

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 377/MP/2022**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Arun Goyal, Member**

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

**Date of Order: 19<sup>th</sup> May, 2024**

**In the matter of:**

Petition under Sections 79 of the Electricity Act, 2003, read with Articles 11, 12 and 16 of the Transmission Services Agreement dated 23.4.2019, seeking extension of time period for achieving the CoD of the Project and compensation on account of occurrence of force majeure and change in law events, and other consequential reliefs, and for seeking recovery transmission tariff/ charges from the Respondent No. 1, on bilateral basis, from 4.9.2021 till 3.10.2021, in terms of Regulation 13(12) of the CERC Sharing Regulations, 2020.

**And**

**In the matter of**

**Bikaner-Khetri Transmission Limited,**

Adani Corporate House,  
Shantigram, S G Highway,  
Ahmedabad-382 421,  
Gujarat.

**...Petitioner**

**VERSUS**

**1. POWERGRID Khetri Transmission System Limited,**

765/400 kV Substation,  
Village--Jasrapur, Tehsil-Kheteri  
District-Jhunjhunu-333 514,  
Rajasthan

**2. Central Transmission Utility of India Limited,**

Plot No. 2, Sector 29,  
Gurugram-122001,  
Harayana

**3. Mahoba Solar (UP)Private Limited,**

Adani House, Near Mithakhali Six Roads,  
Navrangpura,  
Ahmedabad-380009, Gujarat



- 4. ACME Solar Holdings Limited,**  
Plot No. 152, Sector 44,  
Gurgaon-122001, Haryana,
- 5. Hero Solar Energy Private Limited,**  
201, 1st Floor, Okhla Industrial Estate Phase- III,  
New Delhi – 110 020
- 6. Mahindra Susten Private Limited,**  
Embassy 247 Park, Tower B, 6th Floor,  
Lal Bahadur Shastri Marg, Vikhroli West,  
Mumbai 4000083
- 7. Azure Power India Private Limited,**  
5th Floor, Southern Park, D-II, Saket Place,  
Saket, New Delhi – 110017
- 8. Renew Solar Power Private Limited,**  
Commercial Block-1, Zone 6, Golf Course Road,  
DLF City Phase-V,  
Gurugram-122009, Haryana
- 9. PFC Consulting Limited**  
Consulting Ltd. (PFCCCL) 1st Floor, “Urjanidhi”  
1, Barakhambha Lane, Connaught Place,  
New Delhi – 110 001
- 10. Powergrid Corporation of India Limited**  
B-9, Qutab Institutional Area, Katwaria Sarai,  
New Delhi-110016

..... Respondents

**Parties Present:**

Shri Sanjay Sen, Sr. Advocate, BKTL  
Shri Hemant Singh, Advocate, BKTL  
Shri Lakshyajit Singh, Advocate, BKTL  
Shri Harshit Singh, Advocate, BKTL  
Shri Mridul Chakravarty, Advocate, BKTL  
Ms. Ruth Elvin, Advocate, BKTL  
Ms. Neha Dabral, Advocate, BKTL  
Shri Ranjit Rajput, CTUIL  
Ms. Kavya Bhardwaj, CTUIL  
Ms. Swapna Seshadri, Advocate, CTUIL  
Shri Utkarsh Singh, Advocate, CTUIL  
Ms. Sneha, Advocate, CTUIL  
Ms. Tanushree, PKTSL



## ORDER

The Petitioner, Bikaner-Khetri Transmission Limited (hereinafter referred as “**Petitioner**”/ “**BKTL**”) has filed the present Petition under Section 79 of the Electricity Act, 2003 (“the Act”), read with Articles 11, 12 and 16 of the Transmission Services Agreement dated 23.4.2019, seeking extension of time period for achieving CoD of the Project and compensation on account of occurrence of force majeure and Change in Law events, and other consequential reliefs, and for seeking recovery of the transmission tariff/ charges from the POWERGRID Khetri Transmission System Limited (**POWERGRID Khetri/Respondent No. 1**), on bilateral basis, from 4.9.2021 till 3.10.2021, in terms of Regulation 13(12) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (Sharing Regulations, 2020).

2. The Petitioner has made the following prayers:

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

*(b) Direct that the Petitioner is entitled to recover transmission tariff/ charges of Rs. 10.60 Crores along with applicable LPS from the Respondent No. 1, on bilateral basis, for the period of 04.09.2021 to 03.10.2021, in terms of Regulation 13(12) of the CERC Sharing Regulations, 2020, in terms of the submissions made in the present petition;*

*(c) Declare and hold that the Petitioner is entitled to relief (including extension of SCoD) on account of Force Majeure events, without levy of any Liquidated Damages, in terms of the submissions made in the present petition;*

*(d) Hold that the Petitioner is not liable in any manner, whatsoever, for delay in commissioning of the Transmission Project on 04.09.2021, instead of 31.12.2020, and that the SCOD/ COD of the project stands extended to the date of actual commissioning i.e., 04.09.2021, in terms and for reasons stated in the present petition;*

*(e) Hold and declare that the Petitioner is entitled to compensation on account of Loss of tariff due to delay in achieving CoD of the project due to force majeure and associated Change in law events in terms stated in present petition; or in the alternative, extend the term of the TSA by a period of 247 days, which is the time period of the contract lost on account of force majeure and associated Change in*



*Law as pleaded in the present petition treating actual COD as start date of the first contract year;*

*(f) Hold and declare that following events amount to change in law events under Article 12 of the TSA, for which the Petitioner is entitled for reimbursement of additional costs incurred as detailed in the present Petition:*

*i. Outbreak of Covid-19 Pandemic and consequent declaration of Nationwide Lockdown; and*

*ii. Increase in Forest area due to finalization of Khetri S/S location inside Forest area by Respondent No. 1.*

*(g) Hold and declare that the following events amount to change in scope events, for which the Petitioner is entitled for reimbursement of additional costs incurred on actual basis as detailed in the present Petition:*

*a. Increase in scope of Bay extension works at Khetri S/S due to non-allocation of BKTL bays adjacent to PKTSL bays; and*

*b. Change in level of land of allotted bays.*

*(h) Consequent to Prayer (f), direct the Petitioner is entitled to relief by way of increase in monthly transmission charges;*

*(i) Hold and declare that as a consequence of Force Majeure and associated Change in Law event, the Petitioner is entitled to relief in the form of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC), Commodity Price Variation, which is to be provided by way of increase in monthly transmission charges;*

*(j) Declare and direct that the Petitioner is entitled for carrying cost on compounding interest basis towards the additional expenditure incurred pursuant to the change in law events, change in scope events and force majeure events, as detailed in the present petition;*

*(k) Direct that the Petitioner is entitled to monetary compensation either through supplementary bill or through monthly tariff invoices, or both, as may be directed by this Hon'ble Commission; and*

*(l) Pass any other order as this Commission may deem fit in the facts and circumstances of the present case."*

### **Facts of the Case**

3. The Petitioner was incorporated as a Special Purpose Vehicle (SPV) by the Bid Process Coordinator, namely, PFC Consulting Limited (PFCCL) to develop and implement the "Transmission System associated with LTA applications from Rajasthan SEZ Part-D" (hereinafter referred to as "Project"). The Project consisted of the following



elements to be executed through the Tariff Based Competitive Bidding under Section 63 of the Act on a Build, Own, Operate and Maintain (BOOM) basis:

- (a) Bikaner (PG)-Khetri S/s 765 kV D/c line;
- (b) 765 kV Bays at Bikaner (PG) & Khetri for Bikaner (PG)-Khetri S/s 765kV D/c line; and
- (c) 1x240 MVar Switchable line reactor for each circuit at each end of Bikaner-Khetri 765 kV D/c line along with reactor bays.

4. The Petitioner entered into the Transmission Service Agreement with the Long Term Transmission Customers (LTTCS) (i.e. Respondents 3 to 8) on 23.4.2019. Pursuant to the Tariff Based Competitive Bidding conducted by the Power Finance Corporation Consulting Limited (**PFCCL**), Adani Transmission Limited (ATL) was selected as the successful bidder and a Letter of Intent (LoI) was issued on 31.7.2019. Post award of the Project, ATL acquired the SPV (the Petitioner) on 19.9.2019 which became its fully owned subsidiary. The Commission in its order dated 27.12.2019 in Petition No. 344/TL/2019 granted the transmission licence to the Petitioner for inter-State transmission of electricity. The Scheduled Commercial Operation Date (SCOD) envisaged as per Schedule 3 of the TSA, was 31.12.2020. However, the asset of the Petitioner was commissioned on 4.9.2021, i.e. 8 months and 4 days (i.e., 247 days) after the Scheduled Commercial Operation Date of 31.12.2020. The Petitioner has submitted that the aforesaid delay of 247 days was on account of various, force majeure events, which were beyond its control. Accordingly, the Petitioner has sought declaration of the following events as Force Majeure event and claimed consequential relief under Article 11 (Force Majeure) of the TSA:

- (a) Delay in issuance of the LoI and acquisition of the SPV;
- (b) Change in location of Khetri S/s inside Forest Area by Respondent 1;
- (c) Delay in bay allocation by Respondent 1 in terms of Schedule 3 of the TSA;



- (d) Delay due to the Covid-19 pandemic; and
- (e) Delay in providing interconnection points by Respondent 1.

5. Further, the Petitioner has additionally prayed for the following relief:

- (a) Recognition and declaration of the Change in Law events and consequent payment of compensation towards the additional expenditure incurred on account of occurrence of certain events based on the Covid-19 pandemic;
- (b) Recognition and declaration of Change in Law event of increase in forest area due to finalization of the Khetri S/S location inside forest area by Respondent 1;
- (c) Grant of Interest During Construction (IDC), Incidental Expenditure During Construction (IEDC), Commodity Price Variation and Loss of Tariff on account of Force Majeure and Change in Law events, including carrying cost;
- (d) Additionally, the Petitioner is also seeking for recovery of tariff from the deemed COD of the project i.e., from 4.9.2021 till the actual COD of the inter-connection facility i.e., 3.10.2021 which was within the scope of the Associated Inter-State Transmission Licensee viz., Respondent 1, on bilateral basis in terms of Regulation 13(12) of the Sharing Regulations, 2020, as the said Respondent delayed in achieving SCOD of its project.

### **Hearing held on 9.2.2023**

6. The Petition was admitted on 9.2.2023 and notices were issued to Respondents. In response to the specific query of the Commission with regard to the starting of the actual power flow from the Petitioner's Project, the learned senior counsel for the Petitioner submitted that the actual power was started w.e.f. 9.10.2021 i.e. after the interconnection facilities to be established by Respondent 1 (POWERGRID Khetri) achieved COD on 8.10.2021. Further, the Commission directed the Petitioner to submit certain information relating to claims made by the Petitioner. The Petitioner has submitted the information vide affidavit dated 28.3.2023.



### **Hearing held on 15.5.2023**

7. The matter was heard on 15.5.2023. Vide Record of Proceedings (RoP) for the hearing 15.5.2023, the prayer of the POWERGRID Khetri to grant an additional time to file its reply was allowed. Further, the Petitioner and POWERGRID Khetri were directed to file certain information on an affidavit. The Petitioner vide affidavit dated 5.7.2023 and POWERGRID Khetri affidavit dated 9.6.2023 have filed the respective information sought by the Commission.

### **Hearings held on 11.8.2023 and 10.10.2023**

8. The matter was heard on 11.8.2023 and 10.10.2023. The Petitioner was directed to clarify on an affidavit how it has declared the deemed COD of its transmission system, before the readiness of the Khetri-Jatikara 765kV D/c line, the Khetri-Sikar (PG) 400kV D/c line, and the 765/400 kV Khetri sub-station, which were pre-required for the declaration of the COD of the transmission elements of the Petitioner. POWERGRID Khetri was directed to submit information pertaining to SCOD of Khetri-Jatikara 765 kV D/c line, Khetri-Sikar (PG) 400 kV D/c line, and Khetri sub-station. The Petitioner vide its affidavit dated 1.11.2023 and POWERGRID Khetri vide affidavit dated 26.10.2023 have furnished the requisite information/clarification.

### **Hearing held on 8.12.2023**

9. The matter was reserved for order on 8.12.2023. As per the direction of the Commission, the Petitioner has filed the information sought by the Commission vide affidavit dated 27.1.2024. POWERGRID Khetri has submitted the clarifications sought by the Commission vide affidavit dated 3.1.2024. In accordance with the liberty granted by the Commission, the Petitioner and POWERGRID Khetri have filed their respective written submissions on 26.1.2024 and 12.2.2024 respectively.



10. POWERGRID Khetri has also filed its reply dated 16.6.2023. No other Respondent has filed reply. The Petitioner vide affidavit dated 5.8.2023 has filed rejoinder to the reply filed by POWERGRID Khetri.

11. We have perused the submissions of the Petitioner and relevant documents on record. The reliefs sought by the Petitioner are dealt with in subsequent paragraphs.

### **I. Force Majeure Events**

12. The Petitioner has sought relief under Article 11 of the TSA for the Force Majeure events and mainly has submitted as under:

#### **Delay in acquisition of the SPV**

(a) As per Clause 2.4(c) of the RfP, the BPC was required to issue the Lol to the successful bidder by 12.7.2019 and the acquisition of the successful bidder was to be completed by 22.7.2019. However, in the present case, the BPC issued Lol to ATL only on 31.7.2019, and the subsequent SPA was signed on 10.9.2019. Therefore, there was a delay of 59 days (i.e., from 22.7.2019 to 19.9.2019) in execution of the SPA, which was beyond the reasonable control of the Petitioner, and is a Force Majeure event in terms of Article 11 of the TSA.

(b) Accordingly, the Petitioner vide letter dated 15.10.2019 requested LTTCs to extend the SCOD by a period of 59 days as there was a delay in transfer of the SPV.

(c) The Petitioner issued a notice dated 8.11.2019 invoking force majeure under Article 11 of the TSA due to delay in issuance of the Lol and transfer of the SPV. The claim of the force majeure was rejected by Mahoba Solar (UP) Pvt. Ltd. vide letter dated 27.11.2019.

#### **Change in location of Khetri S/s inside Forest Area by POWERGRID Khetri Transmission System Limited**

(d) PFC Consulting Limited provided the coordinates of the proposed Khetri S/s in its survey report. The coordinates provided by PFCCL were outside the forest





area. However, the developer of Khetri S/s, i.e., POWERGRID Khetri Transmission System Limited (PKTSL), finalised the tentative co-ordinates for the substation inside the forest area on 16.10.2019. Due to this, the Petitioner had to re-route its line forcing it to pass through the forest area of Jhunjhunu. Accordingly, the Petitioner had to take forest approval for 4.7515 Ha of forest land in the Jhunjhunu area. The aforesaid was a change in scope for the Petitioner as the bid documents never envisaged the aforesaid requirement of obtaining forest approval qua Khetri sub-station.

(e) In terms of the above, the Petitioner issued a notice dated 22.10.2019 to the LTTCs, in terms of Article 11 of the TSA.

(f) The Ministry of Environment, Forest & Climate Change (MoEF&CC) vide its letter dated 3.2.2021 granted in-principle approval for the diversion of 5.9738 ha forest land (including 1.2223 Ha of forest land for Bikaner Area) in favour of the Petitioner for Bikaner (PG)-Khetri (S/s) 765 kV D/C transmission line.

(g) Subsequently, DFO, Jhunjhunu vide letter dated 26.3.2021 also informed the Petitioner of the allotment 4.7515 ha of forests land for construction of the subject transmission line and raised a compensation demand to the tune of Rs. 89,71,284/-. The DFO, Jhunjhunu, vide letter dated 10.12.2021, revised the above compensation demand. As a result of the same, the demands for forest compensation increased from Rs. 89,71,284/- to Rs. 92,42,760 /- qua Jhunjhunu, which was deposited by the Petitioner.

(h) As a result of the aforesaid requirement, which is a force majeure event leading to change in scope of work, the Petitioner incurred an additional cost of Rs. 92 lakhs, for which the said Petitioner is required to be reimbursed on actuals.

**Delay in bay allocation (site allocation, Land etc.) by POWERGRID Khetri Transmission System Limited in terms of Schedule 3 of the TSA**

(i) As per Schedule 3 of the TSA, POWERGRID Khetri was required to provide the space for construction of 2 nos. of 765 kV line bays and space for 2 nos. of 240 MVAr switchable line reactors & reactor bays at Khetri for the Bikaner (PG)- Khetri 765 kV D/c line.



(j) In terms of the provision of the TSA, the Petitioner vide letter dated 12.9.2019 requested PGCIL (Holding company of POWERGRID Khetri) to provide the site location (GPS Coordinators) and single line diagram & Plan layout of the substation. Further, the Petitioner requested PGCIL to allocate the bays at Khetri sub-station so that the engineering activities for bay extension works can be commenced accordingly.

(k) PGCIL vide its letter dated 16.10.2019 intimated the Petitioner that acquisition of substation land for the construction of the 765/400 kV Khetri S/s was underway and provided the tentative co-ordinates of the sub-station boundary. Further, PGCIL informed that once the acquisition of land is complete, a finalised Single Line Diagram (SLD) & Plan Layout of the 765 kV Khetri S/s will be provided.

(l) The Petitioner, vide letter dated 25.11.2019 again requested PGCIL to provide the final documents/ inputs (Site location, SLD, Plan Layout of S/s & allocation of bay at Khetri S/s).

(e) The Petitioner vide letter dated 10.12.2019 informed PGCIL that the delay in receipt of inputs from the said Respondent adversely affected the work progress, and that the execution period of bays extension works had already been reduced by three months. It was further stated that due to this delay, the Petitioner was unable to finalize the route of the transmission line envisaged under its scope of work, which in turn would have an impact on statutory proposal submission and approval. Therefore, PGCIL was requested to provide the required inputs at the earliest.

(f) Subsequently, the Petitioner issued a notice dated 18.12.2019 to the LTTCs under Article 11 of the TSA stating that despite repeated reminders to the PGCIL, it has failed to provide the documents/ inputs regarding the site location, Single Line Diagram (SLD), Plan Layout of S/s & allocation of bay at Khetri S/s. Accordingly, the Petitioner requested the LTTCs to grant extension of SCOD in terms of Article 4.4 of the TSA.

(g) On 15.1.2020, PGCIL issued a letter to the Petitioner thereby providing technical data for the statutory proposal submission of the 765 kV D/C Bikaner-Khetri Transmission line under Rajasthan SEZ Part-D to the Petitioner. PGCIL



further submitted that Plan layout of the Khetri sub-station is yet to be finalized, and that the same shall be furnished once finalized.

(h) Despite several communications as mentioned above, and the subsequent communications dated 24.1.2020, 14.4.2020, 22.5.2020, 23.6.2020 and 1.8.2020, PGCIL did not provide the requisite details for construction of the transmission project in terms of Schedule 3 of the TSA.

(i) The Petitioner was forced to issue another letter dated 19.8.2020 to PGCIL thereby seeking Site Location (GPS Coordinates), SLD, Plan layout of the substation, Primary and Secondary drawings/ documents for Main S/s Khetri end and further requested to allocate the Bays at Khetri s/s along with levelled land.

(j) PGCIL vide letters dated 16.10.2019, 15.1.2020 & 27.2.2020 provided the tentative coordinates of sub-station boundaries, bay location & SLD, respectively. However, it had failed to provide the final inputs/ documents. Due to the non-availability of final inputs/ documents, engineering activity of bay extension work was delayed which had a cascading impact on supply and execution timelines. Further, the PGCIL Khetri did not hand-over levelled land which delayed overall execution of the Project.

(k) Pursuant to the above, the Central Electricity Authority (CEA) also issued a letter dated 26.8.2020 requesting PGCIL to intervene and extend necessary support for the completion of BKTL's transmission project at the earliest.

(l) On account of the continuing force majeure event of failure in providing the requisite details by PGCIL for the implementation of the transmission project, the Petitioner vide letter dated 5.9.2020 informed the LTTCs of the said force majeure event.

(m) Finally, on 22.9.2020, POWERGRID Khetri submitted that it is handing over the levelled land for start of bay construction work by the Petitioner. Accordingly, POWERGRID Khetri provided the levelled land on 1.10.2020. However, the land provided by PKTSL was not in 100% levelled condition.

(n) On account of the foregoing, the Petitioner faced a substantial delay of 288 days (i.e., from 18.12.2019 to 1.10.2020) in completing the transmission system as



envisaged under the TSA, which was clearly beyond the control of the said Petitioner, and as such, qualifies as a force majeure event in terms of Article 11 of the TSA.

### **Force Majeure due to Covid-19**

(o) The Government of India on 24.3.2020 announced a complete lockdown in the country to prevent the COVID-19. It directly affected the construction work of the Petitioner as the COVID-19 protocols initiated by the Government of India were mandatory.

(p) The Chief Minister of Rajasthan directed to implement Section 144 of the Code of Criminal Procedure, 1972 (CrPC 1973) to prevent the outbreak of the COVID-19 in the State of Rajasthan. The District Magistrate directed implementation of Section 144 with effect from 18.3.2020. As a result of the same, the EPC contractors, labour, and staff etc., had to completely shut-down their respective works. Therefore, till the entire period of lockdown in the year 2020, and on account of further restrictions which were imposed by the Government of India and the State Government of Rajasthan, such as restrictions towards working of personnel, minimal public inter-face, and restriction on supply of goods/ materials, etc., the entire work of the Petitioner was stalled.

(q) In fact, the force majeure situation continued in the year 2021 on account of the second wave of COVID-19, which had a nationwide effect from March 2021. As a result of the same, the State Governments again imposed lockdown and various restrictions, including imposition of Section 144 in order to prevent the outbreak.

(r) On account of the above, the Petitioner issued letters/ notices dated 11.3.2020, 23.3.2020, 26.3.2020, 15.4.2020, 4.5.2020, 18.5.2020, 6.6.2020, 4.7.2020, 20.8.2020, 14.9.2020, 20.10.2020, 20.4.2021 and 7.6.2021 invoking Article 11 of the TSA on account of the continuing force majeure event of the COVID-19 pandemic and various restrictions imposed by the Central and State Governments.

(s) The Petitioner further informed the LTTCs that it has awarded work of supply and erection, testing & commissioning of reactors at Khetri substation to M/s



ABB. In turn, ABB was sourcing 765 kV Bushings from ABB Sweden to India for the Project. However, on account of COVID-19 situation in Europe, ABB was facing several difficulties in getting the bushing on time. As part of precautionary measures being adopted by the Government of India following the COVID-19 outbreak, all international commercial flights to and from India were suspended from 22.3.2020. Accordingly, ABB specified that the bushing will be delivered after delay of 2 months.

(t) When the normalcy in functioning of the works started in the month of June, 2021, the Petitioner on 2.7.2021 issued a letter to Respondents 3 to 8 for cessation of the force majeure event on account of the COVID-19 pandemic.

(u) The Ministry of Power (MoP), Government of India, vide a letter dated 27.7.2020, directed that all the inter-State transmission projects, which were under construction as on date of lock down i.e., 25.3.2020, shall get an extension of five months in respect of the SCOD. Subsequently, MoP, vide its letter dated 12.6.2021, further decided that all inter-State transmission projects which are under construction with SCOD after 1.4.2021 shall get an extension of three months in respect of their SCOD in addition to five months of extension.

(v) The Commission vide its order dated 25.2.2021 passed in Petition No. 41/MP/2021, titled as NTPC Ltd. v. Power System Operation Corporation Limited & Ors., has held that the delay in declaring COD by the generator on account of the COVID-19 pandemic is a force majeure event.

### **Reply of POWERGRID Khetri**

13. In regard to the change in location of Khetri S/s inside Forest Area and alleged delay in allocation of bays, Respondent 1, POWERGRID Khetri, vide its reply dated 16.6.2023 has mainly submitted as under:

(a) POWERGRID Khetri started land acquisition for Khetri sub-station in December 2019 after obtaining transmission licence from the Commission. Land acquisition depends upon actual land requirement, technical suitability, economic considerations, and future scope of the work and associated Environmental & Social risks. Considering above mentioned parameters, site selection was done in compliance with RFP/TSA provisions i.e. within 5 km radius of original



coordinates provided by the BPC after evaluating land identified by BPC. Accordingly, POWERGRID Khetri had acted as per the relevant provisions and relevant practices.

(b) Once the land was selected by POWERGRID Khetri, the Revenue Department was approached for land acquisition in December, 2019. However, due to presence of trees at Khetri sub-station land, Revenue Deptt directed POWERGRID Khetri to apply for the forest clearance. Accordingly, POWERGRID Khetri applied for the forest clearance, However, due to the COVID-19 pandemic, forest clearance and subsequently acquisition of land got delayed.

(c) MoEF&CC through DCF, Jhunjhunu granted the stage-II clearance vide Order dated 12.5.2020 for diversion of the land for establishment of the 765/400 kV Khetri Sub-station. Subsequently, the land was allotted by the Revenue Deptt., Jhunjhunu to POWERGRID Khetri vide Order dated 1.6.2020.

(d) After obtaining the necessary tree cutting permission and after completion of cutting of the trees on 20.7.2020, the earth-cutting and filling work on the highly undulated land was completed in September 2020. Immediately, land was handed over to the Petitioner vide letter dated 22.9.2020.

(e) Therefore, there is no delay in handing over the land by POWERGRID Khetri to the Petitioner. However, POWERGRID Khetri had already provided details regarding FGL level vide letters dated 6.5.2020 & 20.5.2020, Khetri bay coordinates on 6.7.2020 itself.

(f) In addition, POWERGRID Khetri places reliance upon its letter dated 15.2.2021 sent to the Petitioner, wherein it was stated there was no hindrance in carrying out the preparatory activities, viz-a-viz, soil investigation, construction of store, site office etc. to the Petitioner.

14. We observe that the delay on account of the above Force Majeure events overlaps with each other and, thus, are dealt together.



## Analysis and Decision

15. We have considered the submissions made by the Petitioner. No reply has been submitted by any of the LTTCs. The Petitioner has sought extension of SCOD under Article 11 (Force Majeure) on account of the occurrence of force majeure events during the construction/ implementation of the Project which have led to the delay in achieving the commercial operation of the Project.

16. The Petitioner has claimed relief under Article 11 (Force Majeure) of the TSA. Article 11.5.1 of the TSA provides as under:

***“11.5 Notification of Force Majeure Event***

*11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.*

*Provided that such notice shall be a pre-condition to the Affected Party’s entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.*

*11.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.”*

17. Under Article 11.5.1 of the TSA, an affected party shall give notice to the other party of any event of force majeure as soon as reasonably practicable, but not later than seven days after the date on which the party knew or should have reasonably known of the commencement of the event of force majeure. It further provides that such notice shall be a pre-condition to the affected party’s entitlement to claim relief under the TSA.



18. Further, the provisions of the TSA with regard to the “Force Majeure” are extracted hereunder:

**“11.3 Force Majeure**

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

**(a) Natural Force Majeure Events:**

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

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

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

- *Nationalization or compulsory acquisition by any Indian Governmental Instrumentality of any material assets or rights of the TSP; or*
- *the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the TSP to perform their obligations under the RFP Project Documents or any unlawful, unreasonable or discriminatory refusal to grant any other Consents, Clearances and Permits required for the development/ operation of the Project, provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or*
- *any other unlawful, unreasonable or discriminatory action on the part of an Indian Governmental Instrumentality which is directed against the Project, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.*

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

- *act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or*
- *radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non-Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site*





by the Affected Party or those employed or engaged by the Affected Party; or  
• industry wide strikes and labour disturbances, having a nationwide impact in India.

#### **11.4 Force Majeure Exclusions**

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

- (a) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. for the Project;
- (b) Delay in the performance of any contractors or their agents;
- (c) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;
- (d) Strikes or labour disturbance at the facilities of the Affected Party;
- (e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- (f) Non-performance caused by, or connected with, the Affected Party`s:
  - i. negligent or intentional acts, errors or omissions;
  - ii. failure to comply with an Indian Law; or
  - iii. breach of, or default under this agreement or any Project Documents.

.....

In the light of the provisions of Force Majeure in the TSA, the claim(s) of the Petitioner have been examined.

#### **Outbreak of Covid-19 pandemic and consequent lockdown**

19. As per the Petitioner, the entire work of the Petitioner was stalled during the entire period of lockdown in the year 2020 on account of the restrictions imposed by the Central Government and State Government of Rajasthan in terms of restrictions towards the working of personnel, minimal public inter-face, restriction on supply of goods/ materials, etc. The Petitioner has referred to the MoP circulars dated 27.7.2020 and 12.6.2021 allowing extension of SCOD for five months and three months respectively. The original SCOD of the project was 31.12.2020 and the Petitioner is seeking extension of eight months in accordance with MoP orders.

20. The Petitioner has also placed on record the various notices issued by it invoking the force majeure clause under the TSA. With regard to the outbreak of Covid-19



pandemic and consequent restriction imposed in the various parts of the Country, the Petitioner had invoked the force majeure as per Article 11 of the TSA vide its letters 11.3.2020, 23.3.2020, 26.3.2020, 15.4.2020, 4.5.2020, 18.5.2020, 6.6.2020, 4.7.2020, 20.8.2020, 14.9.2020, 20.10.2020, 20.4.2021 and 7.6.2021, *inter-alia*, requesting the LTTCs to consider the above event as force majeure and to grant the necessary extension of time upon completion of the Project. Vide its force majeure notices, the Petitioner intimated the LTTCs about various difficulties being faced in implementation of the project. Therefore, the Petitioner has complied with the requirement of issuance of notice.

21. We observe that MoP vide its order dated 27.7.2020 in the subject matter of “Extension to TSP/Transmission Licensees for completion of under construction inter-State transmission projects” had decided as under:

*“... No. 3/1/2020-Trans  
Government of India  
Ministry of Power  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi- 110001, Dated: 27th July, 2020*

To

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

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

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

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

*i. All inter-state transmission projects, which were under construction as on date of lock-down i.e. 25th March 2020, shall get an extension of five months in respect of SCOD*

*ii. This order shall not apply to those projects, whose SCOD date was prior to 25th*



March 2020,

*iii. Start date of Long Term Access granted to a generator by CTU based on completion of a transmission line, whose SCOD is extended by 5 months due to COVID-19 as mentioned above at point (i), shall also be extended by 5 months.*

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

22. In the aforesaid order, the Ministry of Power, taking into the account the construction activities at the various transmission projects sites having been severely affected by the nationwide lockdown measures announced since 25.3.2020 to contain the outbreak of Covid-19 and the request of the transmission utilities for extension of the SCOD to mitigate the issues of disruption in supply chains & manpower caused due to outbreak of Covid-19, decided that all the inter-State transmission projects which were under construction as on date of the lockdown i.e. 25.3.2020 shall get an extension of 5 months in respect of the SCOD provided the SCOD of these projects was post 25.3.2020. Vide order dated 25.2.2023 in Petition No. 164/MP/2021(*Kohima-Mariani Transmission Limited vs Assam Electricity Grid Corporation Limited & Ors*), the Commission had considered the prayer of the TSP, namely, Kohima-Mariani Transmission Limited (KMTL) to allow COVID-19 as a force majeure event and extended the SCOD of KMTL in light of MoP order dated 27.7.2020 for implementation of the transmission project. The relevant extract of the order dated 25.2.2023 is as under:

*“25. We observe that MoP vide its order dated 27.7.2020 in the subject matter of “Extension to TSP/Transmission Licensees for completion of under construction inter-State transmission projects” has decided as under:*

*“... No. 3/1/2020-Trans  
Government of India  
Ministry of Power  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi- 110001, Dated: 27th July, 2020*

*To*

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

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

*I am directed to state that transmission utilities .....*”



26. *In the aforesaid order, Ministry of Power, taking into the account the construction activities at the various transmission projects sites having been severely affected by the nationwide lockdown measures announced since 25.3.2020 to contain the outbreak of Covid-19 and the request of the transmission utilities for extension of SCOD to mitigate the issues of disruption in supply chains & manpower caused due to outbreak of Covid-19, decided that all inter-State transmission projects which were under construction as on date of lockdown i.e. 25.3.2020 shall get an extension of 5 months in respect of SCOD provided the SCOD of these projects was post 25.3.2020. It is also relevant to note that the above order of the MoP is in nature of generic order/blanket order applicable to all the transmission licensees whose projects fall under the criteria specified therein and as such does not require the individual licensee to substantiate/make out its case for availing the dispensation provided under the said order. In the present case, the Project of the Petitioner was under construction as on the date of lockdown i.e. 25.3.2020 and SCOD of the Project was 31.7.2020 i.e. post 25.3.2020 and therefore, the dispensation provided by the MoP vide its order dated 27.7.2020 in the form of the extension of SCOD for the period of 5 months squarely applies in the case of the Petitioner. Accordingly, the Petitioner is entitled to extension of five months in respect of the SCOD of its Project. In the present case, all the Elements of the Project were declared to have achieved the commercial operation on 31.12.2020 and accordingly, the Petitioner has prayed for extension of SCOD for all the Elements of the Project till 31.12.2020. The extension in SCOD as sought by the Petitioner is squarely covered within extension of 5 months as allowed by the MoP vide its order dated 27.7.2020 and therefore, we hereby allow the extension of SCOD for all the Elements of Project till 31.12.2020. Consequently, the Petitioner shall not be liable to any adverse financial implication i.e liquidate damages under the TSA till the extended SCOD of 31.12.2020.”*

27. *The Commission having already extended the SCOD of the Petitioner's Project till 31.12.2020, as prayed for the by the Petitioner, on basis of the order of MoP dated 27.7.2020 and consequently, having held that the Petitioner shall not be liable to any adverse implication under the TSA till such period, we do not find it necessary to examine the other grounds of delays in commissioning of the Project as raised by the Petitioner.”*

23. As noted in the above order, the MoP letter is generic in nature and a blanket order applicable to all the transmission licensees whose projects fall under the criteria specified therein and as such does not require the individual licensee to substantiate/make out its case for availing the dispensation provided under the said order.

24. The Petitioner's project was under construction as on 25.3.2020 and the SCOD of the Project was 31.12.2020 which was well beyond the cut-off date of 25.3.2020. Therefore, the extension of 5 months in SCOD as sought by the Petitioner is squarely covered by the MoP order dated 27.7.2020. Accordingly, the Petitioner is entitled to extension of five months in respect of the SCOD of its Project.



25. The Petitioner has claimed further extension of three months on account of the restrictions imposed by the Government authorities on account of the second wave of COVID-19 which had a nation-wide effect from March 2021. In this regard, the Petitioner has relied on the MoP letter dated 12.6.2021 which allowed an extension of three months in respect of the SCOD to all the inter-State transmission projects with SCOD after 1.4.2021. We observe that MoP vide its order dated 12.6.2021 has decided as under:

*“... No. 3/1/2020-Trans  
Government of India  
Ministry of Power  
(Transmission Division)  
Shram Shakti Bhawan, Rafi Marg, New Delhi- 110001,  
... 12 June, 2021*

To,  
1. Chairperson, Central Electricity Authority, New Delhi.  
2. COO, CTU, POWERGRID, Gurugram, Haryana

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

*Sir,*

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

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

*i. All inter-state transmission projects which were under construction with SCOD coming after 01 April, 2021 shall get an extension of three (3) months in respect of their SCOD;*

*ii. The commencement date of Long Term Access (LTA) to a generator by CTU based on completion of a transmission line, whose SCOD is extended by three (3) months due to COVID-19 as mentioned above at point (i), shall also be automatically extended by three (3) months.*



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

26. Vide the aforesaid order, considering that construction activity at various transmission project sites have been severely affected by the current second wave of COVID-19 pandemic and various measures taken by the State/UT Governments to contain the pandemic, such as night curfew, imposition of Section 144, weekend lockdown and complete lockdown, the Ministry of Power again granted an extension of three months in respect of the SCOD for under construction inter-State transmission projects having SCOD after 1.4.2021. In the present case, all the elements of the Project were declared to have achieved the deemed commercial operation on 4.9.2021 and, accordingly, the Petitioner has prayed for extension of SCOD for all the elements of the Project for three months over and above the extension of five months granted by the MoP vide order dated 27.7.2020. Keeping in view the extension of SCOD allowed by the Commission on account of the order of the Ministry of Power dated 27.7.2020 (5 months), the SCOD of the Petitioner would fall after the cut-off date of 1.4.2021 and the Project of the Petitioner, being under construction as on 1.4.2021, will squarely be covered by the subsequent MoP order dated 12.6.2021. Accordingly, the Petitioner is entitled to further extension of three months in SCOD in terms of the Ministry of Power's order dated 12.6.2021.

27. In view of the above, the extended SCOD of the Petitioner's Project would work out to 31.8.2021. Hence, we do not find any need to additionally examine the other claims on various counts made by the Petitioner towards force majeure events for extension of its SCOD.

28. However, keeping in view that the Petitioner has prayed for recovery of tariff from the date of the deemed COD of the Project i.e. 4.9.2021 till actual COD of the inter-



connection facility i.e. 3.10.2021, which was within the scope of POWERGRID Khetri on bilateral basis and that POWERGRID Khetri has disputed the deemed COD of the Project by the Petitioner, on various grounds, it would be necessary to examine the validity of the deemed COD declaration by the Petitioner and its entitlement of tariff from such date.

29. POWERGRID Khetri has disputed the contentions made by the Petitioner further challenging the COD declared by the Petitioner on 4.9.2021. Respondent 1 has made the following submission vide its reply dated 16.6.2023.

**Wrong declaration of deemed COD of the Transmission Project as 4.9.2021 by Petitioner and recovery of transmission tariff/ charges through bilateral billing upon PKTSL**

(a) The Petitioner has wrongly declared the COD of the Transmission Project as there is a factual position of non-readiness of the subject line and pending work to be carried out by the Petitioner. The power flow in the POWERGRID Khetri's 400 kV substation at Khetri commenced with effect from 26.9.2021 and the power flow in the complete system occurred with effect from 2.10.2021. However, the power flow in the Petitioner's Transmission System commenced after 7.10.2021 which clearly demonstrates the non-readiness of Petitioner's Transmission System as on the alleged COD on 4.9.2021.

(b) The Petitioner *prima facie* does not qualify to claim the Deemed COD as on 4.9.2021 in accordance with Article 6.2.1 of the TSA. As per Article 6.2.1, the Petitioner's transmission system should be ready for charging to declare deemed COD which was not the case as certain scope was not completed by the Petitioner. As per the mentioned clause, an element of the Project shall be declared to have achieved COD seventy-two hours following the connection of the element with the Interconnection Facilities or seven days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP or seven 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 the Agreement, have been declared to have achieved their respective COD.

(c) PKTSL vide letter dated 18.9.2021, sent to the Petitioner, has raised the issue that there were several works which were pending from the Petitioner's end and were necessary for the expedited parallel commissioning of the Transmission Projects. The non-readiness of the Petitioner's transmission Project as on the alleged date of the Deemed COD i.e. on 4.9.2021 is reflected from the fact that as on 18.9.2021, the following were the works which were still pending on part of the Petitioner:

- i. Non-readiness of firefighting system under the Petitioner scope i.e. installation of firefighting system & laid down the main hydrant pipe-line, which was essential for facilitating the commission of the emulsifier system-spray test for Petitioner's line reactors.
- ii. The DTPC & PLCC panel for the 765 kV D/C Bikaner-Khetri line was not fully commissioned and end to end testing was pending.
- iii. Spare reactor switching scheme for the line reactor was not yet commissioned and tested.
- iv. Bus bar protection & LBB protection testing was pending

(d) Details regarding the non-readiness of the works at the Petitioner's end are produced herein below for the ready reference:

#### Fire Protection System

- i. The work of Main Fire Protection in the scope of PKTSL was commissioned in August 2021 itself and emulsifier system for the 400 kV Bus-reactor and the 765 kV ICT and Bus Reactor banks was in service. Further, the main hydrant point towards the Petitioner's line reactor was also ready. Same position was conveyed to the Petitioner in letter dated 18.9.2021 which has not been contested by it. However, the scope of work being executed by BKTL, i.e., Firefighting system in respect of the 3x80 MVAR reactors and extension of main pipe line from Bus-Reactor Bank-I of PKTSL upto line reactor bank of Petitioner was not completed on the date of deemed COD.
- ii. In this regard, reliance is placed on the provisional CEA certificate dated 28.8.2021 submitted by the Petitioner for its scope at PKTSL Khetri sub-





station wherein it is categorically recorded that “Regulation 44(1&3) requires installation of firefighting system in respect of the 3x80 MVAR reactors and same has not been complied. Project head, BKTL has expressed the urgency of charging the substation and has indicated that “Fire tender & movable mechanical foam trolley fire extinguisher which is temporary arrangement for firefighting has been arranged.” In fact, this certificate issued by the CEA was only provisional which valid upto only 28.10.2021 instead of final certificate.

#### Energy meter installation in Petitioner’s feeders

iii.This work was completed by the Petitioner only in third week of September 2021 and thereafter the Petitioner offered to PKTSL for witnessing and downloading the SEM data on 27.9.2021.

#### FOTE and PLCC testing between Khetri to Bikaner

iv.As per the Schedule 2 of the TSA, the Petitioner was to, *inter-alia*, commission FOTE and PLCC which is essential for the data transmission, and tele protection of transmission line, etc. in absence of tele protection, if line encounters faults then it will continue to feed fault which is detrimental to both the Petitioner & PKTSL transmission system. Apparently, the Petitioner completed this work only by third week of September, 2021 and thereafter the Petitioner offered for witnessing to PKTSL on 21.9.2021.

#### Integration of the Petitioner’s bays in existing SAS and Bus bar & LBB protection testing

v.The information regarding SAS architecture, Busbar protection drawings, etc. was already communicated to the Petitioner *vide* the Letter dated 28.12.2020 issued by PKTSL. In fact, in the said Letter dated 28.12.2020, the PKTSL has apprised the Petitioner that the drawing for the Khetri (New) S/s which was under finalisation at that time, were being provided to the Petitioner at every stage once the same was finalised.

vi.Even though the SAS database of PKTSL system was already available in June 2021 and also available at site, main sub-station SAS was loaded in



the main server and was in operation at PKTSL Khetri substation in August, 2021 itself, the essential inputs (icd file) for the Petitioner's bays was provided by the Petitioner to PKTSL only in 2<sup>nd</sup> week of September 2021 after completion of testing of relays and configuration of Bay Control Unit of the Petitioner's bays. Thereafter, the updated database could be generated by PKTSL on 18.9.2021.

vii. PKTSL's 400 kV switchyard was ready in August, 2021 itself and complete the 400 kV system was charged on 7.9.2021 with 50% of the 765 kV system charged on 24.9.2021 / 25.9.2021 and balance 765 kV system by 30.9.2021/1.10.2021. Only after the Petitioner provided the required input file to PKTSL, the updated SAS database could be prepared and the site integration & testing works of the Petitioner's bays could be completed by 1<sup>st</sup> week of October 2021. The Petitioner's bays at Khetri could thereafter be charged on 7.10.2021 / 8.10.2021.

#### Earthing works by Petitioner at Khetri Substation

viii. PKTSL completed its scope related to main earth-mat well in advance as mentioned in letter dated 18.9.2021 to the Petitioner. However, the Petitioner did not complete its scope of work till September 2021.

(e) In regard to the wrongful declaration of the deemed COD, PKTSL vide letter dated 11.11.2021 immediately disputed the POSOCO notification of the transmission charges payable by the DICs dated 28.10.2021 and highlighted the contentions with POSOCO. Further, PKTSL issued Bill Dispute Notice dated 15.11.2021 to the CTUIL.

30. The Petitioner, vide affidavit dated 5.8.2023, in response to the POWERGRID Khetri reply, has filed its rejoinder and has mainly submitted as under:

Contention of PKTSL that the power flow from the Petitioner's transmission system commenced from 7.10.2021, which demonstrates the non-readiness of the system as against the deemed COD claimed by the Petitioner as on 4.9.2021

a) As per Article 6.2.1 of the TSA, the project can be declared to have achieved COD *inter-alia* 7 days after the date on which it is declared by the TSP to be ready for the charging. However, it is not able to charge on account of the



reasons not attributable to the TSA. The Petitioner completed its scope of work as defined under Schedule 2 of the TSA, and in fact, it also obtained the certificate from the CEA giving its approval for energization on 28.8.2021. The actual power flow through the Petitioner's asset could not commence on 31.8.2021 due to the non-readiness of common interconnection points at the PKTSL's end.

b) As per Article 6.2.2 of the TSA, once any element of the Project has been declared to have achieved deemed COD, 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.

Contention of PKTSL that there were several works which were pending from the Petitioner's end and therefore, it could not have declared deemed COD as 4.9.2021

c) The Petitioner vide letters dated 24.9.2021 and 26.11.2021 had already clarified its position to PKTSL qua the scope of work. The issue-wise rejoinder is demonstrated in the following table:

Issue	Petitioner's response
Fire Protection System	The Petitioner completed the Hydrant Piping work and HVWS system for Line Reactors in August 2021. However, only the extension part of Main Hydrant Line was pending due to the non-readiness of PKTSL. The Main Hydrant Pipeline work was completed by the PKTSL only on 15.9.2021 and was made available to the Petitioner, thereafter. Accordingly, the work of extending the Main Hydrant Pipeline was completed by the Petitioner on 29.9.2021.
Energy meter installation in the feeders	The tested Energy Meter were issued to the Petitioner by the authorities of Northern Region in the month of June 2021 and were installed by the Petitioner on 2.8.2021. Further during the FTC process in the month of September 2021, in order to provide the initial meter reading, the Petitioner requested PKTSL to provide the support for downloading Meter data as PKTSL is the S/s owner.
FOTE and PLCC testing between Khetri to Bikaner	The Petitioner completed the installation of the PLCC & FOTE panels at Khetri S/s in August 2021. PKTSL directed the Petitioner to keep the PLCC and FOTE panel in off position during busbar and LBB testing of 765 kV yard (under the scope of work of PKTSL), in order to avoid the transfer of Direct Trip Signal at Bikaner S/s as the 765 kV bays at Bikaner S/s were already in charged. The Petitioner applied for shutdown of line on 24.9.2021 at Bikaner S/s for end-to-end testing of communication equipment.
Integration of	a. PKTSL 400 kV system was charged during the first week of September 2021 and SAS – 1 was kept completely engaged by



<p>Petitioner's bays in existing SAS bus bar &amp; LBB protection testing</p>	<p>PKTSL for monitoring and control of the 400 kV system. PKTSL engaged SAS – 2 for integration of the 765 kV bays and configuration of gateway for data transmission of its bays till successful charging i.e., 24/25/09.2021. Therefore, the work front for augmentation of the SCADA system was made available to BKTL thereafter.</p> <p>b. The Petitioner completed the SCADA integration work by deploying the SCADA engineer from 25.9.2021 and real time data validation with NRLDC was completed on 28.9.2021. Further, remote operation of line bays under BKTL through NTAMC, Manesar was completed on 4.10.2021.</p> <p>c. PKTSL has also alleged that the 400 kV switchyard was ready in August 2021 itself and complete the 400 kV system was charged on 07.09.2021 with 50% of 765 kV system charged on 24.09.2021 /25.09.2021 and balance 765 kV system by 30.09.2021/ 01.10.2021. The updated database could only be prepared after the petitioner had provided the required inputs file to the said Respondent.</p> <p>In this regard, separate PO was already provided to ABB SCADA Division (SAS vendor) with all the relevant database inputs for hassle free flow of work. Further, the SAS architecture was uploaded during first week of August 2021 on the main server. However, the contractor employed by PKTSL took approximately 15 days to integrate the 400 kV system and approximately 30 days for integration of the 765 kV system. This further delayed the integration of BKTL bays.</p> <p>d. PKTSL only allowed the Petitioner to integrate the line bays in SCADA system after the successful charging of its 400 kV system and 50% charging of its 765 kV system. Once, this permission was received the Petitioner completed the SCADA integration work for Line Bay within the squeezed timeline.</p>
<p>Earthing works by the Petitioner at Khetri Sub-station</p>	<p>PKTSL did not complete the earthing work in Dia 3 till 24.9.2021. Further, the Petitioner completed its earthing of interconnecting X-grid wherever the earthing rod was laid by PKTSL. Accordingly, the Petitioner vide its letter dated 24.9.2021 requested the said Respondent to complete constructing the retaining wall in between PKTSL and BKTL bays so that interconnecting rod may not get damaged.</p>

31. The Petitioner, vide its written submission dated 26.1.2024, has reiterated its contention and additionally submitted as under:

- a) From the reading of the law of interpretation of contract as settled by the Hon'ble Supreme Court as referred above, it is clear that while interpreting the TSA, this Commission has to necessarily apply the certain principles. The interpretation should be: (i) reasonable and equitable; (ii) necessary to give



business efficacy to the contract; (iii) has to pass the officious by standard test; (iv) capable of clear expression, and (v) does not contradict any express term of the contract. In this regard, reliance is placed on judgments of the Hon'ble Supreme Court in *Nabha Power Ltd. Vs. PSPCL* reported in [(2018) 11 SCC 508], *Union of India Vs. D. N. Revady & Co.* reported in [(1976) 4 SCC 147] and *Satya Jain Vs. Arnis Ahmed Rushvi* reported in [(2013) 8 SCC 131].

b) From a reading of definition of "Expiry Date" it is quite clear that the TSA shall operate for a period of 35 years from the SCOD. The definition of SCOD given in the TSA refers to the dates mentioned in Schedule-3.

c) On a careful examination of this definition of SCOD, one will find that the SCOD as provided in the Schedule 3 is subject to change only in terms provided in Article 4.4 of the TSA or as may be mutually agreed among parties. The parties here mean parties to the Agreement and not outsiders. A review or an examination of Article 4.4 will confirm that extension of time is possible only under 2 specific circumstances i.e. (i) when there is a default on the part of the LTTCs, and (ii) when there is a force majeure event. In such cases, the extension is on a day-to-day basis.

d) The question that has now arisen is whether under the proviso to Clause 6.2.1 read with Schedule 3, it can be said that the SCOD / COD of the Project will be extended for the reasons outside Article 4.4.1 and 4.4.2 of the TSA. This is to say whether a reading of the proviso to Article 6.2.1 and Schedule 3 of the TSA allows a non-party to delay the commissioning of the Project in case pre-requisite elements are not ready. Two things are happening here (i) the inaction / default of a non-party is resulting in violation of a fundamental requirement to commission the Project within a particular time frame, and (ii) such inaction / default will result in denial of an express term of a contract under which deemed commissioning is permissible.

e) Accordingly, it is wrong on the part of Respondent 1/ PKTSL to suggest that the parties (the TSP and LTTCs) have undertaken an immitigable risk of events which were not under the control of either parties and not falling under the force majeure events.



f) The Parties are expected to commission the project within the said agreed timeline. Any delay in commissioning of the respective assets/ mismatch does not absolve either party of the liability to pay the transmission charges contemplated under Article 6.2.1. There is no escape from this liability. To create an escape route would be fatal to all the TBCB projects in future for if there is a delay of 2 to 3 years in commissioning of the upstream / downstream projects, the entire business/ asset will become unserviceable.

g) Schedule 3 deals with the Scheduled COD. There is no other time line given in Schedule 3 except Scheduled COD. To suggest that the proviso will have an uncontrolled time line *de hors* the time lines mentioned in Schedule 3 will render the contract uncertain. Contracts are never uncertain.

h) The requirement of pre-requisite is applicable only when either party request for commissioning only in case COD is on or before the Schedule CoD i.e. 31.12.2020. Whereas, in the present case, COD is declared much later than the schedule COD.

i) The difference between the Scheduled COD and COD is controlled only and only by Article 4.4. In terms of Article 6.2.1 of the TSA, the project can be declared to have achieved deemed COD *inter-alia* seven days after the date on which it is declared by the TSP to be ready for charging. However, it is not able to charge on account of the reasons not attributable to the TSP. The Petitioner received a certificate from the CEA giving its approval for energization on 28.8.2021.

32. POWERGRID Khetri, vide its written submission dated 12.2.2024 has made the following additional submission.

a) The Petitioner has submitted the CEA certificate dated 28.8.2021 for its scope at PKTSL Khetri substation, wherein it has been categorically recorded that *“Regulation 44(1&3) requires installation of firefighting system in respect of 3x80 MVAR reactors and same has not been complied. Project head, M/s BKTL has expressed the urgency of charging the substation and has indicated that “Fire tender & movable mechanical foam trolley fire extinguisher which is temporary arrangement for firefighting has been arranged.”* In fact, this



certificate issued by the CEA was only “provisional” which was valid upto only 28.10.2021 instead of a final certificate.

b) The Petitioner is claiming deemed COD of its transmission system as 4.9.2021. However, the Petitioner has not produced RLDC No Load certificate to substantiate its claim for the deemed COD on 4.9.2021. The Commission vide its RoP dated 8.12.2023 had categorically directed the BKTL to file “(a) ‘No load’ charging certificate and ‘on load’ certificate for all elements issued by the RLDC in the scope of the Petitioner.” However, in the ROP Compliance dated 8.12.2023, BKTL has failed to provide such a certificate on record. This categorically evidences the fact that BKTL in fact was not ready on the allegedly deemed COD by BKTL. There are no documents placed on record to show that BKTL was ready as on 4.9.2021.

c) Power flow in the PKTSL Khetri 400 kV substation commenced with effect from 26.9.2021 and the power flow in the PKTSL complete system started with effect from 2.10.2021.

d) However, the power flow from the Petitioner’s Transmission System commenced only after 7.10.2021 which, *prima-facie* demonstrates the non-readiness of the Petitioner’s Transmission System as against the alleged deemed COD on 4.9.2021. This aspect can be perused the relevant extract from the Monthly Report of Northern Region issued by POSOCO for the month of October 2021.

e) In view of the above, PKTSL is not liable to pay the Petitioner the transmission tariff / charges of Rs. 10.60 crore along with the LPS for the period from 4.9.2021 till 3.10.2021, by the way of bilateral billing in terms of Regulation 13(12) of the Sharing Regulations, 2020.

f) An argument was raised by the Petitioner to the effect that PKTSL is not a party to the TSA and therefore, cannot be heard on how the clauses of the TSA are to be interpreted. This is completely fallacious. If a claim or a declaration sought by the Petitioner under the TSA would result in any financial or other liability on PKTSL, Obviously, PKTSL would have to be heard on the interpretation of the TSA. It is also not a fact that PKTSL would hold the right of the Petitioner to claim an extension of time under Article 4.4 as hostage. In the



present case, no time extension has been sought by the Petitioner under Article 4.4, what has been sought is a declaration under Article 6.2.1 proviso and further relief under Article 6.2.2.

## **Analysis and Decision**

33. We have considered the submissions made by the parties. The Petitioner declared deemed commercial operation date of the project on 4.9.2021 in accordance with Article 6.2.1 of the TSA. Article 6 of the TSA, which is relevant for the present case, provides as under:

### **“6. Connection with the Inter-Connection Facilities:**

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

*6.1.2 The RLDC/SLDC (as the case may be) or the CTU/STU (as the case may be) of the Lead Long Term Transmission Customer may, for reasonable cause, including failure to arrange for interconnection Facilities as per Article 4.2 defer the connection for up to fifteen (15) days from the date notified by the TSP pursuant to Article 6.1.1 if it notifies to the TSP in writing, before the date of connection, of the reason for the deferral and when the connection is to be rescheduled. However, no such deferment on one or more occasions would be more than an aggregate period of 30 days. Further, the Scheduled COD would be extended as required, for all such deferments on day for day basis.*

*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;*

*(b) it meets the Grid Code, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and all other Indian legal requirements and*

*(c) The TSP has obtained the approval in writing of the Electrical Inspector certifying that the Element is ready from the point of view of safety of supply and can be connected with the Interconnection Facilities.*

### **6.2 Commercial Operation:**





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

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

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

As per the above, the Petitioner was required to serve at least sixty days advance Written Notice of the date on which it intends to connect an element of the Project.

34. We observe that Petitioner vide letter dated 28.3.2021 intimated CTUIL, NRLDC and LTTCs that its transmission elements shall be ready for charging and anticipated for commissioning by 31.5.2021. The relevant portion of the letter dated 28.03.2021 is quoted as under:

*“Subject: Intimation of readiness for Charging/Commissioning of the Project as per Article 6.1.1 of TSA*

*Ref: Transmission Service Agreement dated 23<sup>rd</sup> April 2019*

*Dear Sir,*

*In Compliance with Article 6.1.1 of the TSA, Bikaner Khetri Transmission Ltd (“BKTL”) hereby gives notice that the Project would be ready for charging and putting best efforts and anticipating completion/commissioning by 31-05-2021.*

*BKTL project consists of three Element which are as below:*

*.....*

*This is in compliance as per Article 6.1.1 of TSA which is reproduced herein below:*

*“TSP shall give RLDC, CTU, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance notice of the date on which it intends to connect as the Element of project”*

*BKTL would further like to inform that it intends to connect and make available this element for Put to use in line with provision of TSA.*



*BKTL also seeks your support to expedite the readiness of associated upstream and downstream elements, which are essential to energize and for put to use, the aforesaid transmission element and declare commercial operation.*

*BKTL request LTTCs to keep the interconnection facility ready in terms of Article 4.2.1(b) of TSA.*

*In terms of Article 4.2.1.(b), it is the obligation of LTTCs to provide interconnection facility for connecting Transmission Line, which is reproduced as below:*

*“for arranging and making available the interconnection Facilities to enable the TSP to connect the Project”*

*Furthermore, we hereby notify you that according to Article No. 6.2.1 & 6.3.1 of TSA, BKTL would be entitled for deemed commissioning in case the interconnection association transmissions is not ready for interconnection and shall be entitled for payment of Monthly Transmission Charges in terms of Article 6.2.2 of TSA.”*

As per the above, the Petitioner intimated on 28.3.2021 regarding its readiness for charging/ commissioning by 31.5.2021, in terms of Article 6.1.1 of the TSA.

35. As per the Petitioner, it declared deemed COD in terms of one of conditions stipulated in Article 6.2.1, as it was ready for charging but was not able to charge for reasons not attributable to it. The Petitioner further relied on Article 6.2.2 of the TSA to contend that 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 the payment of the Monthly Transmission Charges applicable for such element.

36. It may be noted that during the course of the hearing and in their pleadings, the Petitioner and Respondent, POWERGRID Khetri have also made their submissions on the ability of the Petitioner to declare the deemed COD in view of the Article 6.2.1 read with Schedule 3 of the TSA. POWERGRID Khetri has relied upon the proviso of Article 6.2.1 of the TSA to contend that an element can 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 the Schedule 3 of this Agreement, have been declared to have achieved their respective COD. It is noticed that Schedule 3 of the original TSA, under the “*Element(s) which are required for declaring the commercial operation (COD) of the respective Element*” specified the “Establishment of the 765/400kV, 2x150 MVA S/s at suitable location near Khetri & Khetri-Sikar 400kV D/c line (AL59) or Khetri Jhatikara 765kV D/c line” i.e. the elements to be implemented by POWERGRID Khetri are pre-required for the commissioning of elements at Sl. Nos. 1, 2 & 3 of the Petitioner. However, it is also noticed that such a stipulation has been removed in terms of Amendment No.2 to the TSA which then specified “*Elements marked at Sl. No. 1, 2 & 3 are required to commissioned simultaneously as their utilization is dependent on commissioning of each other*” thereby removing the requirement of the establishment of elements of POWERGRID Khetri as pre-requisite for commissioning of the Petitioner’s elements 1, 2 & 3.

37. Further, the Respondent No. 1 POWERGRID Khetri has challenged the deemed COD declared by the Petitioner on the ground that the transmission system of the Petitioner was not ready as on 4.9.2021. POWERGRID Khetri has also contested the reliance of the Petitioner on the approval for energisation granted by the CEA on 28.8.2021. As per POWERGRID Khetri, the certificate issued by the CEA for energization of some of the elements was only a provisional certificate which was valid upto only 28.10.2021. The relevant portion of the CEA certificate is extract hereunder:

*“Whereas the Inspection of Electrical Installation of 6 no 765 kV bays [2 no. Line bays Bikner-I (710) & II(713) & 2 No. tie bays (711,714) and 2 No Future bays (712,715) with switchable line reactor 3x80MVA 1-Phase 765 kV (Bank of three) for each line I & II along with associated equipment of M/s. Bikaner Khetri Transmission Ltd. (BKTL) (Subsidiary of Adani Transmission Ltd.) installed in the premises of 765/400 kV Khetri Sub station, Village-Geja Sarapur, Teh.- Khetri, Distt. Jhunjhunu (Raj.) of M/s PKTSL was carried out on 11<sup>th</sup> August 2021 by the undersigned.*

*Non-compliance of certain provisions stipulated in the Regulations were conveyed*



*to you vide our letter under reference at Sl. No. (2) and the partial compliance of the same has been received under your email under reference at Sl. No. (3) above. Regulation 44(1&3) requires installation of firefighting system in respect of 3x80 MVAR reactors and same has not been complied. Project head, M/s BKTL has expressed the urgency of charging the substation and has indicated that "Fire tender & movable mechanical foam trolley fire extinguisher which is temporary arrangement for fire fighting has been arranged.*

*In view of the above, provisional approval for energization of Electrical Installation of 6 no 765 kV bays 12 no. Line bays Bikner-I (710) & II (713) & 2 No. tie bays (711,714) and 2 No Future bays (712,715) with switchable line reactor 3x80 MVar 1-Phase 765 kV (Bank of three) for each line I & II along with associated equipment of M/s Bikaner Khetri Transmission Ltd. (BKTL) (Subsidiary of Adani Transmission Ltd.) installed in the premises of 765/400 kV Khetri Sub Station, Village-Geja Sarapur, Teh.-Khetri, Distt. Jhunjhunu (Raj.) of M/s PKTSL (As per Annexure encloses) is hereby accorded up to 28<sup>th</sup> October, 2021 subject to consistent compliance of relevant provisions of CEA (Measures relating to Safety and Electric Supply) Regulations, 2010 (as amended) by M/s BKTL.*

38. It is observed that the above certificate dated 28.8.2021 was issued for the Petitioner's assets being installed in Bikaner I and Khetri sub-station of POWERGRID Khetri which was valid till 28.10.2021. It is also apparent that the provisional approval for energization was accorded by the CEA based on the urgency expressed by the Petitioner and making a temporary arrangement by installation of Fire Tender and movable mechanical foam trolley Fire Extinguisher for the firefighting system in respect of the 3x80 MVAR reactors. We also observe that the Petitioner has placed on record the final energization certificate dated 18.8.2021 in respect of other elements of its project such as 765 kV D/C Bikaner-Khetri transmission line implemented by it from the 765/400 kV substation of PGCIL (Bikaner) to the 765/400 kV substation of PGCIL (Khetri). The Petitioner has also placed on record the energization certificate dated 9.7.2021 for electrical installation of the 2 nos of the 765 kV line bays Khetri-I and II with switchable line reactor 3x80 MVar 1-Phase 765 kV (Bank of three) for each line I & II and one spare reactor along with the associated equipment of the Petitioner installed in the premises of the 765/400 kV sub-station of PGCIL at Bikaner. Thus, it is established that the Petitioner had completed the entire scope of work except the firefighting work associated with the



Khetri sub-station.

39. We further observe that the Petitioner intimated the POWERGRID Khetri about completion of bay extension work except the interfacing part vide email dated 12.8.2021. Vide the same email, the Petitioner further sought clearance to complete the each of the interfacing activity with details regarding the number of days required to complete each of the activity from clearance as under:

Sl No	Activity	No. of days required to complete the activity from Clearance
1	Splicing at 400kV end	2
2	Splicing at 765kV end	2
3	Bus Bar panel cable termination work (Cable laying and Glanding completed)	3
4	SCADA configuration at Power Grid End (Relay and SCADA engineer available at site)	6
5	Relay signal witness from Power Grid (Relay and SCADA engineer available at site)	
6	Bus Bar Stability	4
7	Fire Fighting system cable termination in DCDB and annunciation panel located in the Pump House. (Cable laying done, glanding and termination balance)	5
8	Availability of main Pump house and main line tapping of water.	5

40. POWERGRID Khetri has not placed on record any communication disputing the aforesaid email of the Petitioner. Neither did POWERGRID Khetri dispute the timeline specified by the Petitioner for completion of the activity. Thus, if the interconnection facility at Khetri sub-station could be completed by the POWERGRID Khetri, the Petitioner could complete the readiness its system by 28.8.2021.

41. We have also perused the Petitioner's letter dated 25.8.2021, addressed to the POWERGRID Khetri regarding the availability of common/ interconnection points for the 765 kV Bay extension works at 765 kV Khetri SS (PG) under Rajasthan SEZ PART D Package, which states as under:



*“In reference to our earlier intimation wherein BKTl had requested to arrange common/ interconnection points so as to complete extension works of Khetri end. It is to inform that readiness of some of common/ interconnecting facilities of Khetri S/S are still awaited from PGCIL which are now required on urgent basis to complete the associated works under BKTl scope. The same are listed as below:*

<b>SN</b>	<b>Readiness required from PGCIL</b>	<b>Associated works under BKTl and its status</b>
1	Readiness of Busbar Protection Panel	Cable laying up to the existing Bus bar protection has been completed by BKTl. However, cable termination & onwards busbar protection checking & testing is pending due to non-readiness of 765 kV Busbar protection of Khetri Substation.
2	Readiness of SCADA FO ring	Multimode FO cable laying & termination in respective 765 kV Kiosk of BKTl has been completed and connected with existing FO ring towards 765 kV as well as 400 kV. However, SCADA ring formation for existing 765 kV side is pending from PGCIL end due to which integration of 765 kV bays pertaining to BKTl cannot be done with SCADA Servers kept in Control Room Building and therefore checking of equipment operation from existing SCADA & Real Time Data Validation to LDC can not be performed.
3	Earthing of Existing yard	BKTl has completed Earthing in the 765 kV bay extension area. However, inter connection with existing Eartmat is pending due to non-availability/ readiness of PGCIL's X Grid at inter connection point.
4	Fire fighting system	BKTl has completed Firefighting Hydrant Pipeline & HVWS works for 765kV Bay extension area. However, connection with Main hydrant pipeline cannot be completed due to non-readiness of Main Hydrant Pipeline up to the interconnection point under the scope of PGCIL.

*It is pertinent to mention that as per Schedule 3 of the TSA “Simultaneous commissioning of all three elements as stipulated under TSA are required to declare CoD of the respective element”. Further, during Joint meetings mentioned under reference at S. No. 2 & 3, PGCIL have informed readiness/ CoD of Khetri S/S under Rajasthan SEZ Part C as 30.06.2021 & 31.08.2021 respectively. In conjunction to that BKTl had informed readiness/ CoD of it's Khetri Bay Extension works as 15.07.2021 & 31.08.2021 respectively considering timely availability of common/ Interconnection points from PGCIL.*

*Electrical Inspector Visit for Khetri Bay Extension works of BKTl has already been completed on 11 Aug-2021. However, Electrical Inspector has issued an Order for Compliance stating that certain provisions/ stipulations of CEA (Measures Relating to Safety and Electric Supply), Regulations, 2010 made under section 53 of the Electricity Act 2003 have not been complied with **and directed that High Velocity Water Spray system***



***in respect to Reactors shall be tested in Auto & Manual mode of operation and accordingly photographs of multisfire operation shall be submitted to CEA. However, BKTL is not able to comply with the direction issued by CEA regarding operation of High Velocity Water Spray System at this stage due to non-readiness of firefighting system interconnection from PGCIL's end and it is directly hampering Final commissioning/ Charging of BKTL Project.***

*Further, BKTL has already completed execution of Bikaner Bay Extension & 765 kV D/C Bikaner – Khetri Transmission Line and also received approval of energization from CEA for both Bikaner Bay Extension works & 241 km Bikaner to Khetri D/C Transmission Line. Accordingly, BKTL had already submitted application for First Time Charging to NRLDC.*

*Except the above-mentioned interfacing works, BKTL has completed its scope of work at Khetri S/S (PG) also. Further, BKTL has also issued notice dated 28.03.2021 in compliance to Article 6.1.1 of the TSA declaring its intention to connect the transmission system to the interconnection facility. BKTL is facing difficulties in connecting its system at Khetri end, due to non-readiness of Khetri S/s which is under scope of PGCIL.*

*It is essential to bring to your notice that BKTL would be entitled for declaring commissioning of the project in terms of Articles 6.2.1 and 6.2.2 and Tariff in compliance to Applicable CERC Regulation, in case the associated transmission system is not ready at the time of commissioning.*

***You are requested to urgently expedite availability of common/ interconnection points and provide timeline/ schedule for firefighting system readiness and balance activity (common/ interconnection facilities) completion so as to enable BKTL to complete the extension works & to put the assets in to operation in favor of national importance.”***

It is evident that some of the interface works related to Bus Bar Protection Panel, SCADA, Earthing, and Fire Fighting System, which were in the scope of POWERGRID Khetri were not complete as on 25.8.2021. Therefore, the Petitioner requested POWERGRID Khetri to expedite availability of common/ interconnection points and provide timeline/ schedule for firefighting system readiness and balance activity (common/ interconnection facilities) completion so as to enable the BKTL to complete the extension works & to put the assets in operation.

42. We have considered the submissions of Respondents regarding “Provisional Approval for Energization”. In terms of Section 73 of the Act, CEA has been assigned the responsibility to specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid. The relevant portion of the Act is extracted as under:



**“Section 73 (Functions and duties of Authority):**

*The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to –*

*(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co- ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;*

*(b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;  
...”*

43. We have also perused the Central Electricity Authority (Measures relating to Safety and Electric supply) Regulations, 2010 which provides as under:

**“43. Approval by Electrical Inspector.** – (1) *Voltage above which electrical installations will be required to be inspected by the Electrical Inspector before commencement of supply or recommencement after shutdown for six months and above shall be as per the notification to be issued by the Appropriate Government, under clause (x) of subsection (2) of section 176 and sub-section (1) of section 162 of the Act.*

*(2) Before making an application to the Electrical Inspector for permission to commence or recommence supply after an installation has been disconnected for six months and above at voltage exceeding 650 V to any person, the supplier shall ensure that electric supply lines or apparatus of voltage exceeding 650 V belonging to him are placed in positions property joined and duly completed and examined and the supply of electricity shall not be commenced by the supplier for installations of voltage needing inspection under these regulations unless the provisions of regulations 12 to 29, 33 to’ 35, 44 to 51 and 55 to 77 have been complied with and the approval in writing of the Electrical Inspector has been obtained by him:*

*Provided that the supplier may energise the aforesaid electric supply lines or apparatus for the purpose of tests specified in regulations 46.”*

As per the above, approval of the Electrical Inspector is required under Section 43 of the quoted Regulations of the CEA.

We observe that in the present case, the Electrical Inspector of the CEA with full responsibility has issued the Provisional Energization Certificate to the Petitioner. Therefore, we are not inclined to agree to the Respondents’ contention that it is not a





valid Certificate. For all purposes, it is up to Electrical Inspector of the CEA to issue the Energisation Approval and for purpose of the TSA we shall consider the same a valid Energisation Approval.

44. We have perused the “deemed COD” declared by the Petitioner vide letter dated 28.8.2021 quoted as under:

*“Bikaner Khetri Transmission Ltd (BKTL) hereby declares 4<sup>th</sup> September 2021 as Deemed Commercial Operational Date (“COD”) of Transmission System under Article 6.2.1 of TSA which reads as under*

*“ .....*”

*BKTL has completed its scope of work, as defined in Schedule 2 of the TSA, and obtained Certificate from Central Electricity Authority (“CEA”) approving energization of all elements of TSA as described below.*

S.No.	Name of Element as per TSA	Date of CEA Certificate	Remarks
1	Bikaner (PG)-Khetri S/s 765 kV D/C line	18-Aug-21	
2	765 kV Bays at Bikaner (PG) & Khetri for Bikaner (PG)- Khetri S/s 765 kV D/C line. (765 kV D/D line bay-4 nos.)	Bikaner end 9-Jul-21	For 2 Nos. 765 kV Line Bay at Bikaner end, Energization approval received on 9-Jul-21.
		Khetri end 28-Aug-21	For 2 Nos. 765 kV Line Bay at Khetri end, Energization approval received on 28-Aug-21
3	1x240 MVAR Switchable line reactor for each circuit at each end of Bikaner-Khetri 765 kV D/C line along with reactor bays (1x240 MVAR Line reactor-4 nos, 765 kV Reactor bay-4 nos)	Bikaner end 9-Jul-21	For 2 Nos. 765 kV Reactor Bay (2x240 MVar) at Bikaner end alongwith 1 No. Spare Reactor, Energization approval received on 9-Jul-21.
		Khetri end 28-Aug-21	For 2 Nos. 765 kV Reactor Bay (2x240 MVar) at Khetri end, Provisional Energization approval received on 28-Aug-21

Copy of CEA Approvals for Energization referred above are enclosed and marked as Annexure-1.

In terms of Article 4.2.1 (b), it is the obligation of LTTCs to provide interconnection facility for connecting Transmission Line, which is reproduced as below.

*“4.2.1 Subject to the terms and conditions of this Agreement, Long Terms 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.”*



*BKTL has requested LTTCs to keep the Interconnection facility ready in terms of Article 4.2.1(b) of TSA vide its letter dated 28<sup>th</sup> March 2021. Further, BKTL has informed Power Grid Khetri Transmission System Ltd to expedite availability of common/interconnection facility vide its letter dated 25<sup>th</sup> Aug 2021. Copy of Letter is enclosed and marked as Annexure 2.*

*In view of the above, BKTL declares 04-09-2021 (7 days from CEA Certificate dated 28<sup>th</sup> August 2021) as deemed CoD in terms of Article 6.2.1. of TSA. Please note that in terms of Article No 6.2.2. of the TSA reproduced herein below, BKTL shall be deemed to have Availability equal to Target Availability with effect from 04-09-2021 and therefore shall be entitled to Tariff as mentioned in Schedule 6 of the TSA.*

*6.2.2 Once any Element of the Project has been declared to have achieved deemed COD.....*

*Accordingly, BKTL respectfully submits that it will be entitled to payment of the monthly transmission charges with effect from 04-09-2021.”*

45. Now we proceed to analyzed whether the Petitioner declared deemed COD after obtaining the CEA Energisation approval as per TSA or not. Article 6.2 of the TSA provides as follows with respect to the declaration of Commercial Operation of the project:

**“6.2 Commercial Operation:**

**6.2.1** *An Element of the Project shall be declared to have achieved COD seventy two (72) hours following the connection of the Element with the Interconnection Facilities pursuant to Article 6.1 or **seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not attributable to the TSP** subject 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 2 of this Agreement, have been declared to have achieved their respective COD”*

In terms of the above, TSP can declare COD ‘seven days after the date on which it is declared to be ready for charging. Since the CEA energization approval in respect of the last remaining elements of the Petitioner’s Project were received only on 28.8.2021, the Petitioner could have declared deemed COD only after 7 days i.e. on 5.9.2021 and not on 4.9.2021.



46. Respondent No.1 POWERGRID Khetri has further submitted that the power flow in the POWERGRID Khetri's 400 kV sub-station at Khetri commenced with effect from 26.9.2021 and the power flow in the complete system occurred with effect from 2.10.2021. As per POWERGRID Khetri, the power flow in the Petitioner's Transmission System commenced after 7.10.2021 which clearly demonstrates the non-readiness of the Petitioner's Transmission System as on the alleged COD on 4.9.2021. We do not find merit in the said contention of POWERGRID Khetri which, in fact, goes against the Respondent 1. The Petitioner has not disputed the power flow through its transmission system in October, 2021. The case of the Petitioner is that the Petitioner could not commence power flow in August, 2021 as POWERGRID Khetri had delayed its transmission system at Khetri sub-station. In this regard, it is noted that the power flow from the system of the Petitioner commenced from 7.10.2021 i.e. about 5 days after the power flow started from the complete system of POWERGRID Khetri. The time of 5 days taken by the Petitioner to complete its work matches with the time sought by the Petitioner vide email dated 12.8.2021. If the flow from the Petitioner's system had started much later than 2.10.2021, it could be established that the Petitioner's system was not ready. In fact, the Petitioner vide its letter dated 24.9.2021 had also submitted pictures of the sub-station to show the status of completion of work by both the TSPs.

47. In view of the above, we are of the opinion that it was the Respondent No. 1's liability to plan and complete its system in a timely manner to allow the Petitioner to complete inter-facing work and commission its system as per the revised SCOD. In fact, both the TSPs were aware of the revised SCOD of 31.8.2021 as evident from the minutes of the meeting held on 2.7.2021 amongst CEA, CTUIL, TSPs, associated LTTCs, POWERGRID and SECI which has been placed on record by POWERGRID Khetri vide its affidavit dated 3.1.2024. In light of the interdependency of both the systems on each



other, POWERGRID Khetri ought to have completed the work of sub-station on priority to allow the Petitioner adequate time to complete its system by 31.8.2021. Instead, as admitted by POWERGRID Khetri in the present Petition, it was under the misconception that, its system being pre-requisite to the Petitioner's system, the Petitioner could not declare COD. In fact, the stipulation regarding commissioning of pre-requisite elements for declaration of COD was removed in the Amendment No.2 to the TSA to safeguard the Petitioner from delay in commissioning of the POWERGRID Khetri's system. Thus, the Petitioner was prevented from completing its scope of work at Khetri sub-station on account of the delay by POWERGRID Khetri.

48. In light of the above, we allow the declaration of deemed COD by the Petitioner w.e.f. 5.9.2021 as per the provisions of the TSA and, consequently, for the period from 5.9.2021 till the actual COD of the interconnection facility of POWERGRID Khetri i.e. 3.10.2021, the Petitioner is entitled to get tariff along with applicable interest as per applicable Tariff Regulations or provisions of the TSA from POWERGRID Khetri, on bilateral basis, in terms of Regulation 13(12) of the 2020 Sharing Regulations.

### **Change in Law**

49. The Petitioner has claimed relief for the following Change in Law events under Article 12 of the TSA.

#### **Increase in cost due to COVID-19 pandemic**

a) The Ministry of Labour & Employment, GOI vide a notification dated 20.3.2020 issued directives to all the employers to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.



b) Furthermore, in exercise of the power conferred under Section 2 of Epidemic Disease Act, 1897, the Government of Rajasthan issued Rajasthan Epidemic Disease, Covid-19 Regulations, 2020.

c) The above changes/modifications/impositions having force of law, affected the project severally, including its cost during construction period in terms of increase in IDC, idling charges of resources including plant, machinery and manpower, increase in project cost and delay in revenue recovery stream of the Petitioner which adversely affected its cash flow and working capital cost.

d) The aforesaid Change in Law event altered the edifice of the Petitioner's financial model and hence, the same requires that the Petitioner is restituted to the same economic position as if Change in Law event never occurred. On account of the aforesaid, the Petitioner issued a notice dated 22.4.2020 to the LTTCs for the aforesaid Change in Law event. The Petitioner further issued Change in Law notice dated 26.5.2020 informing the LTTCs about the aforesaid Change in Law event which impacted the project in various ways, including increase of cost, reduction in return and other financial burdens on the Company.

**Increase in Forest area due to finalization of Khetri S/S location inside Forest area by POWERGRID Khetri Transmission System Limited**

e) The Bid Process Coordinator, PFCCL had provided the coordinates of the proposed Khetri S/s in its survey report. The coordinates provided by the BPC were outside the forest area. However, the owner of Khetri S/s, POWERGRID Khetri, finalised the tentative co-ordinates for substation inside the forest area on 16.10.2019. Due to this, the Petitioner was required to re-route its line forcing it to pass through the forest area of Jhunjhunu. Accordingly, the Petitioner had to take forest approval for 4.7515 Ha of forest land in Jhunjhunu area, which was not the requirement when the bidding took place.

f) The Ministry of Environment, Forest & Climate Change vide letter dated 3.2.2021 granted the in-principle approval for the diversion of 5.9738 ha forest land (including 1.2223 Ha of forest land for Bikaner Area) in favour of Bikaner Khetri Transmission Limited for Bikaner (PG)-Khetri (S/s) 765 kV D/C Transmission Line.



g) Subsequently, DFO, Jhunjhunu vide letter dated 26.3.2021 also informed the Petitioner regarding allotment of the 4.7515 ha forests land in favour of the Bikaner (PG)- Khetri (S/s) 765 KV D/c transmission line and also raised a compensation demand to the tune of Rs. 89,71,284/-.

h) Thereafter, DFO Jhunjhunu, vide letters dated 10.12.2021, revised the above compensation demand. As a result of the same, the demands for forest compensation increased from Rs. 89,71,284/- to Rs. 92,42,760 /- for Jhunjhunu.

i) The Petitioner incurred additional cost of Rs. 0.92 crore due to above Change in Law event, for which the said Petitioner is required to be reimbursed on actuals. In terms of the above, the Petitioner issued a notice dated 21.10.2019 to the LTTCs, in terms of the Article 12 of the TSA.

j) As per the TSA, the cut-off date for the purpose of claiming Change in Law relief was 18.6.2019. Since the above requirement qua obtaining consent/clearance was not there as on cut-off date and resulted in additional expenditure, the same qualifies as a Change in Law event in terms of Article 12.1.1 of the TSA.

50. With regards to Change in Law events, POWERGRID Khetri, vide its reply dated 16.6.2023 has mainly submitted as under:

a) The Petitioner's contention that it is entitled to the additional cost towards the Change in Law event of increase in forest area due to finalization of the Khetri S/s location inside the forest area by POWERGRID Khetri is misconceived, wrong and denied.

b) POWERGRID Khetri implemented the Khetri substation under Transmission system associated with LTA application from Rajasthan SEZ (Part -C) project. During the bid process, BPC intimated the coordinates for Khetri substation and also clarified that the Khetri substation was to be constructed within 5 Kms radius of these coordinates.

c) In compliance with RfP clarification, POWERGRID Khetri established Khetri substation within a radius of 2 kms from coordinates provided by the BPC. Accordingly, it was beyond the control of Respondent No 1 that Khetri substation



was inside forest area as the site selection was done in compliance with the RfP/TSA provisions i.e. within 5 kms radius of original coordinates provided by the BPC.

## **Analysis and Decision**

51. The Petitioner has sought Change in Law relief under Article 12.1.1 of the TSA.

The relevant extract of Article 12 is reproduced below

**“ARTICLE 12:  
12 CHANGE IN LAW  
12.1 Change in Law**

*12.1.1 “Change in Law” means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the TSP or any income to the TSP:*

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*
- a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*
- the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;”*
- a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits;*
- any change in the licensing regulations of the Appropriate Commission, under which the Transmission License for the Project was granted if made applicable by such Appropriate Commission to the TSP;*
- any change in the Acquisition Price; or*
- any change in tax or introduction of any tax made applicable for providing Transmission Service by the TSP as per the terms of this Agreement.*

*12.1.2 Notwithstanding anything contained in this Agreement, Change in Law shall not cover any change:*

*a. on account of regulatory measures by the Appropriate Commission including calculation of Availability; and*

*b. in any tax applied on the income or profits of the TSP.*



### **12.3 Notification of Change in Law:**

*12.3.1 If the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law under this Article 12, it shall give notice to Lead Long Term Transmission Customer of such Change in Law as soon as reasonably practicable after becoming aware of the same.*

*12.3.2 The TSP shall also be obliged to serve a notice to Lead Long Term Transmission Customer even when it is beneficially affected by a Change in law.*

*12.3.3 Any notice served pursuant to Articles 12.3.1 and 12.3.2 shall provide, amongst other things, precise details of the Change in Law and its effect on the TSP.”*

52. As per Article 12.3 of the TSA, TSP is required to give notice to the Lead Long Term Transmission Customer of Change in Law as soon as reasonably practicable after becoming aware of the same if it wishes to claim relief for such Change in Law under Article 12 of the TSA.

53. The Petitioner issued a notice dated 22.4.2020 to the LTTTCs for the Ministry of Labour & Employment, Government of India`s Notification dated 20.3.2020 and Regulation 12 of Rajasthan Epidemic Disease, Covid-19 Regulations, 2020 notified by the Government of Rajasthan in light of the impact of Covid-19 pandemic. As regards increase in project cost on account of increase in the forest area due to finalization of the Khetri S/S location inside Forest area, the Petitioner issued Change in Law notice dated 21.10.2019 to the LTTTCs, in terms of Article 12 of the TSA.

54. In the light of the provisions of change in law, the claim(s) of the Petitioner have been examined. The Petitioner has claimed increase in project cost on account of (a) Increase in cost due to the COVID-19 pandemic; (ii) Increase in Forest area due to finalization of the Khetri S/S location inside Forest area by the POWERGRID Khetri Transmission System Limited.





**(i) Increase in cost due to COVID-19 pandemic**

55. The Petitioner has contended that the cost of the project increased in terms of increase in IDC, idling charges of resources including plant, machinery and manpower, increase in project cost and delay in revenue recovery stream of the Petitioner which adversely affected its cash flow and working capital cost on account of notification dated 20.3.2020 issued by the Ministry of Labour & Employment, GOI directing all the employers to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages and to consider employees to be deemed to be on duty. The Petitioner has further relied Rajasthan Epidemic Disease, Covid-19 Regulation, 2020 issued by the Government of Rajasthan.

56. We have considered the submissions made by the Petitioner. The relevant extract of Notification dated 20.3.2020 issued by the Ministry of Labour & Employment, GOI is as under:

*“The World is facing a catastrophic situation due to outbreak of COVID-19 and in order to combat this challenge, coordinated joint efforts of all Sections of the Society are required. In view of the above, there may be incidence that employee’s/worker’s services are dispensed with on this pretext or the employees/workers are forced to go on leave without wage/salaries.*

*In the backdrop of such challenging situation, all the Employers of Public/Private Establishments are advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. If any worker takes leave, he should be deemed to be on duty without any consequential deduction in wages for this period. Further, if the place of employment is to be made non-operational due to COVID-19, the employees of such unit will be deemed to be on duty.*

*The termination of employee from the job or reduction in wages in this scenario would further deepen the crises and will not only weaken the financial condition of the employee but also hamper their morale to combat their fight with this epidemic. In view of this, you are requested to circulate this Advisory to the Employers/Owners of the establishments registered with your Association for compliance.”*

57. ‘Law’ has been defined in the TSA as under

*“Law” or “Laws” in relation to this Agreement, shall mean all laws including electricity laws in force in India and any statute, ordinance, rule, regulation,*



*notification, order, or code, or any interpretation of any of them by an Indian Government Instrumentality having force of law and shall include all rules, regulations, decisions and orders of the Appropriate Commission.”*

58. It is observed that the document quoted by the Petitioner is not a Notification as claimed by the Petitioner. It is a general advisory issued by the Ministry of Labour & Employment, Government of India to all the employers seeking to extend their coordination by not taking any adverse action in terms of termination of employees, reduction of wages, etc. Therefore, this letter of the Ministry of Labour & Employment cannot be considered as “Change in Law” as claimed by the Petitioner.

59. Further, Regulation 12 of Rajasthan Epidemic Disease, Covid-19 Regulation, 2020 notified by the Government of Rajasthan on 12.3.2020 and relied on by the Petitioner in its Change in Law notice dated 22.4.2020 is extracted as under:

*“In exercise of the powers conferred under section 2, 3 and 4 of the Epidemic Disease Act, 1867, and The Rajasthan Epidemic Act 1957, The Governor of Rajasthan is pleased to issue following regulation regarding COVID-19 (Corona Virus Disease 2019).*

*12. If case of COVID-19 is reported from a defined geographical area such as Village, town, ward, colony, settlement, the District Administration of the concerned district shall have the right to implement following containment measures, but not limited to these, in order to prevent spread of the disease,*

- I. Sealing of the geographical area,*
- II. Barring entry and exit of the population from the containment area,*
- III. Closure of schools, offices and banning public gatherings,*
- IV. Banning vehicular movement in the area,*
- V. Initiating active and passive surveillance of COVID-19 cases, as per Community based Contact Tracing Implementation Guidelines of GOL VI. Hospital isolation of all suspected cases.*
- VII. Designating any Government/Private building as containment unit for isolation of the cases,*
- VIII. Staff of all Government departments will be at disposal of district administration of the concerned area for discharging the duty of containment measures.*

*16. These regulations shall come into force immediately and shall remain valid for a period of one year or until further orders, whichever is earlier, from the date of publication of this notification.”*



60. The Petitioner has stated that as per Article 12.1.1, an enactment of any law is covered in the definition of Change in Law. In terms of the TSA, 'Law' includes regulation issued by an Indian Government Instrumentality. Therefore, Rajasthan Epidemic Disease, Covid-19 Regulation, 2020, issued in exercise of the powers conferred under Sections 2, 3 and 4 of the Epidemic Disease Act, 1867, and The Rajasthan Epidemic Act 1957 by the Government of Rajasthan to contain the COVID-19 pandemic is covered under Article 12.1.1 of the TSA as Change in Law. However, perusal of the said Regulations reveals that they merely provide various protocols to be followed by the authorised persons defined therein. Even Regulation 12 of the said Regulations, which provides for district administration to implement the containment measure such as sealing of geographic area, restriction on entry/exist from containment area, etc. only upon reporting of the Covid-19 from a defined geographic area, in our view, does not further the Petitioner's Change in Law claim as neither their impact can be traced to the claims of the Petitioner towards idling charges, increase in project cost, delay in revenue recovery, etc. nor the Petitioner has produced any material before us to substantiate as to how these Regulations have led to the incremental expenditure as claimed in the Petition as Change in law event. In view of the above, the Petitioner's Change in law claim as predicated upon the Ministry of Labour & Employment's Advisory dated 20.3.2020 and Rajasthan Epidemic Disease, Covid-19 Regulations, 2020 must fail.

**(ii) Increase in Forest area due to finalization of Khetri S/S location inside Forest area by POWERGRID Khetri Transmission System Limited.**

61. The Petitioner has submitted that the coordinates provided by the BPC for the proposed Khetri S/s in its survey report were outside the forest area. However, the owner of Khetri S/s, POWERGRID Khetri, finalised the tentative co-ordinates for substation inside the forest area on 16.10.2019. Due to this, the Petitioner was required to re-route



its line forcing it to pass through the forest area of Jhunjhunu. Accordingly, the Petitioner had to take forest approval for 4.7515 Ha of forest land in Jhunjhunu area, which was not the requirement when the bidding took place. MoEF&CC granted in-principle approval for the diversion of forest land on 3.2.2021. Thereafter, DFO, Jhunjhunu vide letter dated 26.3.2021 informed the Petitioner regarding allotment of 4.7515 ha of forests land in favour of the Petitioner with compensation demand of Rs 89,71,284/-, subsequently, raising it to Rs. 92,42,760 /- for Jhunjhunu.

62. **Per Contra**, POWERGRID Khetri has submitted that the Khetri sub-station has been established within 2 kms of the coordinates provided by the BPC. Accordingly, it was beyond the control of Respondent 1 that Khetri substation was inside forest area as the site selection was done in compliance with the RfP/TSA provisions i.e. within 5 kms radius of original coordinates provided by the BPC.

### **Analysis and Decision**

63. We have considered the submissions made by the Petitioner and Respondent 1. The Petitioner has argued that the coordinates of the proposed Khetri sub-station indicated in the Survey Report prepared & provided by the BPC were outside the forest area and since, Respondent 1 finalised the co-ordinates for Khetri sub-station inside the forest area on 16.10.2019, the Petitioner was required to re-route its line requiring it to pass through the forest area of Jhunjhunu and consequently, had to pay Rs. 92,42,760/- towards the compensation for diversion of the 4.7515 Ha of forest land as per the demand of DFO, Jhunjhunu. However, it is noticed that in the very same survey report as provided by BPC, it had been specifically mentioned that the “...*this coordinates should not be consider as the point of termination/emanation of transmission line. The TSAP shall coordinate with the agency providing inter Connection facility for exact point of termination/ emanation of transmission line.*” Moreover, the BPC in its clarifications



on the RfP & TSA queries had also clearly indicated that the coordinate of the proposed Khetri sub-station shall be within 5 km radius of the following location (coordinates were given) within the jurisdiction boundary of Khetri Taluka of Jhunjhunu District and that the coordinates of Khetri S/s was tentative in nature and subject to changes as per the availability of land within the boundary limits. Thus, it was amply made clear to all bidders that the coordinates of proposed Khetri S/s as indicated in Survey Report were only tentative and TSP was required to confirm the exact points with the agency implementing the Khetri S/s. Accordingly, it was incumbent upon the Petitioner to plan the route of its Bikaner-Khetri line, especially the last mile connectivity to Khetri S/s, taking into account the above disclaimer and confirming the coordinates of Khetri S/s with Respondent No.1. Having not done so, if the Petitioner is required to re-align its line and take an approval for diversion of forest land, the Petitioner cannot claim such requirement as imposition of requirement for obtaining any Consent, Clearance and Permits which was not required earlier under Change in Law. It is not the case of the Petitioner that Khetri S/s had not come up within the 5 km radius of the coordinates as indicated by BPC. Location of Khetri S/s had indeed been finalised by the Respondent 1 in line with disclaimer given by the BPC to all bidders including the Petitioner herein and hence, the requirement of approval for diversion of the 4.7515 Ha of forest land and the consequent compensation, cannot be considered as Change in Law in the present case.

### **Change in scope of work**

64. The Petitioner has further claimed relief for the following change in scope.

#### **Increase in scope of Bay extension works at Khetri S/S due to non-allocation of BKTL bays adjacent to PKTSL bays**

- a) Khetri S/s has been constructed by POWERGRID Khetri as part of the "Transmission system associated with LTA application from Rajasthan SEZ (Part -C)" under the TBCB Scheme. Accordingly, as per RfP clarification dated 28.5.2019, 1 no. of 1x80 MVAR, 1-Ph, 765kV spare unit of Reactor at 765kV Khetri



S/S was to be provided by POWERGRID Khetri. Further, this Spare unit of Bus Reactor at Khetri S/s was to be utilised for Line Reactor also. Accordingly, the Petitioner's scope of work was for the 765kV Bay extension at Khetri S/s along with spare line reactor of Khetri S/s and hence the 765 kV bays at Khetri S/s were considered adjoining to the Spare Reactor. As per Schedule 2 of the TSA, POWERGRID Khetri was required to provide space for construction of 2 nos. of the 765kV bays at Khetri S/s.

b) However, POWERGRID Khetri did not allocate the 765 kV Bay location adjoining to the Spare Reactor. Thus, to utilize spare Reactor Unit of the Khetri S/s, 765kV Aux Bus & 145kV Aux Bus was required to be extended up to spare unit which in turn increased the Aux bus arrangement along with respective Bus Post Insulator.

c) There is a standard practice to provide space for Bay extension adjoining to the Spare reactor/Bus reactor bays. Further, there will also be challenges in O&M activities. However, despite of this, Respondent 1 did not provide space adjoining to the Spare reactor and accordingly, same resulted into the change in scope of the project of the Petitioner, as the said Petitioner was compelled to do the same.

d) For switching of Spare reactor to line reactor, Single Pole Circuit Breaker is required. As per industry standards, the Circuit Breaker is to be provided by the owner of Spare Reactor. However, POWERGRID Khetri specified that the Circuit Breaker is to be installed by the Petitioner. It is to be noted that there was no requirement to install the Circuit Breaker as per scope of the project of the Petitioner. Therefore, installation of the Circuit Breaker resulted in change in scope of work of the project of the Petitioner.

e) The Petitioner, vide letter dated 8.4.2020, requested POWERGRID Khetri to allocate the bays adjoining to the Bus Reactor Bay so that extension of the auxiliary bus for Line Reactor can be done properly and to provide the Single Pole CB in spare unit of Bus Reactor. Further, the Petitioner also intimated the same to the LTTCs vide its letter dated 15.4.2020.

f) The Petitioner incurred additional cost of Rs. 1.96 crore due to above Change in Scope events, for which the said Petitioner is required to be reimbursed



on actual basis, based on the regulated tariff mechanism provided under Section 62 of EA 2003.

g) Since the bidding guidelines are silent on the aspect of change in scope, the Commission has the requisite general regulatory powers in order to allow additional expenditure due to such change in scope of work. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Energy Watchdog vs. CERC & Ors.* [reported in (2017) 14 SCC 80].

h) The Commission in a catena of judgments has allowed change in scope of work under transmission projects. In this regard, reliance has been placed on order dated 1.8.2022 passed in Petition No. 158/MP/2021 (*Lakadia-Vadodara Transmission Project Limited v. Adani Green Energy MP Limited*) and order dated 20.3.2019 passed in Petition No. 194/MP/2017 (*North Karanpura Transco Limited v. Jharkhand Bijli Vitran Nigam Limited*).

#### **Change in level of land of allotted bays**

i) It is to be noted that all the foundations have to rest below virgin ground level and the minimum depth of foundation below the virgin ground level should be at least 500 mm and no foundations are allowed to rest on filled up soil.

j) At the time of the bidding, it was assumed as per industry practices that the foundation would be required to be done up to normal depth of 2.5 mtr. Further, as per additional clarification dated 14.6.2019, it was duty of substation owner of Khetri S/s i.e., Respondent 1 to provide levelled land for 2 nos. bays and reactor for termination of Bikaner- Khetri 765 kV D/C line.

k) However, upon finalization of land for Khetri S/s, Respondent 1 provided land with differential finished ground levels (FGL). The portion of switchyard to be developed by Respondent 1 was at +98.1 Mtr and the land given to the Petitioner was at +101.5 Mtr with filled up soil of depth 3.4mtr (approx.). This forced the Petitioner to go to higher depths (beyond 2.5mtr) for placement of the foundations, as a result of which there was an increase in the civil works quantities. Further, the Petitioner also intimated the same to the LTTCs vide its letter dated 6.1.2020.



l) On account of the same, the Petitioner incurred additional cost of Rs. 0.67 crore due to above Change in scope, for which the said Petitioner is required to be reimbursed.

65. POWERGRID Khetri vide its reply dated 16.6.2023 has contested the claim of change in scope of the Petitioner and mainly submitted as under:

a) POWERGRID Khetri's scope was only to provide space for the construction of 2 nos. of 765kV line bays, space for 2 nos. of 240MVAR switchable line reactors & reactor bays at Khetri for Bikaner (PG) - Khetri 765kV D/c line and 1 no. of 1x80 MVAR, 1-Ph, 765kV spare unit of Reactor at 765kV Khetri S/S as provided under RfP & TSA. However, exact location of the above scope was to be finalised by Respondent 1 depending upon layout of Khetri substation switchyard, and commercial aspect, etc. Respondent No 1 kept its 765 kV scope i.e. 2x1500 MVA ICTs, 765 kV 2x240MVAR reactors and line bays under its scope at one place to make it convenient for the Petitioner and TSP doing future expansion which is a standard practice and recommended.

b) In addition, TSA/RfP documents never required/ warranted POWERGRID Khetri to provide bays to BKTL adjacent to spare reactor unit of POWERGRID Khetri. The Petitioner's contention that it has incurred an additional expenditure of Rs. 1.96 Crore on account of increase in scope of work of bay extension at Khetri substation, which is beyond the scope of work as contemplated under the TSA is wrong and denied.

c) The reliance placed by the Petitioner on the Energy Watchdog judgment of the Hon'ble Supreme Court is wrong and misplaced. Further, the Commission's order dated 1.8.2022 in Petition No. 158/MP/2021 and order dated 20.3.2019 in Petition No. 94/MP/2017 are not applicable in the present case.

### **Analysis and Decision**

66. We have considered the submissions made by the Petitioner Respondent 1. Schedule 3 of the TSA dated 23.4.2019 laid down the following conditions:

*"2. POWERGRID to provide space for construction of 2 nos. of 765kV line bays and space for 2 nos. of 240MVAR switchable line reactors & reactor bays at Bikaner (PG) for Bikaner (PG) - Khetri 765kV D/c line.*





3. *Developer of Khetri S/s to provide space for construction of 2 nos. of 765kV line bays and space for 2 nos. of 240MVAR switchable line reactors & reactor bays at Khetri for Bikaner (PG) -Khetri 765kV D/c line”*

67. As per the RfP clarification dated 28.5.2019 for the ‘Transmission System associated with LTA applications from Rajasthan SEZ Part-D’, 1 no. of spare unit of the Reactor at 765kV Khetri S/S was to be provided by the POWERGRID Khetri. The relevant extract of the clarifications issued by the BPC is as under:

<b>S. No.</b>	<b>Clause No. and Existing provision</b>	<b>Clarification required</b>	<b>Clarifications</b>
1	<b>RFP Clause No 85</b>  <i>We presume that the land will be provided in levelled condition free of cost by the owner. Confirmed by BPC</i>	<i>Kindly note that in the Rajasthan part-C RFP document, it does not enforce that land development shall be done for future bays (In this case bays for termination of Khetri-Bikaner line). As per past RFP documents also, land development for future bays has not been enforced. Hence, we request BPC to confirm that land development shall be in this scope of TSP &amp; not the existing substation owner.</i>  <i>Lack of clarity of Scope</i>	<i>Khetri S/S developer will provide levelled land for 2 nos bays and reactor for termination Bikener-Khetri 765 kB D/C line.</i>

68. It is observed that the neither Schedule 3 nor clarification dated 28.5.2019 had any provision regarding allocation of the 765 kV bays at Khetri sub-station adjacent to the spare reactor. Therefore, the contention of the Petitioner regarding change in scope in this regard is devoid of merits. It is noted that the SCOD of the Petitioner’s project and the project of Respondent 1 was the same i.e. 31.12.2020. In such cases, where the inter-dependent projects are being implemented simultaneously, the TSPs are expected to coordinate with each other to optimize the sub-station layout mutually. Only in case of dispute between the TSPs with regards to change in the layout/change in scope of work that the TSPs ought to approach the competent authority, if required, for resolution of dispute.

69. However, as regards change in level of land of allotted bays, the BPC clarified



vide clarifications issued on 28.5.2019 that the Khetri s/s developer i.e. POWERGRID Khetri will provide levelled land for 2 nos of bays. The said clarification was provided in response to the specific query that land development shall be in the scope of TSP and not the existing substation owner. POWERGRID Khetri has not made any submission much less dispute the contentions made by the Petitioner with regards to the responsibility of providing levelled land. Therefore, the Petitioner is entitled to recover the cost incurred on account of non-levelled land of allotted bays from POWERGRID Khetri. Accordingly, the increase in cost on account of this aspect (duly certified by the auditor) shall be paid by the Respondent 1 along with interest as per the applicable CERC Tariff Regulations or as per the provisions of TSA, whichever is lower.

#### **Relief to be granted to the Petitioner**

70. We now proceed to consider what relief, if any, should be granted to the Petitioner in the light of the above discussion.

71. With regards to relief on account of force majeure and Change in Law events, the Petitioner has submitted as under:

- a) On account of various force majeure and Change in Law events, the Petitioner is entitled to IDC, IEDC and Commodity Price Variation, as the said delay led to an increase in cost, which could not at all have been fathomed by the Petitioner at the time of the submission of the bid.
- b) As a consequence of the worldwide lockdown due to outbreak of Covid-19 Pandemic, the prices of input commodities skyrocketed for almost all industries including the transmission sector. The miseries of TSPs were aggravated with the subsistence of lockdown for more than a year which not only resulted in time overrun but also adversely impacted the cost of the whole transmission project because of steep rise in commodity prices.
- c) The contribution of commodities in the overall project cost is around 80%, in which Aluminium and Steel contribute to the tune of sixty percent 60%. The



challenges and impact on account of unprecedented raw material price escalation for commodities such as aluminium, steel, CRGO, copper, zinc, silicon, cement etc., in the past years was mammoth.

d) With the increase in commodity prices, there was an increase of around 30% to 40% in overall Project cost, which made the Project unviable. In fact, even the lenders were not comfortable lending to such projects with low to negative Internal rate of return.

e) Once, the said events qualify as force majeure, then the Petitioner becomes entitled for IDC, IEDC and Commodity Price Variation qua the delay in the SCOD in the elements of the transmission project.

f) The Petitioner places reliance upon the following judgments, wherein IDC and IEDC has been allowed as a consequence of force majeure. In this regard reliance has been placed on the judgment dated 3.12.2021 passed by the APTEL in Appeal No. 129 of 2020 titled as *NRSS XXXI (B) Transmission Limited vs CERC & Ors* and judgment dated 20.10.2020 passed by the APTEL in Appeal No. 208 of 2019, titled as *Bhopal Dhule Transmission Company Limited v. Central Electricity Regulatory Commission & Ors*.

g) The total impact of IDC, IEDC and commodity price variation claimed by the Petitioner is Rs 61.10 crore.

Reimbursement of loss of tariff due to force majeure events, or in the alternative, extension of the term of the contract/ TSA period

h) In terms of Schedule 6 of the TSA, the tariff for the period of 35 years commencing from 31.12.2020, has been provided. This was based on the SCOD of the project being 31.12.2020. Based on the aforesaid SCOD, the year-wise bid for each specific year was submitted by the Petitioner. Further, the tariff stream in the bid was such that a cash flow from SCOD was assumed.

i) The SCOD of the project was delayed, *inter alia*, on account of various force majeure, change in scope and Change in Law events. The Project achieved the COD on 4.9.2021, i.e., after delay 247 days. Hence, the Petitioner is entitled

to start recovery of the transmission charges from the year in which the project was commissioned.

j) Alternatively, the term of the TSA is required to be extended for recovery of the transmission charges for the 35 years as per the TSA, starting from 4.9.2021

k) There is a loss arising directly due to Force Majeure, Change in Scope and/or Change in Law events for the Petitioner. Consequently, the Petitioner is entitled to be compensated for the same, either through reimbursement of the loss of tariff on account of loss of 247 days from the contract period, or through extension of the term of the TSA.

### **Analysis and Decision**

72. We have considered the submissions made by the Petitioner. The relief claimed by the Petitioner is dealt with as under:

#### **(i) IDC, IEDC and Commodity Price Variation**

73. We have considered the submissions made by the parties. In the present case, we have already held that the Change in Law claims made by the Petitioner are not maintainable. Hence, the question of granting the relief of IDC & IEDC does not arise. The Petitioner has, however, also submitted that the Petitioner is also entitled to the relief of IDC, IEDC & commodity price variation solely on the account of the force majeure events. However, as per the TSA, there is no compensation provided for the force majeure event except for relief in the form of an extension of SCOD and, hence, protection from levy of liquidated damages. In this regard, it is noted that the Commission declined to admit IDC vide order dated 31.12.2023 in Petition No 237/MP/2021 on the same ground. The relevant portion of the said order dated 31.12.2023 is extracted below:

*“140. We have considered the submissions of the Petitioner and MPPMCL. We have perused the provisions of TSA with respect to force majeure and Change in Law. As per TSA, compensation is provided for a Change in Law event, whereas for force majeure event there is no compensation except for relief in the form of extension of SCOD and hence levying of liquidated damages. In the instant case, two events have been allowed under Change in Law which are construction of concrete wall and compensation for land due to Government*



*Orders. We observe that Petitioner has not claimed any delay on account of both the events allowed under Change in Law. Accordingly, the Petitioner's prayer for grant of IDC, is rejected."*

In light of the above, the Petitioner's claim for IDC, IEDC & commodity price variation on account of force majeure events is not admissible.

**(ii) Reimbursement of loss of tariff or in the alternative, extension of the term of the contract/ TSA period**

74. We have considered the submissions made with regard to the loss of tariff. The issue of loss of tariff is no more res-integra in terms of the common judgment dated 3.12.2021 of Appellate Tribunal for Electricity in Appeal No 129 of 2020 & Appeal No 276 of 2021. Appeal No 129 of 2020 was filed by NRSS XXXI (B) Transmission Ltd (NTL), whereas, Appeal No 276 of 2021 was filed by Darbhanga-Motihari Transmission Company Limited (DMTCL) against the common order dated 29.3.2019 passed by the Commission in separate Petitions filed by NTL (Petition No 195/MP/2017) and DMTCL (238/MP/2017). With regards to claim of the TSPs for loss of tariff, the APTL has decided as under:

**"Issue No. 3**

18.0 The Appellant has claimed for the loss of tariff on account of Force Majeure and Change in Law events which led to under recovery of tariff as against the tariff envisaged at the time of bid submission due to change in the SCOD.

.....

18.2 The Appellant is claiming that the SCOD is 12.09.2016 as per the TSA and because of extended SCOD, the COD for KM line shifted to 18.01.2017 and for MA line to 27.03.2017. On this account the Appellant claim is that there is a tariff loss for 129 days for KM line whereas loss for 139 days for MA line.

18.3 The two lines during this period were not commissioned and no transmission service can be provided by the TSP to LTTCs. There is no provision in the TSA where Transmission Charges can be levied where the TSP cannot serve the LTTCs.

.....

18.5 Further, the Transmission Tariff can be charged against the transmission service actually provided or deemed to have been provided which can be possible only once the Transmission System is fully commissioned and achieved COD.



.....

18.8 Learned Counsel for Respondent no. 15 submitted that there is no such provision under the TSA in so far as the question related to compensation for loss of first year tariff and also for the consequential interest is concerned. Further, it may also be mentioned that this project was conceived to become operational with a certain time frame. The failure of the Appellant to bring the project within the projected time frame had resulted into operation of the Grid network at sub-optimum level till its operation resulting with higher losses which are borne by the Respondents.

18.9 We inclined to accept the contentions of the Respondents in the light of the fact that the Appellant has already been granted relief in respect of additional expenditures incurred and extended SCOD as mentioned under preceding paras.

18.10 It also need emphasis that tariff can be levied only for the services provided and not on account of Force Majeure or Change in Law Events. In the present case the commissioning of the Transmission System of the Appellant has delayed and any Tariff can be billed only once the COD has been achieved. Any change at this stage will result into amendment to the TSA.

18.11 In the present case, we have agreed to the claims of the Appellant on account of the Change in Law and Force Majeure Events:

- i. Expenses made for obtaining Forest Clearance,
- ii. Extension of SCOD for Forest Clearance, and
- iii. Compensation for increased length of the Transmission Lines.

18.12 The time extension granted has also saved the Appellant from levying of any penalty on account of delay in commissioning of the project.

18.13 It may be seen that the Appellant has already been fully compensated for the delay and others as stated above due to Change in Law and Force Majeure Events.

18.14 As such we decline to accept the submission of the Appellant.”

75. Thus, in terms of the decision of the APTEL, the Petitioner’s claim of loss of tariff is rejected on the ground that the transmission tariff can only be charged against the transmission service actually provided or deemed to have been provided, which can be possible only once the transmission system is fully commissioned and achieved COD.

76. The Petitioner has alternatively prayed for shifting of tariff in terms of extension of the terms of the TSA to enable recovery of the transmission charges for 35 years. The issue of shifting of tariff is no more res-integra in light of the order of the Commission dated 13.5.2024 in Petition No 87/MP/2022. The relevant portion of the order dated 13.5.2024 is extracted as under:



“132. The Petitioner, in the instant Petition, has alternatively prayed for shifting of tariff in terms of extension of the terms of the TSA to enable recovery of the transmission charges for 35 years.

133. In this context, it would be relevant to consider the following definitions and provisions of the TSA:

**“Expiry Date”** shall be the date which is 35 (thirty five) years from the Scheduled COD of the Project.

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

134. It is apparent that the expiry date of the TSA is linked to the SCOD of the project, i.e., 35 years from the SCOD of the project. It is also evident from the definition of ‘Scheduled COD’ that the SCOD of the project can be extended mutually by the parties or in terms of provisions stipulated in Article 4.4. Therefore, the expiry date needs to be adjusted in accordance with the extended SCOD of the project. In other words, the ‘expiry date’ of the TSA may be refixed to a new date 35 years after the commencement of the revised SCOD on 1.8.2021.

135. Further, as per Article 2.2 of the TSA, the Agreement shall remain effective until the Expiry Date, i.e., 35 years from the extended SCOD. The relevant extract of the TSA is as under:

**“Term of Agreement”** for the purposes of this Agreement shall have the meaning ascribed thereto in Article 2.2 of this Agreement;

.....

## **2.2 Term and Termination:**

2.2.1 Subject to Article 2.2.2 and Article 2.4, this Agreement shall continue to be effective in relation to the Project until the Expiry Date, when it shall automatically terminate unless extended by the Appropriate Commission for such period and on such terms and conditions as the Appropriate Commission may specify in this regard in terms of the procedures laid down by the Appropriate Commission for such matters.

2.2.2 This Agreement shall terminate before the Expiry Date:

a. If a Termination Notice is served in accordance with Article 13

i. by the Majority Long Term Transmission Customers following a TSP Event of Default; or

ii. by the TSP following the Long Term Transmission Customers’ Event of Default;

b. If the Long Term Transmission Customers or the TSP serves a Termination Notice in accordance with Article 3.3.2 and 3.3.4.”

136. Since the Agreement shall remain effective from the COD till the expiry date, the Petitioner shall remain entitled to tariff recovery for the entire duration of the Agreement.



137. The definition of Contract Year also makes it evident that the contract year will commence from the date of COD, and the contract will be effective till the 'Term of the TSA'. The definition is extracted as under:

**“Contract Year”, for the purpose of payment of Transmission Charges, shall mean the period beginning on the COD, and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the TSA.”**

From the combined reading of the provisions of the TSA, it can be concluded that the recovery of tariff for the entire duration of the contract can be ensured only if the tariff stream is shifted as per the extended SCOD and 'expiry date' in terms of Article 4.4 of the TSA. Accordingly, the First Contract year shall be the contract year in which the Petitioner declared COD in the instant case.

138. The above interpretation is also consistent with the intent of the Ministry of Power as reflected in new SBDs issued on 6.8.2021 for the procurement of inter-State Transmission Services through Tariff Based Competitive Bidding Process. It is observed that the Ministry of Power has provided adequate clarity in the new TSA in the form of illustration to ensure recovery of the transmission tariff for the entire term of 35 years. The relevant portion of Schedule 4 of the TSA is extracted below:

*“Illustration 4: In case of delay in achieving COD of Project & all individual Elements (COD of the Project achieved in Contract Year other than Contract Year 1)*

Quoted Transmission Charges: **Rs 140 Million**

Completion Schedule:

Element No.	Completion Schedule in Months	Scheduled CoD of the Elements	Actual CoD of the Element	% Charges recoverable on Scheduled COD of the Element
Element 1	38	1-Oct-2019	1-May-2020	25%
Element 2	38	1-Oct-2019	1-May-2020	75%

Tariff Payment to be paid as:

Transmission Charges for Element 1			Transmission Charges for Element 2		
1-Oct-19 to 31-Mar-20	--	0.00	1-Oct-19 to 31-Mar-20	--	0.00
1-Apr-20 to 30-Apr-20	-	0.00	1-Apr-20 to 30-Apr-20	-	0.00
1-May-20 to 31-Mar-21	140x100%x (335/365)			128.49	
2	140x100%x1			140	
3	140x100%x1			140	
4	140x100%x1			140	
5	140x100%x1			140	
.....					
.....					
36 (1-Apr to	140x100%x (335/365)			11.51	





139. As per the above illustration, in case of a delay in the COD of the project from SCOD of 1.10.2019 to 1.5.2020, the first year would start from 1.5.2020, and the contract would end in the 36<sup>th</sup> year. The tariff would accordingly shift as per the new SCOD and the Expiry Date. It is evident from the construct of the TSA that the TSP is not deprived of tariff legitimately due to it under the TBCB process. The illustration provided in the new SBDs has only clarified the objective of the Ministry of Power behind projects awarded through the TBCB process, i.e., to ensure recovery of the quoted tariff for the entire term of the contract of 35 years. We have no reason to believe that the Ministry of Power had different intent while drafting the SBDs in force before 6.8.2021.

140. In view of the discussion above, the Commission is of the view that the Petitioner shall be entitled to receive the quoted tariff for 35 years commencing from the revised SCOD of 1.8.2021 as the first year. It would be apt to clarify here that the shifting of tariff is strictly premised on the extension of SCOD in terms of Article 4.4 of the TSA.”

77. In view of the above, we allow shifting of the entire tariff stream to start from the new SCOD of 5.9.2021 and the Petitioner shall be entitled to receive quoted tariff for 35 years starting the first contract year from revised SCOD of 5.9.2021 onwards.

### **Carrying Cost**

78. The Petitioner has submitted that it is also entitled for carrying cost towards allowed compensation of the Change in Law events. The Petitioner has further submitted that the issue of carrying cost is no more res-integra on account of various judgments of the Hon'ble APTEL and the Hon'ble Supreme Court. In this regard, the Petitioner has relied on the following judgments:

(a) Judgment dated 3.3.2023 of the Hon'ble Supreme Court in Civil Appeal No. 684 of 2021, titled as *Maharashtra State Electricity Distribution Company Limited V. Adani Power Maharashtra Limited & Ors.* (para 92 and 93);

(b) Judgment of the Hon'ble Supreme Court dated 24.08.2022 in *Uttar Haryana Bijli Vitran Nigam vs. Adani Power (Mundra) Limited*, Civil Appeal No. 7129 of 2021 (para 17 & 18);

(c) Judgment of the Hon'ble Supreme Court in *Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power Ltd.*, reported in (2019) 5 SCC 325 (paras 10, 13 and 19);

(d) Judgment dated 13.04.2018 passed by the Hon'ble APTEL in Appeal No. 210 of 2017 titled as *Adani Power Ltd. vs. Central Electricity Regulatory Commission & Ors*, [para d(i) to (x)];

(e) Judgment dated 20.12.2012 passed by the Hon'ble APTEL in *SLS Power Limited vs. Andhra Pradesh Electricity Regulatory Commission* and Ors, Appeal Nos. 160, 166, 168, 172, 173 of 2011 and 9,18,26,29 and 38 of 2012 (para 35.4 to 35.6).

### **Analysis and Decision**

79. Carrying cost is a consequential relief in terms of interest on Change in Law claims allowed by the Commission. Since we have already rejected the claims of Change in Law made by the Petitioner in the present case on account of increase in cost due to COVID-19 pandemic and additional compensation claimed on account of additional Forest area around Khetri S/S, the claim for carrying cost does not survive.

80. The Petition No. 377/MP/2022 is disposed of in terms of the above.

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

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

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

