

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 90/MP/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 19th May, 2024

In the matter of

Petition under Sections 63 and 79 (1)(f) of the Electricity Act, 2003 read with statutory framework and Article 11 and Article 12 of the Transmission Service Agreement dated 4.3.2016 executed between Gurgaon Palwal Transmission Limited and its Long-Term Transmission Customers for compensation due to Change in Law and seeking extension to the Scheduled Commissioning Date of the relevant elements of the Project on account of Force Majeure events.

And

In the matter of

Gurgaon Palwal Transmission Limited,

F-I, The Mira Corporate Suites,

1 & 2, Ishwar Nagar, Mathura Road

New Delhi 110065

...Petitioner

Versus

1. **UTC Chandigarh,**

Chandigarh Secretariat, Sector 9,

Chandigarh, 160 009

2. **BSES Yamuna Power Limited,**

2nd Floor, B Block, Shakti Kiran Building,

Near Karkardooma Court,

New Delhi-II0032

3. **BSES Rajdhani Power Limited,**

BSES Bhawall,

2nd Floor, B-Block Nehru Place,

New Delhi-I 10019

4. **New Delhi Municipal Council,**

Palika Kendra, Sansad Marg,

New Delhi- 110001

5. **TATA Power Delhi Distribution Limited,**

33 kV S/Stn. Building, Hudson Lane, Kingsway Camp,

New Delhi-110019



6. **Himachal Pradesh State Electricity Board Limited,**
Vidyut Bhawan, Shimla-171 004

7. **Haryana Power Purchase Centre,**
2nd Floor, Shakti Bhawan, Sector 06,
Panchkula-134109

8. **Power Development Department,**
Govt. of Jammu & Kashmir Civil Sect.,
Jammu-18000 1

9. **Punjab State Power Corporation Limited,**
The Mall, Patiala-147001

10. **Ajmer Vidyut Vitran Nigam Limited,**
Old Power House, Hathi Bhatta,
Jaipur Road, Ajmer

11. **Jodhpur Vidyut Vitran Nigam Limited,**
New Power House Industrial Area,
Jodhpur-342003

12. **Jaipur Vidyut Vitran Nigam Limited,**
Vidyut Bhawan, Janpath,
Jyoti Nagar, Jyoti Marg,
Jaipur-302005

13. **Uttarakhand Power Corporation Limited,**
Uyja Bhawan, Kanwali Road,
Dehradun-24800 1

14. **U.P. Power Corporation Limited,**
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001

15. **Haryana Vidyut Parsaran Nigam Limited,**
Shakti Bhawan, Sector-6
Panchkula-134109

16. **Central Transmission Utility of India Limited,**
Plot No. 2, Sector-29, Gurgaon
Haryana-122001

17. **Grid Controller of India Limited,**
(formerly, Power System Operation Corporation Limited)
National Load Despatch Centre
B-9, Qutab Institutional Area
Katwaria Sarai, New Delhi
Delhi-110016

18. **Power Grid Corporation of India Limited,**
Plot No-2, Sector-29, Gurgaon,
Haryana-122001.

.....Respondents



Parties present:

Shri Sayed Jafar Alam, Advocate, GPTL
Shri Deep Rao Palepu, Advocate, GPTL
Ms. Suparna Srivastava, Advocate, CTUIL
Ms. Divya Sharma, Advocate, CTUIL
Shri Prashant Kumar, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Hari Babu V, CTUIL
Shri Prashant Kumar, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Shubham Arya, Advocate, PGCIL
Ms. Poorva Saigal, Advocate, PGCIL
Shri Ravi Nair, Advocate, PGCIL
Ms. Reeha Singh, Advocate, PGCIL
Shri Akshat Jain, Advocate, UPPCL
Shri Avdesh Mandloi, Advocate, UPPCL
Shri Sann Manchal, NLDC
Shri Alok Mishra, NLDC

ORDER

The present Petition has been filed by the Petitioner, Gurgaon Palwal Transmission Limited (hereinafter referred to as 'GPTL') under Sections 63 and 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Article 11 (Force Majeure) and Article 12 (Change in Law) of the Transmission Service Agreement dated 20.11.2015 (hereinafter referred to as 'the TSA') seeking reliefs on account of occurrence of the Force Majeure and Change in Law events. The Petitioner has made the following prayers:

- a) *“Admit and allow the present Petition*
- b) *Declare that the events described in paragraphs 14-84 of this Petition constitute force majeure in accordance with Article 11 of the TSA and accordingly, extend the SCOD of the elements impacted by the Force Majeure Events along with the overall SCOD of the Project;*
- c) *Grant the applicable Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC), upon commissioning of the Project in view of the Force Majeure Events;*
- d) *Declare that the events described at paragraphs 90-105 of this Petition constitute change in law events in accordance with Article 12 of the TSA;*
- e) *Grant leave to the Petitioner to submit details on the total impact of the introduction of GST on the project cost upon commissioning to offset the adverse impact of the change in law events; and*
- f) *Pass such other order(s) and/or direction(s) as this Commission may deem just and proper in the facts and circumstances of the case.”*



Submissions on behalf of the Petitioner

2. The Petitioner has mainly submitted as under:

(a) The Petitioner is a fully owned subsidiary of Sterlite Grid 4 Limited (hereinafter referred to as 'SGL'), which was selected as a successful bidder through the tariff based competitive bidding process under Section 63 of the Act to establish the "Creation of new 400 kV GIS in Gurgaon area and Palwal as a part of ISTS" (hereinafter referred to as , 'the Project') on a Build, Own, Operate and Maintain (BOOM) basis for the Long Term Transmission Customers (arrayed as Respondent 1 to 14). The project implemented by the Petitioner was conceptualized to meet the increasing load demand in upcoming areas of Gurgaon and Palwal region and to provide additional reliability to the region.

(b) Gurgaon-Palwal transmission scheme was discussed in the 35th meeting of the Standing Committee on Power system Planning of Northern Region, wherein, a proposal was presented to the constituents of the Northern Region beneficiaries for creating three 400kV substations, each at Kadarapur, Sohna Road in Gurgaon area, and Prithala in Palwal area, as a part of Inter State Transmission System (ISTS). The scheme was proposed to cater the load demand of developing regions of Gurgooan area to be developed under Prithala Development Plan.

(c) The transmission scheme was further discussed in the 36th meeting of SCM-NR, wherein, the proposal was further deliberated on the aspects of requirement of the proposed three sub-stations. In the meeting, it was informed to the constituents that the proposed substation at Prithala is being proposed considering the requirements of the Prithala region and the 400/220kV sub-stations in Gurgaon at Sohna Road and Kadarapur are essential to meet the increasing load demands in Gurgaon Region.

(d) The Petitioner was incorporated as a Special Purpose Vehicle by the Bid Process Coordinator (hereinafter referred to as, 'the BPC'), namely, PFC Consulting Limited for the purpose of developing and implementing the Project under the Tariff Based Competitive Bidding route. In the bid process conducted by PFCCCL, STPPL participated and emerged as the successful bidder. Letter of Intent (LoI) was issued by PFCCCL to SGL on 17.3.2016. In compliance with the requirements of the TSA, the Petitioner filed Petition No. 122/TL/2016 before this Commission for the grant of a transmission licence and Petition No. 120/AT/2016 for the adoption of transmission charges under Section 63 of the Act. The Commission vide its orders dated 29.9.2016

and 6.9.2016, respectively, granted the transmission licence, and adopted the transmission charges for the Project.

(e) As per the TSA, the transmission elements were required to be commissioned progressively from May 2019 with the overall SCOD of the Project as September 2019. The transmission system under the scope of the Petitioner comprised of the following transmission elements:

| S. No | Name of the Transmission Element | SCOD |
|-------|---|------------|
| 1. | Neemrana (PG)-Dhanonda (HVPNL) 400 kV D/C HTLS line | 13.05.2019 |
| 2. | 2 Nos. of 400 KV line bays at 400 kV Dhanonda (HVPNL) substation | 13.05.2019 |
| 3. | Aligarh-Prithala 400 kV D/C HTLS Line (" AP Line ") | 13.05.2019 |
| 4. | Creation of 400/220 kV 2x500 MVA GIS sub-station at Prithala in Palwal area along with 1 No. of 125 MVAR Bus Reactor (" Prithala Substation ") | 13.05.2019 |
| 5. | Prithala-Kadarpur 400 kV D/C HTLS Line (" PK Line ") | 13.05.2019 |
| 6. | Creation of 400/220 KV, 2 x 500 MVA GIS Sub-station at Kadarpur in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor (" Kadarpur Substation ") | 13.05.2019 |
| 7. | Kadarpur-Sohna Road 400 kV D/C HTLS line (" KS Line ") | 13.09.2019 |
| 8. | Creation of 400/220 kV, 2 x 500 MVA GIS sub-station at Sohna Road in Gurgaon area along with 1 no. of 125 MVAR Bus Reactor (" Sohna Road Substation ") | 13.09.2019 |
| 9. | LILO of Gurgaon-Manesar 400 kV D/C Quad line at Sohna Road S/S (" LILO of GM Line ") | 13.09.2019 |

(f) As per Schedule 3 of the TSA, all the elements of the Project are required to be commissioned progressively as per the timeline provided. The Scheduled Commercial Operation Date ("SCOD") in months from the effective date (i.e. 14.07.2016) is as per Article 2.1 of the TSA for each element of the Project. The SCOD of the overall Project is 38 months from the effective date i.e. 13.9.2019.

(g) The Petitioner while implementing the instant transmission assets had faced several impediments and challenges on account of the several force majeure events and Change in Law events which hindered the continuous and smooth implementation of the transmission assets, thereby requiring the Petitioner to take additional time in completing its construction activities and escalated the cost of the instant transmission project which are as under:

I. Force majeure events:

- a. Relocation of the Kadarpur Substation, subsequent litigation and unlawful obstructions
- b. Delay in Forest Clearance for AP Line

- c. Delay in sharing CRP Protection Details by HVPNL
- d. Unlawful Obstructions caused by alleged land owners and farmers
- e. Delay in finalization of route for downstream 220 kV lines from the substations
- f. Unlawful obstructions and litigation impacting KS Line
- g. Ban on construction activities in Delhi NCR

II. Change in Law events:

- a. Pro-Rata Revision in the amount for Compensatory Afforestation by the Divisional Forest Officer
- b. Introduction of the Goods and Services Act, 2017

(h) The details of time over-run in case of the various elements under the Project are as under:

| S. No. | Elements | SCOD | Actual COD | Delay |
|--------|---|-----------|-----------------------|------------------|
| 1 | 400kV D/C Neemrana - Dhanonda Transmission Line (" ND Line ") | 13.5.2019 | 25.2.2019 | ---- |
| 2 | 2 Nos. of 400kV line bays at 400kV Dhanonda S/s (" Bays at Dhanonda S/s ") | 13.5.2019 | 25.2.2019 | ---- |
| 3 | 400kV D/C Aligarh - Prithala Transmission line (" AP Line ") | 13.5.2019 | 6.8.2019 (deemed COD) | Approx. 3 months |
| 4 | 400/220kV Prithala GIS S/s (" Prithala S/s ") | 13.5.2019 | 8.8.2019 (deemed COD) | Approx. 3 months |
| 5 | 400kV D/C Prithala - Kadarapur Transmission line (" PK Line ") | 13.5.2019 | 7.12.2019 | Approx. 7 months |
| 6 | 400/220kV Kadarapur GIS S/s (" Kadarapur S/s ") | 13.5.2019 | 11.12.2019 | Approx. 7 months |
| 7 | 400kV D/C Kadarapur - Sohna Road Transmission line (" KS Line ") | 13.9.2019 | 21.3.2020 | Approx. 6 months |
| 8 | 400/220kV Sohna Road GIS S/s (" Sohna Road S/s ") | 13.9.2019 | 13.4.2020 | Approx. 7 months |
| 9 | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s (" LILO of GM Line ") | 13.9.2019 | 13.3.2020 | Approx. 6 months |

(i) The Petitioner has claimed the following relief due to the impact of force majeure and "Change in Law" events on the various elements of the Project:

Force Majeure

| S. No | Element | Impacting Event(s) | Extension to the SCOD sought by the Petitioner |
|---|-----------------------|--|--|
| 1. | Kadarpur Substation | 1. Relocation of the Kadarpur Substation, subsequent litigation and unlawful obstructions 2. Delay in finalization of route for downstream 220 kV lines from the substations 3. Ban on construction activities in Delhi NCR | 7 months: till December 2019 |
| 2. | Prithala Substation | 1. Delay in sharing CRP Protection Details by HVPNL 2. Delay in finalization of route for downstream 220 kV lines from the substations | 3 months: till 7.8.2019 |
| 3. | Sohna Road Substation | 1. Delay in finalization of route for downstream 220 kV lines from the substations 2. Ban on construction activities in Delhi NCR | 7 months: till April, 2020 |
| 4. | AP Line | Delay in forest clearance for AP Line | Approx. 3 months: till 05.08.2019 |
| 5. | PK Line | 1. Relocation of the Kadarpur Substation, subsequent litigation and unlawful obstructions 2. Unlawful obstructions caused by alleged land owners and farmers | 7 months: till December 2019 |
| 6. | KS Line | 1. Relocation of the Kadarpur Substation, subsequent litigation and unlawful obstructions 2. Delay in finalization of route for downstream 220 kV lines from the substations 3. Unlawful obstructions and litigation impacting KS Line 4. Ban on construction activities in Delhi NCR | 4 months: till January 2020 |
| 7. | LILO of GM Line | 1. Delay in finalization of route for downstream 220 kV lines from the substations 2. Ban on construction activities in Delhi NCR | 5 months: till February, 2020 |
| Change in Law | | | |
| Claim | | Amount (₹) | |
| Pro-Rata revision in the amount for the compensatory Afforestation by the Divisional Forest Officer | | Rs. 4,80,27,859/- | |
| Introduction of the Goods and Services Act, 2017 | | 28.58 crore | |

(j) Due to the force majeure events, the Petitioner has lost working time which has delayed the completion of the works and the commissioning of the elements under

impact of such events. On account of the Change in Law events, the cost has increased manifold. In order to comply with the TSA, the Petitioner has notified Respondents about the force majeure and Change in Law events on 22.10.2018, 17.5.2019 and 19.11.2019 in terms of Articles 11 and 12 of the TSA.

Hearing dated 11.6.2020

3. The Petition was admitted on 11.6.2020. The Commission directed the Petitioner to implead Haryana Vidyut Parsaran Nigam Limited (HVPNL) and notices were issued to Respondents. Thereafter, during the hearings held on 11.4.2023 and 28.6.2023, the Commission directed the Petitioner to implead the CTUIL, NLDC and PGCIL as parties to the Petition. The matter was further heard on 25.6.2021, 27.8.2021, 24.1.2022, 15.2.2022, 22.8.2022, 22.11.2022, 19.1.2023, 11.4.2023, 28.6.2023, 15.9.2023 and 16.2.2024. In compliance with the directions of the Commission during the hearings, the Petitioner has filed various details vide affidavits dated 26.6.2020, 14.9.2021, 4.3.2022, 18.12.2022, 9.3.2022, 23.6.2023 and 13.9.2023. The Petitioner has also filed written submissions dated 26.10.2023.

4. PSPCL, HVPNL, UPPCL, NLDC and PGCIL have filed their replies dated 19.08.2020, 12.11.2020, 15.6.2021, 19.7.2023 and 19.7.2023 respectively. The Petitioner has filed rejoinders to replies filed by PSPCL, HVPNL and UPPCL vide affidavit dated 28.8.2020, 29.12.2020 and 09.7.2021 which have been dealt with in the succeeding paragraphs.

5. The Petitioner vide Record of Proceedings (RoP) for the hearing dated 15.2.2022, was directed to submit the following information:

(a) RLDC certificate "on load" for Kadarapur sub-station, if any. SLD (single line diagram) of Kadarapur sub-station and Sohna road sub-station clearly mentioning about 400 kV and 220 kV bays.



(b) CEA energization certificates for assets of the Project except Prithala sub-station and trial operation certificate for Sohna Road substation (on load).

(c) Dates of “Deemed COD” declared prior to dates of “No Load Charging” for AP line and Prithala sub-station.

(d) Reasons for declaration of the COD instead of Deemed COD in case of PK Line and Kadarapur sub-station as these assets were “No Load Charged” prior to their actual COD.

(e) Paying entity of transmission charges for the transmission assets of the Petitioner in case where Deemed COD is considered.

6. In compliance, the Petitioner vide its affidavit dated 4.3.2022 has submitted SLD of the Kadarapur S/s and the SLD of the Sohna Road S/s, energization certificates issued by the CEA for the AP Line, PK Line, Kadarapur-Sohna Road 400 kV D/C HTLS Line, LILO of Gurgaon-Manesar 400 kV D/C Quad line at Sohna Road S/s, Neemrana (PG)- Dhanonda (HVPNL) 400 kV D/C HTLS Line, Kadarapur S/s, Sohna Road S/s and 2 nos. of 400 kV line bays at 400 kV Dhanonda (HVPNL) S/s, trial operation certificate for Sohna Road S/s (on load). The Petitioner has further submitted as under:

(a) Due to the non-availability of the inter-connecting downstream system, the RLDC “on load” certificate for Kadarapur S/s is not available.

(b) Approval for energization of the AP Line from the CEA was received on 29.7.2019. However, it was unable to commission the same due to the non-availability of the bays at the Aligarh end of Power Grid Corporation of India Limited (“PGCIL”). The AP Line was deemed commissioned on 6.8.2019. The AP Line was finally commissioned on 30.10.2019 pursuant to the commissioning of the associated bays at the Aligarh S/s of PGCIL.

(c) The Petitioner received approval for energization from the CEA with respect to the Prithala S/s on 31.7.2019 and the Prithala S/s was declared deemed commissioned with effect from 8.8.2019.

(d) CEA had issued Energization Certificates for Kadarapur S/s and PK line on 27.11.2019. Both Kadarapur S/s and PK Line were charged on 11.12.2019 and

7.12.2019 respectively and declared under commercial operation in compliance with Article 6 of the TSA. POSOCO had also issued Charging certificates for the same.

(e) With regard to the liability of payment of the transmission charges, for AP Line, the entity paying transmission charges for the period of mismatch (i.e., 6.8.2019 to 29.10.2019) will be PGCIL since the Petitioner was unable to commission the AP Line on account of the non-availability of the bays at the Aligarh end under implementation by PGCIL. Further, with respect to the Prithala S/s, the delay in its commissioning was on account of HVPNL since HVPNL delayed the implementation of its interconnecting downstream 220 kV line.

7. The Petitioner, vide RoP for the hearing dated 19.1.2023, was directed to submit the following information.

(a) Status of payment of the transmission charges in respect of the 400 kV D/C Aligarh-Prithala line (AP Line) and 400/220 kV Prithala GIS S/s (Prithala S/s) for which the Petitioner has declared the deemed COD.

(b) Status of utilization of downstream network of the transmission system.

(c) Date of recovering of transmission charges for each element viz common pool or HVPNL or any other entity.

8. In compliance to the RoP for hearing dated 19.01.2023, the Petitioner vide affidavit dated 9.3.2023, submitted as under:

(a) The AP Line was deemed commissioned on 6.8.2019. After being declared commissioned on 30.10.2019 (pursuant to the commissioning of the associated bays at the Aligarh S/s of PGCIL), the transmission charges for the AP Line are being recovered from the PoC pool since 1.11.2019. The Petitioner remains unpaid for the period from 6.8.2019 to 30.10.2019.

(b) Prithala S/s was deemed commissioned on 8.8.2019. After completion of trial run operation on 2.11.2019, the substation was commissioned on 3.11.2019. Since 3.11.2019, the transmission charges for the substation are being recovered from the PoC pool. The Petitioner remains unpaid for the period from 8.8.2019 to 2.11.2019.

(c) As per the status of the downstream network submitted by HVPNL vide its affidavit dated 28.1.2022, the 220 kV downstream system was ready for evacuating power from Sohna Road S/s and Prithala S/s from 20.7.2020 and 19.4.2020, respectively. However, the 220 kV downstream system for evacuating power from the Kadarpur S/s was under progress, likely to be available by March 2023. The 220 kV downstream network under implementation by HVPNL was not a pre-requisite for the Petitioner to declare commissioning of its elements.

(d) The Petitioner has not recovered any bilateral transmission charges from HVPNL or any other entity till date. The date of recovery of the transmission charges for each Project element from the PoC Pool is as under:

| S. No. | Name of the Element | Date of recovery from the PoC Pool |
|---------------|----------------------------|---|
| 1 | Kadarpur S/s | 11.12.2019 |
| 2 | PK Line | 07.12.2019 |
| 3 | Sohna Road S/s | 13.04.2020 |
| 4 | Prithala S/s | 03.11.2019 |
| 5 | AP Line | 01.11.2019 |
| 6 | KS Line | 21.03.2020 |
| 7 | LILO of GM Line | 13.03.2020 |

9. The Petitioner, NLDC and CTUIL vide RoP for the hearing dated 11.4.2023 were directed to clarify that how the transmission charges of above elements have been included in the POC Pool, before the charging of the elements on load.

10. The Petitioner vide affidavit dated 23.06.2023, in compliance to the RoP for hearing dated 11.04.2023 submitted as follows:

(a) With the commissioning of the bays at the PGCIL's Aligarh S/s, AP Line was interconnected with the national grid on 1.11.2019 and Prithala S/s was interconnected with the national grid on 3.11.2019. Therefore, the Petitioner had claimed transmission charges from the PoC Pool which were duly accepted by the CTUIL and the Implementing Agency.

(b) Till date, the Petitioner remains unpaid for the transmission charges for the AP Line from its deemed COD/8.8.2019 till 1.11.2019, and for Prithala S/s from its deemed COD/8.8.2019 till 3.11.2019.

(c) The CEA energization certificate for PK Line and Kadarpur S/s was received on 27.11.2019. PK Line was interconnected with the national grid and declared commissioned on 7.12.2019, after completion of trial operation (on no load) on 6.12.2019. Kadarpur S/s was interconnected with the national grid and declared commissioned on 11.12.2019, after completion of trial operation (on no load) on 9.12.2019.

(d) The transmission charges corresponding to the Sohna Road S/s were included in the PoC pool only after all the requisite equipment were interconnected with the national grid on 7.4.2020, 9.4.2020 and 11.4.2020. The Sohna Road S/s was declared commissioned on 13.4.2020 in line with Article 6.2 of the TSA, after completion of trial operation (on no load) on 11.4.2020.

(e) Pursuant to the issuance of the ROP, the Petitioner approached the NRLDC, GCIL vide its letter dated 20.4.2023 to request for details of power flow (block-wise) for all elements of GPTL's Project. As per the power flow data provided by the NRLDC, there was power flow in the AP Line and consequently in the Prithala S/s from 2.12.2019 onwards. Similarly, there was power flow in the PK Line and consequently in the Kadarpur S/s from 5.12.2019 onwards, and in the KS Line from 18.3.2020 onwards and consequently in the Sohna Road S/s. Therefore, irrespective of the readiness of the inter-connecting/downstream system, the Petitioner's assets were being utilized for the benefit of the grid since their commissioning.

(f) Once the network from the Aligarh to Gurgaon/Manesar got completed with the commissioning of the Petitioner's AP Line, Prithala S/s, PK Line, Kadarpur S/s, KS Line, Sohna Road S/s and LILO of GM Line, the power from Aligarh started to reach the load centers at Gurgaon area via downstream elements available at these substations. The State of Haryana was benefitted by this power and the 400 kV line network developed by the Petitioner has brought in place a robust reliable source for feeding the demand in Haryana.

(g) While Prithala S/s and Sohna Road S/s are already feeding substantial power to major load centers, Kadarpur S/S provides the flexibility for network expansion at 220 kV level to feed the upcoming demand centers in HVPNL network, Gurgaon via Kadarpur 220 kV S/s. It is observed that all the bus voltages are within limits as per new CEA Transmission Planning Manual. The availability of reactors at Prithala,



Kadarpur and Sohna Road substations allow for smooth system operation in terms of voltage regulation.

(h) The Petitioner's transmission system has been put to use, there is power flow in the system and the Petitioner has been recovering transmission charges in line with the decision taken by the Validation Committee and as per the provisions of the TSA.

(i) At this belated stage, any claim against the Petitioner for return or refund of the transmission charges paid from the PoC Pool will be barred by limitation, the doctrine of delay and laches, waiver, and the doctrine of acquiescence. If this Commission is of the view that the PoC Pool should be refunded/returned the transmission charges erroneously paid to the Petitioner- the entity responsible for delay in intended utilization of the Subject Elements ("Defaulting Entity") must pay transmission charges directly to the PoC Pool.

(j) The Petitioner raised Bill-1 for its transmission assets and submitted the documents such as FTC approval, CEA energization approval and RLDC trial operation Certificate (at no load) to the Implementing Agency / CTUIL. The CTUIL and the Implementing Agency after considering the documents submitted by the Petitioner considered its assets under PoC mechanism. If there were any gaps in the documents or issues in relation to the commissioning of the subject elements, they would have been pointed out by the CTUIL and the Implementing Agency, and the Petitioner could not have made any recoveries.

(k) Subject elements were included in the PoC pool based on the decision taken in the 3rd Meeting of the Validation Committee for the Application Period from 1st October 2019 to 31st December 2019 for implementation of the 2010 Sharing Regulations held on 29.8.2019 and the 4th Meeting of the Validation Committee for the Application Period from 1st January 2020 to 31st March 2020 for implementation of the 2010 Sharing Regulations held on 2.12.2019.

(l) Irrespective of the readiness of the interconnecting transmission elements and the status of utilization of the Petitioner's elements, in line with the provisions of the TSA, particularly Article 6 read with Article 10 of the TSA, the Petitioner is entitled to receive transmission charges from the commissioning of its elements.



Hearing dated 28.6.2023

11. During the course of hearing, the learned senior counsel of the Petitioner submitted that vide RoP for the hearing dated 11.4.2023, the Commission had directed the Petitioner, NLDC and CTUIL to clarify the basis for the inclusion of certain elements of the Petitioner's Project in the PoC Pool prior to their date of on-load charging. Pursuant to this CTUIL has unilaterally withheld the further disbursement of the transmission charges to the Petitioner and CTUIL vide e-mail dated 12.6.2023, inter alia, stated that during the proceedings of the present Petition, it has been observed that although the billing and disbursement for the Petitioner's assets had started from November 2019 from PoC Pool, the power flow, in the system commenced w.e.f. 21.3.2020, and keeping the excess payment disbursed to the Petitioner from PoC Pool for the period prior to 21.3.2020 and towards recovery of the same, disbursement to the Petitioner is being withheld w.e.f. 29.5.2023. Accordingly, the Petitioner has filed IA (Diary) No.255/2023 praying, inter alia, quashing of CTUIL's email dated 12.6.2023 and the issuance of directions to CTUIL to release all withheld payments due to the Petitioner, to maintain the status quo, and to refrain from taking any coercive action against the Petitioner pending the disposal of the present Petition. In response, the learned counsel for the CTUIL submitted that, keeping in view the observation of the Commission vide Record of Proceedings for the hearing dated 11.4.2023, the provisions of the Sharing Regulations, and the relevant orders of the Commission on the subject matter of mismatch in commissioning and the liability of transmission charges thereof, CTUIL withheld the payment of transmission charges to the Petitioner from the PoC Pool owing to the excess payment already disbursed to the Petitioner from the PoC Pool for the period prior to 21.3.2020. After hearing the learned senior counsel and learned counsels for the parties, the Commission observed that since the clarification on the aspect of declaration of COD and inclusion of certain elements of the Petitioner's Project in the PoC Pool prior to their on-load charging has already been called for and the Commission being



seized of this aspect, it would not be appropriate to withhold the disbursement of transmission charges to the Petitioner at this stage. Accordingly, the Commission directed the CTUIL to maintain status quo as on 28.5.2023, until further order. Accordingly, IA (Diary) No.255/2023 was disposed of.

12. Learned counsel for Power Grid Corporation of India Limited (PGCIL) submitted that PGCIL has moved IA (Diary) No.237/2023 seeking its impleadment as a party to the Petition, which was allowed by the Commission and IA (Diary) No.237/2023 was disposed of. The Commission also directed the parties to file the following information on affidavit:

(a) The Petitioner to clarify how it has declared the CoD of the LILO of Gurgaon-Manesar transmission line on 13.3.2020 without the COD of the 400/220 kV Sohna Road S/S which was a prerequisite for the LILO of Gurgaon Manesar transmission line as per TSA;

(b) NLDC to clarify the procedure followed by it to include a transmission element under POC during the period;

(c) CTUIL/PGCIL to clarify the procedure followed by them to disburse the transmission charges to a transmission licensee for a transmission element, which was considered under the anticipated COD basis for next quarter (In the instant case, disbursement was started w.e.f. 1.11.2019). Further to clarify as to whether the 72 hours of trial run in case of actual COD and 7 days after completion as per TSA was checked before raising bilateral bills or including transmission line under POC;

13. In compliance with the RoP for the hearing dated 28.6.2023, the Petitioner impleaded the PGCIL as party to the present Petition on 3.7.2023.

14. PGCIL vide affidavit dated 19.7.2023 has submitted as follows:

(a) On 06.08.2019, GPTL declared the deemed date of commercial operation of the AP Line, and, on 08.08.2019, the deemed date of commercial operation of the

Prithala substation. However, both elements were pre-requisite to each other and ought to have been commissioned and their declared COD simultaneously.

(b) On 03.11.2019, the Prithala Substation was commissioned (actual COD) by GPTL. However, actual power flow began for the first time in the AP Line on 18.03.2020 with commissioning of the LILO of Gurgaon – Manesar line at Sohna Road. Regarding GPTL's Prithala substation, power flow started only on 19.04.2020 with commissioning of the downstream asset of HVPNL

(c) GPTL declared deemed COD of AP line on 06.08.2019 and deemed COD of the Prithala substation on 08.08.2019.

(d) In terms of Schedule 3 of the TSA, POWERGRID was to provide 2x1500 MVA 765/400 kV ICTs at Aligarh along with 2 Nos. of 400 kV line bays for termination of AP Line. Though the assets of POWERGRID were ready in the month of July 2019 itself, the shutdown of 765 kV Bus I and II was a prerequisite for the commissioning for creation of 400 kV level at Aligarh substation. The approval of required shut down was not accorded by NRLDC till the month of October 2019. Eventually, POWERGRID completed its assets associated with GPTL's AP line and Prithala substation on 30.10.2019.

(e) Despite the completion of the assets of POWERGRID, power flow could not be commenced due to delay in commissioning of downstream 220 kV lines at Prithala substation under the scope of HVPNL. Thus, POWERGRID assets were ready for regular service after successful charging on 30.10.2019 but prevented from providing regular service due to delay in commissioning of downstream 220 kV lines at Prithala substation under the scope of HVPNL.

(f) Actual Power Flow in the assets started w.e.f. 18.03.2020 after completion of adjoining 400 kV system i.e., Kadarapur-Sohna Road 400 kV D/c HTLS line and LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road S/s. However, even at that time, 220 kV downstream system was not available at any of the three substations of GPTL, i.e. Prithala, Kadarapur and Sohna Road. The 220 kV transmission System at Prithala substation was commissioned by HVPNL only on 19.4.2020.

(g) Power flow through Prithala sub-station was only dependent upon the commissioning of 220 kV downstream network to be implemented by HVPNL. Even

though the power from AP line started from 18.03.2020, the power flow in Prithala substation only started on 19.04.2020. Thus, utilization/ power flow in Prithala substation was only conditional upon the HVPNL 220 kV downstream network which was delayed till 19.04.2020. Hence, AP line and Prithala substation charges should only be levied on HVPNL alone.

15. NLDC vide its affidavit dated 19.7.2023 has submitted as under:

(a) The recovery of the transmission charges during period under consideration used to fall under the 2010 Sharing Regulations and amendments thereof and the decision for inclusion of any new element in POC mechanism was taken by Validation Committee. Further, the 3rd Amendment in the 2010 Sharing Regulations provided that the inclusion of elements likely to be commissioned during the Application Period in the basic network is provided by the CTUIL/transmission licensee to the implementing agency.

(b) The Validation Committee vide its 3rd meeting dated 29.8.2019 for the Application Period from 1st October 2019 to 31st December 2019 decided to include the elements of the Petitioner in pool for the transmission charge recovery, based on anticipated charging dates.

(c) The Implementing Agency had informed the Validation Committee in subsequent meeting i.e. 4th Validation Committee meeting that the assets of GPTL which were anticipated to be commissioned in last quarter by the end of October, 2019 were considered in 2019-20 Q3 computations. However, some of the assets were not commissioned. It was decided by the Validation Committee that the assets of GPTL would be considered for the purpose of recovery of transmission charges from pool on submission of written confirmation by the GPTL confirming the commissioning date of assets.

16. CTUIL, vide affidavit dated 26.7.2023, has submitted as under:

(a) PGCIL was to establish the asset i.e. 2X1500 MVA 765/400 kV transformers and 2 nos. 400 kV bays at Aligarh substation. HVPNL was to establish the downstream 220 kV transmission system at Prithala, Kadarapur and Sohna Road substations.

(b) During the 3rd and 4th validation committee meeting held on 29.8.2019 and 2.12.2019 respectively at NRLDC, the assets of GPTL were proposed to be considered for inclusion in the PoC computation for the quarter October 2019-December 2019 and

January, 2020 March 2020. Accordingly, the said assets were considered by the implementing agency i.e. NLDC for calculation of the PoC slab rates for the period from October, 2019-December, 2019 and the RTAs were issued accordingly based on which the billing was done by the CTUIL.

(c) The data for the 3rd bill for the period from October 2019-December 2019, January 2020-March 2020 and April 2020-June 2020 was submitted by the Petitioner for recovery of the transmission charges of the Petitioner's transmission elements from the PoC as per the details below:

| S. No. | Element | Date of recovery from the PoC pool submitted by GPTL |
|---------------|------------------|---|
| 1 | A-P line | 01.11.2019 |
| 2 | Prithala GIS S/S | 03.11.2019 |
| 3 | P-K line | 07.12.2019 |
| 4 | Kadarpur S/S | 11.12.2019 |
| 5 | Sohna Road S/S | 13.04.2020 |

(d) As the transmission charges were already considered in the PoC computations for the quarter from October 2019-December 2019 and included in the bill 1 raised by the CTUIL for the months since November 2019, CTUIL considered the said transmission elements in the quarterly adjustment bill raised for the period October, 2019-December, 2019, January, 2020-March, 2020 and April, 2020-June, 2020 and thereafter in line with the Sharing Regulations, 2010 and 2020.

(e) The power flow commenced w.e.f. 21.3.2020 when the entire link from the Aligarh-Prithala-Kadarpur-Sohna Road was established with the synchronization of the 400 kV Kadarpur to Sohna Road transmission line. However, Kadarpur and Sohna Road substations were prerequisite for declaration of the CoD of Kadarpur-Sohna Road 400 kV D/C line and the CoD of these assets as per the TSA was 11.12.2019 and 14.4.2020 respectively. Therefore, the CoD of the Kadarpur-Sohna Road 400 kV D/C line may only be considered as 14.4.2020 instead of 21.3.2020. Hence, the recovery of the transmission charges of the following assets from the PoC Pool may also be considered w.e.f. 14.4.2020 only:

- (i) Aligarh-Prithala 400 kV D/C HTLS line
- (ii) Prithala-Kadarpur 400 kV D/C HTLS line
- (iii) Kadarpur-Sohna Road 400 kV D/c line
- (iv) LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road S/s
- (v) Prithala GIS excl. ICTs and unutilized bays.

- (vi) Kadarpur GIS excl. ICTS and unutilized bays.
- (vii) Sohna Road GIS exc. ICTs and unutilized bays

(f) With regard to the billing adjustments, it is proposed that the transmission charges of the said element(s) prior to 14.4.2020 should not be recovered from the PoC pool and the transmission charges claimed earlier by the licensee is required to be refunded back to pool DICs in line with the CERC regulations. The transmission charges for the period prior to 14.4.2020 are now required to be recovered from the defaulting entities, towards non-commencement of power flow in the said element.

(g) The element-wise recovery of transmission charges of the elements of GPTL is mentioned as below:

(i) The Aligarh-Prithala 400 kV D/C HTLS line and Prithala S/S were prerequisites to each other for declaring the CoD. GPTL declared deemed CoD of the Prithala S/S on 8.8.2019. Therefore, deemed CoD of the Aligarh-Prithala 400 kV D/C HTLS line cannot be 6.8.2019 and should be considered as 8.8.2019 only.

(ii) Based on the 1st time charging issued by NRLDC for the Prithala-Kadarpur 400 kV D/C HTLS line and Kadarpur GIS, it is observed that, the last element of the Kadarpur GIS was charged on 9.12.2019. Hence, GPTL was entitled to declare deemed DOCO only after 72 hours post inter-connection of all the elements in line with provision 6.2.1 of the TSA. Accordingly, the deemed CoD of Kadarpur GIS must be considered as 12.12.2019 instead of 11.12.2019.

(iii) Based on the 1st time charging issued by NRLDC for the Sohna Road GIS, it is observed that the last element of the Sohna Road GIS was charged on 11.4.2020. Hence, GPTL was entitled to declare the deemed DOCO only after 72 hours post interconnection of all the elements in line with the provision of Article 6.2.1 of the TSA. Accordingly, the deemed CoD of the Sohna Road GIS must be considered as 14.4.2020 instead of 13.4.2020.

(iv) Sohna Road S/S was pre-requisite for declaration of CoD of the LILO of Gurgaon-Manesar 400 kV D/C Quad line at Sohna Road S/S. Therefore, the CoD of the mentioned line must be 14.4.2020 instead of 13.3.2020.

(v) After examining the trial operation certificate of the 400 kV D/C Neemrana (PG)-Dhanonda (HVPNL) transmission line along with 2 nos. bays at Dhanonda substation issued by the NRLDC, GPTL was entitled to declare the CoD only after

72 hours post interconnection of all the elements in line with the provision of Article 6.2.1 of the TSA and accordingly, the CoD of the said element may be considered as 28.2.2019 instead of 25.2.2019. The transmission charges of the said element(s) prior to 28.2.2019 should not be recovered from the PoC pool and the transmission charges claimed earlier by the licensee is required to be refunded back to pool DICs in line with the CERC Regulations

(vi) However, since the actual CoD of the entire link from the Aligarh-Prithala-Kadarpur-Sohna Road is to be considered as 14.4.2020, the transmission charges of the said elements can be recovered from the PoC pool w.e.f. 14.4.2020 only.

(h) The revised DOCO of GPTL assets and the date of recovery of the transmission charges of GPTL assets from the PoC pool are as under:

| S. No. | Element | DOCO as per GPTL | Revised DOCO proposed | Proposed date of recovery of transmission charges from PoC pool |
|---------------|--|-------------------------|------------------------------|--|
| 1 | Aligarh-Prithala Line | 06.08.2019 | 08.08.2019 | 14.04.2020 |
| 2 | Prithala S/S* | 08.08.2019 | 08.08.2019 | 14.04.2020 |
| 3 | Prithala-Kadarpur line | 07.12.2019 | 12.12.2019 | 14.04.2020 |
| 4 | Kadarpur S/S* | 11.12.2019 | 12.12.2019 | 14.04.2020 |
| 5 | Sohna Road S/S* | 13.04.2020 | 14.04.2020 | 14.04.2020 |
| 6 | Kadarpur-Sohna Road Line | 21.03.2020 | 14.04.2020 | 14.04.2020 |
| 7 | LILO of Gurgaon-Manesar 400 kV D/C Quad line | 13.03.2020 | 14.04.2020 | 14.04.2020 |
| 8 | Neemrana (PG)-Dhanonda (HVPNL) line | 25.02.2019 | 28.02.2019 | 28.02.2019 |

*Substations excluding ICTs and 220 kV line bays for which liability of transmission charges on defaulting entities

17. The Petitioner, vide affidavit dated 13.9.2023, has mainly submitted as under:

(a) The subject elements were included in the PoC pool based on the decision taken in the 3rd Meeting of the Validation Committee for the Application Period from 1st October 2019 to 31st December 2019 for implementation of the 2010 Sharing Regulations held on 29.8.2019 and the 4th Meeting of the Validation Committee for the Application Period from 1st January 2020 to 31st March 2020 for implementation of the 2010 Sharing Regulations held on 2.12.2019. The limitation period to challenge the minutes of the validation committee has expired.

(b) In line with the said decision, the subject assets were considered by the Implementing Agency for calculation of the PoC slab rates for the period from 1st October 2019 to 31st December 2019 and Regional Transmission Accounts (**RTAs**) were issued based on which billing was done by the CTUIL. This was in line with the process for sharing transmission charges detailed under Regulation 7 of the Sharing Regulations 2010. When the Petitioner submitted data for Bill-3 for the periods from October 2019 to December 2019, January 2020 to March 2020, and April 2020 to June 2020 to the CTUIL for recovery of the transmission charges from the PoC Pool, the CTU consistently raised corresponding bills on the DICs, and all payment was duly made by them. The subject assets continued to be part of PoC computations thereafter.

(c) It has been closed to four years since the inclusion of the subject elements in the PoC Pool. Till date no objection has been raised by the LTTCs against payment of transmission charges from the PoC Pool from the relevant dates. Even in the present proceedings, no objections have been raised by the LTTCs (respondents) in this regard and the payment has been made to the Petitioner without any protest or demur.

(d) The CTUIL has suggested that the recovery of the transmission charges from the PoC Pool for the AP Line, PK Line, KS Line, LILO of GM Line, Prithala S/s, Kadarpur S/s and Sohna Road S/s from the PoC Pool should only be allowed from 14.4.2020 i.e. from the alleged date of commissioning of the KS Line. The said suggestion has been made in complete ignorance of the power flow data and the original commissioning schedule envisaged for the various Project elements in Schedule 3 of the TSA - which allowed AP Line, PK Line, Kadarpur S/s and Prithala S/s to be commissioned within 34 months from the Effective Date under the TSA and be included

in the PoC Pool thereafter, without being dependent on the commissioning of the KS Line, which was envisaged to be commissioned in 38 months from the effective date.

(e) It was never the case that the entire Project along with all bays at the substation and the inter-connecting downstream system under implementation by HVPNL would be utilized in one go at the exact same point in time. The utilization of the system was always demand dependent and sequential. The non-utilization of certain ICTs and bays at the substations was due to non-implementation of the downstream system, and the Petitioner cannot be penalized for the same. In any case, irrespective of the delay in commissioning of the downstream system by HVPNL, the Petitioner's assets have been put to use as is evident from the power flow data received from the NRLDC and the independent study undertaken by Fichtner in May 2023. It is evident from the said data that the Petitioner's assets were put to use for the benefit of the grid, and they served power to the State of Haryana, thereby improving the reliability of the system.

(f) Sohna Road S/s was commissioned on 13.4.2020. Since Sohna Road S/s was pre-requisite element for KS Line and LILO of GM Line – COD of these elements should be considered as 13.4.2020 and recovery of the transmission charges for these elements should commence from 13.4.2020 only.

(g) The transmission charges received by the Petitioner from the date of the commissioning of the subject elements have already been utilized towards the operation and maintenance of the Project, repayment of loans and towards other Project related activities. If at this stage, disbursement of transmission charges is suddenly withheld or the Petitioner is asked to pay refund any alleged excess amount to the PoC Pool, it will necessarily cause the Petitioner to default in its loan payment schedule, cause severe cash flow issues and could lead the Petitioner's account to turn into a non-performing asset. This Commission cannot allow a going concern serving the national grid to turn into a defaulter for no fault of its own.

(h) The Petitioner was simply an applicant in the process of seeking inclusion of its assets in the PoC Pool, a decision on which was taken by the Validation Committee based on the data submitted by the NLDC. All necessary supporting documents were submitted by the Petitioner to the NLDC at such time. Any error in the date of recovery of the transmission charges from the PoC Pool for servicing the transmission assets of the Petitioner is not in any manner whatsoever attributable to the Petitioner.



(i) The Petitioner reiterates that it remains unpaid for the transmission charges for the AP Line from its deemed COD/8.8.2019 till 1.11.2019, and for Prithala S/s from its deemed COD/8.8.2019 till 3.11.2019. While PGCIL has submitted that non-availability of PGCIL bays at the Aligarh S/s was attributable to force majeure events impacting PGCIL - including delayed grant of shut down approval by NRPC and the non-availability of the 220 kV downstream elements by HVPNL, the question of which entity is required to pay such transmission charges to the Petitioner may be decided by this Commission.

(j) If this Commission is of the view that HVPNL is liable for the payment of transmission charges to the Petitioner for AP Line and Prithala S/s for the period of mismatch, in that case, the PoC Pool should be refunded/returned the transmission charges allegedly erroneously paid to the Petitioner – the defaulting entity responsible for delay in intended utilization of the subject elements must pay transmission charges directly to the PoC Pool. In case, the Petitioner is directed to set-off/refund such transmission charges to the PoC Pool, it must be ensured that any such payment is directed to be made by the Petitioner after the defaulting entity pays the Petitioner. Payment security in favour of the Petitioner must be ensured so that the Petitioner's account does not turn into a non-performing asset.

Hearing dated 15.9.2023

18. During the course of the hearing dated 15.9.2023, the learned senior counsel for the Petitioner and the Respondents made their respective submissions covering the various aspects such as charging and commissioning details of the various elements of the Project, sequence of commissioning of elements as provided in Schedule 3 of TSA, their inclusion in the PoC Pool and basis thereof, non-readiness/mismatch in commissioning of the downstream elements, and consequent liability to bear the transmission charges, etc. Based on the detailed submissions of the parties, the Commission reserved the matter for order and directed the CTUIL to furnish the following details/ clarification:

(a) Considering that Aligarh-Prithala line, Prithala GIS S/s, Kadarpur S/s, Prithala-Kadarpur line, and Sohna Road S/s were included for PoC calculation for the full

quarter (October, 2019 to December, 2019) by NLDC on anticipated basis, did CTUIL disburse charges to GPTL from 1.10.2019. As per the Petitioner, GPTL, it got charges from PoC from 1.11.2019, 3.11.2019, 11.12.2019, 7.12.2019, and 13.4.2020 respectively from CTUIL. What documents were checked before the disbursement and how did CTUIL decide dates from when it would do the disbursement?

(b) Whether the validation committee asked CTUIL to bill for the full quarter irrespective of the fact that the line is commissioned or carries power?

(c) Did CTUIL always disburse transmission charges to all transmission licensees anticipated to be commissioned in the ensuing quarter, and included in POC calculations for the quarter based on such anticipated commissioning, for the full quarter under the Sharing Regulations, 2010 irrespective of its actual commissioning or put to use? What are the provisions of the Revenue Sharing Agreement entered into by CTUIL with the said licensee?

19. In compliance to the RoP for the hearing dated 15.9.2023, CTUIL vide affidavit dated 29.11.2023 has submitted as under:

(a) As per the procedures framed under the 2010 Sharing Regulations, the PoC rates for a quarter are approved in advance to the commencement of the PoC quarter. As part of the PoC mechanism, the Yearly Transmission charges (YTC) along with details of the new transmission assets anticipated to be commissioned in the PoC quarter are submitted by the ISTS transmission licensees to NLDC, the implementing agency and these details for the said PoC quarter are deliberated in the Validation Committee meeting, generally conducted in the previous month of the PoC quarter. Based on the decisions of the Validation Committee, NLDC includes the anticipated assets in the computations for PoC Slab rates for the quarter and the monthly RTAs are issued accordingly based on which the bills are raised by the CTUIL. Thus, the bills raised by the CTUIL are inclusive of the billing for the new assets anticipated in the current PoC quarter.

(b) During the Third Bill, adjustment between anticipated COD and actual COD of the assets is done by the CTUIL. However, the disbursement of collected pool transmission charges shall be from COD of the asset submitted by the transmission licensee (TBCB/RTM). The required adjustments, i.e. refund of undisbursed

transmission charges to the DICs in the pool, is also done during the Quarterly true-up bill (Third Bill as per 2010 Sharing Regulations). The actual CODs of assets are generally verified by CTU based on the documentation (Trial operation certificate / Inspection clearance certificate) issued by the respective RLDC/CEA, etc.

(c) As far as the assets under discussion are concerned, viz. Aligarh-Prithala line, Prithala GIS, Kadarapur sub-station, Prithala-Kadarapur line, and Sohna Road sub-station were proposed in the Validation Committee meetings held on 29.8.2019 and 2.12.2019 respectively at NRLDC, New Delhi, for inclusion in the POC computation for the quarters October 2019-December 2019 and January 2020 to March 2020, based on the anticipated COD of the assets. Accordingly, the said assets of GPTL were considered by the Implementing Agency i.e. NLDC for calculation of PoC slab rates for approval by the Commission and the RTAs were issued accordingly based on which the bills were raised by the CTUIL for these quarters which included the transmission charges of the subject assets of GPTL.

(d) In regard to the subsequent assets under discussion viz Aligarh-Prithala line, Prithala GIS, Kadarapur sub-stations, Prithala-Kadarapur line, and Sohna Road sub-station, GPTL declared COD for these assets in a phased manner and submitted the data to CTUIL for the third part of the bill for the quarter October, 2019 to December 2019. The said Third Bill under the 2010 Sharing Regulations was raised on 3.4.2020 under constrained conditions due to various administrative difficulties because of lockdown introduced in light of the outbreak of Covid-19 pandemic and the processing of bills was done based on the documentation submitted by the transmission licensees, including GPTL, to avoid the delay in raising of bills. Further, the availability certificates were also being issued by NRPC for assets of GPTL and considering the same, the data provided by GPTL was included by CTUIL for recovery of transmission charges from the PoC and transmission charges were disbursed to GPTL from DOCO of their assets and proper verification of GPTL documentation could not be ensured due to severe Covid 19 pandemic situation. The detailed clarification along with revised DOCO for each asset in this regard has already been submitted in the affidavit dated 26.7.2023.

(e) In the instant case, the disbursement of collected pool transmission charges was made from the actual CODs submitted by GPTL, after the required adjustments, i.e. refund of undisbursed transmission charges to the DICs in the pool, was also done during the Quarterly true-up bill (Third Bill as per 2010 Sharing Regulations).

Analysis and Decision

20. We have considered the submissions of the Petitioner and Respondents and perused the documents available on record. The following issues arise for our consideration:

Issue No. 1: Whether the Petitioner has rightly declared the COD/ deemed COD of the different elements of its project and if not, what should be the correct date of the COD/ deemed COD?

Issue No. 2: Whether the Petitioner has rightly claimed the transmission charges against its assets under consideration from the PoC Pool?

Issue No. 3: Who shall be liable to pay the mismatch charges if any against the different assets covered under the present Petition.

Issue No. 4: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under force majeure and “Change in Law”?

Issue No. 5: Whether the Petitioner is entitled to relief of Force Majeure and Change in Law in terms of TSA?

Issue No. 6: Whether the Petitioner is entitled to relief of in terms of TSA?

The above issues have been dealt with in succeeding paragraphs.

Issue No. 1: Whether the Petitioner has rightly declared the COD/ deemed COD of the different elements of its project and if not, what should be the correct date of the COD/ deemed COD.

21. The detail of the transmission elements developed by the Petitioner along with their scheduled COD are as under:

| S. No | Name of the Transmission Element | Scheduled COD in months from the Effective Date | Scheduled COD |
|-------|--|---|---------------|
| 1. | Aligarh-Prithala 400 kV D/C HTLS Line (“AP Line”) | 34 months | 13.05.2019 |
| 2. | Prithala-Kadarpur 400 kV D/C HTLS Line (“PK Line”) | 34 months | 13.05.2019 |
| 3. | Kadarpur-Sohna Road 400 kV D/C HTLS line (“KS Line”) | 38 Months | 13.09.2019 |
| 4. | LILO of Gurgaon-Manesar 400 kV D/C Quad line at Sohna Road S/S (“LILO of GM Line”) | 38 Months | 13.09.2019 |

| | | | |
|----|---|-----------|------------|
| 5. | Neemrana (PG)-Dhanonda (HVPNL) 400 kV D/C HTLS line | 34 Months | 13.05.2019 |
| 6. | Creation of 400/220 KV, 2 x 500 MVA GIS Sub-station at Kadarapur in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor (" Kadarapur Substation ") | 34 Months | 13.05.2019 |
| 7. | Creation of 400/220 kV, 2 x 500 MVA GIS sub-station at Sohna Road in Gurgaon area along with 1 no. of 125 MVAR Bus Reactor (" Sohna Road Substation ") | 38 Months | 13.09.2019 |
| 8. | Creation of 400/220 kV 2x500 MVA GIS sub-station at Prithala in Palwal area along with 1 No. of 125 MVAR Bus Reactor (" Prithala Substation ") | 34 Months | 13.05.2019 |
| 9. | 2 Nos. of 400 KV line bays at 400 kV Dhanonda (HVPNL) substation | 34 Months | 13.05.2019 |

The SCOD of the overall Project is 38 months from the effective date i.e. 13.9.2019.

22. As per the Schedule 3 of the TSA, all the elements of the Project were required to be commissioned progressively as per the sequence and timeline provided. The Scheduled Commercial Operation Date ("SCOD") in months from the effective date (i.e. 14.7.2016) is as per Article 2.1 of the TSA for each element of the Project. The Schedule 3 of the TSA is extracted as under:

***"Schedule: 3
Scheduled COD***

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

All Elements of the Project are required to be commissioned progressively as per the schedule given in the following table:

| S. No. | Name of the Transmission Element | Scheduled COD in months from Effective Date | Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of the Project | Sequence of commissioning of Element(s) |
|---------------|---|--|---|--|
| 1. | Aligarh-Prithala 400 kV D/c HTLS line | 34 | 17.5 | Prithala S/s as indicated at Pt. No. 8 |

| | | | | |
|----|--|----|-------|---|
| 2. | <i>Prithala-Kadarpur 400 kV D/c HTLS line</i> | 34 | 8.5 | <i>Prithala & Kadarpur S/s as indicated at Pt. No. 6 & 8 alongwith either Aligarh-Prithala line along with its prerequisite elements or Kadarpur-Sohna Road line alongwith its prerequisite elements</i> |
| 3. | <i>Kadarpur-Sohna Road 400 kV D/c HTLS line</i> | 38 | 1.3 | <i>Kadarpur & Sohna Road S/s as indicated at Pt. No. 6 & 7 alongwith either Prithala-Kadarpur line along with its prerequisite elements or LILO of Gurgaon-Manesar line at Sohna Road along with its prerequisite elements.</i> |
| 4. | <i>LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road S/s</i> | 38 | 0.75 | <i>Sohna Road S/s as indicated at Pt. No. 7</i> |
| 5. | <i>Neemrana (PG)-Dhanonda (HVPNL) 400 kV D/c HTLS line</i> | 34 | 12.55 | <i>2 Nos. of 400 kV line bays at 400 kV Dhononda (HVPNL) substation</i> |
| 6. | <i>Creation of 400/220 kV, 2x500 MVA GIS substation at Kadarpur in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor</i> | 34 | 19.3 | <i>Prithala-Kadarpur 400 kV D/c HTLS line along with its prerequisite elements or Kadarpur-Sohna 400 kV D/c HTLS road line along with its prerequisite elements.</i> |
| 7. | <i>Creation of 400/220 kV, 2x500 MVA GIS substation at Sohna Road in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor</i> | 38 | 20.0 | <i>Either Kadarpur-Sohna Road 400 kV D/c HTLS line along with its prerequisite elements or LILO of Gurgaon-Manesar 400 kV D/c line at Sohna Road S/s.</i> |

| | | | | |
|----|--|----|------|--|
| 8. | Creation of 400/220 kV, 2x500 MVA GIS substation at Prithala in Palwal area along with 1 No. of 125 MVAR Bus Reactor | 34 | 19.3 | Aligarh-Prithala 400 kV D/c HTLS line along with its prerequisite elements or Prithala-Kadarpur 400 kV D/c HTLS line along with its prerequisite elements. |
| 9. | 2 Nos. of 400 kV line bays at 400 kV Dhonanda (HVPNL) substation | 34 | 0.8 | Neemrana (PG)-Dhonanda (HVPNL) 400 kV D/c HTLS line |

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

Scheduled COD for overall Project: 38 months from effective date.”

23. As per the Schedule 3 of the TSA above, the successful commissioning of any element shall only be considered after the successful commissioning of the elements which are pre-required for declaring the commercial operation of such element.

24. The Schedule 1 of the TSA indicating the detailed scope of work of the Petitioner’s project is as under:

| S. No. | Transmission System associated with “Creation of new 400 kV GIS Substations in Gurgaon and Palwal area as a part of ISTS” |
|--------|---|
| 1. | Aligarh-Prithala 400 kV D/c HTLS line |
| 2. | Prithala-Kadarpur 400 kV D/c HTLS line |
| 3. | Kadarpur-Sohna Road 400 kV D/c HTLS line |
| 4. | LILo of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road S/s |
| 5. | Neemrana (PG) – Dhanonda (HVPNL) 400 kV D/c HTLS line |
| 6. | Creation of 400/220 kV, 2X500 MVA GIS Substation at Kadarpur in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor <u>400 kV bay requirements</u> Line bays : 4 nos. ICT bays : 2 nos. Bus Reactor Bays : 1 no. Bus Reactor (125 MVAR) : 1 no. <u>220 kV bay requirements</u> Line bays : 8 nos. ICT bays : 2 nos. |



| | |
|----|---|
| | <p><u>Provision for Future Expansion</u> i) 2x500 MVA 400/220 kV ICTS ii) 4 Nos. of 400 kV line bays iii) 2 Nos. of ICT Bays at 400 kV side iv) 8 Nos. of 220 kV line bays v) 2 Nos. of ICT Bays at 220 kV side</p> |
| 7. | <p>Creation of 400/220 kV, 2X500 MVA GIS substation at Sohna Road in Gurgaon area along with 1 No. of 125 MVAR Bus Reactor</p> <p><u>400 kV bay requirements</u> Line bays : 6 nos. ICT bays : 2 nos. Bus Reactor Bays : 1 no Bus Reactor (125 MVAR) : 1 no.</p> <p><u>220 kV bay requirements</u> Line bays : 8 nos. ICT bays : 2 nos.</p> <p><u>Provision for Future Expansion</u> i) 2x500 MVA 400/220 kV ICTS ii) 4 Nos. of 400 kV line bays iii) 2 Nos. of ICT Bays at 400 kV side iv) 8 Nos. of 220 kV line bays v) 2 Nos. of ICT Bays at 220 kV side</p> |
| 8. | <p>Creation of 400/220 kV, 2X500 MVA GIS substation at Prithala in Palwal area along with 1 No. of 125 MVAR Bus Reactor</p> <p><u>400 kV bay requirements</u> Line bays : 4 nos. ICT bays : 2 nos. Bus Reactor Bays : 1 no Bus Reactor (125 MVAR) : 1 no.</p> <p><u>220 kV bay requirements</u> Line bays : 8 nos. ICT bays : 2 nos.</p> <p><u>Provision for Future Expansion</u> i) 2x500 MVA 400/220 kV ICTS ii) 4 Nos. of 400 kV line bays iii) 2 Nos. of ICT Bays at 400 kV side iv) 8 Nos. of 220 kV line bays v) 2 Nos. of ICT Bays at 220 kV side</p> |
| 9. | <p>2 Nos. of 400 kV line bays at 400 kV Dhanonda (HVPNL) substation</p> |

Note:

i) POWERGRID to provide 2x1500 MVA 765/400 kV ICTs at Aligarh along with 2 Nos. of 400 kV line bays for termination of Aligarh-Prithala 400 kV D/c line.

ii) HVPNL to provide space for 2 Nos. of 400 kV line bays at their Dhanonda 400 kV substation and POWERGRID to provide 2 Nos. of line bays at Neemrana 400 kV substation for Neemrana-Dhanonda 400 kV D/c (HTLS) line.”



25. We observe that the Petitioner declared the COD/ deemed COD of its transmission elements as per the details given below. The dates of issuance of the CEA energization certificate and charging “On No Load” and ‘Load’ against the respective elements are as under:

| S. No. | Elements | SCOD | Actual COD | Date of issuance of CEA energization certificate | Date of No Load charging | Date of on Load charging |
|--------|--|------------|----------------------------|--|--------------------------|---|
| 1 | 400 kV D/C Neemrana - Dhanonda Transmission Line | 13.05.2019 | 25.02.2019 | 26.12.2018 | -- | 24.02.2019 |
| 2 | 2 Nos. of 400kV line bays at 400kV Dhanonda S/s | 13.05.2019 | 25.02.2019 | 02.05.2018 | -- | 24.02.2019 |
| 3 | 400kV D/C Aligarh - Prithala Transmission line | 13.05.2019 | 06.08.2019 (deemed COD) | 29.07.2019 | 30.10.2019 | 18.03.2020 |
| 4 | 400/220kV Prithala GIS S/s | 13.05.2019 | 08.08.2019 (deemed COD) | 31.07.2019 | 02.11.2019 | 19.04.2020 |
| 5 | 400kV D/C Prithala-Kadarpur Transmission line | 13.05.2019 | 07.12.2019 | 27.11.2019 | 06.12.2019 | 18.03.2020 |
| 6 | 400/220kV Kadarpur GIS S/s | 13.05.2019 | 11.12.2019 | 27.11.2019 | 09.12.2019 | Not yet charged on load (HVPNL D/s system is not ready) |
| 7 | 400kV D/C Kadarpur - Sohna Road Transmission line | 13.09.2019 | 21.03.2020 | 09.03.2020 | -- | 19.03.2020 |
| 8 | 400/220kV Sohna Road GIS S/s | 13.09.2019 | 13.04.2020 | 29.03.2020 | 11.04.2020 | 29.07.2020 |
| 9 | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s | 13.09.2019 | 13.03.2020 | 09.03.2020 (provisional) | -- | 11.03.2020 |

26. In response to the specific query of the Commission regarding the declaration of “Deemed COD” of AP Line and Prithala S/s prior to the dates of No-Load charging, the Petitioner has submitted that the approval for energization of the AP Line from the CEA was received on 29.7.2019 but was unable to commission the same due to the non-availability of the bays at the Aligarh end of PGCIL. The AP Line was deemed commissioned on 6.8.2019. Further, the Petitioner received approval for energization from the CEA with respect to the Prithala S/s on 31.7.2019 and the Prithala S/s was declared deemed commissioned with effect from 8.8.2019 in terms of Article 6 of TSA.

27. CTUIL in its submissions, proposed the revised COD of the Petitioner’s assets in view of the following:

(a) The AP Line and Prithala S/s were prerequisites to each other for declaring the CoD. The Petitioner declared deemed CoD of Prithala S/S on 8.8.2019. Therefore, deemed CoD of Aligarh-Prithala 400 kV D/C HTLS line should be considered as 8.8.2019 only.

(a) Prithala S/s was declared deemed COD on 8.8.2019 by the Petitioner due to the non-availability of (i) 400 kV line bays for termination of Aligarh-Prithala 400 kV D/C line at Aligarh by PGCIL (DOCO: 1.11.2019) and also (ii) the downstream system by HVPNL (220 kV D/C Prithala-Palwal (HVPNL) Line-DOCO: 21.4.2020; 220 kV D/C Prithala-Ranga Rajpur (HVPNL) Line-DOCO: 3.5.2020).

(b) Based on the 1st time charging issued by NRLDC for the PK line and Kadarpur GIS, the last element of Kadarpur GIS was charged on 9.12.2019. Hence, the Petitioner was entitled to declare deemed DOCO only after 72 hours post interconnection of all the elements in line with the Article 6.2.1 of the TSA. Accordingly, the deemed CoD of Kadarpur GIS must be considered as 12.12.2019 instead of 11.12.2019. Further, Prithala and Kadarpur sub-stations were prerequisite for declaration of COD of PK line and were declared under commercial operation w.e.f. 8.8.2019 and 12.12.2019, therefore, deemed COD of PK line may only be considered as 12.12.2019.

(c) Based on the 1st time charging issued by NRLDC for the Sohna Road GIS, the last element of Sohna Road GIS was charged on 11.4.2020. Hence, GPTL was entitled to declare deemed DOCO only after 72 hours post interconnection of all the elements in line with Article 6.2.1 of the TSA. Accordingly, the deemed CoD of Sohna Road GIS must be considered as 14.4.2020 instead of 13.4.2020.

(d) Sohna Road S/s was a pre-requisite for declaration of CoD of the LILO of GM line at Sohna Road S/s. Therefore, the CoD of LILO of GM line at Sohna Road S/s must be 14.4.2020 instead of 13.3.2020.

(e) After examining the trial operation certificate of the 400 kV D/C Neemrana (PG)-Dhanonda (HVPNL) transmission line along with 2 no. bays at Dhanonda substation issued by NRLDC, GPTL was entitled to declare the CoD only after 72 hours post interconnection of all the elements in line with Article 6.2.1 of the TSA and accordingly, the CoD of the said element may be considered as 28.2.2019 instead of 25.2.2019.

(f) In view of the above, CTUIL proposed the revised DOCO of the Petitioner's assets as below:



| S. No. | Element | DOC0 as per Petitioner | Revised DOC0 proposed |
|--------|--|------------------------|-----------------------|
| 1 | Aligarh-Prithala Line | 06.08.2019 | 08.08.2019 |
| 2 | Prithala S/s | 08.08.2019 | 08.08.2019 |
| 3 | Prithala-Kadarpur line | 07.12.2019 | 12.12.2019 |
| 4 | Kadarpur S/s | 11.12.2019 | 12.12.2019 |
| 5 | Sohna Road S/s | 13.04.2020 | 14.04.2020 |
| 6 | Kadarpur-Sohna Road Line | 21.03.2020 | 14.04.2020 |
| 7 | LILO of Gurgaon-Manesar 400 kV D/C Quad line | 13.03.2020 | 14.04.2020 |
| 8 | Neemrana (PG)-Dhanonda (HVPNL) line | 25.02.2019 | 28.02.2019 |

28. Article 6 of the TSA provides as under:

“6. CONNECTION AND COMMISSIONING 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 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 an 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.”

29. As per the above, an element of the Project can 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. However, any of the 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 Schedule 3 of TSA, have been declared to have achieved their respective COD.

30. Now let us peruse whether the Petitioner followed the abovesaid clauses of the TSA while declaring deemed COD/ COD for various elements of its Project.:

(a) 400 kV D/C Neemrana- Dhanonda Line and 2 No. of 400 kV line bays at 400 kV Dhanonda S/s

31. The Petitioner declared the COD of the 400 kV D/C Neemrana- Dhanonda Line and 2 No. of 400 line bays at 400 kV Dhanonda S/s AP Line on 25.2.2019. The relevant extract of the Petitioner letter dated 25.2.2019 is as under:

"This is with reference to the above subject, it is hereby informed that M/s Gurgaon Palwal Transmission Limited has test charged 2 Nos. of 400 kV line bays at 400 kV Dhanonda (HVPNL) substation on 20-06-2018 (bay-I) & 14-07-2018 (Bay-II) and 400 kV D/C Neemrana (PG)-Dhanonda (HVPNL) HTLS Transmission Line on 15-02-2019 and synchronized with grid on 24-02-2019.

Accordingly, 400 kV D/C Neemrana (PG)- Dhanonda (HVPNL) HTLS Transmission Line along with 2 Nos. of 400 kV line bays at 400 kV Dhanonda (HVPNL) substation are declared under commercial operation (DOC) w.e.f. 25-02-2019.

32. The CEA energization certificate for the said elements were issued on 26.12.2018 and 2.5.2018 respectively. The certificate of completion of trial operation dated 24.4.2019 issued by the NRLDC is extracted as under:

दिनांक: 24.04.2019

प्रमाणपत्र सं.: POSOCO/NRLDC/SO-1/236/

Certificate of Completion of Trial Operation of Transmission element

Reference:

- i) Gurgaon Palwal Transmission Ltd.(GPTL), Communication dated 29.11.2018, 31.12.2018 & 14.02.2019 regarding the submission of pre charging documents for 400kV Neemrana(PG)-Dhanonda(HVPNL)-1 & 2.
- ii) Real time code issued by NRLDC on request of GPTL on 24.02.2019(NRLDC Code: 2488 & 2490).
- iii) GPTL, Communication dated 28.02.2019 & 24.04.2019 regarding the submission of post charging documents.

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

| | |
|--|--|
| Name of Transmission Asset: | 1. 400kV Neemrana (PG)-Dhanonda (HVPNL)-1 along with associated bay no 413(main) at Dhanonda end. 2. 400kV Neemrana (PG)-Dhanonda (HVPNL)-2 along with associated bay no 416(main) at Dhanonda end. |
| Owner of Transmission Asset: | 1. GPTL |
| Date and Time of Energization for Commencement of trial run operation: | 1. 24.02.2019/13:45 hrs. 2. 24.02.2019/14:10 hrs. |
| Date and Time of completion of trial run operation: | 1. 25.02.2019/13:45 hrs. 2. 25.02.2019/14:10 hrs. |

यह प्रमाणपत्र ट्रांसमिशन तत्व के परीक्षण संचालन के सफल समापन को प्रमाणित करने के लिए सीईआरसी (भारतीय विद्युत ग्रिड कोड) विनियम, 2010 के विनियमन 6.3(A) (5) के अनुसार जारी किया जा रहा है। किसी अन्य उद्देश्य के लिए इस प्रमाणपत्र का उपयोग प्रतिबंधित है।

33. As per the certificate of the trial operation (on load) issued by the NRLDC as above, the said elements were charged on load with effect on 24.2.2019. In terms of Article 6.2.1



of the TSA, the Petitioner was entitled to declare the COD only post 72 hrs. Accordingly, we allow the COD of the 400 kV D/C Neemrana- Dhanonda Line and 2 No. of 400 kV line bays at 400 kV Dhanonda S/s, after 72 hours as 28.2.2019.

(b) AP Line and Prithala sub-station

34. The Petitioner declared the deemed COD of AP Line on 6.8.2019 and the deemed COD of Prithala sub-station on 8.8.2019. CEA energization certificate for AP Line and Prithala S/s were received on 29.7.2019 and 31.7.2019 respectively. The relevant extract of the Petitioner's letter dated 29.7.2019, declaring the deemed COD of the AP Line is extracted as under:

Ref. No. GPTL/DOCO/AP/2019/07/01

Date: 29-07-2019

**To,
Member Secretary,
Northern Region Power Committee
Qutub Institutional Area,
Shaheed jeet Singh Marg, Katwaria Sarai
New Delhi - 110016**

Sub: Declaration of Deemed Commercial Operation (DOCO) of 400kV D/C Aligarh - Prithala Transmission line under M/s Gurgaon Palwal Transmission Limited (GPTL).

Ref:

1. Transmission Service Agreement of Gurgaon Palwal Transmission Limited dated 04-03-2016
2. ISTS License issued by CERC under Transmission License No. 43/Transmission/2016/CERC dated 29-09-2016

Dear Sir,

This is to inform you that 400kV D/C Aligarh - Prithala Transmission line is ready for energization from 29-07-2019 as per CEA vide its letter No. CEI/2/EI/RIO(N)/Insp./2019/782 dated 29-07-2019.

It is pertinent to note that due to non-availability of Bays at Aligarh end of PGCIL, the 400kV D/C Aligarh - Prithala Transmission line could not be commissioned.

The aforesaid transmission line is declared as Deemed Commissioned w.e.f. 06-08-2019 as per subject provision of Article 6 of TSA.

This is for your information.

35. The relevant extract of the Petitioner's letter dated 31.7.2019, declaring the deemed COD of the Prithala S/s is extracted as under:

To,
Member Secretary,
Northern Region Power Committee
Qutub Institutional Area,
Shaheed jeet Singh Marg, Katwaria Sarai
New Delhi - 110016

Sub: Declaration of Deemed Commercial Operation (DOCO) of 400/220kV GIS Substation at Prithala under M/s Gurgaon Palwal Transmission Limited (GPTL).

Ref:

1. Transmission Service Agreement of Gurgaon Palwal Transmission Limited dated 04-03-2016
2. ISTS License issued by CERC under Transmission License No. 43/Transmission/2016/CERC dated 29-09-2016

Dear Sir,

This is to inform you that 400/220kV, 2*500MVA GIS Substation at Prithala in Palwal area along with 1 No. of 125 MVAR Bus reactor is ready for energization from 31-07-2019 as per CEA vide its letter No. CEI/2/EI/RIO(N)/INSP/2019/790 dated 31-07-2019 (copy is enclosed herewith for ready reference).

The said Substation is declared as Deemed Commissioned w.e.f. 08-08-2019 as per subject provision of Article 6 of TSA.

This is for your information.

Thanking You,

Yours faithfully,

For, Gurgaon Palwal Transmission Limited,

36. We observe that as per the Schedule 3 of the TSA, for declaration of the COD of the AP Line, Prithala S/s was pre-requisite element. Also, for declaration of the COD of the Prithala S/s, AP line or PK line (along with its prerequisites) was pre-requisite element. While the deemed COD of the Prithala S/s was declared on 8.8.2019, deemed COD of AP Line was declared by the Petitioner earlier than the Prithala Sub-station i.e. on 6.8.2019. We are of the considered view that Petitioner could not declare deemed COD of Aligarh-Prithala line without Prithala substation as per Article 6.2 of the TSA.

37. We also observe that, CEA has issued approval for energisation under Section 43 of CEA Safety regulations for AP line and Prithala S/s on 29.7.2019 and 31.7.2019

respectively. However, in absence of the interconnecting elements at Aligarh (PGCIL) S/s and 220 kV downstream transmission system (in the scope of HVPNL) at Prithala S/s, the Petitioner was unable to inter-connect its elements with upstream/ downstream system. PGCIL made available the bays and ICTs at Aligarh S/s only on 30.10.2019, subsequently, the AP Line and Prithala S/s were charged at no load on 30.10.2019 and 31.10.2019, accordingly the Petitioner was prevented for inter-connection of its elements at Aligarh and Prithala S/s.

38. In view of the above, we allow the deemed COD of both AP line and Prithala S/s as 8.8.2019 i.e. 7 days after the issuance of the CEA energization certificate dated 31.7.2019 for Prithala S/s in terms of the Article 6.2.1 of the TSA.

(c) PK Line and Kadarpur sub-station

39. The Petitioner declared the COD of PK Line on 7.12.2019 and Kadarpur S/s on 11.12.2019. The CEA energization certificate for PK Line and the Kadarpur S/s was issued on 27.11.2019. The No Load charging for the PK Line and Kadarpur S/s was completed on 6.12.2019 and 9.12.2019 respectively. The relevant portion of the certificate for first time charging on no load dated 24.12.2019 is extracted as under:

“Sir,

This is in reference to your request regarding first time charging of 400 kV D/C Prithala (PG) – Kadarpur lines, 500 MVA ICT-1&2, 400 kV and 220 kV line bays at Kadarpur.

As requested first time charging details of subject mentioned lines are as detailed below:

| Sr. No. | Name of transmission element | NRLDC code | Date | Time of charging | Remarks |
|----------------|---|-------------------|-------------|-------------------------|--------------------|
| 1. | 220 kV Future Line bay no- 201 at Kadarpur (GPTL) | 1912-1403 | 7.12.2019 | 17.:11 | Charged at no load |
| 2. | 220 kV Future Line bay no- 202 at Kadarpur (GPTL) | 1912-1423 | 7.12.2019 | 18:17 | Charged at no load |
| 3. | 220 kV Future Line bay no- 204 at Kadarpur (GPTL) | 1912-1428 | 7.12.2019 | 18:57 | Charged at no load |

| | | | | | |
|-----|--|-----------|-----------|-------|--------------------|
| 4. | 220 kV Future Line bay no- 205 at Kadarapur (GPTL) | 1912-1436 | 7.12.2019 | 19:29 | Charged at no load |
| 5. | 220 kV Future Line bay no- 208 at Kadarapur (GPTL) | 1912-1715 | 9.12.2019 | 11:29 | Charged at no load |
| 6. | 220 kV Future Line bay no- 209 at Kadarapur (GPTL) | 1912-1725 | 9.12.2019 | 13:02 | Charged at no load |
| 7. | 220 kV Future Line bay no- 210 at Kadarapur (GPTL) | 1912-1748 | 9.12.2019 | 16:39 | Charged at no load |
| 8. | 220 kV Future Line bay no- 211 at Kadarapur (GPTL) | 1912-1754 | 9.12.2019 | 17:21 | Charged at no load |
| 9. | 220 kV Future Line bay no- 206 at Kadarapur (GPTL) | 1912-1217 | 6.12.2019 | 19:20 | Charged at no load |
| 10. | 400 kV D/C Prithala (GPTL) - Kadarapur (GPTL) - line-1 along with associated bays no 407 (main) at Kadarapur (GPTL) | 1912-942 | 6.12.2019 | 11:45 | Charged at no load |
| 11. | 400 kV D/C Prithala (PG) - Kadarapur (GPTL)- line-2 along with associated bays no 406 (main) at Kadarapur (GPTL) | 1912-958 | 6.12.2019 | 11:45 | Charged at no load |
| 12. | 400/220/33 kV, 500 MVA ICT-1 along with associated bays no 400 kV side 401 (main) and 220 kV side 203 (main) at Kadarapur (GPTL) | 1912-1216 | 6.12.2019 | 18:56 | Charged at no load |
| 13. | 400/220/33 kV, 500 MVA ICT-2 along with associated bays no 400 kV side 409 (main) and 220 kV side 207 (main) at Kadarapur (GPTL) | 1912-1391 | 7.12.2019 | 16.02 | Charged at no load |
| 14. | 400 kV Main bay no 403 of 400 kV Sohna line -1 at Kadarapur | 1912-1158 | 6.12.2019 | 15:23 | Charged at no load |
| 15. | 400 kV Tie bay no 402 of 400 kV Sohna line -1 & 500 MVA ICT- 1 at Kadarapur | 1912-1158 | 6.12.2019 | 15:23 | Charged at no load |
| 16. | 400 kV Main bay no 404 of 400 kV Sohna line -2 at Kadarapur | 1912-976 | 5.12.2019 | 20:45 | Charged at no load |
| 17. | 400 kV Tie bay no 405 of 400 kV Sohna line-2 & 400 kV Prithala line-2 at Kadarapur | 1912-976 | 5.12.2019 | 21:05 | Charged at no load |
| 18. | 400 kV Tie bay no 408 of 400 kV Prithala line-1 & 500 MVA ICT-2 at Kadarapur | 1912-1164 | 5.12.2019 | 16:34 | Charged at no load |

40. As per the above, the no load charging of PK Line was completed on 6.12.2019, while the no load charging of all elements of Kadarapur sub-station were completed on

9.12.2019. Subsequent to the no load charging, the Petitioner declared the COD of PK Line and Kadarpur S/s vide letter dated 11.12.2019 quoted as follows:

Ref. No. – GPTL/PK&KS/DOCO

Date: 11.12.19

To,
Member Secretary,
Northern Region Power Committee,
Qutub Institutional Area,
Shaheed Jeet Singh Marg, Katwaria Sarai
New Delhi -110016

Subject: Intimation of Commercial operation declaration (DOCO) of "400kV D/C Prithala-Kadarpur Transmission Line and 400/220kV GIS Substation at Kadarpur, Gurgaon under "Gurgaon Palwal Transmission Limited".

Ref:

- (1) Transmission Service Agreement of Gurgaon Palwal Transmission Limited Dtd. 04.03.16
- (2) ISTS License issued by CERC under Transmission License No. 43/Transmission /2016/CERC Dtd. 29.09.16.

Dear Sir,

We are the ISTS Licensee, granted license under Ref. 2 above. It is hereby intimated that our below mentioned assets under the aforesaid license have been successfully commissioned on:

1. 400kV D/C Prithala-Kadarpur Transmission Line (Ckt#1 at 11:22 AM on 05.12.19 and Ckt#2 at 1:20 PM on 05.12.19)
2. 400/220kV GIS Substation at Kadarpur, Gurgaon (ICT-1 at 11:51AM on 06.12.19, ICT-2 at 4:02PM on 07.12.19, Bus Reactor at 5:46PM on 06.12.19 and 220kV Bays at 5:21PM on 09.12.19)

Accordingly, the above said elements 400kV D/C Prithala - Kadarpur Transmission Line and 400/220kV GIS Substation at Kadarpur, Gurgaon are declared under commercial operation (DOCO) on 00:00 hrs. on 07.12.19 and 11.12.19 respectively. These elements are in service as per provisions of Article 6 of TSA.

This is for your information.

Thanking You,
Yours faithfully,
For Gurgaon Palwal Transmission Limited,

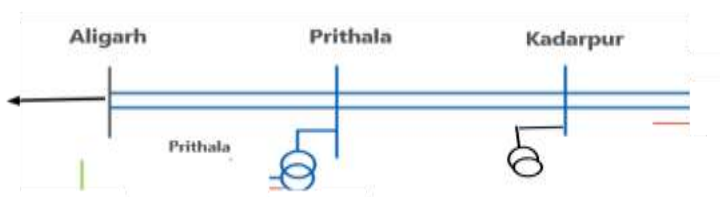
As per the above PK Line was declared under Commercial operation on 00.00 hrs on 7.12.2019 and Kadarpur S/s was declared under Commercial operation on 00.00 hrs on 11.12.2019. We also note that Petitioner vide the above said letter stated that these elements are in service as per provisions of Article 6 of the TSA.

41. Let us analyse if the PK Line and Kadarpur S/s could have been declared under Commercial operation on 7.12.2019 and 11.12.2019 respectively and whether they can be said to be “in service”.

(a) The dates of CEA Approval, no load charging and on load charging for the said elements is as follows:

| S. No. | Elements | COD/Deemed COD declared by Petitioner | Date of issuance of CEA energization certificate | Date of No Load charging | Date of on Load charging | Prerequisites as per Schedule 3 of TSA |
|--------|--|---------------------------------------|--|--------------------------|---|---|
| 1 | 400kV D/C Aligarh - Prithala Transmission line | 06.08.2019 (deemed COD) | 29.07.2019 | 30.10.2019 | 18.03.2020 | |
| 2 | 400/220kV Prithala GIS S/s | 08.08.2019 (deemed COD) | 31.07.2019 | 02.11.2019 | 19.04.2020 | |
| 3 | 400kV D/C Prithala-Kadarpur Transmission line | 07.12.2019 | 27.11.2019 | 06.12.2019 | 18.03.2020 | Prithala & Kadarpur S/s as indicated at Pt. No. 6 & 8 alongwith either Aligarh-Prithala line along with its prerequisite elements or Kadarpur-Sohna Road line alongwith its prerequisite elements |
| 4 | 400/220kV Kadarpur GIS S/s | 11.12.2019 | 27.11.2019 | 09.12.2019 | Not yet charged on load (HVPNL D/s system is not ready) | Prithala-Kadarpur 400 kV D/c HTLS line along with its prerequisite elements or Kadarpur-Sohna 400 kV D/c HTLS road line along with its prerequisite elements. |

42. We observe that as per the requirement of prerequisites under Schedule 3 of the TSA, PK line could be declared only after COD of Kadarpur S/S and Prithala S/S along with Aligarh-Prithala line (Kadarpur-Sohna line was delayed and hence prerequisite with AP line is seen to be met). We note that AP line was already available, declared deemed COD and no load charged on 30.10.2019 and hence the prerequisite of availability of AP line is met. We have persued the part SLD for the system being discussed as follows:



43. As per the above once AP line and Prithala substation is charged on no load as on 2.11.2019 (downstream of HVPNL not available at Prithala S/s), PK line and Kadarapur S/s connected to Prithala substation can also be charged at no load as on 27.11.2019 after CEA's approval for energisation. However, we note that PK Line and Kadarapur substation were charged on no load progressively with last element of Kadarapur substation charged on 9.12.2019. Since, Kadarapur substation is a prerequisite for PK line, PK line can only be declared commercial after last element of Kadarapur substation is ready.

(b) We observe that the COD for PK Line and Kadarapur S/s issued vide letter dated 11.12.2019 had following issues:

(i) Pre-requisites of Kadarapur S/s has not been met while declaring COD for PK line.

(ii) Since PK line and Kadarapur substation could not carry power since there was no downstream system in Kadarapur, which means PK Line and Kadarapur substation cannot be said to be connected to interconnection facilities in terms of Clause 6.2 of the TSA as explained in sub-paragraph (c) below.

(iii) PK line and Kadarapur substation cannot be said to be "in service" till they carry power.

(iv) Kadarapur substation completed no load charging only on 9.12.2019. Before no load charging of Kadarapur substation and PK Line, can PK Line and Kadarapur S/s declared under COD needs to be ascertained which is discussed in subsequent paragraphs.

(c) We have perused various clauses of TSA to conclude as to when can an element be declared under deemed COD or COD as per the TSA. For analyzing this, Clause 6.2 of the TSA is quoted herewith:

"6. CONNECTION AND COMMISSIONING 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 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 an 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 Clause 6.2 of the TSA, an element qualifies for COD 72 hours following the connection of such element with interconnection facilities or 7 days after it is ready but not 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. Let us peruse when can an element qualify as connected to interconnection facilities. Definition of “Interconnection facilities” as per TSA is quoted as follows:

“Interconnection Facilities” shall mean the facilities as may be set up for transmission of electricity through the use of the Project, on either or both side of generating station’s / CTU’s / STU’s / Long Term Transmission Customer’s substations (as the case may be) which shall include, without limitation, all other transmission lines, gantries, sub-stations and associated equipments not forming part of the Project;”

As per the above, interconnection facilities are facilities which are set up for “transmission of electricity through use of the project”. Hence it can be concluded that connection with interconnection facilities should lead to transmission of power and use of project of the TSP. In such cases, an element of the project shall qualify for declaration of COD, 72 hours following such interconnection.

- (a) In all other cases where “transmission of power does not happen”, can qualify for declaration for deemed COD 7 days after TSP is ready but not able

to carry power due to reasons not attributable to it, subject to meeting other conditions as per TSA.

(b) In the instant case of PK line and Kadarpur S/s, unless transmission of power happens as discussed in sub-paragraph (c) above, the said elements does not qualify for declaration of COD under the 72 hours clause. However, they qualify for declaration of deemed COD 7 days after TSP is ready but not able to carry power due to reasons not attributable to it. The day as to when can an element qualify as “ready for charging but is not able to be charged for reasons not attributable to the TSP” needs to be checked as based on this date TSP shall declare deemed COD when there is no transmission of power but the commercial liability starts on the other entity. In this regard there are following checks to establish whether an element is ready for charging or not.

(i) Issuance of the energization certificate by CEA

(ii) No load charging of the element as per the certificate by the RLDC.

We are of the view that ideally an element should be charged at no load after the issuance of the CEA energization certificate, in case other end is not ready. However, in case where TSP is not be able to charge its element even on no load due to non-availability of the interconnecting element on either end, such condition of checking of readiness based on no load charging cannot be enforced. In light of discussions above, we are of the considered view that for cases where an element is not connected to interconnection facilities thereby transmission of power is not happening, in such cases the TSP shall be entitled to declare the deemed COD as follows:

(i) Where No load charging was not possible, Seven (7) days after the date of issuance of CEA energization certificate, provided that all the Element(s), which are pre-required to have achieved COD have been declared to have achieved their respective COD.



(ii) Where no load charging was possible, Seven (7) days after the date of no load charging (post issuance of CEA energization certificate), provided that all the Element(s), which are pre-required to have achieved COD have been declared to have achieved their respective COD.

Based on the discussion in the aforesaid paragraphs, COD of the instant elements of PK line and Kadarapur substation, which were claimed to be successfully commissioned on 9.12.2019 (as per COD letter dated 11.12.2019) and declared COD on 11.12.2019, is found to be incorrect. The elements could only be declared under deemed COD after meeting the prerequisites criteria and establishing completion through no load certificate, which was possible for these elements since Aligarh-Prithala line and Prithala S/s were already charged on no load much before on 2.11.2019.

44. In terms of the provision of Article 6.2.1 of the TSA, and discussions in paragraph 39 of this Order, the Petitioner could declare the deemed COD of both the elements only after 7 days after charging on no load for the last element which happened on 9.12.2019 and considering that both these elements were prerequisite to each other, we allow the deemed COD of both PK line and Kadarapur S/s, as 17.12.2019.

(b) **KS Line, Sohna Road sub-station and LILO of GM Line**

45. The Petitioner declared the COD of LILO of GM Line on 13.3.2020, KS Line on 21.3.2020 through its letter dated 2.4.2020. The Petitioner declared COD of Sohna Road S/s on 13.4.2020 vide its letter dated 13.04.2020. The relevant extract of the Petitioner's letter dated 2.4.2020, declaring the COD of KS Line and LILO Line is as under:

"This is to inform you that the elements pertaining to M/s GPTL, namely Kadarapur-Sohna Road 400 kV D/C HTLS Line (KS Line), LILO of Gurgaon-Manesar 400 kV D/C quad Line at Sohna Road S/s (LILO Line) and 400 kV GIS of Sohna Road Substation have been successfully charged on 19.03.2020, 11.03.2020 and 18.03.2020.

Accordingly, KS Line and LILO line are declared under commercial operation (DOCO) w.e.f. 00:00 Hrs of 21.03.2020 and 13.03.2020 respectively."

46. Further, the relevant extract of the Petitioner’s letter dated 13.4.2020, declaring the COD of Sohna Road sub-station is as under:

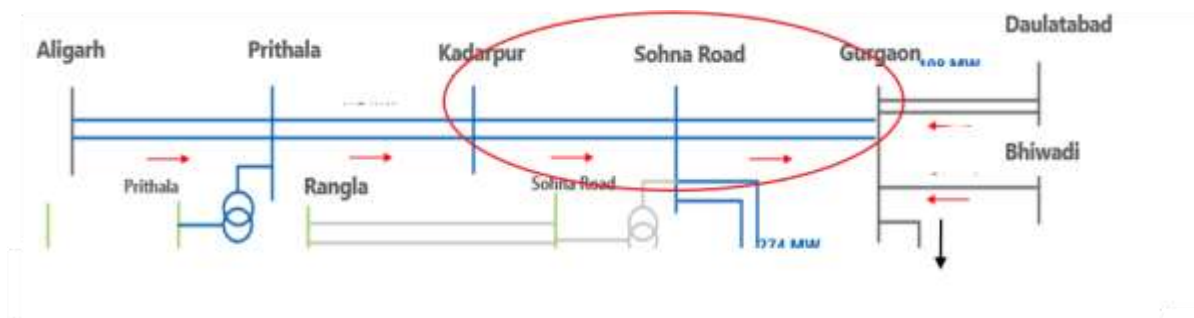
*“This is in reference to the subject matter, we would like to inform you that the element pertaining to M/s GPTL, namely 400/220 kV, 2*500 MVA GIS substation at Sohna Road along with 1 no. of 125 MVAR Bus Reactor has been successfully charged i.e. 400 kV GIS Bays on 18.03.2020, ICT-1 on 07-04-2020, ICT-2 on 09-04-2020, Bus Reactor on 04-04-2020 and 220 kV GIS Bays on 11-04-2020.*

*Accordingly, 400/220 kV, 2*500 MVA GIS Substation at Sohna Road along with 1 no. of 125 MVAR Bus Reactor are declared under commercial operation (DOCO) w.e.f. 00:00 Hrs of 13-04-2020.”*

47. The details of CEA energization certificate, no load charging and on load charging and pre-requisites for KS Line Sohna Road sub-station is as follows:

| S. No. | Elements | COD declared by TSP | Date of issuance of CEA energization certificate | Date of No Load charging | Date of on Load charging | Pre-requisites as per TSA |
|--------|--|---------------------|--|--------------------------|--------------------------|--|
| 1 | 400kV D/C Kadarpur - Sohna Road Transmission line | 21.03.2020 | 09.03.2020 | -- | 19.03.2020 | Kadarpur & Sohna Road S/s alongwith either Prithala-Kadarpur line along with its prerequisite elements or LILO of Gurgaon-Manesar line at Sohna Road along with its prerequisite elements. |
| 2 | 400/220kV Sohna Road GIS S/s | 13.04.2020 | 9.3.2020 + 29.03.2020 | 11.04.2020 | 29.07.2020 | Either Kadarpur- Sohna Road 400 kV D/c HTLS line along with its prerequisite elements or LILO of Gurgaon-Manesar 400 kV D/c line at Sohna Road S/s. |
| 3 | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s | 13.03.2020 | 09.03.2020 (provisional) | -- | 11.03.2020 | Sohna Road S/s |

48. The SLD for the elements under consideration is circled in red as follows:



49. We observe that as per the Schedule 3 of the TSA, for declaration of the COD of the KS Line, the readiness of Kadarapur and Sohna Road sub-station along with either PK Line or LILO of GM Line with their prerequisites were mandatory. As on date of declaration of COD of the KS Line by the Petitioner on 21.3.2020, the PK Line, Kadarapur S/s, LILO of GM line were ready, however, the Sohna sub-Station was not ready (Sohna Road substation for CEA approval as late as 29.03.2020).

50. Let us analyse as to when Sohna Road S/s could be declared COD/ deemed COD. We observe that Sohna Road S/s got CEA approval on 29.03.2020 and consequently no load charging on 11.04.2020. However, the LILO of Gurgaon- Manesar line was charged on load on 11.3.2020. Hence, Sohna Road S/s could have been charged on no load as early as 29.3.2020, however it got no load charging only on 11.4.2020. We observe that Sohna Road substation was not connected to interconnection facilities (downstream to be constructed by HVPNL) as on 11.04.2020. Therefore, the Petitioner was not entitled for the declaration of COD under the 72 hours clause but only deemed COD, 7 days after it was ready for charging in terms explanations provided at paragraph 40 of this Order. Hence Sohna Road S/s becomes entitled to declare deemed COD 7 days after 11.4.2020 which comes out as 19.04.2020.

51. We take a note of the fact that some bays of Sohna Road S/s connecting to Kadarapur-Sohna line and LILO of Gurgaon-Manesar at Sohna Road S/s were carrying power before 11.4.2020, but the entire substation cannot be considered to be connected to interconnection facilities since downstream of HVPNL was not connected leaving ICTs and associated bays without any transmission of power. The COD of Sohna Road S/s as a whole can only be considered under deemed COD without all elements of S/s eligible to be considered as connected to interconnection facilities. In light of these discussions, we approved deemed COD of Sohna Road S/s as 19.04.2020.

52. Now let us analyse when LILO of GM line became eligible for COD/deemed COD. As per the Schedule 3 of the TSA, for declaration of the COD of the LILO of GM Line, the Sohna Road sub-Station was pre-requisite which has been allowed deemed COD of 19.4.2020 in paragraph 44 of this Order. Accordingly, the COD of LILO of GM Line at Sohna Road S/s is allowed as 19.4.2020 after meeting the prerequisite of Sohna Road S/s.

53. Now let us analyse when Kadarapur-Sohna line became eligible for COD/deemed COD. Kadarapur -Sohna line was charged on load on 19.3.2020, after getting CEA energisation approval, however for one of the pre-requisite -Sohna Road S/S, deemed COD has been approved as 19.4.2020, hence COD of Kadarapur-Sohna Line is approved as 19.4.2020.

54. As discussed above, we allow the deemed COD/COD of different elements of the Petitioner's Project as under:

| S. No. | Elements | COD/ deemed COD |
|---------------|--|----------------------------|
| 1 | 400 kV D/C Neemrana- Dhanonda Line | 28.2.2019 (COD) |
| 2 | 2 No. of 400 kV line bays at 400 kV Dhanonda S/s | 28.2.2019 (COD) |
| 3 | 400kV D/C Aligarh - Prithala Transmission line | 8.8.2019 (deemed COD) |
| 4 | 400/220kV Prithala GIS S/s | 8.8.2019 (deemed COD) |
| 5 | 400kV D/C Prithala - Kadarapur Transmission line | 17.12.2019 (deemed COD) |
| 6 | 400/220kV Kadarapur GIS S/s | 17.12.2019 (deemed COD) |
| 7 | 400kV D/C Kadarapur - Sohna Road Transmission line | 19.4.2020 (COD) |
| 8 | 400/220kV Sohna Road GIS S/s | 19.4.2020 (deemed COD) |
| | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s | 19.4.2020 (COD) |

55. The Issue is decided in terms of above.

Issue No. 2: Whether the transmission charges for the different elements of the Petitioner's Project have been rightly considered under the PoC Pool and what should be the dates for recovery of the transmission charges from the PoC Pool against different elements of the Petitioner' Project?

56. The Petitioner has submitted the dates of recovery of transmission charges from the PoC Pool for the elements of the Petitioner's Project as under, which have been confirmed by CTUIL:

| Element | Date of charging on Load | Date of start of recovery from the POC Pool |
|--|---|---|
| 400 kV D/C Neemrana- Dhanonda Line | 24.02.2019 | 25.02.2019 |
| 2 No. of 400 kV line bays at 400 kV Dhanonda S/s | 24.02.2019 | 25.02.2019 |
| 400 kV A-P Line | 18.03.2020 | 01.11.2019 |
| 400/220 kV Prithala GIS S/s | 19.04.2020 | 03.11.2019 |
| 400 kV P-K Line | 18.03.2020 | 07.12.2019 |
| 400/220 kV Kadarapur S/s | Not yet charged on load (HVPNL D/s system is not ready) | 11.12.2019 |
| 400 kV K-S Line | 19.03.2020 | 21.03.2020 |
| 400/220 kV Sohna Road S/s | 29.07.2020 | 13.04.2020 |
| Lilo of G-M Line at Sohna Road S/s | 11.03.2020 | 13.03.2020 |

57. In response to the query of the Commission regarding the start of recovery of the transmission charges from the PoC Pool before the charging of elements on load, the Petitioner has submitted as under:

(a) **AP Line and Prithala S/s:** AP line was declared deemed commissioned on 6.8.2019 and Prithala S/s was declared deemed commissioned on 8.8.2019. With the commissioning of the bays at the PGCIL's Aligarh S/s, AP Line was interconnected with the national grid on 1.11.2019 and Prithala S/s was interconnected with the national grid on 3.11.2019, and therefore, the Petitioner had claimed transmission charges from the PoC Pool which were duly accepted by the CTUIL and Implementing Agency. The Petitioner remains unpaid for transmission charges for the AP Line from its deemed COD/6.8.2019 till 1.11.2019, and for Prithala S/s from its deemed COD/8.8.2019 till 03.11.2019.

(b) **PK Line and Kadarapur S/s:** PK Line was interconnected with the national grid

and declared commissioned on 7.12.2019, after completion of trial operation (on no load) on 6.12.2019. Kadarpur S/s was interconnected with the national grid and declared commissioned on 11.12.2019, after completion of trial operation (on no load) on 9.12.2019.

(c) **Sohna Road S/s:** CEA energization approval for the Sohna Road S/s was obtained in two parts, the first part approval was granted on 9.3.2020, pursuant to which the LILO of GM Line along with the associated equipment were brought into service. The remainder scope for the Sohna Road S/s was completed on 29.3.2020. The transmission charges corresponding to Sohna Road S/s were included in the PoC pool from 13.4.2020 only after all the requisite equipment were interconnected with the national grid on 7.4.2020, 9.4.2020 and 11.4.2020. The Sohna Road S/s was declared commissioned on 13.4.2020 after completion of trial operation (on no load) on 11.4.2020.

Power System Utilization

(d) The Petitioner approached the NRLDC and GCIL vide its letter dated 20.04.2023 to request for details of power flow (block-wise) for all elements of GPTL's Project. It is evident from the power flow data provided by the NRLDC that there was power flow in the AP Line and consequently in the Prithala S/s from 2.12.2019 onwards. Similarly, there was power flow in the PK Line and consequently in the Kadarpur S/s from 5.12.2019 onwards, and in the KS Line from 18.3.2020 onwards and consequently in the Sohna Road S/s. Therefore, irrespective of the readiness of the inter-connecting/downstream system, the Petitioner's assets were being utilized for the benefit of the grid since their commissioning.

(e) After receiving the power flow data from NRLDC, the Petitioner appointed Fichtner Consulting Engineers India Private Limited ("Fichtner") to undertake a study on the utilization of the Project, comparing the power flow in all elements of GPTL's Project at the time of their inclusion in the PoC Pool and on certain subsequent dates. Fichtner was also asked to review the power required to be injected at PGCIL's Aligarh S/s to observe the consequent flow in GPTL's Project.

(f) It is evident from the Fichtner Report that on 19.3.2020, AP Line got synchronized and power started flowing through it. Through AP Line and Prithala S/s, power from Aligarh S/s started to reach the Gurgaon/Manesar area to cater to the growing demand in the region. Earlier, these areas of Gurgaon/Manesar were fed by Daultabad and



Bhiwani, and with the coming of AP Line and Prithala S/s, a more robust network has been implemented to serve the said region.

(g) For Prithala S/s, the 500MVA ICT's attained power flow when 220kV D/C Prithala Palwal transmission line got connected to the 220kV bays at Prithala S/s on 20.04.2020. Once this line got connected with the Prithala S/s, reliable power was fed to the Prithala region via Petitioner's network. Prior to this, Prithala S/s was an essential element for transferring power from Aligarh to Gurgaon/Manesar region via AP Line, PK Line, Kadarapur S/s, KS line and Sohna Road S/s.

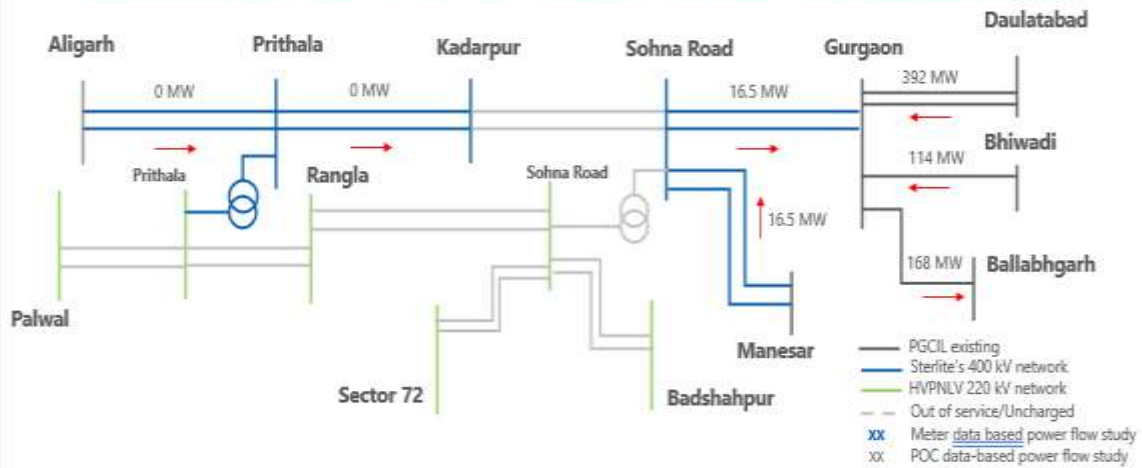
(h) Power started flowing through the PK Line from 19.3.2020 onwards. PK Line and the Kadarapur S/s played a vital role in supplying power from the Aligarh S/s to demand areas in Gurgaon/Manesar areas. On 19.3.2020, the 874 MW of power was fed to the Gurgaon/Manesar area through the Petitioner's transmission system. Such transmission of power would not have been possible without the utilisation of the Kadarapur S/s. The Kadarapur S/s was being utilized on such date, and it is irrelevant for the purpose of recovery of transmission charges by the Petitioner whether HVPNL's downstream system was ready or not on this date.

(i) With the subsequent charging of the downstream elements, there was a significant increase in power flow. The demand in the Gurgaon/Manesar area was met through Petitioner's transmission system, and it further reached the demand stations by alternative routes available through substations in Gurgaon and Manesar.

(j) For Sohna Road S/s, 500MVA ICT's attained power flow when 220kV D/C Badshahpur Sohna Road transmission line got connected to the 220kV bays at Sohna Road S/s on 30.07.2020. Once this line got connected with the Sohna Road S/s, reliable power was fed to the Gurgaon region through the Petitioner's network. Prior to this date, Sohna Road S/s was an essential element for transferring power from Aligarh to Gurgaon/Manesar region through AP Line, PK Line, Kadarapur S/s, KS line and Sohna Road S/s.

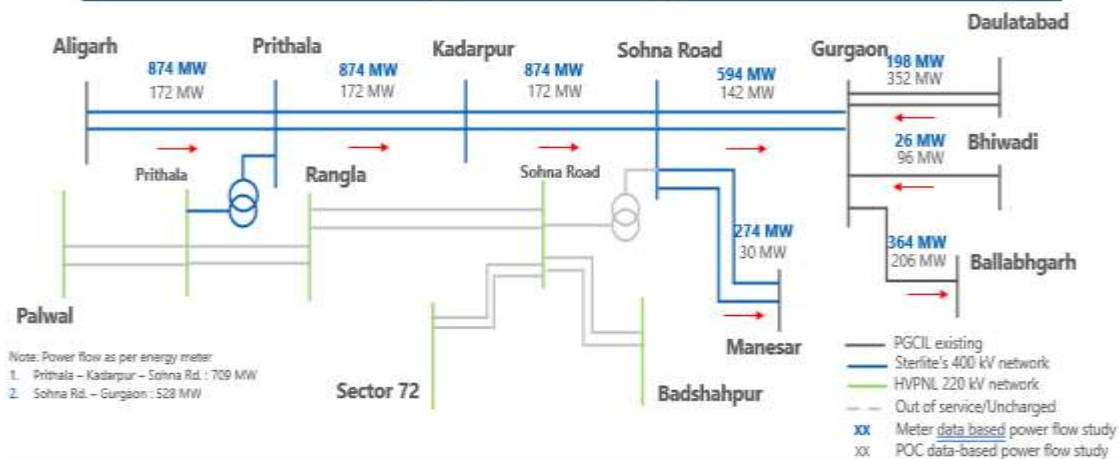
(k) The relevant snapshots of the Fichtner's Report indicating the Power Flow from the different elements and during the different time frames are as under:

Case 1: Power flow summary for elements charged before 18-03-2020



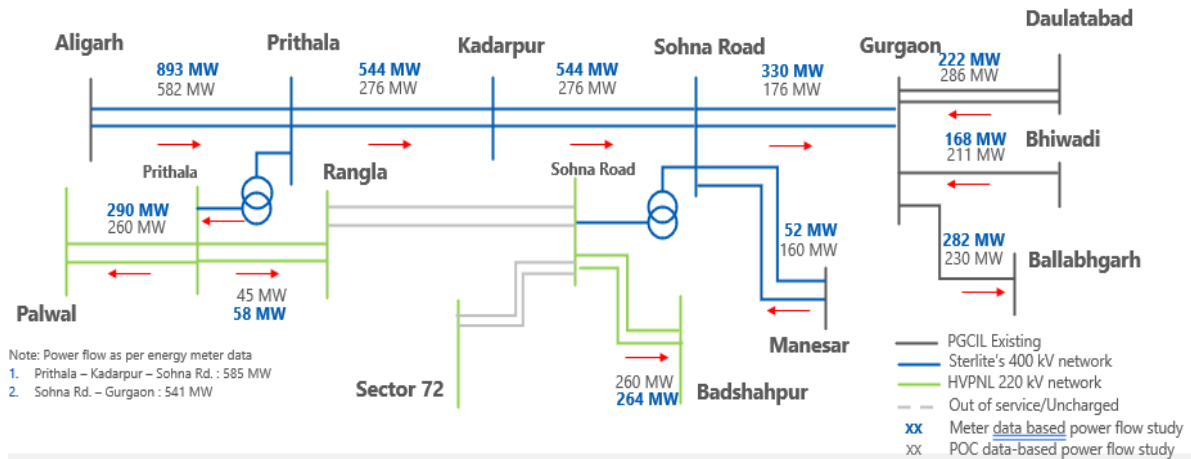
- Aligarh-Prithala-Kadarpur corridor along with LILo of Gurgaon – Manesar line at Sohna Road was charged and available.
- Since, Kadarpur – Sohna Road line was not commissioned and charged until 18.03.2020, no power flow was observed in the network elements under consideration except LILo elements at Sohna Road

Case 2: Power flow summary for elements charged till 19-03-2020



- On 18th March 2020, Aligarh-Prithala-Kadarpur-Sohna Road- Gurgaon/Manesar corridor was commissioned. As per the energy meter data for 19.03.2020, the corridor was observed to have started delivery of **874 MW power to Gurgaon and Manesar areas.**
- With subsequent charging of downstream network, a significant increase in power flow towards Gurgaon, Manesar, Palwal, and other areas of HVPNL network was envisaged.

Case 5: Power flow summary for elements charged till 30.07.2020



- In the 'high demand season' of July and August, further growth in the power flow on 400 kV network is observed, with a maximum power flow of **893 MW in Aligarh – Prithala line**
- **Power flow in 220 kV network increased allowing GPTL network to serve Gurgaon's power requirement through both 400 and 220 kV levels, and thus adding to the reliability of power supply**
- It is pertinent to note that the scenario does not reflect the maximum (or a true picture of) utilization of GPTL network post commissioning of all network elements on account of subdued demand due to Covid-19 pandemic

Payment of Transmission Charges

(l) As has been observed by this Commission in its various orders, including in its order dated 31.07.2019 in Petition No. 20/RP/2018 and Petition No. 3/RP/2019 that non-readiness of downstream assets or non-utilisation of transmission assets for their intended purpose which are otherwise ready for regular service/are capable of operating to their full capacity does not disentitle the non-defaulting transmission licensee from being paid transmission charges.

(m) The Petitioner's transmission system has been put to use, there is power flow in the system and the Petitioner has been recovering transmission charges in line with the decision taken by the Validation Committee and as per the provisions of the TSA. The decision of the Validation Committee and the relevant provisions of the TSA have been elaborated upon subsequently in the present Affidavit.

(n) The Appellate Tribunal for Electricity (the APTEL) vide its judgment dated 27.3.2018 in Appeal No. 390/2017 in the case of *Punjab State Power Corporation Limited v. Patran Transmission Company Limited & Ors.* ("Patran Judgement") has held that the LTTC responsible for arranging the downstream system for interconnection to the impacted transmission licensee ought to be made liable to pay transmission charges when it fails to comply with its corresponding obligation under Article 4.2 of the TSA.

(o) Haryana Power Purchase Centre (HPPC) is the entity that acts on behalf of the State distribution companies to procure power and HVPNL is the entity involved in transmission of such power. HPPC is also one of the LTTCs of the Petitioner. It is clear from the relationship between HVPNL and HPPC, and between the Petitioner and HPPC that HPPC was the LTTC responsible for arranging HVPNL's downstream system for interconnection with the Petitioner's Project. Accordingly, it ought to be made liable to pay the transmission charges for any delay in non-utilization of the Petitioner's Project for its intended purpose.

(p) At this belated stage, any claim against the Petitioner for return or refund of the transmission charges paid from the PoC Pool will be barred by limitation, the doctrine of delay and laches, waiver, and the doctrine of acquiescence.

(q) It is clear from Article 6.2.2 and Article 10.1 of the TSA that the Petitioner was entitled to receive transmission charges from the COD of its elements, and payments have been received by it accordingly. It is also from Article 10.9.1 of the TSA that since the LTTCs did not question or dispute the invoices raised by the Petitioner within 30 days of receiving them, the invoices raised by the Petitioner shall be considered as correct, complete and conclusive between the parties. Neither the LTTCs nor the CTUIL can now belatedly question the correctness of the payment made to the Petitioner.

(r) If the Commission is of the view that the PoC Pool should be refunded/returned the transmission charges erroneously paid to the Petitioner, the entity responsible for delay in intended utilization of the subject elements must pay transmission charges directly to the PoC Pool. In case, the Petitioner is directed to set-off/refund such transmission charges to the PoC Pool, it must be ensured that any such payment is directed to be made by the Petitioner after the defaulting entity pay the Petitioner. The Payment security in favor of the Petitioner must be ensured so that the Petitioner's account does not turn into a non-performing asset.

58. NLDC in its submissions clarified that the recovery of the transmission charges during the period under consideration used to fall under the 2010 Sharing Regulations and amendments thereof and the decision for inclusion of any new element in POC mechanism was taken by Validation Committee. Further, the 3rd Amendment in the 2010 Sharing

Regulations provided the inclusion of elements likely to be commissioned during the Application Period in the basic network is provided by the CTUIL/Transmission Licensee to the implementing agency. The Validation Committee vide its 3rd meeting dated 29.8.2019 for the Application Period from 1st October, 2019 to 31st December, 2019 decided to include the elements of the Petitioner in pool for transmission charge recovery, based on anticipated charging dates. Further, the Implementing Agency had informed the Validation Committee in subsequent meeting i.e. 4th Validation Committee meeting that the assets of GPTL which were anticipated to be commissioned in last quarter by the end of October 2019 were considered in 2019-20 Q3 computations. However, some of the assets were not commissioned. It was decided by the Validation Committee that the assets of GPTL will be considered for the purpose of recovery of transmission charges from pool on submission of written confirmation by GPTL confirming the commissioning date of assets.

59. PGCIL has submitted that, in terms of Schedule 3 of the TSA, PGCIL was to provide the 2x1500 MVA 765/400 kV ICTs at Aligarh along with 2 Nos. of 400 kV line bays for termination of the AP Line. Though the assets of PGCIL were ready in the month of July 2019 itself, however, the shutdown of 765 kV Bus I and II was a prerequisite for the commissioning for creation of the 400 kV level at Aligarh substation. The approval of required shut down were not accorded by NRLDC till the month of October 2019. Eventually, PGCIL completed its assets associated with GPTL's AP line and Prithala substation on 30.10.2019. Despite the completion of the assets of PGCIL, power flow could not be commenced due to delay in commissioning of the downstream 220 kV lines at Prithala substation under the scope of HVPNL. Apparently, actual Power Flow in the assets started w.e.f. 18.3.2020 after completion of adjoining 400 kV system i.e. Kadarapur-Sohna Road 400 kV D/c HTLS line and LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohn Road S/s. However, even at that time, 220 kV downstream system was not available at any of the three substations of GPTL, i.e. Prithala, Kadarapur and Sohn Road.

60. PGCIL has further submitted that the 220 kV transmission System at Prithala substation was commissioned by HVPNL only on 19.04.2020. Even after completion of POWERGRID assets on 30.10.2019, actual power flow in the AP line started only on 18.03.2020. Regarding the Prithala substation, it is submitted that this substation consisted of 2x500 MVA 400/220 kV ICTs and power flow through them was only dependent upon the commissioning of 220 kV downstream network to be implemented by HVPNL. Even though the power from AP line started from 18.03.2020, the power flow in Prithala substation only started on 19.04.2020. Thus, utilization/ power flow in Prithala substation



was only conditional upon the HVPNL 220 kV downstream network which was delayed till 19.04.2020. Hence, AP line and Prithala substation charges should only be levied on HVPNL alone. Therefore, PGCIL is not liable to pay the transmission charges of the assets of GPTL as the delay in commissioning of its asset was not attributable to POWERGRID.

61. CTUIL has submitted that the power flow commenced w.e.f. 21.3.2020 when the entire link from the Aligarh-Prithala-Kadarpur-Sohna Road was established with synchronization of 400 kV Kadarpur to Sohna Road transmission line. However, Kadarpur S/S and Sohna Road S/S were prerequisite for declaration of CoD of Kadarpur-Sohna Road 400 kV D/C line and the CoD of these assets as per the TSA is 11.12.2019 and 14.4.2020 respectively. Therefore, the CoD of the Kadarpur-Sohna Road 400 kV D/C line may only be considered as 14.4.2020 instead of 21.3.2020. Therefore, the recovery of the transmission charges of the following assets from the PoC Pool may also be considered w.e.f. 14.4.2020 only:

- (i) Aligarh-Prithala 400 kV D/C HTLS line
- (ii) Prithala-Kadarpur 400 kV D/C HTLS line
- (iii) Kadarpur-Sohna Road 400 kV D/c line
- (iv) LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road S/s
- (v) Prithala GIS excl. ICTs and unutilized bays.
- (vi) Kadarpur GIS excl. ICTS and unutilized bays.
- (vii) Sohna Road GIS exc. ICTs and unutilized bays

62. With regard to the billing adjustments, CTUIL has submitted that the transmission charges of the said element(s) prior to 14.4.2020 should not be recovered from the PoC pool and the transmission charges claimed earlier by the licensee are required to be refunded back to the pool in line with the CERC Regulations. The transmission charges for the period prior to 14.4.2020 are now required to be recovered from the defaulting entities, towards non-commencement of power flow in the said element.

63. We have considered the submissions of the parties. We observe that the subject transmission Project was planned to meet the growing load demand in Gurgaon and Palwal areas.

64. The Schedule 2 of the TSA provides as under:

*“Schedule: 2
Transmission Service Agreement*



Project Description and Scope of Project

1. Project Description

To meet the growing load demand in Gurgaon and Palwal areas & to serve the consumers with reliable power, establishment of three nos. of 2X500MVA, 400/200kV substations at Sohna Road, Kadarpur & Prithala alongwith associated 400kV connectivity have been agreed. 400/200kV Sohna Road S/s has been proposed to cater to the load demand of sector 58 to 67 of Gurgaon whereas 400/200kV Kadarpur S/s has been proposed to cater to sector 68 to sector 80 loads of Gurgaon. The 400/220kV Prithala substation would feed Palwal, Rangla Rajpur & Meerpur Kurah substations of Haryana & adjoining areas. Prithala substation will be connected to ISTS grid at 400kV to Aligarh(PG) 765kV switching station and 100kV level would be created at Aligarh (PG) 765kV switching station.

The transmission scheme has been discussed and agreed in the 35th and 36th meeting of Standing Committee of Power System Planning in Northern Region held on 3/11/14 & 13/7/15. Further, the scheme was agreed to be executed under TBCB in the 34th meeting of Empowered Committee on Transmission held on 13/05/15.

....

Note:

(i) POWERGRID to provide 2X1500 MVA 765/400 kV ICTs at Aligarh along with 2 Nos. of 400 kV line bays for termination of Aligarh-Prithala 400 kV D/c line.

(ii) HVPNL to provide space for 2 Nos. of 400 kV line bays at their Dhanonda 400 kV substation and POWERGRID to provide 2 Nos. of line bays at Neemrana 400 kV substation for Neemrana-Dhanonda 400 kV D/c (HTLS) line.”

As per the Schedule 2 of the TSA, the required downstream transmission system for the interconnection of the transmission system of the Petitioner was in the scope of PGCIL and HVPNL.

65. We further note that, as per Article 4.2.1 (b) of the TSA, LTTCs are required to arrange and make available the interconnection facilities to enable the TSP to connect the Project. The SCOD of the transmission elements mentioned under the Schedule 3 of the TSA are decided matching with the commissioning of the upstream or downstream assets. In the present case, the interconnection facilities at Aligarh S/s was in the scope of the PGCIL and at Prithala, Kadarpur and Sohna Road it was in the scope of HVPNL. In this regard it is relevant to the quote the various minutes of meeting:

(A) 35th Standing Committee Meeting on Power System Planning of NR held on 3.11.2014:



9. Creation of new 400kV substations in Gurgaon area and Palwal area as a part of ISTS- Agenda by HVPN.

Director (SP&PA) stated that HVPNL has requested for creation of new three 400kV substation one at Kadarapur & other at Sohna Road in Gurgaon area and one 400kV substation at Prithala in Palwal area as a part of Inter State Transmission System (ISTS). The first two S/S has been proposed to cater the load demand of sector 58 to sector 67 and sector 68 to sector 80 sectors of Gurgoan respectively. The creation of Prithala S/S would meet the power demand of the area to be developed under Prithala Development Plan. Beside this it will also act as a main feeding source to Palwal, Rangla Rajpur and Meerpur Kurli.

HVPNL has furnished the district wise load projections of Haryana for 13th Plan (2021-22). Looking at the load growth in Prithala and around Gurgoan areas, bigger ring around Gurgoan with 400 kV Quad conductor, connecting the existing 400 kV S/S of Dhonanda – Faruk Nagar (to be created by LILO of Dhonda- Daulatabad D/C line)-Daulatabad- Gurgoan(PG) –Sona- Manasher –Neemrana- Dhonanda is proposed. The proposed 400 kV S/S at Prithala, Kadarapur and Sonar Road is to be connected through 400 kV Quad D/C line.

The 400kV Sonar road as well as Kadarapur S/S would be created as 400/220 kV, 2x500 MVA. 400 kV Prithala Substation in Palwal area is proposed to be created as 2x500MVA, 400/220kV with 400 kV Quad D/C feed from Agra / Aligarh S/S.

...

Load flow studies were carried out by CEA& CTU. The load flow result indicates normal loading in the Gurgaon ring.

Director SP&PA stated that HVPNL has already planned the 220 kV connectivity from the proposed 400 kV S/S. The proposed S/S at Kadarapur S/S would feed load to sector 58 to 67 of Gurgoan and 220 kV Badshapur and pali. HVPN has envisaged the following network to evacuate power from 400 kV Kadarapur S/S

- a) LILO of 220kV Badshapur – Pali D/C line at Qudarapur on M/C tower
- b) One 220 kV M/C line (four ckt.) with twin moose conductor to feed the 220 kV S/S envisaged at sector 59,61, 63 & 65 of Gurgoan.
- c) One 220 kV D/C line with twin moose conductor to feed the 220 kV S/S envisaged in sector 64, 65 &67

Similarly the proposed S/S at Sonar Road S/S would feed load to sector 68 to 80 of Gurgaon and 220 kV Kankerheri (Sonar) – Rangala Rajpur. **HVPN has envisaged the following network to evacuate power from 400 kV Sonar S/S**

- a) One 220 kV M/C line (four ckt.) with twin moose conductor to feed the 220 kV S/S envisaged at sector 69,70,75,75A,76 Gurgaon.
- b) Provision for 220 KV D/C line with twin conductor for future.

AGM POWERGRID stated that there would be space constraint at Agra as such Aligarh would be a better option. However, Aligarh presently is a switching station and need to be have 765/400 kV transformation for feeding power to Prithala. He emphasized the need for bus reactor at all the proposed new Substations.

.....

CE HVPNL as well as SE UPPCL stated that the feed to Prithala from Aligarh would be a better solution as number of lines from Agra S/S are coming to Gurgaon area and the 765 kV Aligarh switching st. may be changed as 765/400 S/S by adding 2x1500 MVA ICT. They further stated that to take care of the increasing problem of short circuit level, all 400 kV S/S should be designed to handle 50 KA fault current.

(B) 33rd meeting of Northern Regional Power Committee and 29th meeting of TCC

D.6.2.3 Creation of new 400/220 kV substations in Gurgaon area and Palwal area as a part of ISTS.

Representative of CTU, POWERGRID informed that to cater the load demand of sector 58/ to sector 67 and sector 68 to sector 80 of Gurgaon and the area to be developed under Prithala Development Plan, following ISTS Transmission system had been agreed in the 35th SCM:

.....

Members of NRPC while agreeing to the proposal stated that the 220kV connectivity must be ensured by HPVNL in the matching time frame.

(C) 37th Standing Committee Meeting on Power System Planning of Northern Region held on 20th January 2016:

29.0 Establishment of the new 400/220kV substations in Northern Region:

29.1 Powergrid informed that the following new substations were planned under various transmission schemes & are under implementation:

| S. No. | Name of Substation | Capacity (MVA) | Expected Schedule |
|--------|--|----------------|-------------------|
| ---- | ----- | ----- | ----- |
| 13 | 400/220kV Kadarapur S/s in Gurgaon area (GIS) | 2x500 | 38 months |
| 14 | 400/220kV Sohna Road S/s in Gurgaon area (GIS) | 2x500 | 38 months |
| 15 | 400/220kV Prithala S/s in Palwal area (GIS) | 2x500 | 38 months |

30.2 For above 400/220kV substations, implementation of downstream 220kV elements needs to be commissioned at the earliest for utilization of the system. It was desired that the 220kV system also gets commissioned in the matching time frame. Appropriate STUs may note the above and inform the committee about the planned 220 kV system from these substations and their status to CEA and CTU.

(D) 39th meeting of Standing Committee on Power System Planning of Northern Region held on 29-30th May, 2017:



8.0 220kV bays at Prithala 400/220kV sub-station being implemented through TBCB route:

8.1 CEA stated that 400/220kV, 2x500 MVA GIS S/s at Prithala along with 8 nos. of 220kV line bays is under implementation through Tariff Based Competitive Bidding (TBCB) route with commissioning schedule of May, 2019. HVPNL vide their letter dated 30.8.2016 has requested for the following 220kV bays at Prithala 400/220kV substation:

- (i) Two no. 220kV bays for Prithala (400)-Prithala (HVPNL) 220kV D/c line
- (ii) Four no of 220kV bays for LILO of both circuits of existing Palwal–Rangala Rajpur 220kV D/C line at Prithala (400) (FY 2019-20)
- (iii) Two number of 220kV bays for Prithala (400)–Sector-78, Faridabad 220kV D/C line (FY-2020-21)

8.2 On a query about the time frame of implementation of the down stream, HVPNL stated that the element (ii) and (iii) are expected to be implemented in the matching time frame of the Prithala S/s and they are in the process of acquiring the land for Prithala (HVPNL) 220kV sub-station. CTU informed that tariff for the substation may have to be borne by the state utilities, in case of non-utilization of ISTS asset.”

8.3 After deliberations, members agreed with the above proposal. **HVPNL was requested to expedite the implementation of the 220kV outlets from Prithala 400/220kV S/s in the matching time-frame, so as to avoid creation of stranded assets.”**

66. On perusal of the above referred minutes, we observe that the transmission system covered under the present Petition was planned on the request of HVPNL. HVPNL requested for creation of new three 400kV substations - one at Kadarapur, one at Sohna Road in Gurgaon area and one at 400 kV substation at Prithala in Palwal area as a part of Inter State Transmission System (ISTS). The first two sub-stations were proposed to cater the load demand of sectors 58 to sector 67 and sectors 68 to sector 80 sectors of Gurgaon respectively. The creation of Prithala substation would meet the power demand of the area to be developed under Prithala Development Plan. Beside this, it was also to act as a main feeding source to Palwal, Rangla Rajpur and Meerpur Kurli. Further, the utilization of the Prithala, Kadarapur and Sohna Road sub-station was dependent on the readiness of the downstream system being built by the HVPNL and as per the discussions held during the

various meetings, the downstream system was to be implemented by the HVPNL in matching timeframe of the said substations.

67. The relevant extract of the minutes of the 3rd Meeting of the Validation Committee for the year 2019-20 (Application Period from 1st October, 2019 to 31st December, 2019) for implementation of CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 held on 29.8.2019 is as under:

“7. New Assets:

(ii) New lines to be included for this quarter as proposed by IA:

| S. No. | Name of the Transmission line | ISTS Licensee | CoD as per TSA | Anticipated CoD as submitted by transmission licensee | Remarks |
|--------|---|-------------------------------------|----------------|---|----------------------------------|
| 1. | 400 kV Aligarh-Prithala | Gurgaon-Palwal Transmission Limited | May, 2019 | Oct-19 | To be considered for 2019-20 Q3. |
| 2. | 400 kV Bays at Dhanoda (HVPNL) Substation | | May, 2019 | Feb-19 | |
| 3. | 400/220 kV, 2x500 MVA GIS substation at Kadarpur along with 1 No. of 125 MVAR Bus Reactor | | May, 2019 | Oct-19 | |
| 4. | GIS Substation at Kadarpur along with 1 No. of 125 MVAR Bus Reactor | | May, 2019 | Oct-19 | |
| 5. | 400/220 kV, 2x500 MVA GIS substation at Prithala | | May, 2019 | Oct-19 | |
| 6. | 400/220 kV, 2x500 MVA GIS substation at Sona Road | | Sep, 2019 | Oct-19 | |
| 7. | 400 kV Kadarpur-Sohna Road | | Sep, 2019 | Oct-19 | |
| 8. | LILO of Gurgaon- Manesar 400 kV D/c Quad Line at Sohna Road S/s | | Sep, 2019 | Oct-19 | |
| 9. | 400 kV Prithala-Kadarpur | | May, 2019 | Oct-19 | |

(iii) It was decided that assets put into use or anticipated to be put under use shall be considered in PoC subject to CERC Regulations & Orders.”

68. Further, the relevant extract of the 4th Meeting of the Validation Committee for the year 2019-20 (Application Period from 1st January 2020 to 31st March, 2020) for implementation of the 2010 Sharing Regulations, held on 2.12.2019 is as follows:

“8. New Assets:

(i) Implementing Agency informed the Validation Committee that the assets of M/s. Gurgaon-Palwal Transmission Limited (GPTL) which were anticipated to be commissioned in last quarter by the end of Oct’19 were considered in

2019-20 Q3 computations. However, some of the assets were not commissioned. It was discussed upon considering the remaining assets of M/s. GPTL which were again anticipated to be commissioned by Dec'19. It was decided to consider the assets of M/S GPTL on submission of written confirmation by GPTL confirming commissioning date of assets.

(vi) New lines to be included for this quarter as proposed by IA.

(a) TBCB Assets:-

| S. No. | Name of the Transmission line | ISTS Licensee | CoD as per TSA | Anticipated Cod as submitted by transmission licensee | Remarks |
|--------|--|-------------------------------------|----------------|---|--------------------------|
| 1. | GIS Substation at Kadarapur along with 1 No. of 125 MVAR Bus Reactor | Gurgaon-Palwal Transmission Limited | May 2019 | Jan, 2020 | To be considered in PoC. |
| 2. | 400/220 kV, 2 x 500 MVa GIS Substation at Sona Road | | Sep, 2019 | Jan, 2020 | |
| 3. | 400kV Kadarapur – Sohna Road | | Sep, 2019 | Jan, 2020 | |
| 4. | LILO of Gurgaon-Manesar 400kV D/c Quad Line at Sohna Road S/s | | Sep, 2019 | Jan, 2020 | |
| 5. | 400kV Prithala-Kadarapur | | May 2019 | Commissioned | |

(vii) It was decided that assets put into use or anticipated to be put under use shall be considered in PoC subject to CERC Regulations & Orders.”

As per the above quoted minutes, the assets of the Petitioner, which were anticipated to be commissioned in the October 2019 to December 2019 Quarter, were considered in 2019-20 Q3 computations. However, some of the assets were not commissioned. Accordingly, it was discussed that to consider the remaining assets of GPTL on submission of the written confirmation by the GPTL confirming the commissioning date of the assets.

69. We observe that as per the Validation Committee minutes, the assets which were anticipated to be commissioned as per the submission of the transmission licensee were to be included in the PoC calculations. In response to the query of the Commission, CTUIL has submitted the procedure of recovery of charges from POC pool for the assets anticipated to be commissioned in next quarter and the actual disbursement to the transmission licensee in case it does not achieve COD in the said quarter as follows:

(i) As part of the PoC mechanism, the Yearly Transmission charges (YTC) along with details of the new transmission assets anticipated to be commissioned in the PoC quarter are submitted by the ISTS transmission licensees to NLDC and these details for the said PoC quarter are deliberated in the Validation Committee meeting, generally conducted in the previous month of the PoC quarter. Based on the decisions of the Validation Committee, NLDC includes the anticipated assets in the computations for PoC Slab rates for the quarter and the monthly RTAs are issued accordingly based on which the bills are raised by the CTUIL. Thus, the bills raised by the CTUIL are inclusive of the billing for the new assets anticipated in the current PoC quarter.

(ii) During the Third Bill, adjustment between anticipated COD and actual COD of the assets is done by the CTUIL. However, the disbursement of collected pool transmission charges shall be from COD of the asset submitted by the transmission licensee (TBCB/RTM). The actual CODs of assets are generally verified by CTU based on the documentation (Trial operation certificate / Inspection clearance certificate) issued by the respective RLDC/CEA, etc.

(c) As far as the assets under discussion are concerned, viz. Aligarh-Prithala line, Prithala GIS, Kadarapur sub-station, Prithala-Kadarapur line, and Sohna Road sub-station were proposed in the Validation Committee meetings held on 29.8.2019 and 2.12.2019 respectively at NRLDC, New Delhi, for inclusion in the POC computation for the quarters October 2019-December, 2019 and January 2020 to March 2020, based on the anticipated COD of the assets. Accordingly, the said assets of GPTL were considered by the Implementing Agency i.e., NLDC for calculation of PoC slab rates for approval by the Commission and the RTAs were issued accordingly based on which the bills were raised by the CTUIL for these quarters which included the transmission charges of the subject assets of GPTL.

(c) GPTL declared COD for these assets in a phased manner and submitted the data to CTUIL for the third part of the bill for the quarter October, 2019 to December 2019. The said Third Bill under the 2010 Sharing Regulations was raised on 3.4.2020 under constrained conditions due to various administrative difficulties because of lockdown introduced in light of the outbreak of Covid-19 pandemic and the processing of bills was done based on the documentation submitted by the transmission licensees, including GPTL, to avoid the delay in raising of bills. Further, the availability certificates were also being issued by NRPC for assets of GPTL and considering the same, the data provided by GPTL was included by CTUIL for

recovery of transmission charges from the PoC and transmission charges were disbursed to GPTL from DOCO of their assets and proper verification of GPTL documentation could not be ensured due to severe Covid 19 pandemic situation.

70. We have considered the submissions of Petitioner and Respondents. We observe that under the 2010 Sharing Regulations the transmission assets were included in POC calculations for next quarter on anticipated basis where transmission licensee had to provide the anticipated date of commissioning. In such case, the POC rates were calculated based on YTC for such transmission assets anticipated to be commissioned. However, if such assets do not get commissioned, the transmission licensee was not entitled for disbursement of any charges since it could not achieve COD. The entire collection and disbursement is carried out by CTU. We have also noted submissions of CTU that CTU used to adjust the bills for anticipated COD to actual COD in third bill. In a nutshell, the transmission licensee was entitled to get transmission charges only from the date it declared COD. The Petitioner has referred to Validation Committee meeting to claim that it was entitled to transmission charges even without achieving COD as per TSA, since its assets were included in POC calculations based on his own assessment of anticipated COD, which did not fructify. We note that nowhere the validation committee has agreed to disburse the transmission charges to the Petitioner without achievement of the actual COD. We have taken note of various meetings of the Validation Committee where it was recorded that “disbursement shall be from actual COD”. Hence, Petitioner’s reliance on Validation Committee to claim transmission charges without COD is incorrect.

71. In view of the above facts, we now proceed to discuss the issue of recovery of the transmission charges from the PoC Pool in respect of the different elements of the Petitioner’s Project. We observe that an element which has been declared deemed COD and is not put to use cannot be considered under POC methodology of transmission charges. Transmission charges for such an asset which is not put to use is recovered separately. An asset which has been declared COD after interconnection with



interconnection facilities is taken under POC from date of such COD. Based on these principles, let us see when each of the elements of Petitioner's transmission project was put to use after achieving deemed COD, and which ones were under COD.

A. 400kV D/C Neemrana -Dhanonda Transmission Line and 2 Nos. of 400kV line bays at 400kV Dhanonda S/s

72. The date of start of recovery of the transmission charges from the PoC Pool for 400 kV D/C Neemrana -Dhanonda Transmission Line and 2 Nos. of 400kV line bays at 400 kV Dhanonda sub-station by the Petitioner is 25.2.2019. However, the dates of charging (on Load) in respect of AP Line and Prithala S/s is 24.2.2019 and therefore we have in issue no. 1 allowed the COD against the said elements as 28.2.2019. Accordingly, the Petitioner shall be entitled for recovery of the transmission charges from the PoC Pool with effect from its actual COD i.e. 28.2.2019.

B. AP Line and Prithala S/s

73. The date of start of recovery of transmission charges from the PoC Pool for A-P Line and Prithala S/s, by the Petitioner is 1.11.2019 and 3.11.2019 respectively. However, the dates of charging (on Load) in respect of the AP Line is 18.3.2020. The relevant portion of the trial operation certificate issued by the NRLDC is extracted as under:

Certificate of Completion of Trial Run Operation of 400kV D/C Aligarh(PG)-Prithala(GPTL) Line

संदर्भ :

- i) Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 19.08.2019 & 14.10.2019 regarding the submission of pre charging documents of 400kV D/C Aligarh (PG)-Prithala (GPTL) line.
- ii) Real time code issued by NRLDC on request Gurgaon Palwal Transmission Limited (GPTL), Bhopal 30.10.2019 (NRLDC Code: NR- 1911-4010 & 3962).
- iii) Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 20.03.2020 regarding the submission of post charging documents.

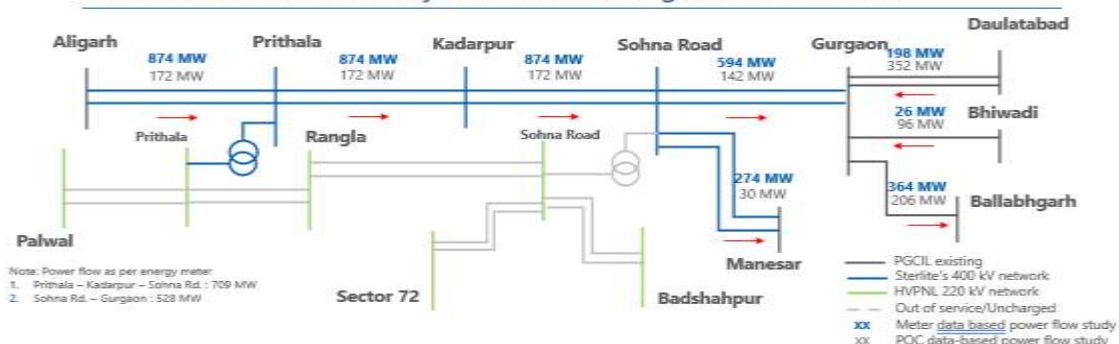
Based on above references, it is hereby certified that the following Transmission elements have been successfully completed the trial operation:

| | |
|--|--|
| Name of Transmission Asset: | 1. 400kV D/C Aligarh(PG)-Prithala(GPTL) Line-1 along with associated main bay (407) & tie bay (408) at Prithala(GPTL). 2. 400kV D/C Aligarh(PG)-Prithala(GPTL) Line-2 along with associated main bay(406) & tie bay (405) at Prithala(GPTL). (Power flow started on above mentioned lines with synchronisation of 400kV Sohna(GPTL)-Kadarpur(GPTL) line on 18.03.2020) |
| Owner of Transmission Asset: | 1. GPTL |
| Date and Time of Energization for Commencement of trial run operation: | 1. 18.03.2020/18:40 hrs. 2. 18.03.2020/18:40 hrs. |
| Date and Time of completion of trial run operation: | 1. 19.03.2020/18:40 hrs. 2. 19.03.2020/18:40 hrs. |

Note: First time charging certificate was issued vide Ref. No: NRLDC/SO-1/117/ Revised dated 16.12.2019 at no load. यह प्रमाणपत्र ट्रांसमिशन तन्त्र के परीक्षण संचालन के सफल समापन को प्रमाणित करने के लिए सीईआरसी (भारतीय विद्युत ग्रिड कोड) विनियम, 2010 के विनियमन 6.3(A)(5) के अनुसार जारी किया जा रहा है। किसी अन्य उद्देश्य के लिए इस प्रमाणपत्र का उपयोग प्रतिबंधित है।

As per the above, the power flow was established in the AP line on 18.3.2020, 6.40 PM with synchronization of the 400 kV Sohna (GPTL)- Kadarpur (GPTL) line and Prithala (GPTL)-Kadarpur (GPTL) line. We take note of the Fictner Report filed by the Petitioner where power flow was filed as follows:

Case 2: Power flow summary for elements charged till 19-03-2020



- On 18th March 2020, Aligarh-Prithala-Kadarpur-Sohna Road- Gurgaon/Manesar corridor was commissioned. As per the energy meter data for 19.03.2020, the corridor was observed to have started delivery of **874 MW power to Gurgaon and Manesar areas.**
- With subsequent charging of downstream network, a significant increase in power flow towards Gurgaon, Manesar, Palwal, and other areas of HVPNL network was envisaged.

74. The power flow started with the availability of Aligarh (PGCIL)-Prithala (GPTL)-Kadarpur (GPTL)-Sohna Road (GPTL)-LILO of GM Line corridor, which was completed

on 19.3.2020 with the charging of KS Line along with associated bays at Kadarpur and Sohna Road S/s. The relevant portion of the trial operation certificate for KS Line is as under:

www.nrldc.org, www.nrldc.in, Tel.: 011- 26519406, 26523869, Fax : 011- 26852747

प्रमाणपत्र सं०:पोसोको/एनआरएलडीसी/एसओ-1 /270/ दिनांक: 01.04.2020

Certificate of Completion of Trial Run Operation of 400kV D/C Kadarpur(GPTL)-Sohna(GPTL) Line

संदर्भ :

- i) Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 13.03.2020 & 14.03.2020 regarding the submission of pre charging documents of 400kV D/C Kadarpur (GPTL)-Prithala (GPTL) line.
- ii) Real time code issued by NRLDC on request Gurgaon Palwal Transmission Limited (GPTL), Bhopal 18.03.2020 (NRLDC Code: NR-2003-3680,3686,3712,3694 & 3723).
- iii) Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 23.03.2020 regarding the submission of post charging documents.

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

| | |
|--|---|
| Name of Transmission Asset: | 1. 400kV D/C Kadarpur(GPTL)-Sohna(GPTL) Line-1 along with associated main bay (404) at Sohna(GPTL) and main bay (403), tie bay (402) at Kadarpur(GPTL). 2. 400kV D/C Kadarpur(GPTL)-Sohna(GPTL) Line-2 along with associated main bay (407) at Sohna(GPTL) and main bay (404) at Kadarpur(GPTL). |
| Owner of Transmission Asset: | 1. GPTL |
| Date and Time of Energization for Commencement of trial run operation: | 1. 19.03.2020/09:48 hrs. 2. 19.03.2020/09:48 hrs. |
| Date and Time of completion of trial run operation: | 1. 20.03.2020/09:48 hrs. 2. 20.03.2020/09:48 hrs. |

यह प्रमाणपत्र ट्रांसमिशन तत्व के परीक्षण संचालन के सफल समापन को प्रमाणित करने के लिए सीईआरसी (भारतीय विद्युत ग्रिड कोड) विनियम, 2010 के विनियमन 6.3(A)(5) के अनुसार जारी किया जा रहा है। किसी अन्य उद्देश्य के लिए इस प्रमाणपत्र का उपयोग प्रतिबंधित है।

75. Therefore, as per the above actual utilization of the AP line started with effect from 19.3.2020 only. Accordingly, we allow the recovery of transmission charges from the PoC Pool for AP Line with effect from 19.3.2020.

76. We observe that although part of Prithala substation associated with AP line was put to use as on 19.3.2020, however, the Power flow in the 2 No. 500 MVA ICTs along with associated bays and 2 No. 220 kV line bays at Prithala S/s was established on 19.4.2020 with synchronization of the 220 kV D/c Prithala (GPTL)-Palwal (HVPNL) Line as per the NRLDC certificate dated 7.5.2020. Therefore, the actual utilization of the Prithala S/s only started with effect from 19.4.2020. Accordingly, Pritha Substation shall be considered in POC pool from 19.04.2020.



C. PK Line and Kadarpur sub-station

77. The date of start of recovery of the transmission charges by the Petitioner from the PoC Pool for PK Line and Kadarpur sub-station, is 7.12.2019 and 11.12.2019, respectively. However, the dates of charging (on Load) in respect of the PK Line is 18.3.2020, however, the Kadarpur S/s is not charged on load yet due to the non-availability of the downstream system at the end of HVPNL.

78. As per the NRLDC certificate for trial run dated 1.4.2020, the Power flow in the PK Line was established on 18.3.2020 along with the synchronization of Sohana (GPTL)-Kadarpur (GPTL) line. The relevant portion of the trial operation certificate for the PK Line is as under:

प्रमाणपत्र सं०:पोसोको/एनआरएलडीसी/एसओ-1/269/ दिनांक: 01.04.2020

Certificate of Completion of Trial Run Operation of 400kV D/C Kadarpur(GPTL)-Prithala(GPTL) Line

संदर्भ:

- Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 27.11.2019 & 29.11.2019 regarding the submission of pre charging documents of 400kV D/C Kadarpur (GPTL)-Prithala (GPTL) line.
- Real time code issued by NRLDC on request Gurgaon Palwal Transmission Limited (GPTL), Bhopal 06.12.2019 (NRLDC Code: NR- 1912-942 & 958).
- Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 20.03.2020 regarding the submission of post charging documents.

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

| | |
|--|--|
| Name of Transmission Asset: | 1. 400kV D/C Kadapur(GPTL)-Prithala(GPTL) Line-1 along with associated main bay (403), tie bay (402) at Prithala(GPTL) and main bay (407) at Kadarpur(GPTL). 2. 400kV D/C Kadarpur(GPTL)-Prithala(GPTL) Line-2 along with associated main bay (404) at Prithala(GPTL) and main bay (406), tie bay (405) at Kadarpur(GPTL). {Power flow started on above mentioned lines with synchronisation of 400kV Sohna(GPTL)-Kadarpur(GPTL) line on 18.03.2020} |
| Owner of Transmission Asset: | 1. GPTL |
| Date and Time of Energization for Commencement of trial run operation: | 1. 18.03.2020/18:40 hrs. 2. 18.03.2020/18:40 hrs. |
| Date and Time of completion of trial run operation: | 1. 19.03.2020/18:40 hrs. 2. 19.03.2020/18:40 hrs. |

Note: First time charging certificate was issued vide Ref. No: NRLDC/SO-1/117/ dated 24.12.2019 at no load.

79. However, in the absence of downstream system of HVPNL at Kadarpur S/s, the actual power flow in PK line could only start with the availability of Prithala (GPTL)-



Kadarpur (GPTL)-Sohana Road (GPTL)-LILO of GM Line corridor which was completed only on 19.3.2020 with the charging of the KS Line and associated bays at Kadarpur and Sohana Road S/s as concluded in the above paragraphs. Therefore, we are of the view that the actual utilization of the PK line started with effect from 19.3.2020. Accordingly, we allow the recovery of the transmission charges from the PoC Pool **for PK Line** w.e.f. 19.3.2020. However, as all the elements of the Kadarpur S/s are still not charged (on load), the Petitioner shall not be entitled for the recovery of transmission charges from the PoC Pool Kadarpur S/s till the availability of the downstream transmission system of HVPNL at Kadarpur S/s.

D. KS Line and Sohana Road sub-station

80. The date of start of recovery of transmission charges by the Petitioner from the PoC Pool for KS Line and Sohana Road substation is 21.3.2020 and 13.4.2020 respectively however, the dates of charging (on Load) in respect of KS Line and Sohana Road substation is 19.3.2020 and 29.7.2020 respectively. Although the power flow in the K-S Line and Sohana Road S/s was established on 19.03.2020, however, in the issue no. 1, we have concluded the deemed COD/ COD of Sohana Road S/s and K-S Line shall be as 19.04.2020, the Petitioner in any way shall not be entitled for transmission charges before the date of actual COD. As we have allowed the actual COD of the K-S Line as 19.4.2020, the Petitioner shall be entitled for recovery of transmission charges of the KS Line with effect from 19.4.2020.

81. Further, the Power flow in the 2 No. 500 MVA ICTs along with associated bays and the 2 No. 220 kV line bays at Sohana Road substation was established on 29.7.2020 with synchronization of the 220 kV Badshahpur (HVPNL) Line-Sohana Road (GPTL) after the readiness of downstream system of HVPNL for evacuation of power from the 400 kV S/s

Sohna Road on 29.7.2020. The relevant portion of the trial operation certificate (on load) in respect of Sohna Road substation is as under:

प्रमाणपत्र सं०:पोसोको/एनआरएलडीसी/एसओ-1/280/ 632-634

दिनांक: 14.08.2020
-18

Certificate of Completion of Trial Operation of 400kV, 500MVA ICT-1,2 and 220kV bays no 206,211 at Sohna Road(GPTL)

संदर्भ:

- Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 17.03.2020, 19.03.2020 & 14.07.2020 regarding the submission of pre charging documents of 400kV,5000 MVA ICT-1,2 and 220kV bays no 206,210 at Sohna(GPTL).
- Real time code issued by NRLDC on request Gurgaon Palwal Transmission Limited (GPTL), Bhopal and SLDC Haryana, Panipat (NRLDC Code: NR 2007-2014 & NR- 2007-2019).
- Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 27.07.2020 regarding the submission of post charging documents.

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

| | |
|--|--|
| Name of Transmission Asset: | <ol style="list-style-type: none"> 400kV,500 MVA ICT-1 along with associated main bay (410) & tie bay (411) and 220kV side bay no 205 at Sohna(GPTL). 400kV,500 MVA ICT-2 along with associated main bay (415) & tie bay (414) and 220kV side bay no 211 at Sohna(GPTL). 220kV bay no 210 of Badshahpur(HVPL) line-1 at Sohna Road (GPTL). 220kV bay no 206 of Badshahpur(HVPL) line-2 at Sohna Road (GPTL). |
| Owner of Transmission Asset: | <ol style="list-style-type: none"> GPTL |
| Date and Time of Energization for Commencement of trial run operation: | <ol style="list-style-type: none"> 29.07.2020/17:00 hrs. 29.07.2020/17:00 hrs. 29.07.2020/17:00 hrs. 29.07.2020/17:00 hrs. |
| Date and Time of completion of trial run operation: | <ol style="list-style-type: none"> 30.07.2020/17:00 hrs. 30.07.2020/17:00 hrs. 30.07.2020/17:00 hrs. 30.07.2020/17:00 hrs. |

Note: First time charging certificate at no load of above elements was issued vide ref no.: NRLDC/SO-1/117/2020/02 dated 04.05.2020. Transmission Licensee applied for trial operation certificate w.e.f 11:53 hrs of 21.07.2020, however SEM meter data was made available w.e.f 17: 00 hrs. of 29.07.2020. In view of above trial operation certificate is issued w.e.f 17:00 hrs of 29.07.2020.

यह प्रमाणपत्र ट्रांसमिशन तत्व के परीक्षण संचालन के सफल समाप्त को प्रमाणित करने के लिए सीईआरसी (भारतीय विद्युत शिड कोड) विनियम, 2010 के विनियमन 6.3(A)(5) के अनुसार जारी किया जा रहा है। किसी अन्य उद्देश्य के लिए इस प्रमाणपत्र का उपयोग प्रतिबंधित है।

(Signature)
एन. नल्लराज्जन 18/8/20

82. Since the Sohna Road substation was actually put to use with effect from 29.7.2020, we allow the recovery of the transmission charges from the PoC Pool for Sohna Road substation with effect from 29.7.2020.

E. LILO of GM Line at Sohna Road sub-station

83. The date of start of recovery of the transmission charges by the Petitioner from the PoC Pool for the LILO of GM Line at Sohna Road substation is 13.3.2020 and the date of

charging (on load) is 11.3.2020. However, in the issue no. 1 we have concluded the COD of the LILO of GM Line shall be as 19.4.2020, the Petitioner in any way shall not be entitled for recovery of the transmission charges from the PoC Pool before the date of actual COD. Accordingly, the Petitioner shall be entitled for recovery of transmission charges of the KS Line with effect from 19.4.2020 from the PoC Pool.

84. As per the above discussions, the date of allowed start date of recovery of the transmission charges from the PoC Pool in respect of the different elements of the Petitioner's project is summarized as under:

| S. No. | Element | Date of charging on No Load | Date of charging on Load | Date of start of recovery from the POC Pool by the Petitioner | Allowed date of start of recovery of transmission charges from PoC Pool |
|--------|--|-----------------------------|---|---|--|
| 1 | 400kV D/C Neemrana - Dhanonda Transmission Line | -- | 24.02.2019 | 25.02.2019 | 28.02.2019 |
| 2 | 2 Nos. of 400kV line bays at 400kV Dhanonda S/s | -- | 24.02.2019 | 25.02.2019 | 28.02.2019 |
| 3 | 400kV D/C Aligarh - Prithala Transmission line and associated bays at Prithala S/s | 31.10.2019 | 18.03.2020 | 01.11.2019 | 19.03.2020 |
| 4 | 400/220 kV Prithala GIS S/s | 02.11.2019 | 19.04.2020 | 03.11.2019 | 19.04.2020 |
| 5 | 400kV D/C Prithala-Kadarpur Transmission line | 06.12.2019 | 18.03.2020 | 07.12.2019 | 19.03.2020 |
| 6 | 400/220kV Kadarpur GIS S/s (ICTs, associated bays and 220 kV Line bays) | 09.12.2019 | Not yet charged on load (HVPNL D/s system is not ready) | 11.12.2019 | Not allowed for recovery from PoC Pool till the readiness of downstream system of HVPNL) |
| 7 | 400kV D/C Kadarpur - Sohna Road Transmission line | --- | 19.03.2020 | 21.03.2020 | 19.04.2020 |
| 8 | 400/220kV Sohna Road GIS S/s | 11.04.2020 | 29.07.2020 | 13.04.2020 | 29.07.2020 |

| | | | | | |
|---|--|-----|------------|------------|------------|
| 9 | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s | --- | 11.03.2020 | 13.03.2020 | 19.04.2020 |
|---|--|-----|------------|------------|------------|

85. We observe that the Petitioner has recovered the transmission charges from the PoC Pool before the dates allowed as per the above mentioned table against each component, the treatment for which shall be as per our decision in Issue No.3 below.

86. As per the above, in the Issue Nos. 1 and 2, we have decided the date of deemed COD/ COD in respect of the different elements of the Petitioner's project as well as the date of start of recovery of the transmission charges from the PoC Pool, we now proceed to discuss the liability of bilateral charges during the mismatch period.

Issue No. 3: Who shall be liable to pay the mismatch charges if any against the different assets covered under the present Petition? What shall be the mode of recovery of transmission charges?

87. We observe that the subject Transmission Project was planned to meet the growing load demand in Gurgaon and Palwal areas. The downstream transmission system at Prithala, Kadarapur and Sohna Road S/s was to be built by the HVPNL. Therefore, the utilization of the Prithala, Kadarapur and Sohna Road S/s was dependent on the readiness of the downstream system being built by the HVPNL. Further the power at Prithala S/s was to be fed from the PGCIL's Aligarh S/s. Accordingly, PGCIL was to provide 2x1500 MVA, 765/400 kV ICTs at Aligarh along with 2 Nos. of 400 kV line bays for termination of Aligarh-Prithala 400kV D/c line.

88. The Petitioner with respect to delay in achieving the COD of the respective elements has submitted as under:

- (a) The Petitioner received the approval for energization of the AP Line from the CEA on 29.7.2019. However, due to the non-availability of bays at the Aligarh end of PGCIL, the said line could not be commissioned and was declared to be deemed commissioned on 6.8.2019 as per Article 6 of the TSA. The AP Line was finally

commissioned on 30.10.2019 pursuant to the commissioning of the associated bays at the Aligarh Substation of PGCIL.

(b) The Petitioner received approval for energization from the CEA with respect to the Prithala Substation on 31.7.2019 and the Prithala Substation was declared deemed commissioned with effect from 8.8.2019 in terms of Article 6 of the TSA. The Petitioner vide its letter dated 23.9.2019 while seeking information on the status of the 220kV transmission line under construction by HVPNL from Prithala substation to other load centers *inter-alia* informed HVPNL of the CEA charging approval for the substation and that the substation was ready for charging in all respects. Thereafter, the Prithala substation was charged on 2.11.2019.

89. HVPNL has submitted that on 20th July 2020, the 220 kV downstream system at 400 kV Sohna Road S/s was available for evacuation of power and on 19th April 2020, 220 kV downstream system was available for evacuation of power from the 400 kV Prithala substation. Further, downstream transmission system at Kadarapur substation, is likely be available by March 2024 for evacuation of power from the 440 KV Substation Kadarapur.

90. PGCIL has submitted that its assets associated with GPTL's AP line and Prithala substation on 30.10.2019. Despite the completion of the assets of PGCIL, power flow could not be commenced due to delay in commissioning of the downstream 220 kV lines at Prithala substation under the scope of HVPNL. Apparently, actual power flow in the assets started w.e.f. 18.3.2020 after completion of the adjoining 400 kV system i.e. Kadarapur-Sohna Road 400 kV D/c HTLS line and the LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road substation. The utilization/ power flow in Prithala substation was only conditional upon the HVPNL 220 kV downstream network which was delayed till 19.4.2020. Hence, AP line and Prithala substation charges should only be levied on HVPNL alone.

91. CTUIL has mainly submitted as under:

(a) PGCIL was to establish the asset i.e. 2X1500 MVA 765/400 kV transformers and 2 nos. 400 kV bays at Aligarh substation. HVPNL was to establish the downstream 220 kV transmission system at Prithala, Kadarapur and Sohna Road substations.

(b) The power flow commenced w.e.f. 21.3.2020 when the entire link from Aligarh-Prithala-Kadarapur-Sohna Road was established with synchronization of the 400 kV Kadarapur to Sohna Road transmission line. However, Kadarapur S/s and Sohna Road S/s were prerequisite for declaration of CoD of Kadarapur-Sohna Road 400 kV D/C line



and the CoD of these assets as per the TSA was 11.12.2019 and 14.4.2020 respectively. Therefore, the CoD of the Kadarapur-Sohna Road 400 kV D/C line may only be considered as 14.4.2020 instead of 21.3.2020. Hence the recovery of the transmission charges of the following assets from the PoC Pool may also be considered w.e.f. 14.4.2020 only:

- (i) Aligarh-Prithala 400 kV D/C HTLS line
- (ii) Prithala-Kadarapur 400 kV D/C HTLS line
- (iii) Kadarapur-Sohna Road 400 kV D/c line
- (iv) LILO of Gurgaon-Manesar 400 kV D/c Quad line at Sohna Road S/s
- (v) Prithala GIS excl. ICTs and unutilized bays.
- (vi) Kadarapur GIS excl. ICTs and unutilized bays.
- (vii) Sohna Road GIS exc. ICTs and unutilized bays

(c) The transmission charges of the said element(s) prior to 14.4.2020 should not be recovered from the PoC pool and the transmission charges claimed earlier by the licensee is required to be refunded back to DICs pool in line with the CERC regulations. The transmission charges for the period prior to 14.4.2020 are now required to be recovered from the defaulting entities, towards non-commencement of power flow in the said element.

92. We have considered the submissions of Petitioner and Respondents. In this regard it is relevant to quote the order dated 26.4.2022 in Petition No. 60/TT/2017:

“19. Clause (3) of Regulation 4 of the 2014 Tariff Regulations defines the date of commercial operation of transmission system as under:

“(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

(i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavor to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations:

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission

licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.”

20. As per the above definition, a transmission system or an element thereof can be declared under commercial operation when it is put in regular service after successful trial operation for transmitting electricity and upon availability of communication signal from sending end to receiving end. If the transmission system is prevented from being put to service on account of the delay in commissioning of the concerned generating station or in commissioning of upstream or downstream transmission system, then the transmission licensee has the option to approach the Commission for approval of COD of such transmission system or an element thereof. PGCIL, the Petitioner herein, has approached the Commission in several cases for approval of date of commercial operation of its transmission assets including the present case under second proviso to Regulation 4(3) of the 2014 Tariff Regulations. Where the Commission has approved the date of commercial operation under the said proviso, the entity whether generating station or transmission licensee on whose account the transmission asset is prevented from regular use has been levied with the transmission charges till the defaulting entity has declared its generating station or transmission system, as the case may be, under commercial operation and the transmission asset is put to regular use. A few of such illustrative cases are the Commission’s Order dated 12.4.2019 in Petition No. 233/TT/2018; Order dated 14.2.2019 in Petition No. 59/TT/2018; Order dated 9.10.2018 in Petition No. 56/TT/2017; Order dated 29.7.2016 in Petition No. 201/TT/2015; Order dated 19.7.2016 in Petition No. 403/TT/2014; Order dated 29.4.2016 in Petition No. 99/TT/2014; Order dated 29.4.2016 in Petition No. 100/TT/2014; and Order dated 29.4.2016 in Petition No. 110/TT/2014. In cases where the Commission has not approved the date of commercial operation under second proviso to Regulation 4(3) of the 2014 Tariff Regulations and deferred the date of commercial operation for matching it with the commercial operation of the other concerned entity, the Commission has imposed the liability of IDC and IEDC on the said other entity for the period of delay. A few of such illustrative cases are the Commission’s Order dated 5.10.2017 in Petition No. 203/TT/2016; Order dated 15.5.2018 in Petition No. 108/TT/2016; Order dated 22.2.2018 in Petition No. 13/TT/2017; Order dated 15.12.2017 in Petition No. 141/TT/2017; and Order dated 30.11.2017 in Petition No. 55/TT/2017. In the present case, the Commission vide order dated 30.11.2017 decided that COD of Asset-I and Asset-II shall be considered from COD of the transmission lines being implemented by NTL and imposed liability of IDC and IEDC on NTL.

21. Article 6.2.1 and Article 6.2.2 of the Transmission Service Agreement (TSA) deal with the commercial operation of transmission systems executed through TBCB route as under:

.....

22. As per the above provisions, an element of a transmission project shall be declared to have achieved COD 72 hours following the connection of the element with the interconnection facilities or 7 days after the date on which it is declared by TSP (transmission service provider) to be ready for charging but is not able to be charged for reasons not attributable to TSP. Further, as per Article 6.1.1 of TSA, date of interconnection shall not be prior to SCOD unless it is agreed by LTTCs. As per Article 6.2.2 of TSA, once an element of the transmission system is declared to have achieved COD in accordance with Article 6.2.1 of TSA, such element shall be deemed to have achieved the availability equal to the Target Availability and to that extent shall be eligible for monthly transmission charges.

23. Bearing of monthly transmission charges, where an element of transmission system that has been executed through TBCB route and has declared COD under Article 6.2.1 of TSA on account of the non-availability of connected transmission system for charging is also an issue for consideration. Sharing of transmission charges, whether implemented through Tariff Based Competitive Bidding (TBCB) route or under Regulated Tariff Mechanism (RTM), was governed by the Central Electricity Regulatory Commission

(Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (in short, “the Sharing Regulations, 2010”) which remained in force till 31.10.2020. However, the Sharing Regulations, 2010 did not contain any specific provision with regard to sharing of transmission charges in case of mismatch in COD of transmission system of a transmission licensee with COD of a generating station or upstream/ downstream transmission asset of another transmission licensee.

24. In the RAPP Case in Petition No. 43/MP/2016 (RAPP Transmission Company Limited Vs Power Grid Corporation of India Limited & Others), the RAPP-Shujalpur transmission line being developed by RAPP Transmission Company Limited under TBCB route was ready for commercial operation but the associated bays within the scope of Nuclear Power Corporation of India Limited (NPCIL) were not ready. In the light of the afore-mentioned provisions of Article 6.2.1 of TSA, the Commission vide order dated 21.9.2016 decided COD of the RAPP-Shujalpur transmission line as 1.3.2016. As regards the sharing of transmission charges from 1.3.2016 till COD of bays under the scope of NPCIL, the Commission held as under:

“23. The next question is who shall bear the transmission charges of RAPP-Shujalpur Transmission Line from the date of SCOD till the associated bays at NPCIL end is commissioned. In the present case, it was decided in the 31st meeting of Standing Committee held on 2.1.2013 that commissioning of RAPP 7 & 8 generation would be delinked from the commissioning of the bays at RAPP end and the bays would be commissioned matching with the SCOD of RAPP-Shujalpur transmission line. Development of the bays at RAPP end was entrusted to NPCIL. Therefore, it was the responsibility of NPCIL to develop the bays by February, 2016. Non-commissioning of the bays by NPCIL has rendered the RAPP-Shujalpur transmission line unutilized which was developed as the interconnection line between Northern and Western Regions. Therefore, the petitioner is entitled for the transmission charges from SCOD of the transmission line i.e. 1.3.2016 till bays to be developed by NPCIL are ready and the asset covered under the present petition is put into actual use. NPCIL would be liable to pay the transmission charges from 1.3.2016 till the bays are commissioned. After the commission of the bays being implemented by NPCIL, the transmission line will be used for North-West inter connection and would be included in PoC calculation and the transmission charges shall be payable as per the provisions of the Sharing Regulations. As per Regulation 11 of the Sharing Regulations, CTU is responsible for raising the bills, collection and disbursement of transmission charges to ISTS transmission licensee. Accordingly, CTU is directed to raise the bills on NPCIL from 1.3.2016. However, NPCIL shall directly pay to the petitioner under intimation to CTU in order to avoid double deduction of TDS. If NPCIL fails to pay the charges within a period of one month from the date of issue of this order, it shall be liable to pay the late payment surcharge in terms of Article 10.8.1 of the TSA.”

25. The Commission vide order dated 21.9.2016 in Petition No. 43/MP/2016 also laid down the following principle to deal with future cases involving transmission systems developed under TBCB route as under:

“24. A related issue arises as to how recovery of transmission charges of transmission licensee shall be made when the transmission system under TBCB is ready as on its scheduled COD as per the provisions of the TSA but cannot be made operational or put to use due to non-availability/ delay in upstream/ downstream system. In our view, ISTS licensee executing the project under TBCB should enter into Implementation Agreement with CTU, STU, inter-State transmission licensee, or the concerned LTTC, as the case may be, who are responsible for executing the upstream/ downstream transmission system and clearly provide the liability for payment of transmission charges in case of the transmission line or upstream/downstream transmission assets. In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the

bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.”

26. The above principle was followed in the Patran Case in Petition No. 155/MP/2016 (Patran Transmission Company Limited Vs. Haryana Power Purchase Centre and Others) while dealing with the mismatch of the transmission lines executed by Patran Transmission Company Limited and the sub-station being implemented by Punjab State Transmission Company Limited. The Commission in its order dated 4.1.2017 in Petition No. 155/MP/2016 decided that the transmission charges of the transmission system of Patran Transmission Company Limited from the date of its SCOD or actual COD, whichever is later, till COD of the downstream system shall be payable by PSPCL. The order dated 4.1.2017 in Petition No.155/MP/2016 was challenged by PSPCL before APTEL in Appeal No.390 of 2007 (the Patran Case). During the course of the hearing, APTEL desired to know the basis of the principle laid down in the RAPP Case. It was apprised to APTEL that the Commission had laid down the said principle in exercise of its regulatory power under Section 79 of the Act in the light of the judgement of the Hon’ble Supreme Court in the PTC matter i.e. PTC India Limited Vs CERC [(2010) 4 SCC 603] which states that specifying regulation under Section 178 is not a pre-requisite to take any measure by the Commission in exercise of powers under Section 79(1) of the Act. The relevant extract of the said judgement is as under:

...

27. APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran Case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) has upheld the principles enunciated by the Commission. In these appeals, the APTEL also proceeded to establish the contractual linkage between the transmission licensees executing the upstream and downstream transmission system by referring to the provisions of TSA in case of Patran Transmission Company Limited and the minutes of the meeting of the Standing Committee in case of RAPP Transmission Company Limited.”

93. The Commission in the above order has taken a view that the payment liability of the transmission charges during the mismatch period shall fall on the entity on whose account an element is not put to use. We also observe that the Haryana Power Purchase Centre (HPPC) is the entity that acts on behalf of the Haryana Discoms to procure power and HVPNL facilitates transfer of power to HPPC and was acting on behalf of HPPC. HPPC is also one of the LTTCs of the Petitioner and also the signatory of the TSA. It is the responsibility of LTTCs to arrange the interconnection facilities as per the TSA. Therefore, it was the responsibility of HPPC for arranging HVPNL’s downstream system for interconnection with the Petitioner’s Project. Accordingly, we are of the view that HPPC shall be liable to pay the transmission charges due to delay in commissioning of HVPNL system leading to non-utilization of the Petitioner’s elements as per details in following paragraph.



94. In light of the above, we now proceed to discuss the issue of element-wise liability of payment of the transmission charges during the mismatch period.

(b) **AP Line and Prithala substation**

95. The utilization of the AP Line and Prithala S/s were dependent on the availability of ICTs and bays at Aligarh S/s (in the scope of PGCIL) and the availability of downstream system of HVPNL at Prithala S/s. In the issue Nos. 1 and 2 above, we have allowed the deemed COD of the AP Line and Prithala S/s as 8.8.2019 as the ICTs and bays at Aligarh S/s (in the scope of PGCIL) were made available only on 30.10.2019. Thereafter, the power flow in the AP Line was established on 19.3.2020. However, the 2 No. 500 MVA ICTs along with associated bays at Prithala sub-station put to use only on 19.4.2020, on availability of the downstream system at Prithala sub-station by HVPNL. We observe that both the elements in the scope of PGCIL at Aligarh substation and downstream system in the scope of HVPNL were required for utilization of the AP Line and Prithala substation. Therefore, the liability of the bilateral transmission charges in respect of the AP Line and Prithala S/s shall be as under:

(i) **400 kV D/c AP Line:** With effect from 8.8.2019 till 29.10.2019, 50% of applicable transmission charges shall be payable by PGCIL and 50% by HPPC and with effect from 30.10.2019 till 18.3.2020, 100% applicable transmission charges shall be paid by the HPPC.

(ii) **400/220 kV Prithala S/s:** With effect from 8.8.2019 till 29.10.2019, 50% of applicable transmission charges shall be payable by PGCIL and 50% by HPPC and with effect from 30.10.2019 till 18.4.2020, 100% applicable transmission charges shall be paid by the HPPC.

(c) **PK Line and Kadarapur sub-station**

96. We have allowed the deemed COD of the PK Line and Kadarapur S/s as 17.12.2019. Power flow in the PK line started with effect from 19.3.2020 through Kadarapur Sohna Road

corridor. Further, the ICTs along with associated bays and line bays at Kadarapur substation are not yet charged due to non-readiness of the downstream system by HVPNL. Therefore, liability of the transmission charges in respect of the PK Line and Kadarapur S/s shall be as under:

(i) **400 kV PK Line:** With effect from 17.12.2019 till 18.3.2020, 100% of applicable transmission charges shall be payable by HPPC.

(ii) **400/220kV Kadarapur GIS sub-station:** 100% of applicable transmission charges shall be payable by HPPC from 17.12.2019 till the readiness of downstream system at Kadarapur substation.

(d) **KS Line and Sohna Road substation**

97. We have allowed the COD KS Line as 19.4.2020. KS line shall be in POC pool from 19.04.2020. However, the downstream system at Sohna Road sub-station (in the scope of HVPNL) was made available on 20.7.2020. Hence, Sohna Road S/s which has been approved under deemed COD as 19.4.2020, was put to use on 29.7.2020. The relevant portion of the trial operation certificate in respect of the Sohna Road sub-station is as under:



Certificate of Completion of Trial Operation of 400kV, 500MVA ICT-1,2 and 220kV bays no 206,211 at Sohna Road(GPTL)

संदर्भ:

- i) Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 17.03.2020, 19.03.2020 & 14.07.2020 regarding the submission of pre charging documents of 400kV,5000 MVA ICT-1,2 and 220kV bays no 206,210 at Sohna(GPTL).
- ii) Real time code issued by NRLDC on request Gurgaon Palwal Transmission Limited (GPTL), Bhopal and SLDC Haryana, Panipat (NRLDC Code: NR 2007-2014 & NR- 2007-2019).
- iii) Gurgaon Palwal Transmission Limited (GPTL), Bhopal, Communication dated 27.07.2020 regarding the submission of post charging documents.

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

| | |
|--|--|
| Name of Transmission Asset: | <ol style="list-style-type: none"> 1. 400kV,500 MVA ICT-1 along with associated main bay (410) & tie bay (411) and 220kV side bay no 205 at Sohna(GPTL). 2. 400kV,500 MVA ICT-2 along with associated main bay (415) & tie bay (414) and 220kV side bay no 211 at Sohna(GPTL). 3. 220kV bay no 210 of Badshahpur(HVPNL) line-1 at Sohna Road (GPTL). 4. 220kV bay no 206 of Badshahpur(HVPNL) line-2 at Sohna Road (GPTL). |
| Owner of Transmission Asset: | <ol style="list-style-type: none"> 1. GPTL |
| Date and Time of Energization for Commencement of trial run operation: | <ol style="list-style-type: none"> 1. 29.07.2020/17:00 hrs. 2. 29.07.2020/17:00 hrs. 3. 29.07.2020/17:00 hrs. 4. 29.07.2020/17:00 hrs. |
| Date and Time of completion of trial run operation: | <ol style="list-style-type: none"> 1. 30.07.2020/17:00 hrs. 2. 30.07.2020/17:00 hrs. 3. 30.07.2020/17:00 hrs. 4. 30.07.2020/17:00 hrs. |

Note: First time charging certificate at no load of above elements was issued vide ref no.: NRLDC/SO-I/117/2020/02 dated 04.05.2020. Transmission Licensee applied for trial operation certificate w.e.f 11:53 hrs of 21.07.2020, however SEM meter data was made available w.e.f 17: 00 hrs. of 29.07.2020. In view of above trial operation certificate is issued w.e.f 17:00 hrs of 29.07.2020.

यह प्रमाणपत्र ट्रांसमिशन तत्व के परीक्षण संचालन के सफल समापन को प्रमाणित करने के लिए सीईआरसी (भारतीय विद्युत निगम कोड) विनियम, 2010 के विनियमन 6.3(A)(5) के अनुसार जारी किया जा रहा है। किसी अन्य उद्देश्य के लिए इस प्रमाणपत्र का उपयोग प्रतिबंधित है।

(Signature)
एन. मन्सूरामन 18/8/20

98. The Sohna Road substation was put to use on the availability of the downstream system in the scope of HVPNL. Therefore, 100% of applicable transmission charges in respect of the Sohna Road S/s from 19.4.2020 till 28.7.2020 shall be billed to HPPC.

(e) **LILO of G-M Line at Sohna Road substation**

99. We have allowed the COD of the LILO of GM Line at Sohna Road substation as 19.4.2020 and the said LILO portion also actually put to use on 19.4.2020 and shall be considered in POC from 19.4.2020.

100. As discussed above, the liability of transmission charges against different element of the Petitioner's Project is summarized as under:

| Sl. No. | Particulars of the Transmission Element | Deemed COD allowed | Actual COD allowed | Billing of transmission charges |
|---------|--|--------------------|--------------------|---|
| 1 | 400kV D/C Neemrana - Dhanonda Transmission Line | ---- | 28.2.2019 | under POC from 28.2.2019 |
| 2 | 2 Nos. of 400kV line bays at 400kV Dhanonda S/s | ---- | 28.2.2019 | under POC from 28.2.2019 |
| 3 | 400kV D/C Aligarh - Prithala Transmission line | 8.8.2019 | | 8.8.2019 to 29.10.2019: 50% of applicable transmission charges shall be payable by PGCIL and 50% by HPPC. 30.10.2019 to 18.3.2020: 100% applicable transmission charges shall be paid by the HPPC. Under POC from 19.3.2020 onwards |
| 4 | 400/ 220 kV Prithala S/s | 8.8.2019 | | 8.8.2019 to 29.10.2019: 50% of applicable transmission charges shall be payable by PGCIL and 50% by HPPC. 30.10.2019 to 18.4.2020: 100% applicable transmission charges shall be paid by the HPPC. 19.4.2020 onwards- from POC |
| 5 | 400kV D/C Prithala- Kadarpur Transmission line | 17.12.2019 | | 17.12.2019 till 18.3.2020: 100% of applicable transmission charges shall be payable by HVPNL. Under POC from 19.3.2020 onwards |

| | | | | |
|---|--|------------|-----------|---|
| 6 | 400/220kV Kadarpur GIS S/s | 17.12.2019 | ----- | 17.12.2019 till the commissioning of downstream system of HVPNL or 1.10.2023, whichever is earlier : 100% of applicable transmission charges shall be payable by HPPC. Post 1.10.2023 in terms of 2020 Sharing Regulations |
| 7 | 400kV D/C Kadarpur - Sohna Road Transmission line | --- | 19.4.2020 | Under POC from 19.4.2020 |
| 8 | 400/220kV Sohna Road GIS S/s | 19.4.2020 | | From 19.4.2020 to 28.7.2020: 100% of applicable transmission charges shall be payable by HPPC . Under POC from 29.7.2020 onwards |
| 9 | LILO of G-M Line at Sohna Road S/s | ---- | 19.4.2020 | Under POC from 19.4.2020 |

101. Now we proceed to discuss the mode of recovery of transmission charges which have been paid to the Petitioner from POC pool.

102. The Petitioner has submitted that at this belated stage, any claim against the Petitioner for return or refund of the transmission charges paid from the PoC Pool will be barred by limitation, the doctrine of delay and laches, waiver, and the doctrine of acquiescence. However, we are not persuaded by the aforesaid submission of the Petitioner. Indisputably, the extension of the SCOD of the Project/elements (upto a deemed COD/ actual COD), as having prayed for by the Petitioner, is the subject matter of the present Petition and resultantly, such declaration of deemed COD by the Petitioner in respect of its Project/elements would also form part of the present Petition, enabling the Commission to look into and/or enquire into these aspects. Once these aspects are subject

matter of a scrutiny and approval of this Commission in the instant case, the Petitioner cannot argue that the issue of recovery of transmission charges from the PoC Pool and any other sources from such period cannot be examined by the Commission as these aspects are barred by the limitation, doctrine of delay and laches, waiver and doctrine of acquiescence. The Petitioner has also submitted that If this Commission is of the view that the PoC Pool should be refunded/returned the transmission charges erroneously paid to the Petitioner - the entity responsible for delay in intended utilization of the Subject Elements (“Defaulting Entity”) must pay transmission charges directly to the PoC Pool.

103. We observe that Petitioner has recovered transmission charges from POC pool from the dates as recorded in Paragraph 47 of this Order. However, the approved COD/deemed COD for the elements of the Petitioner are different from claimed COD/deemed COD. Hence the recovery from POC pool which has already happened has two cases:

(a) Recovery from POOL before COD/ deemed COD

(b) Recovery from Pool after COD/deemed COD but before the allowed date of recovery from pool as summarised in Paragraph 100 of this Order.

104. The summarised table for each of the above said cases is as follows:

(a) Recovery from POOL before COD/ deemed COD

| S. No. | Elements | COD/ deemed Cod declared by Petitioner | Date of start of recovery from PoC Pool by Petitioner | Allowed deemed COD/ COD | Period for which amount has been recovered by the Petitioner from PoC Pool prior to COD |
|--------|---|--|---|-------------------------|---|
| 1 | 400kV D/C Neemrana - Dhanonda Transmission Line | 25.02.2019 | 25.02.2019 | 28.02.2019 | 25.02.2019 to 27.02.2019 |
| 2 | 2 Nos. of 400kV line bays at 400kV Dhanonda S/s | 25.02.2019 | 25.02.2019 | 28.02.2019 | 25.02.2019 to 27.02.2019 |
| 3 | 400kV D/C Aligarh - Prithala Transmission line | 06.08.2019 (deemed COD) | 01.11.2019 | 08.08.2019 (deemed) | ---- |
| 4 | 400/220kV Prithala GIS S/s | 08.08.2019 (deemed COD) | 03.11.2019 | 08.08.2019 (deemed COD) | ---- |

| | | | | | |
|---|--|------------|------------|---------------------|--------------------------|
| 5 | 400kV D/C Prithala - Kadarpur Transmission line | 07.12.2019 | 07.12.2019 | 17.12.2019 (deemed) | 07.12.2019 to 16.12.2019 |
| 6 | 400/220kV Kadarpur GIS S/s | 11.12.2019 | 11.12.2019 | 17.12.2019 (deemed) | 11.12.2019 to 16.12.2019 |
| 7 | 400kV D/C Kadarpur - Sohna Road Transmission line | 21.03.2020 | 21.03.2020 | 19.04.2020 | 21.03.2020 to 18.04.2020 |
| 8 | 400/220kV Sohna Road GIS S/s | 13.04.2020 | 13.04.2020 | 19.04.2020 (deemed) | 13.04.2020 to 18.04.2020 |
| 9 | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s | 13.03.2020 | 13.03.2020 | 19.04.2020 | 13.03.2020 to 18.04.2020 |

As per the above, the transmission charges recovered by the Petitioner from POC pool need to be refunded by the Petitioner to POC pool along with applicable interest. Accordingly, CTUIL shall raise the bill raising such refund from the Petitioner within 15 days of issue of this Order. The Petitioner shall pay back the amount within next 3 months of issue of such bill by CTUIL. In case of non-refund of the bill amount by Petitioner, CTUIL shall adjust such amount in next month after expiry of such period of 3 months while disbursing the transmission charges to the Petitioner towards YTC.

(b) Recovery from Pool after COD/deemed COD but before the allowed date of recovery from pool as summarised in Paragraph 100 of this Order.

| S. No. | Elements | Date of start of recovery from PoC Pool by Petitioner | Deemed COD allowed | Actual COD allowed | Approved as per this Order | Under POC- as approved | Treatment for period under this issue |
|--------|---|---|--------------------|--------------------|--|------------------------|---------------------------------------|
| 1 | 400kV D/C Neemrana - Dhanonda Transmission Line | 25.02.2019 | ---- | 28.2.2019 | Under POC from 28.2.2019 | From 28.2.2019 | |
| 2 | 2 Nos. of 400kV line bays at 400kV Dhanonda S/s | 25.02.2019 | ---- | 28.2.2019 | Under POC from 28.2.2019 | From 28.2.2019 | NA |
| 3 | 400kV D/C Aligarh - Prithala Transmission line | 01.11.2019 | 8.8.2019 | | 8.8.2019 to 29.10.2019: 50% of applicable transmission charges shall be payable by PGCIL and | From 19.3.2020 | 01.11.2019-18.3.2020 |

| | | | | | | | |
|---|--|------------|------------|-------|--|----------------|--|
| | | | | | 50% by HPPC. 30.10.2019 to 18.3.2020: 100% applicable transmission charges shall be paid by the HPPC. 19.3.2020 onwards- from POC | | |
| 4 | 400/220kV Prithala GIS S/s | 03.11.2019 | 8.8.2019 | | 8.8.2019 to 30.10.2019: 50% of applicable transmission charges shall be payable by PGCIL and 50% by HPPC. 31.10.2019 to 18.4.2020: 100% applicable transmission charges shall be paid by the HPPC. 19.4.2020 onwards- from POC | From 19.4.2020 | 3.11.2019-18.4.2020 |
| 5 | 400kV D/C Prithala - Kadarapur Transmission line | 07.12.2019 | 17.12.2019 | | 17.12.2019 till 18.3.2020: 100% of applicable transmission charges shall be payable by HVPNL. 19.3.2020 onwards- from POC | From 19.3.2020 | 17.12.2019-18.3.2020 |
| 6 | 400/220kV Kadarapur GIS S/s | 11.12.2019 | 17.12.2019 | ----- | 17.12.2019 till the commissioning of downstream system of HVPNL or 1.10.2023, whichever is earlier : 100% of applicable | - | 17.12.2019-onwards till 30.9.2023 Post which as per 2020 Sharing Regulations |

| | | | | | | | |
|---|--|------------|-----------|-----------|--|----------------|---------------------|
| | | | | | transmission charges shall be payable by HPPC. Post 1.10.2023 in terms of 2020 Sharing Regulations | | |
| 7 | 400kV D/C Kadarapur - Sohna Road Transmission line | 21.03.2020 | --- | 19.4.2020 | POC from 19.4.2020 | From 19.4.2020 | NA |
| 8 | 400/220kV Sohna Road GIS S/s | 13.04.2020 | 19.4.2020 | | From 19.4.2020 to 28.7.2020: 100% of applicable transmission charges shall be payable by HPPC . 29.7.2020 onwards- from POC | From 29.7.2020 | 19.4.2020-28.7.2020 |
| 9 | LILO of Gurgaon Manesar 400kV D/C line at Sohna road S/s | 13.03.2020 | ---- | 19.4.2020 | POC from 19.4.2020 | From 19.4.2020 | NA |

105. We observe that the Petitioner was entitled for transmission charges post approved deemed COD/COD. CTUIL has suggested that charges for such period where bills are to be levied on PGCIL/HPPC should be recovered from the Petitioner first. On payment by PGCIL/HPPC, the same should be credited to the Petitioner.

106. We have considered the suggestions of CTUIL and the Petitioner. We are of the view that the Petitioner as a transmission licensee once entitled for transmission charges should not be left in a precarious situation where it has to arrange funds for refund of such charges for past period which otherwise it was entitled to get. Accordingly, we observe that bills shall be raised by CTUIL to PGCIL and HPPC as directed above along with next Bill

2 under 2020 Sharing Regulations. On payment of such charges by PGCIL and HPPC, the same shall be credited to the pool.

107. The issue is answered accordingly.

Issue No. 4: Whether the Petitioner has complied with the provisions of the TSA before approaching the Commission for claiming relief under force majeure and “Change in Law”?

108. Since the Petitioner has claimed the relief under Article 11 (Force Majeure) of the TSA in respect of certain events, it is relevant to note the Article 11.5.1 of the TSA, which 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.”

Thus, as per 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.



109. In the present case, the Petitioner has submitted that it issued the force majeure notices for (i) delay in grant of the forest clearance in respect of the AP Line on 22.10.2018 and 17.5.2019 (ii) delay in sharing of the CRP Protection details by HVPNL on 17.5.2019, (iii) requirement of relocation of the Kadarapur substation and subsequent obstructions caused by Ishwar Singh on 22.10.2018 and 17.5.2019 (iv) unlawful obstruction caused by landowners/ farmers impacting PK Line on 17.5.2019, (v) unlawful obstruction and litigation impacting KS Line on 19.11.2019, (vi) delay in finalisation of route for 220 kV downstream lines from substation attributable to HVPNL on 17.5.2019 and (vii) ban on construction activities in Delhi-NCR on 19.11.2019. However, Respondents, PSPCL, UPPCL and HVPNL have stated that the Petitioner has not complied with the notice requirement under Article 11.5 of the TSA. In response, the Petitioner has referred to the above notices placed on record and has also cited the constructive notice to the LTTCs as the various events were discussed at the CEA meetings – minutes of which are public documents.

110. We have considered the submissions made by the parties. The Petitioner has indeed placed on record the above notices dated 22.10.2018, 17.5.2019 and 19.11.2019 having issued to the various LTTCs of the TSA including PSPCL and UPPCL. However, we find that these notices are not strictly in accordance with the provisions of Article 11.5 of the TSA, as they neither give any indication as to the cessation of the relevant force majeure event as required under Article 11.5.2. Also, as per Article 11.5.1, the affected party is required to give the notice to the other party of any event of force majeure event as soon as reasonably practicable but not later than 7 days after the date on which the such Party knew or should reasonably have known of the commencement of event of force majeure. However, the notices issued by the Petitioner as such do not strictly fall within the above stipulation inasmuch as date of these notices do not commensurate with the window of 7 days from the commencement of force majeure event(s). Nevertheless, keeping in view the subjectivity associated with precise date of the commencement of force majeure

event(s) for the events as cited in the present case, we deemed it proper to consider the above notices in compliance with the provisions of the TSA.

111. The Petitioner has also claimed relief under Article 12 (Change in Law) of the TSA.

Article 12.3.1 of the TSA provides as under:

“12.3 Notification of Change in Law Event

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

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

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

112. Article 12.3 of the TSA provides that if the TSP is affected by a Change in Law in accordance with Article 12.1 and wishes to claim relief for such Change in Law, it shall give notice to the lead LTTC as soon as reasonably practicable after being aware of the same. It further provides that any notice served pursuant to Article 12.3.1 and Article 12.3.2 of the TSA shall provide amongst the other things, precise details of Change in Law and its effect on the TSP.

113. Insofar as Change in Law is concerned, it is noticed that the Petitioner has placed on record the various Change in Law notices issued by it intimating the lead LTTC/LTTCs about the occurrence of Change in Law event viz. (i) Promulgation of GST Act, 2017 on 24.7.2017 and (ii) Pro-rata revision in the amount for Compensatory Afforestation due to Change in wage rate on 22.10.2018. In view of the above, we find that the Petitioner has largely complied with the requirement of prior notice of Change in Law event in terms of the Article 12.3 of the TSA.

Issue No. 5: Whether the Petitioner is entitled to relief of Force Majeure and Change in Law events in terms of TSA?



114. The Petitioner has prayed that the various events, as indicated in subsequent paragraph, be declared as force majeure events in accordance with Article 11 of the TSA and the SCOD of the elements as well as the overall Project impacted by these Project be extended. The Petitioner has also prayed for grant of applicable Interest During Construction and Incidental Expenditure upon the commissioning of the Project in view of the cited force majeure events.

115. The provisions of the TSA with regard to “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.

.....

11.6 Duty to perform and duty to mitigate

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

116. Further, Article 4.4 of the TSA provides as under:

“4.4 Extension of Time

4.4.1 In the event that the TSP is prevented from performing its obligations under Article 4.1 (a), (b) and (e) by the stipulated date, due to any Long Term Transmission Customers' Event of Default, the Scheduled COD shall be extended, by a 'day to day' basis, subject to the provisions of Article 13”

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

In the light of the provisions of Force Majeure, the claims of the Petitioner have been examined in the subsequent paragraphs.

Force Majeure Claims

(A) Relocation of the Kadarpur Substation, subsequent litigation and unlawful obstructions

Petitioner's submissions

117. The Petitioner has mainly submitted as under:



(a) For the construction of the Kadarapur substation, the Petitioner had finalized a location in Village Garhi Wajidpur close to one of the three sites provided by the BPC in the Survey Report. On 16.1.2017, the Petitioner shared the coordinates for construction of the substation at Kadarapur with Haryana Vidyut Prasaran Nigam Limited (“HVPNL”) while *inter alia* mentioning that the acquisition of the parcel is in advance stage and is expected to be acquired in the next 30 days. HVPNL communicated its reservations with respect to the location chosen by the Petitioner for the Kadarapur substation at Village Wajidpur *vide* various communications and in its meetings with the representatives of the Petitioner and the CEA. HVPNL was of the view that the chosen location was supposedly not suitable for Kadarapur substation. The reasons provided by HVPNL included, among others (a) that the chosen location may jeopardize the planning of the downstream network along with extra financial burden on HVPNL and (b) that the chosen location is very far from the approved location in the Kadarapur village.

(b) The Petitioner *vide* its letter dated 21.02.2017 delineated its stand with respect to the concerns raised by HVPNL. In the meeting held on 8.2.2017, the CEA advised the Petitioner and HVPNL to finalize an amicable solution mutually and submit a report to the CEA. HVPNL *vide* its letter dated 28.3.2017 informed the Petitioner regarding constitution of a committee by HVPNL to resolve the matter of location of the Kadarapur Substation. In the committee meeting dated 12.4.2017, HVPNL repeated its previously raised concerns and impressed upon changing the location nearer to Gurugram. In response, the Petitioner *inter alia* categorically mentioned (a) that the land selected for construction of the Kadarapur substation was based on the three alternate locations given in the Survey Report by the BPC, (b) that the land was in advance stage of acquisition, (c) that the Petitioner was about to commence work at the field and (d) that the re-location as sought by the HVPNL will attract huge financial and time implication and need for statutory approvals. It was decided in the said meeting that the matter will be decided in a CEA meeting.

(c) Subsequently, in the meeting conducted by the CEA on 26.4.2017, it was decided that a separate committee of members shall be constituted comprising of representatives from the CEA, HVPNL and the Petitioner, who shall collectively finalize the location for the Kadarapur substation after conducting a survey of the possible locations for the substation by 5.5.2017 and submit its report to the CEA.



(d) In the CEA Committee meeting held on 5.5.2017, the alternate location identified near village Mahenderwara, was found feasible by all the members on *prima facie* basis and it was collectively opined that the Petitioner may proceed for site selection in the radius of 1.5 kms of the visited location preferably towards Gurugram.

(e) The Petitioner proceeded on the locations provided under the Survey Report to finalize the actual coordinates of the Kadarpur substation. As such, HVPNL should have consulted the CTUIL for the location of the substation prior to the issue of the RfP document by the BPC. The procedure adopted for reconsidering the location of the Kadarpur substation to accommodate the concerns of HVPNL regarding their downstream networks not only stalled the progress of the Project but had also set the clock backwards.

(f) The Petitioner commenced the process for land acquisition at the original proposed location for the Kadarpur substation in June 2016. However, when after a lapse of 11 months, the CEA Committee finalized an alternate location for the substation near village Mahenderwara on 5.5.2017, the Petitioner had to restart the entire process for acquiring land near the newly finalized location. On 16.4.2018, the Petitioner executed sale deeds with multiple landowners for acquisition of land for the Kadarpur substation near the location identified by the CEA Committee. The Petitioner lost 11 months of working time on account of the relocation of the Kadarpur substation.

(g) Post-acquisition of land for the Kadarpur substation, the Petitioner faced hindrances in the construction of the substation from an erstwhile landowner, Mr. Ishwar Singh. The Petitioner purchased approximately 2.225 acre of land from the said erstwhile landowner for a total consideration of Rs. 5,56,25,000, pursuant to execution of a Sale Deed registered bearing Vasika No. 298 dated 16.4.2018.

(h) Pursuant to the execution of the sale deed, the erstwhile land owner filed a suit for declaration with consequential relief of temporary injunction and alternative for possession against the Petitioner (CS 121 of 2018), before the Court of Additional Civil Judge (SD), Sohna, District Gurugram in April 2018 on the baseless ground that he has been paid lesser than the total amount of sale consideration. While the first application filed by the erstwhile landowner was dismissed vide the order dated 31.05.2018, the matter is now listed for further hearing on 18.12.2019 as per the order dated 15.11.2019, for an order on second application made by the Petitioner for appointment of local commissioner.



(i) Even while the pendency of the aforementioned civil suit, for a long time the erstwhile landowner remained in forceful possession of the suit land. In order to continue the work on the site and get rid of the abuse being caused by the erstwhile landowner, the Petitioner took all possible efforts, including filing police complaints with the Station House Officer at Bhondsi Police Station on 25.10.2018 and 19.9.2019 and seeking police protection from the District Magistrate, Gurugram vide its letter dated 31.5.2019. The District Magistrate, Gurugram, vide order dated 4.6.2019 appointed a Duty Magistrate to provide the police assistance till completion of the work.

(j) In spite of all the impediments and consequent delay, the Petitioner applied to the CEA for electrical inspection of the Kadarpur substation on 17.10.2019 and received an order for compliance with the CEA dated 13.11.2019 in relation to the certain provisions/stipulations of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010. The works required to be performed for compliance with the said order are currently stalled on account of the ban on construction activities in Delhi NCR.

(k) In view of the foregoing and the other force majeure events impacting the Kadarpur substation as described in the instant Petition, the Petitioner prays for a grant of 7 months extension to the SCOD for the Kadarpur substation i.e. till December, 2019.

(l) As the PK Line and KS Line are terminating at the Kadarpur substation, the delay caused in constructing the Kadarpur substation also caused a delay in commissioning of the PK Line and KS Line. Accordingly, in view thereof and other force majeure events impacting the PK Line and KS Line, an extension of 7 months to the SCOD of PK Line i.e. till December, 2019 and an extension of 4 months to the SCOD of KS Line i.e. till January 2020, may be granted.

Reply of PSPCL

118. PSPCL, in its reply vide affidavit dated 19.8.2020, has submitted as follows:

(a) By its own admission, there were three locations specified for the Kadarpur substation in the survey report by the BPC. It was therefore incumbent on the Petitioner to choose diligently a location which would not affect the planning of the downstream network.

(b) As per Article 5.1.4, the TSP is responsible for the acquisition of land and also for the final selection of the site. Therefore, it was the responsibility of the Petitioner to



zero in on a site which is most feasible and to have made sure that the need to look for an alternate location need not arise.

(c) Further, as per the TSA, the Petitioner has to inform the LTTCs of the Force Majeure Event within 7 days of its occurrence which is a condition precedent to invoke reliefs under the TSA. However, under the head of the said force majeure event, the Petitioner has not shown how the force majeure event was notified by the Petitioner.

Rejoinder of the Petitioner to the reply of PSPCL

119. The Petitioner, in its rejoinder mainly has submitted as follows:

(a) The obligations being imputed on the Petitioner by PSPCL do not find any support in law or any contract executed by the Petitioner or the provisions of the TSA in terms of which the Petitioner was required to undertake the implementation of the Project.

(b) While the Survey Report provided by the BPC indicated tentative coordinates of three alternative locations for the proposed site for the Kadarapur sub-station, such coordinates were only to facilitate the bidders to locate the sub-station. In terms of Article 5.1.4 of the TSA, it was the prerogative of the Petitioner to select the site inter alia for all sub-stations within its scope of work and the Petitioner had indeed chosen a site close to one of the three locations provided in the Survey Report.

(c) Although the Petitioner had chosen a location for the said substation near one of the three sites provided by the BPC in the Survey Report, HVPNL unfoundedly contended in its various correspondences and meetings with the Petitioner and CEA that the location chosen by the Petitioner was far from the approved location of Kadarapur village.

(d) The Petitioner had commenced the process for land acquisition at the original proposed location for the Kadarapur substation in June, 2016. However, when after a lapse of 11 months, the CEA Committee finalized an alternate location for the substation near village Mahenderwara on 5.5.2017, the Petitioner had to restart the entire process for acquiring land near the newly finalized location. On 16.4.2018, the Petitioner executed sale deeds with multiple landowners for acquisition of land for the Kadarapur sub-station near the location identified by the CEA Committee. It is submitted that the Petitioner lost 11 months of working time on account of the relocation of the Kadarapur substation.



(e) The Petitioner was under no obligation, under the TSA, RFP or otherwise to consult HVPNL before finalizing location for the substation. Neither HVPNL was a party to the TSA nor is there any other legal relationship between the Petitioner and HVPNL that mandated consultation between the two entities before the Petitioner could finalise the location of the substation.

(f) Ideally, HVPNL should have consulted the CEA and the CTUIL for the location of the Kadarapur sub-station prior to the issue of the RFP document by the BPC. The procedure adopted by the CEA for reconsideration of the location for the substation to accommodate the concerns of HVPNL regarding downstream network not only stalled the Project but also set the clock backwards.

(g) The Petitioner has duly complied with the notice requirements under the TSA and particularly, with respect to the force majeure event of change in location of the Kadarapur sub-station, the Petitioner had informed the LTTCs of the same vide its letter dated 22.10.2018.

Reply of HVPNL

120. HVPNL in its reply mainly has submitted as under:

(a) The Petitioner is alleging that the relocation of the Kadarapur substation in terms of the decisions taken in the CEA meeting held on April 26, 2017 and May 05, 2017, to address the concerns of HVPNL, prevented the Petitioner in the timely performance of its obligation under TSA. These allegations are frivolous and have been adeptly presented by the Petitioner to conceal its misdeeds. In addition, the vital facts/documents (which would have clearly demonstrated the lackadaisical approach adopted by the Petitioner while executing the project) are consciously not placed before this Commission.

(b) The Petitioner initiated the process of acquisition of substation land in the month of June 2016. However, when after the lapse of more than 4 months, the exact coordinates of the land were not shared, HVPNL vide letter dated October 27, 2016 requested the Petitioner to share the said coordinates. Knowing the exact coordinates of land, wherein 400kV substations are to be constructed, was the deciding factor for the HVPNL to plan its downstream network. However, no response was issued by the Petitioner to this communication.

(c) Resultantly, a meeting was scheduled on November 07, 2016 to deliberate upon the issue of finalization of substation land, wherein both the representatives of the Petitioner and the HVPNL were present. During the meeting, the Petitioner was duly informed that knowing the exact coordinates of substation land is utmost important to plan the downstream network. Therefore, due to lack of the said information, HVPNL is being prevented from adopting appropriate course to achieve implementation of the downstream network. In response, the Petitioner apprised that they are still in the process of acquiring the requisite land and the acquisition process will be concluded within fifteen days. No justification was accorded by the Petitioner to explain the delay caused so far in acquiring the land.

(d) Another meeting was conveyed on 14.11.2016, wherein the Petitioner shared the land details, which were being identified for substation, with the HVPNL. Consequently, officials of HVPNL from Planning and TS wing, along with the representatives of the Petitioner, visited the identified land. It was discovered that the location was not suitable as it would not meet the requirement of Load Centre (Zone 1 to 5) as prescribed. In addition, the identified land was far from the Gurugram area and thus would have an upward impact on the cost of the downstream network. Accordingly, the Petitioner's representatives gave assurance to resolve the matter and revert within a week's time.

(e) When the Petitioner failed to respond on the land issue within the assured timeline, HVPNL was constrained to issue a letter dated 23.11.2016, asking the Petitioner regarding the measure adopted to resolve HVPNL's concern. Also, the Petitioner was requested to share coordinates of a suitable land on urgent basis. However, the Petitioner kept silent on the issue and chose not to respond to the said communication at that time.

(f) On 15.12.2016, a meeting was scheduled by the CEA wherein issue regarding finalization of substation land was deliberated. HVPNL once again raised concern regarding unsuitability of the sub-station land identified by the Petitioner. In addition, HVPNL informed that delay in finalization of land by the Petitioner, has already impacted HVPNL's ability to complete the downstream network as planned i.e. by September 2019. Taking into consideration HVPNL's concerns, CE (PSPM) suggested the Petitioner to find out a suitable location for the Kadarapur Substation and resolve the issue. Thereafter, the Petitioner vide communication dated December 19, 2016 informed HVPNL that acquisition of land, for Sohna substation and Prithala substation



is in advance stage and expected to be acquired in next 15 days. Thereafter, requisite land coordinates will be shared. However, the communication was silent regarding acquisition of the land in Kadarpur.

(g) On 2.1.2017, HVPNL, vide communication reminded the Petitioner regarding the suggestion given by CE (PSCM) during the meeting held on 15.12.2016 qua finalize a suitable land and again requested the Petitioner to expedite the matter.

(h) However, the Petitioner yet again demonstrated a callous approach towards the issue of utmost importance repeatedly raised by HVPNL's since October 2016. The said casual behaviour of the Petitioner is evident from the letter dated January 16, 2017 (please refer to page 312 of the petition), wherein the Petitioner has shared the tentative coordinates of the land for Kadarpur substation in Garhi Wazirpur Village. The said land was approximately 22 kms by road and 10 Kms by aerial distance from the Kadarpur village. It is relevant to mention that since October 2016, HVPNL was repeatedly requesting the Petitioner that the substation land should be in the proximity of the Kadarpur village and the same was endorsed by the CEA in its meeting held on December 15, 2016. Despite that, a land in Garhi Wazirpur Village was identified. Consequently, vide letter dated January 20, 2017, HVPNL raised serious concerns regarding Petitioner's irrational approach towards the project and requested the Petitioner to execute the project of public importance in a diligent manner.

(i) On 8.2.2017, a meeting was scheduled by the CEA wherein HVPNL apprised the CEA regarding Petitioner's unprofessional behaviour towards the selection of the substation land. Consequently, CEA again suggested to resolve the issue. Pursuant thereto, HVPNL vide letter 9.2.2017 again requested the Petitioner to close the issue qua selection of suitable substation land. HVPNL again reiterated its concern to the Petitioner that failure to achieve a suitable closure of the land issue in terms of the CEA recommendation, would jeopardize the downstream network. In response, the Petitioner vide letter dated 21.1.2020 took an irrational stand that it is the sole prerogative of the Petitioner to finalize the substation land and in this regard concurrence of HVPNL is immaterial. The said position was supported by an erroneous interpretation of Article 5.1.4 of the TSA and in complete ignorance of the other provisions of the TSA.

(j) The 400 KV substations stations to be constructed by the Petitioner as a part of ISTS in Gurgaon and Palwal area are meant for strengthening of the transmission



network in these regions. Therefore, as per the TSA, the selection of the said substations by the Petitioner must be location specific (i.e. within the immediate proximity of these regions) and in coordination with HVPNL, enabling HVPNL to plan its downstream system accordingly. The proximity between the substation land and site for downstream network is of utmost importance, as greater the distance between them, extra cost (which can be easily avoided) is to be incurred for connecting the project with the downstream network. Eventually, the consumers would be burden with the said cost in the form of higher tariff.

(k) Consequently, HVPNL vide letter dated 13.2.2017, inter alia apprised CEA regarding the above stated illogical stand of the Petitioner. With an attempt to resolve the issue, HVPNL organized a meeting on 14.4.2017, wherein HVPNL once again conveyed its concerns to the Petitioner and agreed to extend requisite assistance to the Petitioner in identifying a suitable land. However, the Petitioner again demonstrated unwarranted reluctance and therefore, it was decided to approach the CEA.

(l) Pursuant thereto, a meeting was scheduled by CEA on 26.4.2017. During the meeting, a Committee (comprising of representatives of CEA, Petitioner and HVPNL) was constituted to conduct a survey and identified a suitable location for the Kadarapur substation. The Committee members visited the site initially identified by the Petitioner and found that the same was far from Gurugram area, thereby justifying HVPNL's claim, which it has been advocating since October 2016. Consequently, a suitable location was found near village Mahenderwara by the Committee and accordingly it was decided to proceed for the site selection in the radius of 1.5 Km of village Mahenderwara towards Gurugram. These events were duly captured in a meeting held on 5.5.2017.

(m) Thereafter, the Petitioner took approximately 1 (one) year to share the coordinates for the Kadarapur substation with HVPNL vide letter dated June 28, 2018 (which was received by HVPNL on July 02, 2018). The said delay of one year has not been explained by the Petitioner.

(n) It has been alleged by the Petitioner that post execution of the sale deed with one Mr. Ishwar Singh, a suit was preferred by the Erstwhile landowner before the Additional Civil Judge (SD) Sohna, District Gurugram. Also, the Petitioner was obstructed by the erstwhile landowner to perform work on the site. Due to these events, the Petitioner was prevented from executing the project, which delayed the execution process.



However, such litigations and obstructions from the locals are the normal feature while executing projects of present nature. These events could easily be foreseeable at the stage of preparation of bid and therefore are not qualified to be treated as an extraordinary situation to justify delay. Moreover, the Petitioner has not enclosed any court order which prevented the Petitioner from executing the project. The Petitioner has miserably failed to adopt possible measures to handle these events. Ideally, the Petitioner should have immediately approached the court or the concerned authority for obtaining restraining order against the erstwhile landowner. To the contrary, the Petitioner on 25.10.2018 (for the first time and after more than five months from initiation of the alleged issue) approached the concerned police authority. Surprisingly, after the lapse of approximately one year, a follow-up communication was sent by the Petitioner on September 19, 2019 to the Police Authority. In addition, after the lapse of more than a year, the Petitioner vide communication dated May 31, 2019 approached the District Magistrate, Gurugram for seeking necessary protection.

Petitioner's rejoinder to the reply of HVPNL

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

(a) Contrary to the suggestion of HVPNL, the Petitioner was under no obligation, contractual or otherwise, to finalise the location of the Kadarpur substation subject to HVPNL's approval. The construction and commissioning of substations is exclusively governed by the TSA and transmission licence granted to the Petitioner by this Commission.

(b) In terms of Clause 1.5 of the RfP, the BPC had provided the prospective bidders (including the Petitioner) with a Survey Report on the Project prior to the bid deadline. The said Survey Report inter-alia contained initial information regarding the Project including on the transmission line, i.e. voltage level, line configuration (i.e., S/C or D/C), indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered. Such Survey Report provided the following three alternate tentative coordinates for locating the Kadarpur S/s [Annexure P-3, Page 244 onwards of the Consolidated Pleadings]:

- a) Alternate 1: Kadarpur Village, Sohna Tahsil, Sohna District;
- b) Alternate 2: Mahendwara Village, Sohna Tahsil, Sohna District; and
- c) Alternate 3: Alipur Village, Sohna Tahsil, Sohna District.



(c) It is to note that such coordinates were only indicative and were provided to facilitate the bidders in locating the substation. The clarifications on the RfP and TSA issued by the BPC also clarify that based on a preliminary survey, the survey report only provided tentative coordinates for locating the substations.

(d) Although the three alternate locations provided in the Survey Report for locating the substations were only indicative, the Petitioner identified land for the Kadarpur substation at Garhi Wazirpur Village, which was approximately 1.6 km from Alipur village (mentioned as 'Alternate 3' in the Survey Report). The coordinates of the said location were shared by the Petitioner with HVPNL vide its letter dated 16.1.2017 while *inter alia* mentioning that acquisition of parcel was in advance stage and was expected to be acquired in the next 30 days. The CEA was also apprised of the fact that the location chosen by the Petitioner was very close to Alternate 3 in the Survey Report.

(e) The Petitioner had chosen the aforesaid location for constructing the Kadarpur substation after considering the accessibility, approach and future maintenance of the substations and the lines. However, HVPNL belatedly raised concerns on locating the substation close to Alternate 3. The primary concern of HVPNL was that in locating the substation near Alternate 3, the length of the 220kV downstream lines to be implemented by it would increase and that would have a significant cost implication on HVPNL. HVPNL unfoundedly insisted that the substation should instead be located close to Alternate 1 i.e. near Kadarpur village and kept highlighting the distance between the location chosen by the Petitioner (which was close to Alternate 3) and Alternate 1.

(f) HVPNL was actively involved at the power system planning stage when the instant Project was being conceptualised. HVPNL's involvement, specifically in relation to development of the Kadarpur substation is evident from the minutes of the 35th Standing Committee Meeting on Power System Planning in Northern Region held on 03.11.2014 and the 36th Standing Committee Meeting on Power System Planning in Northern Region held on 13.7.2015. If HVPNL did have concerns on locating the substation near Alternate 3, it should have pursued the issue before the CEA at the planning stage and before the BPC issued the Bidding Documents including the Survey Report to the bidders identifying the three alternate locations.

(g) Solely to address HVPNL's cost related concerns, it was decided in the CEA Meetings held on 26.4.2017 and 5.5.2017 to relocate the Kadarpur substation near

village Mahenderwara (Alternative 2 in the Survey Report). The minutes of the said meetings at no place mention that the location chosen by the Petitioner was not in terms of the RfP or the TSA. Rather, it only states that the alternate location at Mahenderwara was decided keeping in view the concerns raised by HVPNL. This change in location was not foreseeable by the Petitioner at the time of bidding for the Project.

(h) Due to such relocation towards Kadarapur village/Gurgaon, the Petitioner had to face several issues. The land acquisition was difficult and costly, the length of the 400 kV lines to be implemented by the Petitioner substantially increased and the Petitioner had to face multiple RoW issues. Even after causing belated change in the location of the Kadarapur sub-station to the prejudice of the Petitioner, till date HVPNL has not even initiated any work with respect to the construction of its downstream network from the Kadarapur S/s.

(i) It is pertinent to point out that HVPNL has falsely alleged that they had been raising the issue regarding non-suitability of the land identified by the Petitioner since October 2016. The only letter on record from October 2016 is the letter dated 27.10.2016 and it does not at any place mention about non-suitability of land identified by the Petitioner.

(j) Contrary to the suggestion of HVPNL, the Petitioner has duly complied with the requirement under Article 11.5 of the TSA to notify the LTTCs of the occurrence of force majeure events. As already stated in the captioned Petition, the Petitioner had notified the LTTCs of the relocation of the Kadarapur sub-station as a force majeure event vide its letter dated 22.10.2018. Further, the monthly progress reports provided to the LTTCs and CEA in terms of Clause 4.1 (g) of the TSA also mentioned of such force majeure event impacting the implementation of the Project. In addition to this, the said force majeure event was discussed at various CEA meetings including in the meetings held on 15.12.2016, 8.2.2017, 26.4.2017 and 5.5.2017.

(k) This Commission has recognized in various cases that obstruction/resistance from landowners resulting in delay in construction activities constitutes a force majeure event. While dealing with such cases, this Commission has also acknowledged that seeking help of the district authorities to permit the construction work and seeking police protection for the personnel working at the site constitute reasonable efforts to mitigate the delay caused due to such obstructions. In the present case, the Petitioner took all possible steps including filing police complaints and seeking necessary



protection from the local administration to continue the construction work for the Kadarpur substation as and when necessary. It is denied that the Petitioner approached the concerned authorities belatedly. It is submitted that the Petitioner approached the local administration within a reasonable period of time after it became apparent that the Petitioner could not tackle the obstruction on its own.

Reply of UPPCL

122. UPPCL, in its reply, has submitted as under:

(a) As per Clause 2.14.2 of the RfP, once the bidders have submitted their bids, the bidders shall be deemed to have inspected and examined the site conditions. Further, as per Article 5.1.2 of the TSA, GPTL has acknowledged and agreed that it shall not be entitled to any extension of time by reason of the unsuitability of the Site or Transmission Line route(s) for whatever reasons. Thus, it is unequivocal that it was the responsibility of GPTL to select a site location which is most feasible for setting-up the Kadarpur Substation and to have made sure that the need to look for an alternate location need not arise. In this regard it is submitted that: -

(b) As per GPTL's own admission, the BPC had provided three site locations for the Kadarpur substation in its survey report. Thus, it was incumbent on GPTL to diligently choose a location which would not affect the planning of the downstream network of HVPNL.

(c) In facts of the present case, it is unequivocal that the initial location chosen by GPTL for setting up the Kadarpur substation was not suitable and hence the same had to be changed pursuant to CEA's decision.

(d) The alleged delay could have been avoided if GPTL would have taken appropriate steps in light of the repeated concern raised by HVPNL since October 2016 and consequent recommendation given by CEA. Instead, GPTL continued to justify the initial location selected for the Kadarpur substation, which eventually resulted in delaying its SCOD and the development of downstream network.

(e) With regards to litigation and obstruction by the erstwhile landowner such litigation and obstructions from the locals are the normal feature while executing projects of present nature. These events are foreseeable and taken into consideration by the project developers at the stage of preparation of the bid. Hence, the same does not

qualify as an extraordinary situation justifying the delay in SCOD. Also, GPTL has not provided any Court Order, which prevented it from executing the project. Mere filing of a Suit cannot be construed as an impediment in executing the project. In response to the suit, GPTL ought to have immediately approached the appropriate Court or the concerned authority for seeking a restraining Order against the erstwhile landowner. However, GPTL failed to act in a prudent manner.

Rejoinder of the Petitioner to the reply of UPPCL

123. The petitioner, in its rejoinder to the reply of UPPCL, has submitted as follows:

(a) While admitting that it was in fact the prerogative of the Petitioner to choose the final site for the Kadarapur substation, UPPCL has unfoundedly attempted at burdening the Petitioner with an additional obligation of choosing a location suitable for HVPNL.

(b) The construction and commissioning of substations is exclusively governed by the TSA and transmission licence granted to the Petitioner by this Commission. There was no requirement whatsoever in the bidding documents or the TSA for any previous planning to be undertaken taking into account HVPNL's requirements in respect of the Kadarapur S/s. Rather, it is amply clear from Article 5.1.4 (b) of the TSA that it was exclusively the prerogative of the Petitioner to select the site *inter alia* for all substations within its scope and the same has also been admitted by UPPCL.

(c) UPPCL has unfoundedly relied on the representations made by HVPNL before the CEA and the Petitioner on this issue. Such reliance is misplaced as there is no evidence whatsoever on record which proves that the location chosen by the Petitioner did not meet the requirement of the load center or that it was detrimental to the planning of the downstream network. Even if such concerns existed, HVPNL should have had them addressed at the planning stage and not post bidding.

(d) UPPCL's suggestion that the delay in commissioning of the Kadarapur substation is on account of lacunae in the planning of the Petitioner and that the Petitioner should have ensured that the need to look for an alternate location does not arise is without any merit. The need to look for an alternate location arose to address HVPNL's belated concerns and the Petitioner had no role whatsoever to play in causing such change in location.



(e) Relying on HVPNL's submission in its reply to the captioned Petition, UPPCL has also asserted that HVPNL had been raising the issue regarding non-suitability of the land identified by the Petitioner since October 2016. The only letter on record from October 2016 is the letter dated 27.10.2016 and it does not at any place mention about non-suitability of land identified by the Petitioner.

Analysis and Decision

124. We have considered the submissions made by the parties. The issue appears to stem from the disagreement between the Petitioner and HVNPL over the initial location of the Kadarpur sub-station. As per the Petitioner, it was under no obligation, contractual or otherwise to finalize the location of the Kadarpur sub-station subject to HVPNL's approval or as per its requirement and the three alternate coordinates for locating the Kadarpur sub-station as provided in the Survey Report prepared by the BPC only tentative and it was upon the bidder to satisfy itself about the location of the Kadarpur sub-station in all respect. In any case, the Petitioner has indicated that initial location identified by the Petitioner for the said sub-station at Garhi Wazirpur village was approximately 1.6 km from Alipur village (i.e. Alternate 3 in the Survey Report). Whereas, as per Respondent, HVPNL the earlier location identified by the Petitioner was very far from the indicated location in Kadarpur village and this made the planning of downstream network by Respondent infeasible. It further appears that these parties exchanged the correspondence and discussed the matter amongst themselves but no consensus could arrive at. Thus, the matter was escalated to CEA. We have perused meeting held at CEA on 15.12.2016 where following is noted:



5. During detailed deliberations lead LITCO Haryana Vidyut Prasaran Nigam Limited (HVPNL) informed that they have written M/s Sterlite to submit locations/co-ordinates of above three Substations (Sohna Road, Prithala and Kadarapur) vide two letters dated 27/10/2016 and 23/11/2016 but no reply had been received from M/s SGL. He further stated that due to non-availability of locations of these substations HVPNL could not finalize downstream system from Sohna Road, Prithala and Kadarapur substations.
6. M/s SGL informed that land for Sohna Road and Prithala substations has been identified and acquisition of land is under progress which would be completed within two weeks. He further stated that the details of villages etc. of these two S/s would be shared with HVPNL. M/s SGL representative informed that the negotiation for land of Kadarapur S/S is under progress, at the locations as indicated in the RFP. HVPNL representative informed that the location of Kadarapur S/S is not suitable for them as it would not meet the requirement of Load Centre (Zone 1 to 5) as envisaged by HVPNL and also the length of their 220kV transmission line would increase.
7. CE (PSPM) suggested M/s SGL to find out the location of Kadarapur S/S which is suitable for HVPNL.

As per the above, Petitioner informed HVPNL that it is finalizing location of Kadarapur substation at the locations as per RFP, to which HVPNL stated that it would not meet the requirement of load centre of HVPNL and that length of their 220kV line would increase. CEA suggested Petitioner to find out location of Kadarapur S/s which is suitable to HVPNL.

125. The matter was again discussed in the meeting held on 26.4.2017, wherein it was observed as under:

“(c) Issue related to finalization of location of 400/220 kV Kadarapur Substation

400/220 kV Kadarapur GIS, 400/220 kV Prithala GIS and 400/220 kV Sohna Road GIS are in the scope of the transmission project. HVPNL will be implementing the downstream system of these projects.

Representative of HVPNL stated that location chosen by GPTL for Kadarapur GIS was far way from Kadarapur village and site proposed for Kadarapur Sub-station is not among the three locations provided in RfP by BPC. The proposed site for Kadarapur sub-station would have a significant cost implication and RoW issues in the implementation of downstream 220 kV lines. He added that HVPNL has already agreed to the locations chosen by M/s GPTL for 400/220 kV Prithala GIS and 400/220 kV Sohna Road GIS.

Representative of GPTL stated that the location has been finalised near to the one of the three sites (alternative – 3) provided by BPC in RfP document and considering the accessibility, approach & future maintenance of S/S and lines. Further, shifting of location towards Gurgaon (alternative 1) would make land acquisition difficult and costly. This would also increase the lengths of 400 kV line and there would be RoW issues in implementation.

CE (PSPM), CEA stated that as per norms the substation should be located at the degraded, non-agricultural and non-commercial land.

After deliberations, it was decided to form a committee comprising following members to finalise the location for Kadarpur GIS

.....

This committee will conduct survey for possible locations of Kadarpur GIS by 05.05.2017 and will submit its report to CEA.”

Thereafter, the members of the Committee constituted in the above CEA meeting (comprised of representatives of CEA, Petitioner and HVPN) along with the other representatives from the concerned departments visited the preliminary location selected by the Petitioner in village Garhi Bazidpur and in the minutes of a meeting dated 5.5.2017 observed as under:

“.....All designated members on preliminary basis found that the site identified by M/s GPTL initially for 400 kV S/S Kadarpur is far from Gurugram area and alternatively they visited another location near to village Mahenderwara which is about 2.5 KM from initial location identified by M/s GPTL in village Garhi Bajidpur.

The alternate location identified near village - Mahenderwara (tentatively) found feasible by all the present members on prima facie basis having coordinate – 28D18M60S (N), 77D05M15S(E). It is opined by all members that M/s GPTL may proceed for site selection in the radium of 1.5 KM of visited location preferably towards Gurugram, after detail survey by both the parties i.e. M/s GPTL & HPVN.”

126. It is the case of the Petitioner that in terms of the above decision of the CEA Committee, the Petitioner had been required to relocate the Kadarpur sub-station from the initially/originally selected site and keeping in view that under the TSA, it is the Petitioner who was responsible to make final selection of site, the period of approximately 11 months elapsed (from commencement of land acquisition process at initial site to finalization of revised site in terms of CEA Committee) amounts to force majeure and actual delay in the achieving the commercial operation of Kadarpur sub-station deserves to be condoned.

127. After a careful consideration of the submissions made by the parties, we are of the view that, the Petitioner had selected the substation location in compliance of the terms and conditions of the TSA and RfP document. Further the relocation of the substation was directed by the CEA and the Committee constituted by the CEA, therefore, the Petitioner

had no choice but to follow the directions of the CEA. The Respondents in their submissions have not claimed any non-compliance of the TSA terms and conditions by GPTL. The BPC has correctly provided three alternate co-ordinates where the substation could be located, and it was up to the project developer to select the final location in compliance of the terms and conditions of the TSA and RfP documents.

128. Considering the above, we do not find any reason to penalize the project developer for complying with the provisions of the bid documents and its TSA. Further, the Petitioner has only claimed relief for loss of working time due to the aforesaid delay and has not claimed any financial reliefs. Accordingly, the time lost for resolution of this issue was beyond the control of the Petitioner and therefore, cannot be attributed to the Petitioner and is therefore a force majeure event.

129. The Petitioner has also pleaded the hindrances in the construction of Kadarpur substation from Mr. Ishwar Singh (erstwhile landowner) as force majeure event. The Petitioner has contended that pursuant to the execution of sale deed for 2.225 acres of land, the erstwhile landowner went on to file a suit for declaration with consequential relief of temporary injunction and alternative for possession against the Petitioner (CS 121 of 2018) before the Court of Additional Civil Judge (SD), Sohna, District Gurugram in April, 2018 on the baseless ground that he had been paid lesser than total amount of sale consideration. It is also stated that even while the pendency of said civil suit, the erstwhile landowner remained in forceful possession of suit land and in order to continue the work on site and get rid of the abuse being caused, the Petitioner had to take the measures such as filing of police complaint, seeking police protection/assistance till completion of work.

130. We have considered the submissions made by the Petitioner. The issue as to severe RoW issues in construction of Transmission Project(s) and delay caused thereof, would whether qualify as force majeure or not has been recently considered by this Commission

in its order dated 23.6.2023 in Petition No. 470/MP/2019 (Alipurduar Transmission Ltd. v. SBPDCL and Ors.) and the relevant extract of the said order is reproduced below:

“.....46. We have noted the submissions made by the Petitioner on the RoW issues faced by it at various locations during the implementation of the Alipurduar- Siliguri 400 kV D/c line. A slew of correspondences furnished by the Petitioner indicate the severity of RoW issues faced by it and the various persuasive measures undertaken by it including approaching the concerned authorities under the Telegraph Act, 1985, State Government, Hon’ble High Court of Calcutta by way of Writ Petitions as well as the Central Electricity Authority for assistance in resolving these RoW issues. However, it has to be noted that RoW issues are part and parcel of implementation of transmission system projects and the developers are expected to factor into the eventualities of facing of such problems and the consequent time & efforts to be undertaken in resolving them. Every geographical area from where the transmission line is to be laid / to be passed through has its fair share of difficulties, be it difficult terrain or RoW issues, which the developer undertakes to deal with while bidding for such large scale infrastructure projects. As such, there cannot be any objective criteria for terming the RoW issues faced by the licensee/developer as a force majeure event. In each case, the licensee/developer claiming the RoW issues as force majeure has to satisfactorily demonstrate that despite making an all out efforts and exhausting all the available remedies to it, the licensee could not resolve such issues for no fault of its own and this ultimately led to the delay in implementation of the transmission project.

47. In other words, whether the RoW issue, in particular case, qualifies as a force majeure event or not has to be examined on the basis of the facts & circumstances involved in each case and also the efforts & remedies availed by the licensee to resolve such issues in such case. As already noted above, the Petitioner has submitted the details of correspondences exchanged with various Authorities along with supporting documents. Insofar as they relate to the obstruction/ resistance from the land owners, request for intervention/ assistance of the Govt. Authorities in dealing with them etc. cannot be considered as force majeure event and no relief under force majeure can flow to the Petitioner as such activities are required to be anticipated by the licensee during the course of implementing the projects. However, what have to be distinguished from these generic efforts of resolving the RoW issues are the delays - owing to the stays/injunctions granted by the Courts and the Court proceedings arising out these RoW issues & in the course of the Petitioner having availed the legal remedies in resolving the RoW issues. Accordingly, the delays attributable to the above aspect have been dealt with separately.

(b) Delay due to stay/injunction granted by the court and delay due to various proceedings initiated, either by the landowners or the Petitioner.

54. Perusal of the above proceedings indicate that for the period from 16.11.2018 upto 20.9.2019 i.e. 308 days, the Petitioner was restrained and severely marred from carrying out the construction works on one or the other locations due to injunction/stay granted against the Petitioner in suits/applications filed by the various land owners. Some of these stays/injunctions continued beyond SCOD of 06.03.2019. This severely hampered the progress of the project at one or the other tower location. Thus, we are inclined to consider this period of 308 days during which the Petitioner was effectively restrained from carrying out the construction works at



one or the other location as force majeure event and consequently, condone the delay in achieving the COD of the Project to the above effect.....”

131. The RoW issues faced by the Petitioner and the actions /efforts undertaken to resolve the same cannot be considered as a force majeure event. Albeit, in the order dated 23.6.2023, the Commission had condoned the delays wherein the Petitioner was restrained and severely marred from carrying out the construction works on one or the other locations due to the injunction/stay granted for a considerable period against the Petitioner in the various suits/application moved by the landowners. However, the instant case is quite distinguishable as no point in time the Petitioner had been enjoined by the Court from carrying out the construction works. In view of the above, the plea of the Petitioner that subsequent unlawful obstruction and litigation in respect of construction of Kadarapur sub-station qualify as force majeure event deserves to be rejected. However, as noted above, the requirement of relocation of Kadarapur Substation in the circumstances noted above would qualify as force majeure event and although the Petitioner has attributed the lapse of approx. 11 months on account of requirement of relocation and finalisation of alternate location, keeping in view that the actual delay in achieving the deemed COD of the Kadarapur sub-station is around 7 months 4 days, we find it proper to condone such delay as force majeure event.

Delay in Forest Clearance for AP Line

Petitioner’s submissions

132. The Petitioner, has mainly submitted as follows:

(a)The AP Line of the Petitioner is *inter alia* crossing the Agra Canal and the protected forests along with the Agra Canal, which passes through the States of Haryana and Uttar Pradesh. For the construction of the said line, the Petitioner had sought diversion of forest land for non-forestry purposes under the Forest Conservation Act, 1980 (“FCA”) which *inter alia* included the protected forests along the Agra Canal. Since the administrative affairs regarding the protected forests along the Agra Canal were in a

perplexed state of affairs, the Petitioner had to submit multiple proposals and engage in long-drawn correspondence with the concerned authorities in relation to the question of jurisdiction over the protected forests along the Agra Canal, thereby, delaying the entire process of clearance for forest diversion. The correspondence regarding the approval process is detailed herein below.

(b) On 25.4.2017, the Petitioner submitted its proposal for diversion of forest land for laying of the AP Line before the Divisional Forest Officer, Palwal District, Haryana, in terms of Section 2 of the FCA. After a joint site inspection, the Government Forest Officer, Palwal, vide its letter dated 22.05.2017 *inter alia* informed the Sub-Forest Conservator, Palwal that the forest land along the Agra Canal in District Palwal, Haryana was not under the Palwal Forest Division. Accordingly, the area in the proposal was reduced by the protected forest area along the Agra Canal. The in-principle approval and the final approval for the remaining land of 0.3768 ha was issued by MoEF and CC, Northern Regional Office, Chandigarh on 2.11.2017 and 28.5.2018, respectively.

(c) With respect to the 0.2537 ha of protected forest land along the Agra Canal in District Palwal, Haryana, the Petitioner was informed upon inquiry that the said forest land falls under the jurisdiction of Gautam Buddha Nagar Forest Division, Uttar Pradesh. Accordingly, the Petitioner submitted a proposal on 4.12.2017 for diversion of the forest land along with Agra Canal in its favour for construction of said element before the Forest Division, Gautam Buddha Nagar. The Petitioner vide its letter dated 8.5.2018, referring to its proposal dated 4.12.2017, informed the Deputy Commissioner, Palwal, Haryana that its proposal had been accepted and approved by the Nodal Officer, Lucknow on 18.4.2018 and requested the Deputy Commissioner to process the Forest Diversion Proposal and issue the FRA Certificate for diversion of the forest land.

(d) The Sub-Divisional Forest Officer, Gautam Buddha Nagar, Uttar Pradesh vide its letter dated 10.5.2018 informed the District Magistrate, Palwal, that Agra Canal is under ownership of the Irrigation Department of Uttar Pradesh, but according to Gazette, the banks of Agra Canal are declared as Protected Forest Land, which fall under jurisdiction of Forest Sub-Division of Gautam Buddha Nagar. In view of the statutory framework, the District Magistrate was requested to sign the FRA Certificate post relevant inspection by the concerned officers/authorities. Pursuant to the said letter, the District Forest Officer, Palwal was requested by the District Collector, Palwal



on 30.5.2018 to inspect the matter and share a report. In response to the same, the District Collector, Palwal was inter alia informed by the Forest Department, Haryana on 21.06.2018 that the forest along the Agra Canal is not under the Forest Department of Haryana Government but under the Forest Department of Gautam Buddha Nagar, Uttar Pradesh.

(e) On 23.7.2018, the common communication issued by the office of the District Collector, Palwal and Divisional Forest Officer, Gautam Buddha Nagar Forest Division, clarified that the administration regarding protected forests along the Agra Canal falls under the jurisdiction of Gautam Buddha Nagar Forest Division, Uttar Pradesh. However, from October, 2018 onwards, the diversion proposal remained pending with the State Government, for want of clarification regarding documentary evidence that the said land was under the jurisdiction of Gautam Buddha Nagar Forest Division. In the interim, the Petitioner met with the Secretary, Forest and Nodal Officer, Lucknow, Uttar Pradesh (FCA) on 27.12.2018 to have a detailed discussion regarding delay in processing the subject proposal.

(f) In spite of running from pillar to post to get a timely approval for diversion of protected forest along the Agra Canal, the proposal dated 4.12.2017 remained pending. With a view to get the requisite forest clearance at the earliest and to clear the matter at the State Government level, the Petitioner vide its letter dated 11.2.2019 again approached the Divisional Forest Officer, Gautam Buddha Nagar, Noida, Uttar Pradesh in relation to its proposal dated 04.12.2017. The Petitioner requested the officer to confirm with documentary evidence that the proposed diversion of land of Agra Canal was under the jurisdiction of Gautam Buddha Nagar Division was requested by the Secretariat, State Government of Uttar Pradesh. In the interim, on the advice of the Nodal Officer (FCA), Lucknow, the Petitioner submitted another proposal dated 31.12.2018, once again before the Divisional Forest Officer, Palwal District, Haryana, for diversion of the forest land along the Agra Canal in Palwal District, Haryana.

(g) Finally, the proposal dated 31.12.2018 of the Petitioner for diversion of forest land received Stage-I clearance on 25.6.2019 from the Principal Chief Forest Conservator, Haryana, Forest Department, Haryana Government.

(h) After taking all measures to expedite the grant of the approval, the Petitioner received Stage I approval for diversion of forest along the Agra Canal after more than

22 months from the date of first application. Such delay caused a substantial loss of working time and delay in completion of the AP Line. In spite of the long-drawn delay, due to the sincere efforts of the Petitioner, the works for the AP Line have been completed with a delay of less than 3 months. The Petitioner received the approval for energization of the AP Line from the CEA on 29.7.2019. However, due to the non-availability of bays at the Aligarh end of Power Grid Corporation of India Limited, the said line could not be commissioned then and was declared to be deemed commissioned on 6.8.2019 as per Article 6 of the TSA. The AP Line was finally commissioned on 30.10.2019 pursuant to the commissioning of the associated bays at the Aligarh substation of PGCIL. In view thereof, to declare that the delay in grant of the approval for forest clearance constitutes a force majeure event in terms of the provisions of the TSA and accordingly, grant an extension to the SCOD for the AP Line till 5.8.2019.

Reply of PSPCL

133. The PSPCL with respect to the specific claim of the Petitioner has submitted as under:

(a) As regard the delay in forest clearance, it was within the knowledge of the Petitioner that it was its responsibility to seek access to the sites and places where the project was to be executed at its own cost including payment of any compensation of the same. As per Clause 2.14.2 of the RfP dated 29/12/2015, it was the Petitioner's responsibility to fully inform itself of the site conditions. As per the RfP, once the bidders (which include the Petitioner) have submitted their bids, the bidders shall be deemed to have inspected and examined the site conditions. This includes all necessary information about the forest areas and the clearances and consents. Further as per Clauses 2.14.2.3 and 2.14.2.4 it was incumbent upon the bidders to visit the route and carry out route surveys before submitting their bids. Further, as per Clause 2.14.2.6, the bidders had to familiarize themselves with the procedures and time frames to obtain all due consents, clearances and permits. In this background it cannot be the case of the Petitioner that having done the surveys it was not aware as to whom to take permissions from.

(b) It cannot be the contention of the Petitioner that the 'administrative affairs' with respect to the protected forests along the Agra Canal were in a 'perplexed state of affairs'. It was upon the Petitioner to factor in such consents prior to the bidding. The



Petitioner after having taken part in the bidding process on the basis of having sufficient experience cannot now make excuses such as administrative failures. The Petitioner has also claimed that there were issues concerning the jurisdiction of the forest land. The survey report is indicative of the routes to be taken and hence it cannot be the case of the Petitioner that there was delay in commissioning of the Aligarh-Prithala line because it was not sure about the jurisdiction while approaching relevant departments for obtaining forest clearance.

(c) The Petitioner has failed to mention as to how it has satisfied the condition for serving a notice to the LTTCs notifying the instant force majeure event.

Petitioner's rejoinder to the reply of PSPCL

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

(a) It was not the Petitioner who was unsure about the jurisdiction over 0.2537 ha of forest land along the Agra Canal in Palwal while approaching the relevant departments for forest clearance. Rather, there was an evident lack of clarity on the matter in the concerned forest departments in Haryana and Uttar Pradesh that caused the Petitioner to run from pillar to post and receive a much delayed forest clearance.

(b) Therefore, it was the administrative confusion in the forest divisions regarding jurisdiction over the subject Forest Land that caused the delay, although multiple interventions were made by the Petitioner to facilitate the process through meetings and correspondences with the relevant authorities during such time.

(c) The Petitioner has duly complied with the notice requirements under the TSA and particularly, with respect to the force majeure event of delay in forest clearance for the AP Line, the Petitioner had informed the LTTCs of the same vide its letters dated 22.10.2018 and 17.05.2019.

Reply of HVPNL

135. HVPNL, in its reply to the Petitioner's claim, has submitted as under:

(a) In terms of Clause 2.1.4.2 of the RFP, it was incumbent upon the Petitioner (a) to visit the route and carry out route survey, (b) to familiarize with the procedure and time frames to obtain all due clearances and permits before submitting the bid. Thereafter, once the bid was submitted, the Petitioner shall be deemed to have undertaken the



said activities. Therefore, at this stage, the Petitioner is precluded to aver, that having undertaken activity mentioned in (a) and (b), it was not aware regarding the status of the subject land, within whose jurisdiction the subject land falls and from the requisite permission/approval were to be obtained.

(b) In addition, failure to undertaken activity mentioned in (a) and (b) and investigate the route of the transmission lines associate with the project, shall not absolve the Petitioner from its responsibility to ensure time bound execution of the project. Also, the Petitioner has failed to demonstrate the compliance of Article 11.5 of the TSA.

Rejoinder of the Petitioner to the reply of HVPNL

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

(a) At the very outset, it may be noted that HVPNL appears to have erroneously referred to Clause 2.1.4.2 of the RFP in its reply; there is no such provision in the RfP. Instead, the reference appears to be to Clause 2.1 and Clause 2.14.2.1 of the RFP.

(b) It is amply clear from a plain reading of the provisions of the RfP that bidders were required to familiarise themselves of the procedures, time frames required to obtain consents, clearances and permits and inform themselves on factors that may have any effect on the bid like site conditions etc. However, the said provisions cannot be possibly relied upon to argue that the Petitioner should have been aware of an internal administrative matter like the concerned forests department's lack of clarity on the jurisdiction over the 0.2537 ha of forest land along the Agra Canal in Palwal.

(c) As against the statutory period of 300 days for processing and obtaining forest clearance, the Petitioner obtained forest clearance after 26 months of making its first proposal.

(d) The Petitioner had duly informed the LTTCs of the occurrence of the said force majeure event. The LTTCs were specifically informed of the delay in grant of forest clearance for the AP Line vide its letters dated 22.10.2018 and 17.05.2019. Further, the monthly progress reports provided to the LTTCs and CEA in terms of Article 4.1 (g) of the TSA also mentioned of such force majeure event impacting the implementation of the Project by the Petitioner.

Reply of UPPCL



137. UPPCL, in its reply has mainly submitted as under:

a) In terms of the RfP and the TSA, all approvals, permits and clearances required for setting up of the Project (including Forest Clearance for diversion of forest/protected land) including those required from State Government and local bodies were to be obtained by GPTL and the same were entirely within the scope and responsibility of the Project developer i.e., GPTL. In view of the binding provisions of the TSA and RFP, it was GPTL's responsibility to fully inform itself of the geographical conditions of AP Line and obtain and maintain all required Consents and Clearances in a time bound manner. This would include all necessary information about the forest areas and the clearances and consents required for diversion of any forest or protected land along the route of AP Line.

(b) GPTL was mandated to visit the route of the AP Line and carry out surveys and field investigation before submitting its bid. Once the bid was submitted, GPTL shall be deemed to have undertaken the said activities. Hence, at this stage it cannot be the case of GPTL that having done the surveys it was not aware about the status of the subject land i.e., 0.2537 ha of protected forest land along the Agra Canal in the route of AP Line, within whose jurisdiction the subject land falls, and the Appropriate authority from whom consents, and clearances had to be obtained from.

(c) The survey report is indicative of the routes to be taken. Hence GPTL was expected to be aware of the relevant Department for obtaining forest clearance for the subject land. Further, GPTL after having taken part in the bidding process on the basis of having sufficient experience and knowledge cannot now make excuses such as administrative failures. In view of the above, delay in obtaining Forest Clearance for the subject land cannot be said to be an event of force majeure within the scope of Article 11 of the TSA.

Rejoinder of the Petitioner to reply of UPPCL

138. The petitioner in its rejoinder to the reply of UPPCL has submitted that the delay in grant of forest clearance is not a result of the Petitioner's lack of knowledge on the status of the subject land and within whose jurisdiction the subject land falls. While the bidders were required to familiarise themselves of the procedures, time frames required to obtain consents, clearances and permits and inform themselves on factors that may have any effect on the bid like site conditions etc., the said provisions cannot be possibly relied upon

to argue that the Petitioner should have been aware of an internal administrative matter like the concerned forest departments' lack of clarity on the jurisdiction over the 0.2537 ha of forest land along the Agra Canal in Palwal.

Analysis and Decision

139. We have considered the submissions made by the parties. Indisputably, as per the provisions of the TSA, the Petitioner was responsible for procuring and maintaining all Consents, Clearances and Permits required in accordance with law for the development of the Project and also seek access to the site and other places where the Project is being executed at its own costs. However, the sequence of events as narrated by the Petitioner indeed reflect the lack of clarity regarding the jurisdiction over the forest area along the Agra Canal. Pertinently, the Petitioner had submitted its proposal for diversion of forest land for the APL line before DFO, Palwal, Haryana on 25.4.2017 and a joint site visit, the Government Forest Officer, Palwal informed the Sub-Forest Conservator, Palwal that the forest along the Agra canal was not under the Palwal Forest Division and consequently, the area in the proposal was reduced by such protected forest area. Subsequently, the Petitioner after being informed that the said forest land fell within the jurisdiction of Gautam Buddha Nagar Forest Division, UP, submitted its proposal for diversion of such forest land on 4.12.2017. Although we find this delay i.e. after its application dated 25.4.2017 having been reduced by the protected forest area along Agra Canal to the Petitioner applying for such area vide proposal dated 4.12.2017 quite unreasonable, subsequent thereto, the Petitioner appears to have diligently followed up its application with various authorities. Perusal of the various correspondence in this regard reveals that on 23.7.2018, a common communication was issued by the Office of District Collector, Palwal and Division Forest Officer, Gautam Buddha Nagar Forest Division clarifying that the administration regarding protected forests along the Agra Canal falls under the jurisdiction of Guatam Buddha Nagar Forest Division, Uttar Pradesh. However, even thereafter, the application of the Petitioner remained pending for want of clarification regarding the documentary evidence that the



said land was under the jurisdiction of Gautam Buddha Nagar Forest Division. Finally, the Petitioner, upon the advice of Nodal Officer, Lucknow, again submitted the proposal dated 31.12.2018 before Division Forest Officer (earlier submitted on 25.4.2017), Palwal, Haryana for diversion of the forest land along Agra Canal and in respect of the said application, the Petitioner finally received the Stage-I approval on 25.6.2019 from the Principal Chief Forest Conservator, Haryana itself. The above sequence of events clearly indicates that there was lack of clarity regarding the jurisdiction over the forest land along the Agra Canal among the various Govt. divisions and the Petitioner cannot be held responsible for the delay caused on account of such lack of clarity on the part of Govt. Instrumentalities. Accordingly, the delay caused in obtaining a Forest Clearance in respect of 0.2537 Ha of protected forest land along the Agra Canal, Palwal, Haryana deserves to be treated as force majeure event. Although the Petitioner has attributed the delay of approximately 22 months on the above ground, keeping in view the actual delay in commissioning of AP Line being 87 days (SCOD – 13.5.2019 and deemed COD allowed - 8.8.2019), we find it appropriate to condone the same owing to the force majeure event.

Unlawful Obstructions caused by alleged land owners and farmers – PK Line

140. The Petitioner in support to its specific claim has submitted as under:

(a) For laying the PK Line through the land situated in Village Harchandpur, District Gurgaon, Haryana, the Petitioner had initiated the work of erecting the towers/poles on the said land pursuant to the Section 164 approval granted by the Ministry of Power on 28.3.2017. The said order was published in the Gazette of India, clearly specifying the route through which the line shall pass and it included village Harchandpur for the PK Line. Public notices were also published in the newspapers in July and August, 2016. However, the Petitioner faced severe hindrances from Nerissa Constructions Limited, Lorena Developers Limited, Devona Properties Limited and Majesta Constructions Limited, who allegedly owned land at the subject location. The alleged land owners sent representations to the Petitioner on 20.3.2019 and 29.3.2019 along with a representation to the Deputy Commissioner on 25.3.2019, *inter alia* stating that the land on which the Petitioner is proposing to erect towers for laying down the said

transmission line belongs to them and has been mutated in their favour since 2012. The factual and legal position that was erroneously laid down by one alleged landowner in its letter dated 25.3.2019 was clarified by the Petitioner to the Deputy Commissioner vide its letter dated 10.4.2019.

(b) On 5.4.2019, Nerissa Constructions Limited along with the three other companies allegedly owning portions of land as specified in their Petitions filed civil writ petitions numbered 10824, 10067, 10103 and 10132 of 2019 before the Hon`ble High Court of Punjab and Haryana. Through these Petitions, the alleged land owners sought directions to restrain the Petitioner from erecting or putting up any poles/towers/pillars for transmitting any electricity and laying overhead transmission lines through the land of the Petitioner, to keep in abeyance the said work till the final adjudication of the writ petition filed and to deviate the existing route of the transmission lines to another more practical, economical and convenient route. Pursuant to the filing of the said writ petitions, no direction to deviate the route has till date been issued to the Petitioner by the Hon`ble High Court and the matter remains sub-judice.

(c) On several occasions when the Petitioner was commissioning the towers on the said land, its men and machinery were unlawfully and arbitrarily obstructed by the employees of these owners without any sanction of law, preventing the Petitioner from commissioning the towers. The Petitioner vide its letters dated 12.3.2019 and 28.3.2019 requested the Divisional Forest Officer, District Gurugram and the Deputy Commissioner, District Gurugram for administrative support in this regard.

(d) On account of such unlawful hindrance and obstruction created by the land owners, the work in the said area completely stopped for a period of two months in spite of efforts on part of the Petitioner to continue the work with the help of administrative support. The Petitioner could resume the work at the said land only after seeking police protection which was granted to it vide the order of the Collector, Gurugram dated 15.04.2019.

(e) Further, hindrances were also caused by certain farmers - Mr. Satish Kumar and Mr. Satbir Singh Yadav in relation to construction of the PK Line on their agricultural land. The construction of the said line was in advance stage with most of the foundation complete. The Petitioner is paying compensation for the damages of crop as per the norms and was ready to pay compensation for the location. However, the farmers

owning the subject land were adamant and did not allow foundation work in their fields from July, 2019 to September, 2019.

(f) In order to continue work on the line, the Petitioner on 23.7.2019 and 13.9.2019 sought the intervention of the local administration and requested the District Magistrate, Gurugram to advise the concerned police station to extend their support in resolving the issues and provide police protection with duty Magistrate to the field staff till execution of the work so that the work of the Project may be completed within the prescribed time frame. In response to the aforementioned letters, the District Magistrate vide order dated 2.8.2019 and 25.9.2019, provided police protection to the Petitioner and the landowners were directed not to interfere with the work of the Petitioner. The Petitioner lost around 3 months of working time on account of the impediments caused by the farmers owning land.

(g) An application was made by the Petitioner to the CEA for inspection on 21.10.2019. The inspection of the line was carried out by the CEA on 31.10.2019. On 19.11.2019, the Petitioner received an order for compliance with the CEA in relation to certain provisions/stipulations of the CEA (Measures relating to Safety and Electric Supply) Regulations, 2010, which the Petitioner is in the process of complying with. The works required to be performed for compliance with the said order are currently stalled on account of the ban on construction activities in Delhi NCR.

(h) In spite of the occurrence of the abovementioned events and the other force majeure events that have had an impact on the commissioning of the PK Line, as described in this Petition, the Petitioner could complete the construction of the PK Line with a delay of only 7 months from its SCOD. Therefore, the same must be condoned and an extension to the SCOD of the PK Line till December, 2019 ought to be granted.

Reply of PSPCL

141. PSPCL, in its reply to the specific claim of the Petitioner, has submitted as under:

(a) The project was awarded to the Petitioner subsequent to a competitive bidding process wherein bids were placed by all the stakeholders (including the Petitioner) knowing fully well that ROW permissions have to be kept in mind. The SCOD of the project is determined keeping in mind such permissions and as such it is not open to the Petitioner at this stage to seek time extension on account of the failure to procure statutory permissions within the stipulated time period.



(b) The Petitioner had commenced with the work of erecting the towers/poles on the land situated in village Harchandpur pursuant to the Section 164 approval granted by the Ministry of Power on 28.3.2017 and, by its own admission, the issue with said land commenced with the representation submitted by the land owners on 20.3.2019, after about two years. The Petitioner is being put to strict proof regarding the status and progress of the work during the said two years.

Petitioner's rejoinder to the reply of PSPCL

142. The petitioner in its rejoinder to the reply of PSPCL has submitted that while authorization under Section 164 of the Act for laying of electric lines for the Project was granted to the Petitioner on 28.3.2017, the work relating to the PK Line in Harchandpur village was not limited to the land parcels that were claimed to be owned by the Indiabulls companies and the farmers who caused obstructions. It is pertinent to note that unlike in the case of a substation, where construction activity takes place collectively in one area, work related to transmission lines, considering its linear nature, is implemented section wise and all work cannot be commenced at once. PSPCL in its argument has assumed that the only land in village Harchandpur where work with respect to the PK Line had to be implemented was the land claimed to be owned by the Indiabulls companies or belonged to the farmers that caused the hindrances. The Petitioner has submitted that the obstruction caused by the employees of Indiabulls companies in implementing the work related to the PK Line and the hindrances caused by the farmers could only be put to stop after seeking police protection from the District Magistrates, and such events cannot in any manner be construed as foreseeable or within the control of the Petitioner. Although independent surveys and investigations that were duly undertaken by the Petitioner as a bidder, such surveys and investigations could not have possibly predicted any future attempt by employees of the Indiabulls companies or farmers to cause obstructions in the implementation of the works by the Petitioner.

Reply of HVPNL

143. HVPNL in its reply to the specific claim of the Petitioner has submitted that on 23.2.2017, approval under Section 164 was granted to the Petitioner. However, the subject issue cropped up in the month of March 2019 i.e. nearly after 2 years. In case, the Petitioner has acted diligently and would have initiated the work on PK Line in March 2017 itself, then the alleged delay could have been avoided or the subject issue could have been resolved, without impacting the project timelines. The obstructions from the locals are the normal

feature while executing projects of present nature. These events could be easily foreseeable at the stage of preparation of the bid and therefore, are not qualified to be treated as an extraordinary situation to justify delay. Moreover, the Petitioner has not enclosed any court order which would have prevented execution of the work. The Petitioner has failed to demonstrate the compliance of Article 11.5 of the TSA.

Rejoinder of the Petitioner to the reply of HVPNL

144. The Petitioner in its rejoinder to the reply of HVPNL has submitted that while authorization under Section 164 of the Act for laying of the electric lines for the Project was granted to the Petitioner on 28.3.2017, the work relating to the PK Line in Harchandpur village was not limited to the land parcels that were claimed to be owned by the Indiabulls companies and the farmers caused obstructions. The PK Line traverses several land parcels and an obstruction on any one land parcel across the line length holds up construction activities and delays the commissioning of linear transmission elements. Similarly, the unlawful obstructions caused by the farmers i.e. Mr. Satbir Singh Yadav and Mr. Satish Kumar were beyond the control of the Petitioner and caused loss of working time of approximately 3 months i.e. July, 2019 to September, 2019, otherwise available to the Petitioner for the implementation of the Project. The Petitioner has duly informed the LTTCS of the said force majeure events vide its letter 17.5.2019. Further, the monthly progress reports provided to the LTTCS and CEA in terms of Clause 4.1 (g) of the TSA also mentioned of such force majeure event impacting the implementation of the Project by the Petitioner.

Reply of UPPCL

145. UPPCL in its reply to the specific claim of the Petitioner has submitted that the obstructions from locals and the landowners are a normal feature while executing such projects. The said event is neither unforeseeable nor unprecedented and any alleged delay on such account could have been avoided by exercise of reasonable care and Prudent Utility Practices. Hence, the same do not qualify as an event of force majeure within the scope of Article 11 of the TSA. GPTL was mandated to conduct its own independent surveys and investigation of transmission line routes and its surrounding areas prior to submission of its bid. Hence, at this stage it is not open to GPTL to seek time extension on account of obstructions caused by the landowners and failure to procure statutory permissions within the stipulated time period. On 23.3.2017, MoP granted Section 164 approval to GPTL with regards to the PK Line. The alleged unlawful obstructions



commenced on 20.3.2019, with the representation submitted by the landowners (i.e., after two years of Section 164 approval). If GPTL would have acted diligently and commenced with the work of erecting towers and poles of PK Line in March 2017 itself, then the alleged delay could have been avoided and the issue with the landowners and farmers could have been resolved, without impacting the project timelines. The Petitioner has not provided any Court Order, which prevented it from executing the work on PK Line.

Rejoinder of the Petitioner to the reply of UPPCL

146. The Petitioner in its rejoinder to the reply of UPPCL has submitted that the PK Line traverses several land parcels and an obstruction on any one land parcel across the line length holds up construction activities and delays the commissioning of linear transmission elements. It is also mentioned that no independent survey or investigation of line routes and surrounding areas, although conducted by the Petitioner, could have alerted or prepared the Petitioner for such an obstruction.

Analysis and Decision

147. We have considered the submissions made by the parties. As pointed out, as per Article 5.1.4(c), it is the Petitioner which is responsible for seeking access to the site and other places where the Project is being executed, at its own costs, including payment of any compensation or any other compensation as may be required. Moreover, while dealing with the plea of the Petitioner regarding the unlawful obstruction and subsequent litigation by the erstwhile landowner(s) in relation to the Kadarpur sub-station in the foregoing paragraph, we have already pointed out that the issue as to whether the delay caused due to severe RoW issues during implementation of the Transmission Project would qualify as force majeure event or not, has already been dealt with by us in order dated 23.6.2023 in Petition No. 470/MP/2019 in the matter of *Alipurduar Transmission Ltd. v. SBPDCL and Ors.* In the said order, the Commission has specifically observed that obstruction/resistance from the land owners, request for intervention/ assistance of the Govt. Authorities in dealing with them etc. cannot be considered as force majeure event and no relief under force majeure can flow to the Petitioner as such activities are required to be

anticipated by the licensee during the course of the implementing the projects and that what have to be distinguished from these generic efforts of resolving the RoW issues are the delays owing to the stays/injunctions granted by the Courts and the Court proceedings arising out of these RoW issues and in the course of the Petitioner having availed the legal remedies in resolving the RoW issues. Although, in the present case, the Petitioner has brought out the details of the Court proceedings instituted in connection to its PK Line, what distinguishes the present case is the aspect that in none of these proceedings, the Petitioner was restricted from implementation of the elements/Project on account of the stays/injunctions, etc. Accordingly, the plea of the Petitioner that unlawful obstructions caused by alleged landowners and farmers in course of laying PK Line amounts to force majeure event deserves to be rejected.

148. However, the Petitioner has also attributed the delay in achieving the deemed COD of the PK Line due to relocation of Kadarapur S/s and subsequent litigation and unlawful obstructions as the said line being terminated at the Kadarapur S/s. While the litigation and unlawful obstructions aspect has also been rejected by the Commission in the foregoing paragraphs, the requirement of relocation of Kadarapur S/s has been held to be force majeure event. While the Petitioner has attributed the delay on the above count to be approx. 11 months, the actual delay in achieving the deemed COD/COD of Kadarapur S/s as well as PK Line (delay in both the case being 7 months 4 days) being lesser than that and delay in achieving the deemed COD/COD in respect of Kadarapur S/s having already been condoned, we find it appropriate to condone the delay in achieving the deemed COD/COD of PK Line of 7 months 4 days owing to force majeure event.

Delay in finalization of route for downstream 220 kV lines from the substation

149. The Petitioner in respect to its specific claim mainly has submitted as under:

- (a) The construction of the Kadarapur, Sohna Road, Prithala substations, KS Line and the LILO of GM Line has been delayed also on account of the issues between the

Petitioner and HVPNL *inter alia* regarding the route of the downstream 220kV lines of HVPNL. HVPNL was required to plan the downstream transmission system of the aforementioned substations. Several discussions, joint site visits and meetings took place between HVPNL and the Petitioner in relation to the issue of infringement of the 400 kV lines of the Petitioner by the 220 kV network proposed by HVPNL. On a related note, discussions also took place regarding the orientation of the 220 kV bays at the sub-stations, RoW issues being faced for creation of the downline system of the Sohna Road substation, and the delay caused in planning the downline transmission system from the Kadarapur substation on account of the delay in finalization of its location.

(b) To resolve these issues, the Petitioner fully co-operated with HVPNL, and such cooperation is evident from a perusal of the correspondence between the Petitioner and HVPNL. For instance, in the meeting with the Petitioner held on 27.3.2017 and vide its letter dated 27.12.2017, HVPNL requested the Petitioner to address the issue of infringement between the lines of HVPNL and the Petitioner, by providing the 400 kV towers with appropriate extension. In response to the same, the Petitioner actively communicated to HVPNL vide its letter dated 1.4.2018, the feasibility issues in the route provided by HVPNL and also provided its suggestions.

(c) When HVPNL vide its letter dated 3.7.2018 pointed out that reorientation of bays at the Kadarapur and Sohna Road substations may be required to avoid the infringement with the lines of the Petitioner, and that further modifications in the layout plan for the Kadarapur and Sohna Road substations may be required, the Petitioner vide its letter 4.7.2018 responded promptly and sought further data to examine the feasibility of the routes and to find a solution to the issues being faced.

(d) Vide its letter dated 23.7.2018, the Petitioner *inter alia* proposed the plan to cross over the proposed 220 kV MC lines of HVPNL by KS Line by putting the maximum extension in KS Line with some permissible conditions and matching the feasibility of HVPNL and the Petitioner's lines as per the key plan provided. Also, the Petitioner requested to pass the 220 kV M/C line going to Sector 77 of HVPNL under the proposed LILO of GM Line of the Petitioner, considering that it was not possible to increase the height of the LILO of GM Line due to the limitation of height of the towers.

(e) In the meeting of the Petitioner and HVPNL, held on 4.7.2018, HVPNL appreciated the solution for crossing of the Petitioner's KS Line with HVPNL 220 kV M/C Pachgaon-Badshahpur Line LILO at Sohna Road and 220 kV M/C Sector 72 – Rangla Rajpura



LILO at Sohna Road, which had resolved most of the contentious issues pertaining to the said lines. However, HVPNL *inter alia* raised concern on the proposal for the route of the LILO of Pachgaon-Badshahpur-Sohna at Sector 77, Gurugram. The Petitioner responded to this concern saying that it had already checked the options for the same but no alternate solution was found and it will still work out more on any possibility for the same.

(f) Meetings were held on 07.08.2018 and 09.09.2018 at HVPNL's office for deliberation on downline transmission lines associated with proposed 400kV Sohna Road substation. In the said meetings, HVPNL raised its concerns regarding the route plan conceptualized by the Petitioner. It was unanimously agreed upon that joint team of the Petitioner and HVPNL shall avail the last opportunity to find an amicable solution for the 220 kV transmission lines and if a solution is not found, the status of impasse would be conveyed to the management of HVPNL and CEA for intervention.

(g) A CEA meeting was held on 12.9.2018 to review the progress of the transmission projects awarded through the TBCB route and it was *inter alia* decided that the CEA would form a technical committee comprising officers of the CEA, HVPNL, the Petitioner, and any other agency, if required, to finalise the route of the downstream line of HVPNL inside and outside the substation, emerging from the three substations of the Petitioner. Thereafter, a committee was constituted to review/finalize the route of the 220kV downstream lines and the same was intimated by CEA vide its letter dated 17.10.2018 to the Petitioner.

(h) Pursuant to the formation of the technical committee, a site visit by the members to the three GIS substations was held on 16.11.2018 to understand the difficulty in termination of the 220kV lines.

(i) During the site visit, it was observed that with respect to the Sohna Road Substation, HVPNL's representative *inter alia* pointed out his concern over the irregular shape of the land chosen for construction of the 400kV substation at Sohna Road. HVPNL also requested the Petitioner to provide engineering support for termination of the lines and requested the Petitioner to take responsibility of resolving the RoW issues associated with HVPNL's line near the substation area and also allow fixing the location of the 220 kV dead end/terminal towers of HVPNL inside the substation boundary. Similar request was also made for the Kadarapur Substation and Prithala Substation. The representative of CEA categorically stated that since execution of substation and 400

kV lines has been awarded through Tariff Based Competitive Bidding process, the developer has the liberty to design the substation meeting the requirements of regulations and Indian/International Standard as stipulated in the RFP document. The representative suggested that a joint survey by engineers of HVPNL and Petitioner should be carried out to finalize the route alignment of 220 kV lines to minimize crossing with KS Line, (ii) With respect to the Kadarapur Substation, HVPNL pointed out the need to modify the design layout to accommodate proposed 220kV bays in such a way that evacuation of 220kV lines would not have difficulty. The Petitioner suggested that crossing of lines can be avoided by interchanging the bay arrangement to accommodate future lines and HVPNL agreed with the suggestion of the Petitioner, (iii) With respect to the Prithala substation, HVPNL informed that issues regarding crossing of their 220 kV lines and 400 kV lines of the Petitioner has been resolved, however, engineering support would be required for termination of their 220kV in double decker configuration. The Petitioner agreed to provide all support and cooperation in implementation. The CEA insisted that the Petitioner and HVPNL should amicably resolve the issues to avoid unnecessary delay and for timely completion of the Project. (iii) A meeting was held on 29.5.2019 between HVPNL and the Petitioner for *inter alia* resolving the right of way issue being encountered by both HVPNL and the Petitioner due to infringement of their lines. To resolve the issue and to avoid any further delay, the Petitioner planned to realign its route plan of 400kV line from the left side of the Sohna Road substation and shared the revised route with HVPNL during the said meeting on 29.5.2019. With the said route suggested by the Petitioner, there would be no change in the routes of HVPNL lines, and it shall facilitate avoiding of crossing of future downlines and shall minimize RoW issues. The Petitioner also conveyed that they have re-planned and rerouted their LILO of GM Line to avoid x-ing by gantries of HVPNL line. With the said plan, the Petitioner has to increase 4 nos. of additional towers and is burdened with additional expenditure.

(j) The Petitioner lost around 8 months of working time i.e. from 12.9.2018 till 29.5.2019, on account of the delay in finalization of the route for the HVPNL's downstream 220kV lines from the substations. Such an event qualifies to be a force majeure event in terms of Article 11.3 of the TSA.

(k) In view thereof, and the other force majeure events impacting the said elements, the Petitioner is entitled for an extension to the SCOD of the Prithala substation till 7.8.2019 (extension of 3 months to the SCOD), Sohna Road substation till April 2020 (extension



of 7 months to the SCOD), Kadarapur substation till December 2019 (extension of 7 months to the SCOD), KS Line till January 2020 (extension of 4 months to the SCOD) and LILO of GM Line till February 2020 (extension of 5 months to the SCOD).

Reply of PSPCL

150. PSPCL in its reply has submitted that the Petitioner was well aware of the route which had to be taken for its transmission lines and any overlapping which might occur with the downstream network of HVPNL. The Petitioner itself has stated that HVPNL had first communicated the possibility of infringement of lines of the Petitioner with that of HVPNL on 27.3.2017. However, by its own admission, the Petitioner followed up on the issue with HVPNL after about a year on 1.4.2018. The Petitioner cannot take such a lackadaisical attitude and now come before this Commission seeking extension of time.

Rejoinder of the Petitioner to the reply of PSPCL

151. The petitioner in its rejoinder to the reply of PSPCL has submitted that PSPCL is attempting to mislead the Commission by erroneously stating that HVPNL had first communicated the possibility of infringement of lines of the Petitioner with that of HVPNL on 27.3.2017, when the actual date of formal representation by HVPNL on the said issue was 27.12.2017. Before such date, only internal meetings were being conducted by HVPNL on this issue and the same has been recorded in the letter dated 27.12.2017. In fact, post such representation by HVPNL, the Petitioner sought relevant details and inputs from HVPNL for further submission to the CTUIL for short circuit studies vide its letter dated 7.2.2018. Thereafter, the Petitioner responded to HVPNL's letter dated 27.12.2017 on 1.4.2018, after detailed internal discussions and undertaking studies on the feasibility of the suggestions made by HVPNL in its letter dated 27.12.2017 to be able to provide solutions to the issues faced by HVPNL. Accordingly, the suggestion of PSPCL that the Petitioner opted for a lackadaisical approach and took a year to follow up on the issue with HVPNL is completely wrong and contrary to the facts already placed on record.

Reply of HVPNL

152. HVPNL with respect to specific claim of the Petitioner has submitted that there was issue regarding infringement of the 440 KV of the Petitioner with the 220 KV line of HVPNL's downstream system and was initially raised by the HVPNL in its communication dated February 22, 2017 addressed to the Petitioner. Thereafter, this concern regarding infringement of lines was repeatedly raised by HVPNL on several occasions (including vide



its communication dated March 24, 2017 to the Petitioner and in a meeting held on June 06, 2018). To resolve the issue, HVPNL suggested the Petitioner to plan its 400KV line (namely 400KV D/C KS line) from left side of the substation. In addition, the Petitioner was apprised that delay in resolution of this issue would impact the process qua construction of downstream network. However, the Petitioner, without any plausible basis, maintained an irrational and rigid stand to HVPNL's suggestion and ultimately on May 29, 2019 agreed to realign its route plan in terms of HVPNL's suggestion. Due to this, the issue which could have resolved much earlier was delayed by the Petitioner for more than two (2) years, which *inter alia* severely impacted HVPNL's down line network. Therefore, the delay, on basis which the Petitioner intends to invoke force majeure, is self-created and hence does not deserve to be condoned by this Commission.

Rejoinder of the Petitioner to the reply of HVPNL

153. The petitioner in its rejoinder to the reply of HVPNL submitted that the Petitioner was under no obligation whatsoever to accommodate the requests of HVPNL to change the approved route of its 400 kV lines. In spite of such fact, after much deliberation with HVPNL and CEA and to avoid any further delay, on 29.5.2019, the Petitioner shared a revised route with HVPNL that would cause no change in the route of HVPNL lines and minimize the RoW issues faced by it. During the said meeting, the Petitioner also conveyed that it has re-planned and rerouted their LILO of GM Line to avoid x-ing by gantries of HVPNL line. Such change was undertaken by the Petitioner although it had to implement 4 (four) additional towers and was burdened with additional expenditure. The delay caused in finalisation of the route of the downstream elements of HVPNL, which in turn delayed the implementation of the KS Line, LILO of GM Line and the three substations under the scope of the Petitioner, was not attributable to the Petitioner. Rather, to avoid further delay, the Petitioner took all possible efforts and incurred additional expenditure to resolve the issues faced by HVPNL. The Petitioner has submitted that the Petitioner has duly complied with the notice requirement under the said provision of the TSA and the LTTCs were informed of this force majeure event vide Petitioner's letter dated 17.5.2019. Further, the monthly progress reports provided to the LTTCs and CEA in terms of Clause 4.1 (g) of the TSA also mentioned of such force majeure event impacting the implementation of the Project by the Petitioner. In addition to these, the said force majeure event was discussed at various CEA meetings including in the meetings held on 12.9.2018 and 16.11.2018.

Reply of UPPCL

154. UPPCL with respect to specific claim of the Petitioner has submitted that the GPTL was mandated to conduct its own independent surveys and investigation of transmission line routes and its surrounding areas prior to submission of its bid. Hence, GPTL was well aware of the route which had to be taken for its transmission lines and any overlapping which might occur with the downstream network of HVPNL.

Rejoinder of the Petitioner to UPPCL reply

155. The Petitioner in its rejoinder to the reply of UPPCL has submitted that in spite of such technical and design freedom available with the Petitioner, only to assist HVPNL in finding a solution to the issues belatedly raised by it, the Petitioner fully cooperated, actively communicated and suggested solutions to HVPNL.

Analysis and Decision

156. We have considered the submissions made by the Petitioner and Respondents. From the documents placed by parties, we have noted that the Petitioner had proactively coordinated with HVPNL for resolving the issues. Further, the Petitioner has taken the necessary steps to mitigate the impact of loss of time by aligning their assets with the requirements given by HVPNL. The Petitioner has fully cooperated, actively communicated and suggested solutions to HVPNL to resolve the issues. It is noticed that the Petitioner approached the CEA for intervention when bottleneck arose between the Petitioner and HVPNL. The Petitioner has placed on record the various correspondences exchanged between the Petitioner and HVPNL along with letters written to CEA and minutes of the meetings held under the Chairmanship of CEA for timely and amicable resolution of the concerns of HVPNL. Further, the Petitioner undertook to incur additional costs to have the impasse resolved quickly – it extended the height of towers in KS Line and re-routed the LILO of GM Line which involved setting up the additional towers and re-routing of the transmission line. A brief tabular representation of key correspondences and developments on this issue is extracted as under:

| S. No. | Communications exchanged between GPTL and HVPNL | Content of Communication |
|---------------|--|---|
| 1. | Letter from GPTL to HVPNL dated 27.03.2017. | Intimating details of proposed GPTL s/s |
| 2. | Minutes of Meeting dated 27.03.2017 | The 220kV line network proposed by HVPNL was infringing the 400kV line of GPTL. Therefore, it was proposed by HVPNL that the GPTL could cross the line with providing towers with appropriate extensions. |
| 3. | Letter from HVPNL to GPTL dated 25.08.2017 | Intimation by HVPNL for conducting a meeting to be held on 28.08.2017 to discuss location of Kadarapur S/s and orientation of 220kV bays at ends of both Substations. |
| 4. | Letter from HVPNL to GPTL dated 27.12.2017 | Details of lines crossing Sohna S/s were provided. Further for Kadarapur S/s, it was stated that no route can be finalized due to non-finalization of land for Kadarapur S/s |
| 5. | Letter from GPTL to HVPNL dated 24.01.2018 | Technical details sought from HVPNL for lines being connected to Prithala S/s, Kadarapur S/s and Sohna Road S/s |
| 6. | Letter from HVPNL to GPTL dated 08.02.2018 | HVPNL intimated that the details for Sohna S/s had already been shared, and that route of Kadarapur cannot be finalized since substation land is not yet finalized. |
| 7. | Letter from GPTL to HVPNL dated 01.04.2018 | GPTL requested HVPNL to execute 220kV D/c Panchgaon – Badarpur line on the old route, to avoid any crossings with proposed GPTL lines. Further, it was requested by GPTL to HVPNL to construct lines with limited height so that GPTL could give proper clearance over the lines during crossing by using sufficient extensions. |
| 8. | Order dtd 22.06.2018 from HVPNL | HVPNL intimated the constitution a Committee to resolve the issue of crossing of lines. |
| 9. | Letter from HVPNL to GPTL dated 22.06.2018 | Request by HVPNL for participation in constitution of a committee to resolve the line infringement issues being faced by HVPNL and GPTL. |
| 10. | Letter from GPTL to HVPNL dated 28.06.2018 | Submission of layout plan for Kadarapur substation |
| 11. | Letter from HVPNL to GPTL dated 03.07.2018 | Request to finalize the layout plan after fixing the routes for 400 KV add 220 KV lines being constructed by GPTL and HVPNL |
| 12. | Letter from GPTL to HVPNL dated 04.07.2018 | For Kadarapur substation KML file of all proposed 220 KV routes was requested. For Sohna substation certain information was requested for checking the feasibility of overhead crossings. |

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| 13. | Letter from GPTL to HVPNL dated 23.07.2018 | Reminder for sharing KML file for all proposed 220 KV routes for checking the crossing feasibility. |
| 14. | Letter from GPTL to HVPNL dated 23.07.2018 | Regarding submission of 400kV and 220kV TL routes feasibility near Sohna s/s |
| 15. | Letter from HVPNL to GPTL dated 06.08.2018 | Regarding submission of 400kV and 220kV TL routes feasibility near Sohna s/s Information for meeting to be held on 7th of August 2018 |
| 16. | Minutes of Meeting dated 07.08.2018 | GPTL and HVPNL to resolve the 220KV transmission line issue amicably however if the same is not achieved till 14th August 2018, CEA intervention would be sought |
| 17. | Minutes of Meeting dated 09.09.2018 | GPTL and HVPNL to try to resolve the 220KV transmission line issue amicably however if the same is not achieved till within a week's time, CEA intervention would be sought. |
| 18. | CEA Minutes of Meeting dated 12.09.2018 | CEA to form technical committee comprising the officers to GPTL, HVPNL and CEA to finalize the route for downstream lines of HVPL emerging from Kadarapur S/s, Sohna S/s and Prithala S/s |
| 19. | CEA Minutes of Meeting dated 16.11.2018 | CEA insisted that HVPNL and GPTL should amicably resolve the issue to avoid unnecessary delay in completion of the Project. |
| 20. | Letter from GPTL to HVPNL dated 26.02.2019 | With reference to the crossing feasibility of LILO of 400 kV D/C Gurgaon Manesar Line of GPTL over the M/C LILO of 220 kV D/C Pachgaon-Badshahpur Line at Sector 77 of HVPNL. It has been found that while crossing, even after giving the maximum extension in 400 kV lines, maintaining the subsequent clearance is very critical with the proposed extension of Tower No.06 (proposed MD+6) & Tower No.05 (proposed MD+6) of HVPNL. The required clearance can be maintained if the Tower No.6 of HVPNL will be executed as MD+0 instead of MD+6 & string the OPGW/Earthwire upto conductor level. If any LT/11 kV falls for the clearance wrt bottom conductor in the span between T.No.05 to T.No.06 of 220 kV M/C Line due to the proposed changes, GPTL will divert that LT/11 kV line. |
| 21. | Memo dated 08.05.2019 from HVPNL | HVPNL requested GPTL to submit the route plan for its 400kV line and also directed GPTL to stop construction of tower foundation falling in ROW of HVPNL & further directed GPTL to |

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| | | take prior approval before commencing work in HVPNL's ROW. |
| 22. | Minutes of Meeting held on 29.05.2019 b/w HVPNL and GPTL | <ul style="list-style-type: none"> • HVPNL conveyed that they have re-routed their 400kV lines to avoid x-ing by gantries of HVPNL lines. • GPTL requested to share the details of 220kV Badshahpur-Panchgaon line so as to finalise the x-ing profile of their lines. • GPTL & HVPNL agreed upon to share the information in respect of line amendments, if necessitated, so as to not let the work of other party be suffered. • GPTL recommended alteration of tower types in LILO of 220kV D/C Badshahpur - Panchgaon line. |
| 23. | HVPNL Internal communication dated 22.08.2019 | Details of approved overhead crossings of HVPNL lines with KS Line, along with conditions. |
| 24. | 31.08.2019 | Approval to connect GM Line with Sohna S/s from PGCIL |
| 25. | Letter from GPTL to HVPNL dated 25.03.2020 | Request for line profile and foundation/ tower details |
| 26. | Email trail B/w HVPNL and GPTL from 09.03.2020 to 02.04.2020 | Email trail regarding GPTL's request to HVPNL for issuing NOC to get charging approval from NRLDC. |
| 27. | Email trail B/w HVPNL and GPTL from 04.04.2020 to 30.06.2020 | GPTL informed the completion of soil levelling at Sohna S/s and requested HVPNL to deploy its team for completion of work. |
| 28. | CEA Minutes of Meetings dated 10.06.2021 and 28.12.2021 | Implementation of 220kV downstream network from the Kadarapur S/s was discussed in the CEA Meeting since it is still under implementation. |

157. From perusal of the above correspondences, we conclude that the Petitioner took timely measures to mitigate the issues faced with HVPNL. We have also noted from the correspondences placed above that the Petitioner had made several representations to CEA and HVPNL asking timely resolution of the issues in the interest of commissioning of its scope of work by SCOD. As per the above, the Petitioner wrote to HVPNL with a proposal for its scope of work as early as March 2017 and thereafter continuously kept writing letters to HVPNL for amicably resolving the planning and transmission lines crossing issues of the interconnecting 400 kV lines and 400kV sub-station under the scope of the Petitioner with the downstream 220kV system under the scope of HVPNL.

158. Finally, after the directions given by the CEA in the meeting held in September 2019 that the Petitioner and HVPNL were asked to amicably resolve the issues. In this regard, the Petitioner has submitted that having no other choice but to concede to the requirement of HVPNL, the Petitioner undertook route revision and tower height extension of KS Line and agreed to re-routing the LILO of GM Line which involved setting up four additional towers to ensure that no changes are caused in the routes of HVPNL lines. On this account, the Petitioner has also incurred additional expenditure, but the same has been absorbed by the Petitioner and is not claimed as additional cost on this account in the instant proceedings. The Petitioner made *bona-fide* efforts to resolve the issue in a timely fashion. Accordingly, the delays in this issue are uncontrollable as an impasse was reached with HVPNL despite prudent coordination efforts.

159. We have further noted that the present transmission scheme was implemented for the benefit of the State of Haryana, where HVPNL and HPPC had undertaken the responsibility of ensuring timely and effective utilization of the transmission systems. Whereas, from the submissions we have noted that HVPNL itself caused many hindrances and delayed the project implementation activities. HPPC being a LTTC had the responsibility of aiding and assisting the Petitioner, whereas, HPPC could not submit any document in support of the same. After a careful analysis of the documents placed on record by the Petitioner and considering the submissions made by Respondents, the we are of the view that the delay in finalisation of the route for HVPNL's downstream lines from the Petitioner's substations is a force majeure event in terms of Article 11 of the TSA as it delayed the commissioning of the three substations along with KS Line, and LILO of GM Line. Although the Petitioner has stated that it lost around 8 months of working (from 12.9.2018 till 29.5.2019) on account days of delay in the finalization of route for HVPNL's downstream 220 kV lines from Sub-stations, the actual delays in achieving the deemed COD/COD for the elements Prithala S/s (87 days), Sohna Road S/s (219 days), KS Line

(219 days), LILO of GM Line (219 days) being lesser than 8 months, we find it proper to condone the actual delays in respect of the aforesaid elements on the account of force majeure event. Although, the Petitioner has also stated that the works of its Kadarapur S/s had also been affected by this event, since we have already condoned the delay in respect of Kadarapur S/s owing to the requirement of its relocation being force majeure event, the said element has not been considered under this head.

160. In addition, the Petitioner has also pleaded (i) unlawful obstructions and litigation impacting KS Line, (ii) delay in sharing CRP Protection Details by HVPNL impacting Prithala S/s, and (iii) ban on construction activities in Delhi NCR impacting LILO of GM Line, KS Line, Sohna Road S/s, and Kadarapur S/s as force majeure events. However, keeping in view that in forgoing paragraphs, the Commission has already condoned the delay in achieving the deemed COD/COD of these elements on account of force majeure event(s), we do not find any reason to go into these claims.

161. The Petitioner has also prayed for grant of IDC and IEDC upon the commissioning of the Project in view of the force majeure events. However, the aspect of transmission licensee entitlement to the monetary reliefs in the forms of IDC and/or IEDC in view of the force majeure event, has already been considered by the Commission in its order dated 25.7.2022 in Petition No. No. 210/MP/2017 in the matter of Kudgi Transmission Limited v. Bangalore Electricity Supply Co. Ltd. and Ors. wherein the Commission in its order dated 25.7.2022 *inter alia* observed as under:

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

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

The aforesaid stand has also been reiterated by the Commission in the order dated 31.12.2023 in Petition No. 237/MP/2021 in the matter of Khargone Transmission Limited v. MPPMCL and Ors. Hence, in line with the findings of the Commission in these orders, the claim of the Petitioner for grant of IDC and IEDC for the force majeure events cannot be allowed in the present.

Change in Law Claims

162. The Petitioner has submitted that in terms of Article 12 of the TSA, Change in Law Events have occurred after the cut-off date, resulting in additional recurring expenditure for the Petitioner during the Construction Period.

Pro-Rata Revision in the amount for Compensatory Afforestation by the Divisional Forest Officer

Submissions of Petitioner

163. The Petitioner has submitted that the PK Line of the Petitioner is passing through Palwal and Gurgaon forests in the State of Haryana. For the construction of the said line, GPTL had applied for diversion of the 14.4543 ha of forest land, with 13.9978 ha under Gurgaon division and 0.4565 ha under Palwal division, in terms of Section 2 of the FCA on 11.10.2017. Further, the KS Line of the Petitioner is also passing through Gurgaon Forest in the State of Haryana. For the construction of the said line, the Petitioner had applied for diversion of the 14.1266 ha of forest land under Gurgaon Forest division, in terms of

Section 2 of the FCA on 4.10.2017. In terms of the scheme of the FCA and rules and regulations made thereunder, the user agency, which in the present case is the Petitioner, seeking to apply for diversion of forest for non-forestry purpose is charged for the compensatory afforestation under the Compensatory Afforestation Scheme ("CA Scheme") prepared by the concerned Divisional Forest Officer on the basis of applicable norms, with a view to provide the rates of compensatory afforestation required to be charged from the user agencies. The CA Scheme had to be prepared on the basis of cost norms by the Divisional Forest Officers. In terms of Conservator of Forests cum Nodal Officer, Haryana's letter dated 4.9.2017, which was addressed to all Divisional Forest Officers (Territorial), Haryana, on the subject of Compensatory Afforestation under FCA and CAMPA guidelines; these cost norms for compensatory afforestation had been arrived at the wage rate of Rs. 318.46 ("Cost Norms - Guidelines"). The Cost Norms- Guidelines *inter alia* also mentioned that the wage rate being dynamic, pro-rata revisions will be made by the Divisional Forest Officers consistent with the prevalent wage rate. The Principle Chief Conservator of Forests (PCCF) *vide* its letter dated 3.7.2018 *inter alia* informed all Divisional Forest Officers, Haryana of the increase in wage rate to Rs. 326.82 per day and directed preparation of all new CA schemes on such revised rates. The MoEFCC granted Stage-I approval to the Petitioner for diversion of the forest land for PK Line *vide* its letter dated 13.8.2018. Pursuant to the said Stage-I approval, the Divisional Forest Officers for both Palwal and Gurgaon *vide* their demand notes dated 16.8.2018 and 23.8.2018 sought a payment of Rs. 4,57,03,020 from the Petitioner. However, later on 31.8.2018, the Petitioner received revised demand notes that sought payment of a total of Rs. 6,91,32,487. The said revised demand note was based on the revised cost norms and updated wage rates. MoEFCC also granted Stage I approval to the request by the Petitioner for diversion of forest land for the KS Line *vide* its letter dated 13.8.2018. Pursuant to the said Stage I approval, the Divisional Forest Officer for Gurgaon *vide* its demand note dated 16.8.2018 sought a payment of Rs. 4,50,67,692 from the Petitioner. Later, the Petitioner received a revised demand note dated 31.8.2018 from the Divisional Forest Officer, Gurgaon that sought a payment of Rs. 6,96,66,084. The revised demand note was based on the revised wage rate of Rs. 326.82 per day, as mentioned in the CA scheme dated 1.8.2018. The Petitioner deposited the amount claimed *vide* the demand notices for the CA fund into the account of the State Forest Department. The Stage-II approvals for diversion of forests in favour of the Petitioner for the PK Line and the KS Line were received on 3.10.2018 and 11.10.2018, respectively. Since the wage rates are dynamic, the pro-rata revision in the CA rates that has been made by the Divisional Forest Officers constitutes a Change in Law



event. Such a stance is supported by the co-joint reading of the definitions of 'Consents, Clearances and Permits' and 'Indian Governmental Instrumentality' under Article 1 of the TSA and the meaning of Change in Law under Article 12.1.1 of the TSA. The pro-rata revisions by the Divisional Forest Officer in the cost norms for preparation of CA scheme, by changing the reference wage rates shall constitute change in the terms and conditions prescribed for obtaining such the approval under Section 2 of the FCA or more broadly put, in the terms and conditions prescribed for obtaining Consents, Clearances and Permits - which constitutes a Change in Law event in terms of Article 12.1.1. Accordingly, the Petitioner has suffered a total additional impact of Rs. 4,80,27,859 on account of the pro-rata revision of the cost norms for the computing the amount for compensatory afforestation, and it constitutes a change in law event in terms of the TSA.

Reply of PSPCL

164. PSPCL with respect to the specific averment of the Petitioner submitted that the additional expenditure incurred by the Petitioner on account of pro-rata revision in the amount for compensatory afforestation, the case at hand is a competitive bidding project and that the Petitioner has quoted all inclusive transmission charges and the Petitioner was also expected to factor all unforeseen and contingent expenditure on account of right of way settlement in the quoted transmission charges while submitting the bid. Therefore, the additional expenditure incurred by Petitioner to pay for compensatory afforestation does not constitute a Change in Law event and any claim under this is not admissible.

Rejoinder of the Petitioner

165. The Petitioner in its rejoinder has submitted that the very reason for inclusion of a Change in Law clause in the TSA is for the Commission to take into consideration the impact of the increase in the cost of the Project due to the Change in Law events occurring after the cut-off date and to determine the tariff in such a manner that this increase in cost is absorbed in the transmission charges and the Petitioner is restored to the same economic condition as existed prior to occurrence of change in law events. It is also relevant to mention that the returns on the Project is dependent entirely on the Project cost through the transmission tariff as the scalable part of the tariff is miniscule and only covers the O & M expenses. If the cost of the project increases or there is time over-run, the transmission service provider suffers not only because of cost over-run but also due to loss of revenue. This Commission in its various orders including the orders dated 2.4.2013 and

15.4.2013 in Petition Nos. 155/MP/2012 and 159/MP/2012, respectively, has recognized the importance of adequate returns for investors in ensuring reliable supply of electricity.

Reply of HVPNL

166. HVPNL has submitted that the requirement of Forest Clearance was indicated in the RfP and therefore, the Petitioner was expected to factor in the expenditure involved in obtaining the Forest Clearance. Thus, the alleged expenditure incurred towards increase in afforestation rates cannot be allowed under Change in Law.

Rejoinder of Petitioner

167. The Petitioner in its rejoinder has submitted that the pro-rata revision in the cost norms for preparation of the CA scheme by the Divisional Forest Officer on account of change in the reference wage rates constitutes change in the terms and conditions prescribed for obtaining approval under Section 2 of the FCA or more broadly put, in the terms and conditions prescribed for obtaining Consents, Clearances and Permits. Such an event constitutes a Change in Law event in terms of Article 12.1.1 of the TSA. It was not possible for the Petitioner to have foreseen such increased costs before placing its bid. Such change in cost norms occurred after the cut-off date and for any such Change in Law event, the Petitioner is entitled to seek relief in terms of Article 12.2 of the TSA.

Reply of UPPCL

168. UPPCL has submitted that in terms of the RfP as well as Article 4.1 of the TSA, GPTL is responsible for procuring and maintaining in full force and effect all Consents and Clearances including Forest Clearance at its own cost and expense. The TSA has been executed pursuant to competitive bidding under Section 63 of the Act. Hence, GPTL was expected to submit an all inclusive tariff factoring all unforeseen and contingent expenditure on account of obtaining and maintaining the Forest Clearances and right of way settlement. Hence, the additional expenditure incurred by GPTL on account of increase in afforestation rates will not qualify as Change in Law under Article 12 of the TSA.

Rejoinder of the Petitioner

169. The Petitioner in its rejoinder has submitted that simply because the requirement of forest clearance had been indicated in the RfP, it cannot be contended that additional



expenditure for forest clearance incurred on account of a Change in Law event cannot be sought by the Petitioner.

Analysis and Decision

170. We have considered the submissions made by the parties. The Change in Law claim of the Petitioner towards the pro-rata revision in the amount for Compensatory Afforestation due to change in wage rate is premised upon the letter of Principal Chief Conservator of Forest (PCCF) dated 3.7.2018 whereby all the DFOs were intimated about an increase in wage rate to Rs. 362.82 per day and consequently, were directed to prepare new CA schemes based on such rate. The Petitioner has submitted that since its application for the forest diversion proposals along the route of PK Line and KS Line were under process at that time, the earlier demand notes raised upon the Petitioner by the concerned DFOs based on the Previous Cost Norms (wage rate of Rs. 318.46 per day) of 4.9.2017 were revised based on the Revised Wage Rate and accordingly, the Petitioner was required to incur the additional expenditure of Rs. 4.8 crore towards Compensatory Afforestation due to change in wage rate. It is noticed that by letter dated 4.9.2017, the PCCF, Haryana intimated to all the DFOs, Haryana about the standardized rates of Compensatory Afforestation required to be charged from the user agencies who apply for diversion of forest land for non-forestry purpose under Section 2 of the Forest Conservation Act, 1982. The said letter also indicated that the norms specified therein has been arrived at the wage rate of Rs. 318.46 and the wage rate being dynamic, pro-rata revisions will be made by the DFOs consistent with the prevalent wage rates. It is stated that based on the wage rate of Rs. 318.46, the DFOs had raised the demand notes dated 16.8.2018 & 23.8.2018 for Rs. 4,57,03,020/- upon the Petitioner for diversion of forest land for PK Line and demand notes dated 16.8.2018 for Rs. 4,50,67,692/- for diversion of forest land for KS Line. However, PCCF, Haryana, in its letter dated 3.7.2018 noted that as per the letter dated 4.9.2017, the cost norms mentioned therein were to increase with increase in the wage rate and despite the present wage rate being Rs. 326.82, the CA schemes were



being prepared as per the wage rate of Rs. 318.46. Accordingly, all the DFOs, Haryana were asked to prepare the CA scheme only considering the wage rate of Rs. 326.82. Although, the demand notes original raised upon the Petitioner are post the above letter of PCCF dated 3.7.2018, it is stated that the said demand notes came to be revised based on the revised cost norms and wage rates. However, it is noticed that the above increase, which has been attributed to the letters of PCCF, Haryana dated 4.9.2017 and 3.7.2018, are of post the cut-off date. The Petitioner has as such not disclosed the cost norms / wage rates prevailing on the cut-off date and whether the prevailing norms already provided for pro-rata revision in compensatory afforestation rates based on prevalent wages. Another point to be considered is if the revision of CA charges is due to normal increase in wages as a result of inflation. In absence of the necessary details relating to the cost norms / wage rates prevailing on cut-off date, we are unable to decide upon the plea of Change in Law and accordingly, grant the liberty to the Petitioner to raise its claim by way of separate Petition along with all necessary and supporting details in this regard.

Introduction of the Goods and Services Act, 2017

Submission of Petitioner:

171. The Petitioner in support of its claim has submitted that as per the Commission's order dated 17.12.2018 in Petition No. 1/SM/2018, the introduction of GST has been declared to constitute a Change in Law event if the cut-off date as per the relevant TSA falls on or before 30.6.2017. The Cut Off Date under the TSA in the present case is 23.2.2016. Therefore, in terms of the CERC Order dated 17.12.2018, introduction of GST shall constitute a Change in Law event for the Petitioner in the present case. Till date, the Petitioner has incurred an additional cost of approximately Rs. 28.58 crores on account of the introduction of GST. However, the exact and total impact of the introduction of GST on the cost of the Project can only be computed after the completion of the Project. Therefore, in view of the Order dated 17.12.2018, the Commission may recognize in-principle that the impact of introduction of GST on the Project will constitute a Change in Law event in terms of Article 12 of the TSA. Once the Project is commissioned, the Petitioner shall submit before the Commission a detailed estimate of the total impact of GST on the Project cost

for the Petitioner, for grant of relief in terms of Article 12 of the TSA, and prays for the leave of this Commission in this regard.

Reply of PSPCL

172. PSPCL in its reply to the specific averment of the Petitioner has submitted that in order to exhibit correlation between the projects, the supply of goods or services and the invoices raised by the supplier of goods and services, the certification should state that all the norms as per GST Laws have been complied with by the Petitioner and the claim of the amount being made by the Petitioner are correct as per the effective taxes in pre and post GST regime. The invoices have to be accompanied with GST receipt by the concerned Government to cross check that the GST payments were made. The Petitioner is liable to provide the LTTCs, the relevant documents along with the auditor certification the methodology adopted to reconcile the claim. It is pertinent to mention that computation should be on the basis of invoices raised by the suppliers of goods and services which contain a clear and specific description regarding the levy of GST and the norms as per GST Laws have been complied with by the Petitioner and the claim of the amount must be in order as in Pre-GST and Post-GST regime, duly certified by Chartered Accountant.

Rejoinder of the Petitioner to the reply of PSPCL

173. The Petitioner in its rejoinder to the reply of PSPCL submitted that in response to PSPCL's suggestions on the details ought to be provided in the certification in relation to total impact of GST, the Petitioner vide RoP for the hearing dated 11.6.2020 was directed to place on record the total impact of GST along with an auditor certified calculation of the amount claimed due to introduction of GST. In compliance with the same, the Petitioner has already submitted vide its affidavit dated 26.6.2020 that the total additional impact of introduction of GST on the cost of implementation of the Project by the Petitioner has been to the tune of Rs. 26,92,10,435. The Petitioner has also placed on record the auditor certificate for the amount claimed due to introduction of GST. Article 12.1 of the TSA which *inter alia* defines Change in Law and Article 12.2.1 which provides for relief for Change in Law during construction period, does not in any manner limit the availability of relief for a Change in Law event that occurred during the construction period till the SCOD of the Project. Rather, the term "*Construction Period*" has been defined under Clause 1.1.1 of the TSA to mean the period from (and including) the effective date of the TSA up to (but not including) the COD of the element of the Project in relation to an element and up to (but not including) the COD of the Project in relation to the Project. It is pertinent to note that in



terms of the said definition, construction period ends on the COD of the element/s of the Project/ Project and not the SCOD of the element/s of the Project/Project.

Reply of HVPNL

174. HVPNL has submitted that this issue needs to be adjudicated by this Commission by ascertaining the actual impact of GST on the Project by comparing Pre-GST and Post-GST regime. Further, the Petitioner has to furnish invoices, accompanied with GST receipt, to ascertain that the GST payments were made. Also, computation of GST should be on the basis of invoices raised by the Petitioner's suppliers, containing description regarding levy GST.

Rejoinder of the Petitioner to the reply of HVPNL

175. The Petitioner in its rejoinder to the reply of HVPNL has submitted that as per the order of the Commission dated 17.12.2018 in Petition No. 1/SM/2018, the introduction of GST has been declared to be a Change in Law event if the cut-off date as per the relevant TSA falls on or before 30.6.2017. The cut off date under the TSA in the present case is 23.2.2016. Therefore, in terms of the aforementioned order, introduction of GST shall constitute a Change in Law event for the Petitioner in the present case. In response to HVPNL's suggestions on the details that should be provided by the Petitioner and the manner in which the Commission should adjudicate upon the captioned issue. The Petitioner vide RoP for the hearing dated 11.6.2020 was directed to place on record the total impact of GST along with an auditor certified calculation of the amount claimed due to introduction of GST. In compliance with the same, the Petitioner has already submitted vide its affidavit dated 26.6.2020 that the total additional impact of introduction of GST on the cost of the Project by the Petitioner has been to the tune of Rs. 26,92,10,435.

Reply of UPPCL

176. UPPCL has submitted that the Commission vide Order dated 17.12.2018 passed in Petition No. 1/SM/2018, has already settled the issue holding that introduction of Goods and Services Act 2017 ("GST Act") constitutes an event of Change in Law if the cut-off date as per the relevant TSA falls on or before 30.6.2017. However, for the purpose of ascertaining and computing the impact of GST Act on the Project, GPTL shall be directed to provide the aactual impact of GST on the Project by comparing Pre-GST and Post-GST regime, Invoices accompanied with GST receipt, to ascertain whether GST payment were made, Computation of GST on the basis of invoices raised by GPTL's suppliers, containing



description regarding levy GST, details of the methodology adopted to reconcile the claim and the Auditor Certificate.

Rejoinder of the Petitioner

177. The Petitioner in its rejoinder has submitted that the introduction of the Goods and Services Act, 2017 (“GST Act”) constitutes a Change in Law event. The Petitioner has submitted that the RoP for the hearing held in the captioned matter on 11.6.2020 *inter alia* required the Petitioner to place on record the total impact of GST on the Project along with an auditor certificate. In compliance, the Petitioner has submitted on affidavit that the total additional impact of introduction of GST on the Project has been to the tune of Rs. 26,92,10,435.

Analysis and Decision

178. We have considered the submissions made by the Petitioner. Change in Law has been defined in Article 12.1.1 as “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”. Thus, any event specified in the bullets under Article 12.1.1 which have occurred after the date which is seven days prior to the bid deadline and which result into any additional recurring or non-recurring expenditure to the TSP or income to the TSP shall be covered under Change in Law. The Commission in its order dated 17.12.2018 in Petition No.1/SM/2018 in the matter of “Additional tax burden on transmission licensees on introduction of Goods and Service Tax compensation cess” has held that the introduction of GST with effect from 1.7.2017 constitutes a Change in Law event. In the said order, the Commission has also directed that TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of the introduction of GST to the LTTCs duly supported by the auditor’s certificate and the additional expenditure on account of GST shall be reimbursed by the LTTCs as per the relevant provisions of the TSA. The relevant extract of the order dated 17.12.2018 in Petition No. 1/SM/2018 is reproduced below:



“27. From the forgoing, it is observed that due to varied nature of such taxes, duties and cess etc. that have been subsumed/abolished on introduction of GST, it is not possible to quantify the resulting impact in a generic manner for all the TSPs. The abolition of taxes, duties, cess, etc. on the introduction of GST are “Change in Law” events and the savings arising out of such “Change in Law” should be passed to the beneficiaries of the TSPs. Similarly, the introduction of GST has also resulted in imposition of new or increase in existing taxes, duties, cess etc. which constitute “Change in Law” events and accordingly the additional impact due to introduction of GST shall be borne by the beneficiaries. The details of the increase or decrease in the taxes, duties, cess etc. shall be worked out by the TSPs and the beneficiaries. The TSPs should provide the details of increase or decrease in the taxes, duties, cess etc. supported by Auditor Certificate and relevant documents to the beneficiaries and refund or recover the amount from the TSPs due to the decrease or increase in the taxes, duties, cess etc. as the case may be. Since the GST liveable on the transmission licensees pertain to the construction period, the impact of GST shall be disbursed by the beneficiaries to the transmission licensees in accordance with the provisions in the TSA regarding relief for Change in Law during construction period. In case of any dispute on any of the taxes, duties, cess etc., the beneficiaries may approach the Commission.

Summary

28. Summary of our decision in the order is as under:-

(a) Introduction of GST with effect from 1.7.2017 shall constitute a Change in Law event if the cut-off date (7days prior to the bid deadline) as per the relevant TSA falls on or after 1.7.2017.

(b) The differential between the taxes subsumed in GST and the rates of GST on various items shall be admissible under Change in Law.

(c) The TSPs shall work out and provide the details of increase or decrease in the tax liability in respect of introduction of GST to the beneficiaries/Long Term Transmission Customers duly supported by Auditor’s Certificate.

(d) The additional expenditure on account of GST shall be reimbursed by the beneficiaries/Long Term Transmission Customers as per the relevant provisions of the TSA regarding Change in Law during the construction period or operating period, as the case may be.

(e) In case of dispute, either party is at liberty to approach the Commission in accordance with law.”

179. In the present case, as on cut-off date i.e. 23.2.2016, there was no GST. Subsequently, the Parliament and State Legislative Assemblies, in order to introduce a unified indirect tax structure, have introduced a fresh set of taxation laws, which replaced various Central and State level taxes, through various enactments (GST Laws) which came into effect from 1.7.2017. Since the additional recurring and nonrecurring expenditure which has been incurred by the Petitioner is through an Act of Parliament after the cut-off date, i.e.23.2.2016 the same is covered under Change in Law. The relief for additional expenditure incurred by the Petitioner due to introduction of GST on (i) Supply of Material, (ii) Supply of Services – Civil & Erection and (iii) Right of Way shall be admissible on the capital expenditure incurred upto Scheduled Commercial Date of the Elements/ Project.



However, the claim has to be strictly with respect to the additional tax expenditure due to introduction of the GST i.e. difference of tax incidence between the GST regime and pre-GST regime. While claiming the Change in Law compensation on account of introduction GST Laws, the Petitioner and the LTTCs may carry out the reconciliation of incremental expenditure due to GST impact by taking into the account tax rates in Pre-GST regime and post GST regime, exhibiting clear and one-to-one correlation with the Project activities and invoices raised as backed by auditor certificate.

180. Insofar as the applicable relief to the Petitioner for the allowed Change in Law during the construction period is concerned, Article 12.2 of the TSA provides as under:

“12.2 Relief for Change in Law

12.2.1 During Construction Period:

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

*For every cumulative increase/decrease of each **Rupees Five Crore Sixty Two Lakhs Eighty Eight Thousand Only (Rs. 5,62,88,000/=)** in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in non-escalable Transmission Charges shall be an amount equal to 0.32 percent (0.32%) of the Non-Escalable Transmission Charges.”*

181. All reliefs on account of Change in Law have been claimed by the Petitioner for the construction period. Accordingly, as per Article 12.2.1 of the TSA, for every cumulative increase/decrease of each Rupees Five Crore Sixty Two Lakh Eighty-Eight Thousand Only (Rs. 5,62,88,000/-) in the cost of the Project up to the Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to zero point three two percent (0.32%) of the Non- Escalable Transmission Charges. Thus, in terms of the findings of the Commission in the foregoing paragraphs, the Petitioner shall re-compute the increase in the cost of Project, to be supported by Chartered Accountant certificate, and accordingly, shall be entitled to corresponding increase in Non-Escalable Transmission Charges as provided under Article 12.2.1 of the TSA after reconciliation with LTTCs.

182. The Petition No. 90/MP/2020 is disposed of in terms of the above discussions and findings.

Sd/-
(P.K.Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson