a technical agreement that should have been signed to set out the terms of technical requirements in the interest of Grid Security. However, we do not agree with the contention of the Petitioner that in the absence of the Connection agreement, the Petitioner was not

obligated to implement the downstream network matching with the commissioning of the corresponding Elements of the NKTL project when the Petitioner himself has agreed to the same in various planning meetings quoted in this Order.

53. We observe that there may be some other cases also where the Connection agreement has not been signed with the concerned STU where an inter-State transmission licensee got connected to an intra-State transmission system. We direct CTUIL to sign the tripartite Connection Agreement with parties as CTU, STU, and the concerned inter-state transmission licensee, including that in the case of NKTL, wherever the intra-State network is involved, within six months of the issuance of this order.

Sub-Issue D: Whether Notice was required to be given to Petitioner under Clause 6.1.1 of the TSA?

54. Petitioner has submitted a letter dated 22.03.2021 (60 days advance notice under Clause 6.1.1 of TSA) that does not comply with the requirements of Clause 6.1.1, which requires that the TSP shall provide advance notice to the STU and any other agencies as required. The said letter dated 22.03.2021 was thus required to be sent to the Petitioner. However, NKTL did not address the same to the Petitioner. In fact, NKTL extracted clause 6.1.1 in the said letter, which curiously omits the word 'STU' from the said clause. Therefore, in the absence of the mandatory notice under Clause 6.1, no default can be alleged by NKTL qua the Petitioner.

55. Clause 6.1.1 of the TSA dated 14.03.2016 provides as under:

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

As per the above, before connecting its Element(s), the TSP is obligated to serve at least 60 days advance written notice from SCOD or extend SCOD to RLDC(s), to CTU or to STU, as the case may be, and to the LTTCs.

56. A relevant extract of the NKTL letter dated 22.03.2021 is provided as under:



Transmission

Ref: NKTL/ HO/ Element 3&4/22032021

Date:- 22-03-2021

To,

Without Prejudice

Chief Engineer (Commercial) South Bihar Power Distribution Corporation Ltd, 2 nd Floor, Vidyut Bhavan, Patna – 800 021	Chief Engineer (Commercial) North Bihar Power Distribution Corporation Ltd, 3 rd Floor, Vidyut Bhavan, Patna – 800 0021
Chief Engineer (C & R) Jharkhand Bijli Vitran Nigam Ltd, Engineer's building, Dhurwa Ranchi – 834 001	Director (Commercial) GRIDCO Ltd, Janpath, Bhoi nagar, Bhuvneshwar – 751 022
Chief Engineer (PTP), West Bengal State Electricity Distribution Company Ltd, Vidyut Bhavan, Sector – II, Block-DJ, Bidhannagar, Kolkata – 700 091	Eastern Regional Load Despatch Centre, 14 – Golf Club Road, Tollygunge, Kolkata – 700 033
Executive Director, Central Transmission Utility, 1st Floor, A wing, Saudamini, Plot No.2, Sector 29, Near IFFCO Chowk, Gurgaon (Haryana) - 122001	

Subject: Intimation of readiness for Charging / Commissioning of Element 3 i.e Establishment of 400/220 kV, 2 X 500 MVA sub-station at Dhanbad and Element 4 i.e LILO of both circuits of Ranchi – Maithon – RB 400 kV D/c line at Dhanbad as per Article 6.1.1 of TSA

Ref: Transmission Service Agreement dated 14th March 2016

Dear Sir,

In Compliance with Article 6.1.1 of the TSA, North Karanpura Transco Ltd ("NKTL") hereby gives notice that Element 3 – "Establishment of 400/220 kV, 2 X 500 MVA sub-station at Dhanbad" and Element 4 – "LILO of both circuits of Ranchi – Maithon – RB 400 kV D/c line at Dhanbad" would be ready for charging / commissioning by 31-05-2021.

As per the above, NKTL vide letter dated 22.03.2021 gave advance notice for readiness for the commissioning of Element 3 and Element 4 in terms of Article 6.1.1 of TSA to LTTCs, ERLDC, and CTUIL. However, the same letter is not marked to the STU.

57. We observe that NKTL should have issued the 60-day notice to STU also since it was intended to connect to STU also. Nonetheless, this does not entitle JJUSNL to default in the implementation of its associated lines. Further it is noted that JBVNL is the LTTC that has signed the TSA dated 14.03.2016. LTTCs have the responsibility to arrange interconnection facilities in terms of the TSA. Therefore, JBVNL should have coordinated with the JUSNL for the implementation of the downstream network in a timeline matching the completion of the NKTL Assets.

58. In light of the Sub-Issues A to D above, we are of the considered view that JUSNL was obligated to construct the downstream network in a manner to match the timelines for the completion of its asset with the Commissioning of the NKTL assets.
59. The Issue No.1 is answered accordingly.

Issue No. 2: Who shall be responsible for the payment of transmission charges for Element 3 (Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad) for the period from deemed COD to 31.10.23?

60. Petitioner has submitted that post commissioning of Element 3 of the NKTL Project on 06.08.2021, CTUIL, on behalf of NKTL, has started raising monthly bilateral bills on JUSNL for the asset- ICTs at 400/220 kV, 2x500 MVA Dhanbad Sub-station citing the 2020 Sharing Regulations. Petitioner further submitted that CTUIL has incorrectly raised the invoices for bilateral transmission charges on JUSNL starting from the month of August 2021 as the same are issued without any justification, and there is no formal legal agreement that has been executed between the parties that imposes responsibility on JUSNL to construct the downstream network in synchronization with the NKTL's Project. Regulation, 13 (12) of the 2020 Sharing Regulations, is applicable to ISTS licensees only, whereas the Petitioner is an intra-state transmission licensee in the state of Jharkhand, and therefore, the said Regulation is not applicable to the petitioner.
61. Petitioner has submitted that the APTEL, in the judgment of Punjab State Transmission Corporation Limited vs CERC & Ors. (Appeal No. 109 of 2021) held that the liability to pay transmission charges cannot be fastened upon the STU, least on the ground that it had been remiss in the development of the downstream system.
62. Petitioner has submitted that as per Proviso (iii) to Regulation 5.4 of the 2010 Grid Code (as amended by its Fourth Amendment) and the Orders dated 21.09.2016 and 24.02.2017 passed in Petition No.43/MP/2016 and 85/TT/2015 respectively, in the absence of any 'Implementation Agreement' between the Petitioner and Respondent No.1, no liability can be fastened onto it.
63. NKTL submitted that the applicability of the principle of defaulter's pay, as recognized under Regulation 13(12) of the 2020 Sharing Regulations, cannot be limited to the

defaulting inter-state transmission licensee only while excluding the intra-state transmission licensee from the ambit of law who committed the similar default of delaying the associated transmission system. NKTL submitted that the Commission has regulatory powers under Section 79 (1) (c) of the Electricity Act, 2003, for applying the principle to the intra-state licensees as well. NKTL also submitted that the principle of 'defaulter's pay' has been duly affirmed by the APTEL vide judgment dated 27.03.2018 passed in Appeal No. 390 of 2017, titled as Punjab State Power Corporation Limited vs. Patran Transmission Company Limited & Ors ("Patran Judgment"), and judgment dated 02.05.2023 passed in Appeal No. 352 of 2022, titled as Fatehgarh Bhadla Transmission Company Limited Vs. CERC & Ors.

64. CTUIL submitted that LTTCs of Respondent No.1 were contractually obligated under Article 10 of the TSA dated 14.03.2016 to pay to Respondent No.1 monthly transmission charges for each of the elements of the transmission system from their respective commercial operation dates (CODs) and the LTTCs under Article 4.2.1(b) also agreed that they would keep the 'Interconnection Facility' ready. The principle of 'defaulter's pay' as recognized under Regulation 13(12) cannot be limited only to the defaulting 'inter-state transmission licensee' while excluding the 'intra-state transmission licensee' who may while undertaking co-ordinated transmission system planning, commit a similar default of delaying the associated transmission system.
65. We have considered the submission of the Petitioner and Respondent and perused the facts on record.
66. Regulation 13(12) of the 2020 Sharing Regulations, which was effective at the time of the Commissioning of the NKTL assets, i.e., 06.08.2021, was as under:

"(12) In case of a transmission system where COD has been approved in terms of proviso (ii) of Clause (3) of Regulation 4 of the Tariff Regulations, 2014 or Clause (2) of Regulation 5 of the Tariff Regulations, 2019 or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff based Competitive Bidding, the Yearly Transmission Charges for the transmission system shall be:

(a) paid by the inter-State transmission licensee whose transmission system is delayed till its transmission system achieves COD, or

(b) paid by the generating company whose generating station or unit(s) thereof is delayed, till the generating station or unit thereof, achieves COD, or

(c) shared in the manner as decided by the Commission on case to case basis, where more than one inter-State transmission licensee is involved or both transmission system and generating station are delayed."

As per above, the transmission charges of a transmission system where deemed COD has been declared in terms of the Transmission Service Agreement shall be paid by the inter-State transmission licensee whose transmission system is delayed. There is no specific reference to delay by intra-State transmission licensee.

67. We have pursued the TSA, which provides as follows:

“4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers, at their own cost and expenses, undertake to be responsible:

.....

b. for arranging and making available the Interconnection Facilities to enable the TSP to connect the Project.

.....”

As per above, LTTCs are responsible for arranging an interconnection facility. We observe that in the present case, the downstream network is to be built by the JUSNL, and in terms of 4.2.1 of the TSA dated 14.03.2016, it is the LTTC, i.e., JBVNL who should have coordinated with JUSNL to make the availability of the downstream network.

68. We have also perused Proviso (iii) to Regulation 5.4 of the 2010 Grid Code (as amended by its Fourth Amendment) and the Orders dated 21.09.2016 and 24.02.2017 passed in Petition No.43/MP/2016 and 85/TT/2015 where the need of an appropriate Implementation Agreement to ensure the matching of the commissioning of transmission system of one licensee with the transmission system of the other licensee has been emphasized. However, we do not agree with the contention of the Petitioner that in the absence of such an implementation agreement, the transmission licensee who has implemented its project shall not be entitled to transmission charges.

69. Further, Petitioner has placed reliance on the APTEL Order dated 15.09.2022 in Appeal No. 109 of 2021 in support of its contention that the liability towards transmission charges cannot be fastened on the STU, not the least on the ground that it had been remiss in development of the downstream system. We have perused the said APTEL Order. The relevant extract of the APTEL Order dated 15.09.2022 in Appeal No. 109 of 2021 is as under:

“19. Admittedly, there is no formal contract executed by the PGCIL with the appellant vis-à-vis the development of the subject asset and its utilization. The case of PGCIL plainly is that an agreement had been reached between the parties for purposes of the subject asset by the

resolution adopted in the 25th meeting of NRPC held on 23rd & 24th February, 2012, which was confirmed in the 26th meeting, held on 09.08.2012. The plea is that though in terms of the resolution adopted in the 30th meeting of the Standing Committee for Northern Region held on 19.12.2011, the proposal was to be acted upon after the 'requirement' had been communicated by the STU, no such condition was attached to the concurrence to the proposal before NRPC.....

.....

26. We do not accept the arguments of PGCIL that the resolution adopted in the 25th meeting of NRPC constitutes an agreement between the parties. The said resolution on the basis of deliberations in the meeting held on 23.02.2012 and 24.02.2012 was only to record 'concurrence' of NRPC with the transmission proposals that had been agreed earlier in the 30th Standing Committee meeting on Power System Planning of Northern Region. The qualifying clause in the said earlier resolution that the approval in principle was subject to the 'requirement of STU' being communicated would also apply to the concurrence by NRPC. It is not in dispute that PGCIL did not receive any confirmation of the requirement from the appellant. PGCIL itself did not ascertain requirement by any communication addressed to the appellant before obtaining investment approval from its Board of Directors on 16.05.2014 or before commencement of the execution of the work. As noted earlier, the first communication from its office, after development of the asset, was sent on 28.12.2016, the focus being to elicit information regarding construction of downstream lines. As noted earlier, the reference in the said communication was not on the NRPC resolution but on the resolution before the Standing Committee wherein the STU had expressed its agreement subject to it communicating its requirements later.

27. From the chronology of events, it is clear that PGCIL went ahead with the development of the work assuming that there was a requirement of the asset for purposes of the appellant. This assumption, without confirmation by the STU, was unfounded. In these circumstances, it cannot be said that there was an agreement reached between the parties (PGCIL on one hand and PTCL on the other) for development of the subject asset. In this view, as indeed in absence of any contract binding the parties to the dispute herein, the liability towards transmission charges cannot be fastened on the STU (PSTCL), not the least on the ground that it had been remiss in development of the downstream system.

.....”

As per above, APTEL held that PGCIL went ahead with the development of the work without confirmation by the STU when STU had specifically expressed its agreement in the Standing Committee meeting subject to it communicating its requirements later.

70. We observe that the planning of the transmission elements under question in the instant Petition was decided in the 17th Standing Committee meeting of the ER region held on 25.05.2015, quoted in Paragraph 34 of this Order. During the abovementioned meeting JUSNL had agreed to construct the downstream network. JUSNL also continued to commit to the timeline for the construction of JUSNL's downstream network during subsequent meetings quoted in Paragraphs 38 and 39 of this Order. Considering the same, we find that the APTEL order dated 15.09.2022 in Appeal No. 109 of 2021 and

the issue in the present Petition is different, and thus petitioner's reliance on the said APTEL order is found incorrect.

71. We note that in a similar matter in Petition No.155/MP/2016, wherein the downstream network for the TBCB project was to be built by the PSTCL, the LTTC of the TSA was the PSPCL, and it was directed that PSPCL shall pay the transmission charges for the mismatch period vide Order dated 4.01.2017. The said Order was challenged in APTEL. APTEL vide Order dated 27.03.2018 in Appeal No. 390 of 2017 and IA No. 566 of 2017, 725 and 1063 of 2017 stated as under:

“.....

(v) The Central Commission has submitted that the statutory basis for the decision by the Central Commission to assign liability on the Appellant for payment of transmission charges is based on the Hon'ble Supreme Court's judgement dated 15.3.2010 in SLP (C) No. 22080/2005 in case of PTC India Ltd. v. CERC (2010) 4 SCC 603. After perusal of the said judgement we find that it has been held that the Central Commission is the decision-making Authority under Section 79 (1) of the Act and such decision making or taking steps/ measures under the said Section of the Act is not dependent upon making of regulations under Section 178 of the Act. It is further stated in the judgement that if any regulations are framed by the Central Commission under Section 178 of the Act then the decision of the Central Commission has to be in accordance with the said regulations.

Accordingly, in absence of specific provisions in the Sharing Regulations/ Tariff Regulations, 2014 to deal with the situation under question the Central Commission through exercise of its regulatory power has prescribed a principle for sharing of transmission charges of the Transmission System of the Respondent No. 1 in the Impugned Order. Thus, it is observed that by way of exercising its regulatory power by a way of judicial order (s) the Central Commission has laid down the principles of payment of transmission charges in such an eventuality.

(vi) However, it is felt that the Central Commission in the Impugned Order has abruptly concluded the payment liability on the Appellant just by referring to its earlier orders and not establishing the linkage with the present case explicitly. This Tribunal would like to make it clear the same.

(vii) It is clear that the liability to pay transmission charges by the Appellant to the Respondent No. 1 from SCOD till downstream system is commissioned does not arise from the Regulations of the Central Commission. The most relevant decision of the Central Commission matching to the circumstances of the present case is its order dated 21.9.2016 in Petition No. 43/MP/2016 where the principles were laid down clearly that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/ downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it appears that PSTCL is the defaulting party and should have been made liable to pay the said transmission charges. However, we find that there is no contractual relation between the Respondent No. 1 and PSTCL. The contractual relation between the Appellant and the Respondent No. 1 is the TSA, which lays down the rights and obligations of the parties. The Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The relevant portion is reproduced below:

“4.2 Long Term Transmission Customers’ obligations in implementation of the Project:

1.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers’, at their own cost and expense, undertake to be responsible:

.....

b. for arranging and making available the Interconnection facilities to enable the TSP to connect the Project;”

The LTTCs, including the Appellant at their own cost and expense were required to provide interconnection facilities to the Respondent No. 1 so that the Transmission System could be connected by SCOD and made operational.

(viii) It is clear that it was only the Appellant amongst all the LTTCs who was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. This is irrespective of any relation between the Appellant and PSTCL. Accordingly, as per the principles laid down by the Central Commission vide its Order dated 21.9.2016 which are judicial in nature the defaulting entity in the present case is the Appellant.

(ix) The Appellant has also argued that there was communication between PSTCL and the Respondent No.1 regarding implementation of the downstream system and hence it was not responsible for the execution of the downstream system. The Appellant by taking strength from communications exchanged between the petitioner and the STU in the Order of the Central Commission in case of RVPNL has argued that in that case the STU was held responsible for the delay in execution of downstream bays but the Appellant ignored the fact that the Rajasthan Discoms were made liable to pay the transmission charges by the Central Commission in that case. In the present case it is observed that the communication of Respondent No. 1 with PSTCL was technical in nature arising out of various meetings taken by CEA/ Regional Power Committee and not a contractual one. It was the Appellant who was bound contractually for arranging and making available the downstream system. Accordingly, these contentions of the Appellant are misplaced.

(x) The Respondent No. 1 has brought on record the orders of the Central Commission in similar cases where the Appellant was a party and the Appellant has not challenged the same. The Appellant has contested that some of these orders cannot be made applicable to it, as they were not directly related to the Appellant. To mention them are Central Commission’s Order dated 26.8.2016 in Petition No. 31/RP/2016 wherein liability of payment of transmission charges of the transmission system of PGCIL have been imposed on the Appellant. Based on the submissions of the parties it appears that this order has also not been challenged by the Appellant thus attaining finality of the principle of payment of transmission charges by the Appellant from SCOD until commissioning of the downstream system. The other similar orders where the Appellant was a party as Respondent are the order dated 24.11.2016 in Petition No. 29/RP/2016 (PGCIL Vs. RRVPNL &Ors.) and order dated 27.1.2017 in Petition No. 32/RP/2016 (PGCIL Vs. RRVPNL &Ors.). Although vide these orders the Appellant is not held to pay the transmission charges from SCOD until commissioning of the downstream system but these orders have enumerated the principles followed by the Central Commission.

(xi) In view of the foregoing discussions, we are of the considered opinion that there is no infirmity in the decision of the Central Commission by holding that the Appellant is liable to pay transmission charges from SCOD of the Transmission Asset until commissioning of the downstream system.

(xii) Accordingly, this issue is decided against the Appellant.

.....

e) On Question No. 9 (b) i.e. Whether the Central Commission while passing the transmission tariff orders can ignore the provisions of Sharing Regulations, 2010 which provide for pooling of



transmission tariff of all transmission licensees and recovery through the PoC Pool? and on Question No. 9 (d) i.e. Whether, having prescribed a manner of recovery of transmission charges in the Sharing Regulations, the Central Commission can proceed to distract from the same in individual cases and for the benefit of certain private parties?, we decide as follows:

(i) As discussed at S. No. 15 b) above while deciding Question No. 9 (a) it is clear that the provisions of the Sharing Regulations (applicability of PoC on the DICs) are not applicable to the situation when the Transmission Asset is not in use. Accordingly, the question of applicability of sharing regulation for the period from SCOD until commissioning of downstream system does not arise.

(ii) From the discussions at S. No. 15 b) above it is clear that the Central Commission has decided the principle to deal with the situation by a way of regulatory powers available to it under Section 79 (1) of the Act as has been held by Hon'ble Supreme Court's judgement PTC case in absence of specific regulations. It is also seen that the same principle has been applied by the Central Commission in case of PGCIL in some other orders. It can't be presumed by the Appellant that the Central Commission has proceeded for benefit of the private parties.

(iii) Hence, this issue is also decided against the Appellant.

.....”

As per the above, the APTEL upheld the decision of the Commission regarding liability to pay transmission charges from SCOD of the transmission asset until the commissioning of the downstream system is on the concerned LTTC (which was the distribution licensee of the State), and APTEL further stated that the Central Commission had decided the principle to deal with the situation by way of regulatory powers available to it under Section 79 (1) of the Act as has been held by the Supreme Court's judgement PTC case in the absence of specific regulations. The APTEL also held that it is the LTTC, that is bound contractually for arranging and making available the downstream system for interconnection of the TBCB licensee Assets.

72. Considering the above discussion and in light of APTEL Order dated 27.03.2018 in Appeal No. 390 of 2017 and IA No. 566 of 2017, 725, and 1063 of 2017, we are of the considered view that it is the JBVNL among the LTTCs of the TSA dated 14.03.2016, which is contractually bound for making available the downstream system for interconnection of the Element 3 of NKTL. Accordingly, JBVNL shall be liable for payment of transmission charges for the period from the deemed COD of Element 3 of the NKTL until the commissioning of the downstream system. However, the deemed COD is required to be adjudicated based on documents on record.

73. We also note that on the direction of the Commission vide RoP of hearing dated 03.01.2024, the JBVNL has also been impleaded as a party under this Petition. Further, the Commission vide the same RoP has also directed the JBVNL to file the details of action taken by him for timely implementation of the downstream network in terms of NKTL's letter dated 22.3.2021 and clause 4.2.1 of the TSA. However, JBVNL has not filed any submission in this Petition.

74. Now, we proceed to discuss the mismatch period for which JBVNL is liable for the payment of bilateral transmission charges for Element 3 and Element 4 of the NKTL Project.

75. We observe that the NKTL has declared COD of Element 3 on 06.08.2021. The relevant extract of Clause 6.2.1 of the TSA dated 14.03.2016 is as under:

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

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

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

As per above, an element can be declared under deemed COD seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reason not attributable to the TSP. In the instant case the downstream is not commissioned yet. Hence, we observe that NKTL can only declare deemed COD since it is not connected to interconnection facilities. Now we peruse as to when Element 3 of NKTL was ready for charging and is entitled for deemed COD.

76. Snapshot of Schedule 3 of the TSA dated 14.03.2016 provides as under:

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]

Sr. No	Name of the Transmission Element	Scheduled COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
1	North Karanpura – Gaya 400kV D/c line with quad moose conductor	40 months # (September 2019)	44.01%	Nil
2	North Karanpura – Chandwa (Jharkhand) Pooling Station 400kV D/c line with quad moose conductor	16 months # (September 2017)	22.06%	Nil
3	Establishment of 400/220 kV, 2x500 MVA sub-station at Dhanbad	34 months	29.98%	Elements at Sl. No. 3 & 4 are required simultaneously
4	LILO of both circuits of Ranchi – Maithon-RB 400kV D/c line at Dhanbad	34 months	3.95%	Elements at Sl. No. 3 & 4 are required simultaneously

We agree that the payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after the successful commissioning of Element(s) which are pre - required for declaring the commercial operation of such Element as mentioned in the above table.

Scheduled COD for overall Project: 40 months from Effective Date #.

As per above, Element 3 and Element 4 of the NKTL project are required to be commissioned simultaneously.

77. We have perused the trial run certificate issued by the ERLDC and the CEA Energisation Certificate with following details:

Element as per Schedule 2 of TSA	Element name	ERLDC Certificate Description	Time and Date of Charging	CEA Energisation certificate
	Establishment of 400/200 kV, 2X500 MVA substation at Dhanbad	400 kV, 125 MVAr Bus Reactor – 1 along with associated Bay no 403 at Dhanbad SS	18:47 Hrs of 23.07.2021	12.07.2021
	400 kV • ICTs: 400/200 kV, 2X500 MVA • Line bays: 4 no	400 kV, 125 MVAr Bus Reactor – 2 along with associated Bay no. 406 at Dhanbad SS	15:12 Hrs of 25.07.2021	

3	<ul style="list-style-type: none"> • 400 kV bus reactor bays: 2 no • Bus reactor: 2x125 MVAR • Space for future bays: 4 no • Space for future 400/220 kV. 500 MVA ICT along with associated bay 	No load first time charging of 220 kV Bus Coupler Bay (Bay no. 208) at Dhanbad SS	15:30 Hrs of 02.08.2021	
		No load first time charging of 220 kV Bus Coupler Bay (Bay no. 207) at Dhanbad SS	15:30 Hrs of 02.08.2021	
		No load first time charging of 400/220/33 kV, 500 MVA ICT-1 along with associated bay no: 412 & 202 at Dhanbad SS	18:27 Hrs of 31.07.2021	
		No load first time charging of 400/220/33 kV, 500 MVA ICT-2 along with associated bay no: 409 & 201 at Dhanbad SS	20:58 Hrs of 31.07.2021	
4	LILO of both circuits of Ranchi – Maithon – RB 400 kV Dlc line at Dhanbad (Twin Moose)	400 kV Ranchi – Dhanbad CKT – 1 along with associated bays (Main Bay – 410 and Tie Bay – 411) at Dhanbad SS (only LILO length 1.35 km owned by NKTL)	18:47 Hrs of 23.07.2021	15.07.2021
		400 kV – Dhanbad – Maithon RB CKT – 1 along with associated bays (Main Bay – 401 and Tie Bay – 402) at Dhanbad SS (only LILO length 1.35 km owned by NKTL)	18:50 Hrs of 23.07.2021	
		400 kV – Dhanbad – Maithon RB CKT – 2 along with associated bays (Main Bay – 404 and Tie Bay – 405) at Dhanbad SS (only LILO length 1.35 km owned by NKTL) (only LILO length 1.35 km owned by NKTL)	19:46 Hrs of 27.07.2021	
		400 kV – Ranchi- Dhanbad RB CKT – 2 along with associated bays (Main Bay – 407 and Tie Bay – 408) at Dhanbad SS (only LILO length 1.35 km owned by NKTL)	13:37 Hrs of 27.07.2021	

We observe that although the CEA Energisation Certificate is dated 12.07.2021 and 15.07.2021 NKTL achieved no load charging only on 2.08.2021 (last element -220 kV Bus Coupler Bays at Dhanbad Substation). The no-load certificate can be considered

as proof of completion of the elements of NKTL in the absence of regular use due to the non-availability of interconnection facilities.

78. We note that for the declaration of deemed COD of Element 3, i.e., Dhanbad substation, the readiness of all the associated transmission assets is required. Accordingly, considering Clause 6.2.1 of the TSA dated 14.03.2016 and the first-time no-load charging of the last element, i.e., 220 kV Bus Coupler Bay at Dhanbad Substation on 02.08.2021, we allow the deemed COD of the Element 3, 7 days after 2.08.21, i.e 10.08.2021.
79. Considering the above, the period for which bilateral transmission charges for Element-3 of the NKTL project have to be raised shall be from 10.08.2021 onwards.
80. We have concluded in Paragraph 72 of this Order that JBVNL is liable for payment of transmission charges for the period from the deemed COD of Element 3, being the LTTC responsible for arranging the interconnection facilities in terms of the TSA.
81. Further, Clause (d) of Regulation 13(12) of the 2020 Sharing Regulations, inserted vide First Amendment and which came into effect from 1.10.2023, is as under:

“13. Treatment of transmission charges and losses in specific cases

.....

(12) In case of a transmission system where COD has been approved in terms of proviso (ii) of Clause (3) of Regulation 4 of the Tariff Regulations, 2014 or Clause (2) of Regulation 5 of the Tariff Regulations, 2019 or where deemed COD has been declared in terms of Transmission Service Agreement under Tariff based Competitive Bidding, the Yearly Transmission Charges for the transmission system shall be

.....

(d) paid by the respective drawee DIC(s) of the State whose intra-state transmission system is delayed till its transmission system achieves COD, or

.....”

As per the above, if deemed COD has been declared but the corresponding intra-state transmission system is delayed, the concerned drawee DIC(s) of the State whose intra-state transmission system has delayed is to pay the Yearly Transmission Charges for the transmission system under TBCB.

82. Further, the relevant extract of Regulation 13(12), of the 2020 Sharing Regulations as amended vide Second Amendment and came into effect from 1.11.2023 is as under:

“13. Treatment of transmission charges and losses in specific cases

.....

(12) For the cases other than those covered under Clauses (3), (6) or (9) of Regulation 13 of these regulations, the YTC for the inter-State transmission system or element thereof approved or declared as deemed COD shall be treated as follows:

.....

(d) Sub-clause (a), (b) and (c) of this Clause shall not be applicable for transmission elements covered under Transformer component (as defined under Regulation 7 of these regulations) which shall be billed to respective drawee DIC of the State from the date of deemed COD. In case of non-availability of separate Yearly Transmission Charges of such transmission elements covered under transformer component, the same shall be worked out by CTU in terms of Regulation 7(1) of these regulations.”

As per the above, for the transmission elements covered under the Transformer component, YTC of such transmission elements that have been approved or declared as deemed COD shall be billed to the respective drawee DIC of the State from the date of deemed COD.

83. As per Regulation 13(12) of the 2020 Sharing Regulations as quoted above and effective from 1.10.2023, the concerned DIC of the State is liable for the payment of YTC of the inter-State transmission system for the mismatch period, which is JBVNL. We also note that CTUIL is raising the bills for transmission charges for Element 3 of the NKTL on drawee DIC, i.e., JBVNL, with effect from January 2024 billing month onwards. Accordingly, we direct that the CTUIL shall raise the bills for transmission charges for Element 3 of the NKTL on JBVNL for the period 10.08.2021 to 30.9.2023 in terms of TSA and from 1.10.2023 onwards as per provisions of 2020 Sharing Regulations.

84. The Issue No. 2 is answered accordingly.

85. We also note that consequent to the billing of transmission charges for Element 3 of the NKTL on drawee DIC, i.e., JBVNL with effect from the November 2023 billing period onwards, the Petitioner has submitted that relief sought at prayer (d) in the present

Petition has been rendered redundant post the period January 2024. Accordingly, we found that the prayer (d) of the Petition does not survive for our consideration.

86. Further, in light of our observations above, the prayer (e) of the Petitioner seeking to restrain CTUIL from taking any coercive actions during the pendency of the present Petition does not survive.

87. The petition No. 216/MP/2023 is disposed of in terms of above.

**Sd/
(Harish Dudani)
Member**

**Sd/
(Ramesh Babu V.)
Member**

**Sd/
(Jishnu Barua)
Chairperson**