

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 45/GT/2016

Coram:

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

Date of Order: 20th November, 2025

In the matter of:

Approval of tariff for Bongaigaon Thermal Power Station, Unit-I (250 MW) for the period 2016-19.

And

In the matter of:

Implementation of the APTEL judgment dated 19.11.2024 in Appeal No. 137/2019 (NTPC V CERC & ors).

And

In the matter of:

NTPC Limited
NTPC Bhawan, Core-7, SCOPE Complex, 7,
Institutional Area, Lodhi Road, New Delhi – 110003

...Petitioner

Vs

1. Assam Power Distribution Company Limited,
Bijulee Bhawan, Paltan Bazar,
Guwahati-782 001

2. Meghalaya Energy Corporation Ltd.,
Short Round Road, Shillong- 793 001

3. Department of Power,
Government of Arunachal Pradesh, Itanagar

4. Power and Electricity Department,
Government of Mizoram, Aizawal- 796 001

5. Manipur State Power Distribution Company Ltd.,
Khwai Bazar, Keishampat, Imphal- 795 001

6. Department of Power,
Government of Nagaland, Kohima

7. Tripura State Electricity Corporation Limited,
Bidyut Bhawan, North Banamalipur, Agartala - 700 001

.....Respondents



8. Mallika Sharma Bezbaruah,
C/o Mr. A. K. Datta, 222, Pocket-E,
Mayur Vihar Phase-II, New Delhi – 110091

9. Saurabh Gandhi,
C/o Mr. A. K. Datta, 222, Pocket-E,
Mayur Vihar Phase-II, New Delhi – 110091

.....Objectors

Parties present:

Ms. Swapna Seshadri, Advocate, NTPC
Shri Parth Bhalla, Advocate, NTPC
Mr. Parimal Piyush, NTPC
Mr. Saurav Lalhal, NTPC
Shri Avijit Roy, Advocate, APDCL
Shri Sunil Sharma, Advocate, APDCL
Ms. Mallika Sharma Bezbaruah, Objector
Shri H.M. Sharma, Objector
Shri Saurabh Gandhi, Objector

ORDER

Background

Petition No. 45/GT/2016 was filed by the Petitioner, NTPC for approval of tariff of Unit-I (250 MW) of Bongaigaon Thermal Power Station (in short “the generating station”) for the period 2016-19, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short “the 2014 Tariff Regulations”) and the Commission vide its order dated 22.5.2017, after condoning the delay of 1303 days (as against the delay of 1886 days claimed by the Petitioner) determined the annual fixed charges for the said period. Aggrieved by the said order, the Petitioner filed Petition No. 29/RP/2017 seeking a review of the order dated 22.5.2017 with the following prayers:

- (a) *To admit the review petition;*
- (b) *To revise the IDC & normative IDC disallowed to the Petitioner and re-compute the same on proportionate basis; and*
- (c) *To condone the delay and allow the IDC/IEDC for the period April 2013 to January 2015 (Bandh / Strikes / Section 144 etc), Non-availability of RCC bridge to support heavy consignment & Change in course of Champamati river.*

2. However, the Commission vide order dated 23.7.2018, rejected the aforesaid prayers of the Petitioner, in the Review Petition. Aggrieved thereby, the Petitioner had filed an appeal (Appeal No.137/2019) before the Appellate Tribunal for Electricity (in short 'APTEL'), raising the following grounds:

- (a) *Refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area / region.*
- (b) *Refusal to consider delay of 30 days on account of change of course of Champamati river;*
- (c) *Refusal to condone delay on account of non-availability of RCC bridges on the way of Bongaigaon TPS site.*
- (d) *Disallowance of IDC and IEDC.*

3. The APTEL vide its judgment dated 19.11.2024, decided the above issues raised by the Petitioner, as summarised below:

Sl. No.	Issue No./Issue	APTEL Judgment
1	<u>Issue - a)</u> Refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area/region.	The findings of the commission on this issue are set aside. We remand the matter back to the Commission to decide the issue afresh after hearing the parties and in the light of a whole bunch of documents filed by the appellant. The exercise shall be completed by the Commission within two months from the date of this judgment.
2	<u>Issue - b)</u> Refusal to consider delay of 30 days on account of the change of course of the Champamati river.	We set aside the findings of the Commission on this issue as well and remand the same back to the Commission for fresh consideration after hearing the parties again. The 'exercise shall be completed by the Commission within two months from the date of this judgment.
3	<u>Issue - c)</u> Refusal to condone the delay on account of the non-availability of RCC bridges on the way to the Bongaigaon TPS site.	We are unable to find any fault in the observation of the Commission that the 'delay of 60 days claimed by the appellant under this head could have been avoided, and therefore, the findings of the Commission on this issue are affirmed.
4	<u>Issue - d)</u> Disallowance of IDC and IEDC.	In view of our decision on issue Nos. (a) and (b) hereinabove, the IDC and IEDC need to be reworked by the Commission. Therefore, this issue is also remanded back to the Commission for fresh consideration upon hearing the parties.

4. It is therefore evident that APTEL, while rejecting the prayer (c) above, has allowed the issues (a), (b) and (d) raised by the Petitioner, and the same was

remanded to the Commission, with a direction to decide the issues afresh, based on its findings and the documents filed by the Petitioner. Pursuant to this, the Petitioner filed IA No. 2/2025 seeking the hearing of this petition. The Petitioner also filed IA No. 3/2025 in Petition No.243/GT/2017 (determination of tariff of Bongaigaon TPS for the period from COD of Unit-I [1.4.2016] to 31.3.2019) and IA No. 4/2025 in Petition No. 409/GT/2020 [determination of tariff of Bongaigaon TPS for the period 2019-24] respectively.

Hearing dated 7.1.2025

5. In terms of the above directions, the IA 2/2025 (in Petition No.45/GT/2016) was listed and heard along with IA Nos. 3/2025 and 4/2025, filed in the respective petitions, as stated above. During the hearing, the learned counsel for the Petitioner submitted that though the Commission had reserved its order in Petition Nos. 243/GT/2017 and 409/GT/2020, the same has been listed, keeping in view that the APTEL judgment dated 19.11.2024 relating to Petition No.45/GT/2016, will also have a consequential impact in these petitions. The learned counsel also pointed out that the Petitioner has filed a compilation, referring to the pleadings in Petition No. 45/GT/2016 and the issues raised /allowed by APTEL in the said appeal. Since none was present on behalf of the Respondents, the Commission directed the issuance of notice to the Respondents/ Objectors, to enable them to file their replies/responses in these matters.

Hearing dated 25.2.2025

6. The Commission, after hearing the parties, adjourned the hearing of these petitions after granting time to the Respondent APDCL to file its reply and the Objector to file his response (along with an affidavit containing certain additional information). The parties were also directed to complete their pleadings in the matter. The objectors

have complied with the above directions, and pleadings in the matter have been completed.

Hearing dated 22.5.2025

7. During the hearing, the learned counsel for the Respondent, APDCL, referred to the APTEL judgment and also made detailed oral submissions on the issues viz., (i) time over-run of 671 days due to ethnic violence and bandhs, and (ii) time overrun of 30 days on account of the change in the course of the Champamati river. He also pointed out that the Petitioner, NTPC, failed to provide satisfactory reasons for enabling the Commission to condone the delay and accordingly, the claim of the Petitioner on this count, was rejected by the Commission vide its order dated 22.5.2017 (in Petition No. 45/GT/2016) and vide order dated 23.7.2018 in Petition No.29/RP/2017 filed by the Petitioner. While arguing that the Commission had elaborately dealt with the issue of 'change in course of the Champamati river' in an order dated 23.7.2018, the learned counsel submitted that there is little possibility that the water level can drastically go down in the said river, immediately after the high rainfall period. Accordingly, the learned counsel submitted that the reply filed in the matter may be considered while disposing of the petition. The representative of the Objectors adopted the above submissions of the Respondent, APDCL, and made oral submissions on the issues remanded by APTEL. The learned counsel for the Petitioner clarified that based on the orders passed in Petition No.45/GT/2016 (on remand), the consequential impact of the same shall be considered while passing the orders in the other tariff petitions, viz., 243/GT/2017 and 409/GT/2020, which had already been heard and orders reserved. Accordingly, based on the parties' consent, the order in the petitions, along with the IAs, was reserved.

Submissions of the Petitioner

8. The Petitioner, in the IA and the note of arguments, has submitted the following:

(a) As regards the issue (a)-time overrun for the period from April, 2013 to January, 2015 (671 days) on account of ethnic violence and bandh in the concerned area, the Commission had refused to condone the delay for the said period, except the period of 32 days, citing non-submission of prohibitory orders by NTPC during the time period in question. However, the APTEL has held that the Commission had taken note of only one page, which bears details of Section 144 prohibitory orders enforced between 2.5.2014 to 2.6.2014 and thus condoned the delay of these 32 days only. Whereas, the Petitioner had provided several other documents to support its claim that the project work was seriously impeded on account of violence and bandh from April 2013 to January 2015, but the same has not been considered.

(b) The Petitioner, for the sake of convenience, has filed a compilation to summarise all the documents, i.e., bandhs/prohibitory orders/newspaper clippings/South Asia terrorism portal incidents (NDFB), etc., that had been filed before this Commission in the original tariff proceedings. A perusal of these documents clarifies beyond any doubt that the prohibitory orders remained in force right from April 2013 till January 2015, since all the orders read that they would be in force till further orders. It is only in order dated 20.1.2015 that indicates the cessation of the prohibitory orders. Though it is well settled that on a daily basis, new prohibitory orders will not be issued, for the sake of convenience of the Commission, the issuance and sustenance of the prohibitory orders filed in the original tariff proceedings are summarised and attached at Appendix-A

(c) The APTEL in para 17 of its judgment has also held that the situation in Kokrajhar District, where the power project was being constructed, remained volatile and affected by regular bandhs/curfew/prohibitory orders etc., throughout the years 2013-15, and the situation returned to normal in January 2015. The finding of APTEL is amply clear that the situation in Kokrajhar remained volatile for the complete period of the dispute (2013-15) and therefore, the delay on account of ethnic violence and bandh of 671 days, during this period, is to be condoned, considering the overlapping period.

(d) As regards the issue (b)-the delay of 30 days on account of the change of course of the Champamati river, the Commission had refused to condone the delay for the said period, citing the reason of heavy rainfall which occurred just before the said activity took place during the period from 1.10.2015 to 31.12.2015. However, the APTEL has held that the contention of the Petitioner that the make-up water for the plant was taken from the Champamati river for which make-up water pumps were erected in the river, but due to heavy

rainfall, high deposition of silt occurred, which caused the change in the course of the Champamati river near the intake well due to which there was insufficient water do pumps to operate, which was not considered by this Commission.

(e) As regards the issue (d)- Disallowance of IDC and IEDC, the IDC and IEDC are to be recalculated in terms of the APTEL judgment. As per the Commission's order dated 22.5.2017, the total IDC computed till 31.3.2016 (till COD of Unit-I) amounts to Rs. 142319.38 lakh, out of which IDC (including Financing Charges) transferred to fixed assets, as on COD of Unit-I, is Rs. 56908.35 lakh. Taking the effect of APTEL's judgment, the figure mentioned for total IDC and corresponding IDC transferred to fixed assets as on the COD of Unit-I may be allowed. As per the Commission's order dated 22.5.2017, the total overheads (IEDC) incurred till 31.3.2016, amount to Rs. 59073.78 lakh, out of which, the IEDC considered as on the COD of Unit-I is Rs. 23676.51 lakh, and the same may be allowed.

(f) The Petitioner, in its compilation (pages 887-984), has extracted the relevant documents which were available in the original petition filed before this Commission.

Reply of the Respondent APDCL

9. The Respondent APDCL, vide its reply affidavit dated 25.3.2025, has mainly submitted as under:

- (a) The Commission has deliberated and decided the condonation of time overrun/delay on the basis of supporting documents furnished by the Petitioner and accordingly condoned the delay of 1303 days as admissible on the documents submitted, and for the balance period of 583 days, the Petitioner failed to provide satisfactory reasons for enabling the Commission to condone the delay. There is a reference of 671 days for the time overrun attributable to the Petitioner as referred to in the APTEL judgment dated 19.11.2024. However, this respondent has pleaded in its pleadings on the issue as 583 days.
- (b) The project site is located in a remote area of around 15 km away from the Kokrajhar town, and the project and colony are well protected with CISF security arrangements. The prohibitory orders annexed by the Petitioner for the period from April 2013 to January 2015 are basically on the imposition of Section 144 of the CrPC, which is normally applied as a precautionary measure, just to avoid the gathering of more than 4/5 people. By virtue of these orders, there seems to be the least possibility of gathering more people and the occurrence of any disturbing effect in and around the district in general and around the project site of the Petitioner, in particular. As the Petitioner also failed to provide convincing

documents as directed by this Commission, there is no other option but to attribute the same to the Petitioner.

- (c) Despite having a closed campus with CISF protection forces, the Petitioner failed to make arrangements for the necessary workers for the uninterrupted continuation of the construction works. The law and order situation did not deteriorate overnight. Considering the commissioning schedule of the project, the Petitioner ought to have approached the law and order authority of the State for timely and proper additional protection, if at all was needed. From the prima facie case, it appears that the delay is totally attributable to the Petitioner on account of mismanagement on its part.
- (d) The prohibitory orders annexed by the Petitioner for the period from April 2013 to January 2015 are basically on imposition of Section 144 CrPC and as such there were the least possibilities of gathering of anti-social elements since the prohibitory orders were extended on a continuous basis. On the other hand, there were no incidents of disturbances in and around the project site as has been evident from the documentary evidence. Under such contradictory situations no one would agree to the submission of the Petitioner that the entire period of 671 days, there were no workers and no working conditions, unless there was any lapse on the part of the Petitioner itself.
- (e) The Commission in para 16 to 18 of the order dated 23.7.2018 in Petition No. 29/RP/2017 specifically held that the Petitioner was directed to produce additional documents to substantiate its claim on time overrun due to bandh and violence, which the Petitioner could not produce at that time. This Commission had elaborately and rightly dealt with the issue of time overrun in its order dated 23.7.2018.
- (f) The Petitioner is attempting to pass on the buck of its failure in the timely commissioning of the project, to the consumers, without having any convincing supporting evidence on its claim. The Commission has clearly mentioned in its order dated 22.5.2017 with proper justification, about the issues involved in the condonation of the total delay of 1886 days.
- (g) In the light of the judgment of the Hon'ble Supreme Court in the Energy Watchdog case, there were no such follow-up actions at those relevant periods from the Petitioner to the Respondent. Though the Commission directed the Petitioner to submit the effective documents, like imposition of prohibitory orders with exact details like the date and period of such orders for the time overrun period from April 2013 to January 2015, the Petitioner could not submit the detailed justification for certain time delays, to the satisfaction of the Commission.
- (h) As per clause 8.0 of the PPA dated 30.5.2007 entered between the Petitioner and the Respondent APDCL (previously ASEB), any party claiming "force

majeure” must satisfy the other party about the existence of such an event and give a written notice, within a reasonable time to the other to that effect. In the present case, there was no such effective due diligence by the Petitioner.

- (i) As regards the change in the course of the Champamati river, para 26 of the order dated 22.5.2017 is self-explanatory. Normally the high hydro season in NER ranges from July to September/ October. Being the project site directly under the foothills of Bhutan, the monsoon prevails till October/ November. Both submissions of the Petitioner, namely excessive rainfall vis-à-vis the non-availability of water in the Champamati river are self-contradictory. A Small hydroelectric project (SHEP) was also running on the river from November 2010 without any so-called change of course and scarcity of water due to high deposition of silt, as claimed by the Petitioner. The discharge of SHEP is also released in the same river
- (j) On the issue of the change of course of the river Champamati and the non-availability of the required flow level of water, the Petitioner has not submitted any supporting materials. The activities of intake well took place from 1.10.2015 to 31.12.2015. The trend from rainfall data provided by the Petitioner does not support the claim of the Petitioner, as the rainfall is more or less very good during that year, and the maximum rainfall occurred in August 2015. The SHEP (4.05 MW) located around 15km from the project of the Petitioner draws water from the Champamati river, and the discharged water of that SHEP is released into the same river. The SHEP is generating energy throughout the whole year and selling energy to the Respondent. In such a scenario, there is little possibilities that the water level can drastically go down in the Champamati river immediately after the high rainfall period. The Commission has rightly not entertained the prayer for condonation of the delay of 30 days based on the reason explained in the order.
- (k) With regard to the re-working of IDC and IEDC, there is no error on the part of the Commission, as the reason for the time overrun period of 583 days is identified and attributed to the Petitioner on the grounds of the absence of proper and reliable justification from the Petitioner.

Rejoinder of the Petitioner to the reply of the Respondent APDCL

10. The Petitioner, vide its rejoinder affidavit dated 11.4.2025, has submitted the following:

- (a) Respondent APDCL has again placed reliance on the Commission’s order dated 22.5.2017 and contended that this Commission has rightly refused to condone the delay due to bandhs and change of course of the Champamati river owing to lack of documents to support the said claims. It is not clear as to how the submissions of APDCL can be entertained at this stage, when the matter has

been remanded back by APTEL, specifically setting aside the earlier findings arrived at by this Commission on the said issues.

(b) APDCL is seeking to reopen the issues that were previously considered and dismissed, vide the Commission's order dated 22.5.2017. APDCL had neither challenged the original order in appeal nor had contested its validity and therefore, it is not allowed to raise these issues again within the restricted scope of the remand proceedings. A similar attempt was made by TANGEDCO to reopen the issues in an appeal decided by APTEL in favour of NLC, and the same was rejected by the Commission (order dated 29.3.2025 in Petition No.9/P/2015). A similar approach needs to be followed with regard to the objections raised by APDCL.

(c) As regards the incidents of disturbance caused from the law and order point of view, the Petitioner has no control over them. These incidents could neither be foreseen nor mitigated by the Petitioner. Therefore, the delay caused by these incidents like communal violence, bandhs, law and order situations, etc., cannot be attributed to the Petitioner. With regard to the delay caused due to natural calamities like the excessive rainfall, the change of the course of the Champamati river, the Petitioner took best efforts to mitigate the delay caused, however, the circumstances were extremely unfavorable and even the best and most prudent plans of the Petitioner were rendered weak in the face of the factors that were beyond the control of the Petitioner.

(d) The Petitioner had proved the reasons for the delay with all supportive documents required for the same in its original petition as well as before APTEL and the APTEL after observing that the documents filed by the Petitioner were not considered, has set aside the original order, for deciding the matter afresh, in the light of the documents submitted by the Petitioner.

(e) The Commission in its order, had refused to condone the delay for the said period (671 days), except for the period of 32 days, on the ground of non-submission of the prohibitory orders issued during the time. However, APTEL has held that the Commission had taken note of only one page, which bears details of Section 144 CrPC enforced between 2.5.2014 and 2.6.2014 and thus condoned the delay of only 32 days. Whereas the Petitioner had provided several other documents to support its claim that the project work was seriously impeded on account of violence and bandh from April 2013 to January 2015, these were not considered. A perusal of these documents (page 887-963 of the consolidated pleadings) clarifies beyond doubt that the prohibitory orders remained in force right through the said period, and it was only in the order dated 20.1.2015 that the prohibitory orders were ceased.

(f) APTEL, in para 17 of its judgment, also held that the situation in Kokrajhar district, where the project was being constructed, remained volatile and was affected by regular bandhs/curfew/prohibitory orders etc., throughout the years

2013-15, and the situation returned to normal only in January 2015. Thus, it is clear from the findings that the delay on account of the ethnic violence and bandh for 671 days, during the period, is to be condoned, considering the overlapping period. effect In light of the APTEL judgment, the figures for IDC and IEDC may be allowed.

(g) The contention of APDCL that the Commission has correctly condoned the delay and disallowed part of the delay due to lack of documentary evidence stands rejected by the APTEL judgment, wherein its findings are clear on the aspect of providing sufficient documents. The documents already submitted make it clear that there existed conditions which seriously impeded the project work between April 2013 and January 2015, and the reappraisal and re-examination of those documents make it apparent that the uncontrollable conditions existed as claimed by the Petitioner.

(h) The contention of APDCL that the Petitioner failed to make any efforts to ensure that the necessary protections towards law and order maintenance existed in the project, considering that the deterioration of the law and order situation was not overnight, is denied. APDCL cannot reargue the matter now and contend that the delay on account of bandh and ethnic violence was attributable to NTPC, despite the Commission in its order dated 22.5.2017, considering the Section 144 prohibitory order as a valid reason to condone part delay in commissioning the project.

(i) As regards the contention that the imposition of Section 144 is normally applied as a precautionary measure just to avoid gathering of more than 4-5 numbers and this does not have any disturbing effect in and around the district in general, is preposterous. The fundamental goal of Section 144 is to uphold law and order in places where unrest or tensions could flare up and disturb daily life and peace. There cannot be any public movement in accordance with the order issued under the said Section of CrPC, as the situation in and around the area is unpredictable and is not normal, which may cause danger to human life, safety, etc. It is incomprehensible to understand how the Petitioner could have avoided this. APDCL has been unable to identify any errors or inconsistencies in the documents submitted by the Petitioner and is only seeking to re-argue the original petition.

(j) The contentions raised and the reliance on the Energy Watchdog judgment by APDCL are baseless and irrelevant. In the said judgment, the Hon'ble Court was interpreting a force majeure clause under a PPA entered into under Section 63 of the Act. The issue in the present case is only about time overrun to be condoned, and if so, to what extent in the commissioning of the generating station. The *force majeure* clause in the PPA would only be applicable after the commissioning of the project, when either party is unable to perform its obligations to the other due to the reasons mentioned in the said clause.

Therefore, this clause of the PPA has nothing to do with the tariff petition, which is to be decided as per the prevalent tariff regulations, and has no relevance to the present remand proceedings, which are confined to the said three issues.

(k) Both the rainfall and change in the course of the Champamati river go hand in hand, since the excessive and heavy nature of rainfall during the period from 1.6.2015 to 30.9.2015, caused the heavy deposition of silt on the banks of the Champamati river, which in turn caused the change in course of the river, especially, where the water pumps were erected to ensure the makeup water supply to the station. Due to the heavy rainfall, the course of the river changed near the intake-well resulting in a low water level at the location where the water pumps were erected, and hence, there was not enough supply of water from the Champamati river to the generating station.

(l) APDCL cannot compare the issues faced by a thermal station in one region with that of the performance of a small hydro power station of 4 MW capacity, which is 15 kms away, even by its own admission. Such a comparison is grossly inaccurate and lacks any relevance to the present matter, as it says nothing about the difficulties faced by the Petitioner in the present matter.

(m) If the first two issues are allowed, then there would be no time overrun. Accordingly, in terms of the judgement dated 19.11.2024, the IDC and IEDC ought to be recalculated afresh. APDCL has not made any specific reply, except for placing reliance on certain judgments. The Petitioner reiterates the facts available on record, while substantiating the grounds relied upon. Therefore, there is no merit in the reply filed by APDCL.

Submissions of the Objector, Ms. Mallika Sharma Bezbaruah

11. The Objector in its affidavit dated 28.3.2025, has mainly submitted as under:

(a) The Petitioner published the tariff petition for the determination of tariff for Unit-1 of the Power project at Salakati in Kokrajhar district of Assam, calling upon the persons to appear and file objections before this Commission, as per law. Pursuant to this, this answering objector was allowed to participate in the process and also filed its response and participated in the oral hearing. The Commission, after hearing all the parties, including this objector, issued the order dated 22.5.2017. This Objector participated in the proceedings before APTEL and, after hearing the parties, including this objector, issued the judgment dated 19.11.2024. The Petitioner never objected to the participation of this objector before APTEL, and now, at this stage, raising questions on the locus standi of this objector is not only unwarranted but also raises several other questions on the Central Commission.

(b) In the Electricity (Supply) Act, 1948, the consumers had no such specific right as provided under the Act, as it recognizes the public and the consumers as important stakeholders in the determination of the tariff of the generating

companies. The primary objective of this was to protect the rights and interests of the consumers and the public at large. The objector has no past relation with the Petitioner prior to the filing of this petition and is inviting the public to participate in the petition as per the law.

(c) The answering objector and its authorized representative, Shri H.M. Sharma (also happens to be husband of the answering objector) are permanent domicile of the State of Assam and the names are already included vide ARN No. 601831202077112300003 in the National Register of Citizens (NRC) of Assam which was prepared under supervision of the Hon'ble Supreme Court during 2018. This objector has been participating in many tariff Petitions in this Commission since 2006, in the determination of tariffs of several generating companies and transmission licensees.

(d) The IA filed by the Petition was not received by this objector till 25.2.2025. In the reply mail dated 13.3.2025, the Petitioner sent two IAs and a compilation on Petition No. 45/GT/2016. The matter was raised by this objector before the Commission during the hearing on 25.2.2025, and the Commission agreed that there were certain mistakes which took place in clubbing the other two petitions with Petition Nos 243/GT/2017 and 409/GT/2019, which need corrections. But surprisingly, nothing was mentioned in the ROP posted in the CERC website on 12.3.2025. Even though the decisions of the Commission were logical and correct, the lack of representation before APTEL from the Commission has led to the reopening of the case, where the interests of the public are not safeguarded. The Petitioner misguided the APTEL by not submitting the entire documents, to arrive at a logical conclusion, which could have been avoided if the Commission had explained those technical issues before APTEL.

(e) The APTEL has erred in passing the judgement without those tariff filing forms. The Petitioner completely misguided the APTEL by not filing the entire tariff petition, to get a favourable order, which they achieved. All the details for prudence check for the determination of capital cost and other controllable and uncontrollable costs for cost plus tariff, are to be provided as per the audited report of the generating company, and all the reasons for expenditure incurred, time and cost overrun to be provided in those forms. The total pages of the tariff petition filed by the Petitioner before this Commission, on 8.8.2016 were 435 pages and out of this, the Petitioner, filed selected pages of only 27 pages before APTEL, in the appeal paper book. The intent of the Petitioner was to get a higher tariff by passing all cost overruns to the consumers. The APTEL has erred in deciding the appeal on the basis of those few pages and the Petitioner's verbal submissions.

(f) APTEL has failed to appreciate that in the absence of those filing forms all the required information such as technical and financial parameters such as Schedule date of commissioning, time and cost overrun, if any and reasons thereof, were provided before the Commission were not before APTEL which decided the time and cost overrun is not only against the regulations, but also against natural justice to be delivered to the respondents. It is also worth mentioning that as per provisions

of the MYT Regulations, a tariff petition that was filed before the Commission was not as per regulations, as that were submitted by the Petitioner with manipulations, which is impermissible under the law.

(g) It is clear from the order dated 22.5.2017 that the Petitioner provided only the works executed and the remaining works to be executed in the tariff filing forms with manipulations. The original estimate approved by the Board of Directors was Rs 437535 lakh, and the revised cost estimate in the form 5B as the original cost estimate was Rs. 674918 lakhs, which was escalated by Rs. 237383 lakhs. This was done by the Petitioner fraudulently to get a higher tariff, which is impermissible under the law. It is well settled that statutory notifications as well as regulations cannot be deviated from, at the discretion of the Petitioner.

(h) With regard to the refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area/region, the APTEL has failed to appreciate that the Petitioner did not file the entire tariff petition along with Annexure-I forms, which were filed before the Commission. The Commission, while making a prudence check, took into account all those facts available before them. However, the Petitioner concealed from the Commission the actual reason for the time and cost overrun, as the project was actually delayed considerably due to the failure of the contractors engaged in civil works packages (documents enclosed as Annexure-B)

(i) In the above facts and circumstances, the Commission may decide the time and cost overrun of the project strictly in accordance with the 2014 Tariff Regulations to provide complete justice. The Petitioner has not come before this Commission nor before APTEL with clean hands and concealed several facts and reasons for the time and cost overrun of the project. As revealed from the Petitioner through RTI, a considerable delay with effect from 30.1.2008 till 25.11.2013 (for a period of 2066 days) was caused due to the failure of the contractors of civil work packages, which were cancelled by the project developers, due to failure of execution of the work in time and also realized the LD from the contractors. Further, the work was re-awarded to another contractor, namely M/s NBCC Ltd, on 29.9.2014, which caused another delay of 309 days, causing a total delay of 2376 days.

(j) Both the contractor's M/s SPML Infra Ltd and M/s Punj Lloyd were the agents of the Petitioner, and the cost overrun resulting from the delay cannot be passed on to the consumers. Further, the delay in re-awarding the contract to a new contractor for 309 days was due to the selection of bad contractors, which was also attributable to the Petitioner. Therefore, the time and cost overruns incurred during those periods cannot be passed on to the consumers. After cancellation of both the contracts, the Petitioner recovered an amount of Rs. 469822317/- from both the contractors towards penalty, which they did not mention in the tariff petition. Once the Petitioner has already recovered the liquidated damages as a penalty from the non-performing contractors for time overrun, it cannot again claim the cost overrun

due to time overrun, from the beneficiaries while requesting the determination of capital cost.

(k) It is clear from the Commission's order that it did not carry out the prudence check as the details of the cost break-up for the original approved cost estimate were not provided by the Petitioner and were directed to submit all details after COD of all three units. As regards the delay due to law and order situation in Kokrajhar District, these prohibitory orders under Section 144 of CrPC were issued as preventive measures from 11.4.2013 to 20.12.2014, which was not considered by the Commission and directed the Petitioner to furnish details of the exact duration of the Bandh due to the prohibitory orders. The Petitioner has enclosed one prohibitory order dated 11.9.2014 made by the District Authority of Bongaigaon for a period of 51 days, whereas the project is situated in Kokrajhar district. Similarly, the district authority issued a prohibitory order on 20.4.2014 for the polling of the Lok Sabha election as a preventive measure, and the polling was peaceful. Similarly, due to the election in Bhutan, the prohibitory order issued by the district authority on the Indo-Bhutan border has nothing to do with the project's works. Misleading information galore in the tariff petition, which was not filed before APTEL. Annexure Q regarding the supporting documents on time overrun due to violence and bandh was not even filed before the Commission, and hence, the same was not condoned. This annexure was not even filed before APTEL.

(l) As regards delay due to change of course of the Champamati river, the Commission already considered the submissions of the Petitioner and, on prudent check, found no ground for condonation of delay as the necessary documents were not submitted along with the petition. APTEL's approach was not correct since the Petitioner did not file the entire tariff petition before APTEL, and APTEL, while making the judgment, relied only on submissions of the Petitioner, and the Petitioner did not submit any document to substantiate its claim in the appeal. APTEL made the judgment without sufficient information before them and therefore directed the Commission to look into it, taking into consideration the whole bunch of documents. The photograph on the basis of which the APTEL judgment was made is also not a deposition of silt in the water intake pump house. Therefore, the period of 30 days delay is not acceptable and should not be allowed.

(m) The Petitioner did not comply with the terms and conditions of the PPA while the force majeure conditions occurred. They did not communicate to the erstwhile ASEB and the subsequent entities about the occurrence of such force majeure events. Therefore, no time and cost overruns are admissible to the Petitioner.

(n) Under the above facts and circumstances, it is prayed that the Commission may decide the time and cost overrun of the project, strictly in accordance with the provisions of the 2014 Tariff Regulations, considering those facts, suppressed by the Petitioner, and not to consider the condonation and delay for the cost and time overrun on IDC and IEDC, in the interest of justice.

Response of the Petitioner to submissions of the Objector

12. In response to the above submissions of the Objector, the Petitioner vide affidavit dated 11.4.2025, has mainly submitted as under:

- (a) The objections filed on behalf of the Objector are vexatious, full of avowal against the Commission and reek of an ulterior motive to misdirect the present proceedings. Heavy cost must be imposed on the Objector. The Objector, Ms. Mallika Sharma Bezbaruah, has never appeared in any of the proceedings. One Mr. Hemant Madhav Sharma always comes for the hearing claiming to be her representative. There is no document by which he has been authorized to represent Ms. Bezbaruah, let alone a Vakalatnama. It is only by convention that this Commission has been permitting the objectors, to file objections, in certain tariff matters, pertaining to the North-East. However, this does not confer any locus standi on her to be heard in a tariff determination process of a central sector generating company, under Section 79(1)(a) of the Act. The interests of consumers are well represented by the distribution licensees, who are parties to the tariff petition. The licensees have the technical know-how and the commercial support to represent the consumers in such tariff proceedings.
- (b) The fact that Ms. Bezbaruah earlier participated in the proceedings without any objection from the Petitioner would not confer locus on her. Consumers are affected by the retail supply tariff determination made by the State Commission, and in no other case are consumers permitted to participate in the determination. The generator does not have any direct relationship with consumers, which is considered under the Act for a licensee/direct supplier to the public. A public notice issued in all tariff petitions is only an additional mode of service after the necessary distribution licensees are served through the Commission's e-filing portal.
- (c) The Objector and her husband live in Delhi, and are not paying any electricity charges in the State of Assam. It is not clear how a tariff determination, and that too, complying with the remand judgment of the APTEL, will have any impact on the Objector. To the best of the knowledge of the Petitioner, all documents are served through the e-filing portal of this Commission. The e-mail service on 13.3.2025 is an additional service beyond e-filing. In fact, the Objector had participated in Petition Nos. 243/GT/2017 and 409/GT/2020, as recorded in the ROP for the hearing dated 14.5.2019 and 13.3.2019. As regards the accusation that the Commission had agreed that there were mistakes in clubbing the Petitions (243/GT and 409/GT) is shocking since nothing of this nature was discussed during the hearing dated 25.2.2025.
- (d) The Objector is criticizing the APTEL judgment for having remanded the matter to the Commission. The accusation against the Petitioner to have misguided APTEL is absurd, misleading and deserves to be rejected at the threshold. To

contend that this Commission did not represent before the APTEL which has led to reopening of the case is in extremely poor taste. The Commission is a regulatory body speaking through its orders. Often at times higher courts set aside the orders of this Commission and remand matters with directions. This is the judicial hierarchy, and it is well understood by the parties. The Petitioner is enclosing a copy of the daily order dated 25.9.2024 of APTEL (in the appeal), recording the Objector representative, continuously disturbing the hearing before the APTEL.

- (e) The objector is only criticizing the judgment, and it is not clear as to how such submissions can even be entertained at this stage. The matter has been remanded back by APTEL, specifically setting aside the findings arrived at by this Commission on the issue of time overrun related to violence and bandhs and a change in the course of the Champamati river. To argue that the Petitioner misled the APTEL by not filing its tariff petition is factually incorrect, as the entire pleadings before this Commission (in Petition No.45/GT/2016) were filed before the APTEL as part of its rejoinder and available, while adjudicating the issues. In any case, all such submissions are beyond the scope of remand, and the objector cannot expand the scope of these proceedings by adding documents at this stage. Objector had not filed any appeal against the order dated 22.5.2017 and cannot claim that APTEL has varied the order in its favour while deciding the appeal filed by the Petitioner.
- (f) The objector is seeking to reargue the original tariff petitions by quoting some selective dates. After considering these objections, the Commission had already passed an order dated 22.5.2017, which the Petitioner challenged. The objector had made similar submissions before the APTEL, which had not found favour with it. If the APTEL judgment aggrieves the Objector, it has to file a second appeal, but cannot oblivate the issues which has been decided in the Petitioner's favour.
- (g) The submissions of the Objector to apply a fresh prudence check based on some other judgment amounts to reopening of the issues which have been decided in the original order. The submission that even in the original order dated 22.5.2017, the Commission had not conducted a prudence check properly, and now the same should be done. should shock the conscience of this Commission and ought to be rejected at the threshold.
- (h) A perusal of documents clarifies beyond any doubt that the prohibitory orders remained in force right from April 2013 till January 2015. All the said orders say that they would be in force until further orders. It is only in order dated 20.1.2015 that the cessation of the prohibitory orders is indicated. The Petitioner had provided several other documents to support its claim that the project work was seriously impeded, on account of violence and bandhs from April 2013 to January 2015, but the same have not been considered.

- (i) The findings of APTEL is amply clear that the situation in Kokrajhar was volatile for the complete period of dispute i.e. 2013-2015 and therefore, the delay of on account of ethnic violence and bandhs, during this period, for 671 days, is to be condoned, considering the overlapping period. Annexure-Q was the detailed break-up of the time overrun for the first unit of the plant and was also filed before APTEL. However, several other documents were also filed as Annexures-F, G, H and I, which provided complete details of the violence and bandh that caused the affected areas to be volatile and seriously impacted the project work.
- (j) The Commission has refused to condone the delay, citing the reason of heavy rainfall which occurred just before the activity took place during the period from 1.10.2015 to 31.12.2015. However, the APTEL held that the contention of the Petitioner that the make-up water for the plant was taken from the Champamati river, for which makeup water pumps were erected in the river, but due to heavy rainfall, high deposition of silt occurred, which caused the change in the course of Champamati river near the intake well, due to which there was insufficient water for pumps to operate, which was not considered by the Commission.
- (k) The Objector has once again criticized the APTEL for not having fully considered the tariff filing forms filed by the Petitioner. This is not the forum or proceedings to question the findings arrived at by the APTEL. This precise submission was raised by the objector as an objection in appeal, and the petitioner had produced the entire records as were filed before this Commission in its rejoinder before APTEL.
- (l) It is not for the Objector to demand a roving and a fishing inquiry, on all unrelated issues at this stage of the proceedings, as these are limited to comply with the APTEL's judgment dated 19.11.2024, and ought to be restricted to the same. The Objector cannot make any prayers in the NTPC petition. The objections may be dismissed by imposing a heavy cost.

Analysis and Decision

13. As regards the prayer of the Petitioner for condonation of time overrun for the period from April 2013 to January 2015, on account of violence and bandh in the concerned area/region, the Commission, in its order dated 22.5.2017 (in Petition No.45/GT/2016), held as under:

"20. As regards time over-run due to violence and bandhs during the period from April, 2013 to January, 2015, petitioner has requested to condone the delay of 671 days and has furnished the copy of the various prohibitory orders, but the same does not indicate the exact date of imposition of prohibitory orders. The petitioner has also submitted the supporting document indicating the prohibition from 2.5.2014 to 2.6.2014 (i.e. 32 days). Though, the petitioner was directed to submit the effective

duration of bandh against prohibitory orders, the petitioner has not submitted the same and therefore, we are inclined to condone the delay of only 32 days. Based on the above discussion, the total delay of 32 days has been condoned, out of the delay of 671 days claimed by the petitioner.”

14. In the Petition (Petition No. 29/RP/2017) filed by the Petitioner for review of the said order on this count, the Commission, vide its order dated 23.7.2018, rejected the prayer of the Petitioner as under:

“18. It is evident from the above that the Commission while undertaking prudence check of the time overrun involved in the project had considered all the documents/evidences as submitted by the petitioner related to Bandhs, Violence etc., including the newspaper clippings and the communal violence in 2014 etc. It is further noticed that since the documents related to the prohibitory orders did not indicate the exact date of imposition of such orders, the petitioner was directed to furnish the effective duration of bandh against such prohibitory orders, but the petitioner failed to submit the same. Accordingly, on analysis of such prohibitory orders, the delay of 32 days (from 2.5.2014 to 2.6.2014) was condoned in order dated 22.5.2017. The Commission having considered the documents furnished by the petitioner with regard to violence and bandhs while allowing the time overrun in order dated 22.5.2017, we find no reason to entertain the petitioner’s plea for review of the said order on this issue. Accordingly, there is no error apparent on the face of the order dated 22.5.2017 and therefore the prayer of the petitioner for review on this ground fails.”

15. In the appeal (Appeal No. 137/2019) filed by the Petitioner against the aforesaid order, the APTEL vide its judgment dated 19.11.2024, set aside the findings of the Commission, on this issue, and remanded the matter to the Commission, with the following observations:

“16. We have perused all these documents which were referred to during the course of oral submissions before us. The document at page Nos.208- 215 of the appeal paper book is a list of agitational programmes organized by various organizations in the year 2013. It mentions the date and time duration of each bandh / blockade specifically that was observed in the year 2013. At page No.232 of the appeal paper book is the letter dated 18.4.2015 issued by Additional District Magistrate, Kokrajhar to the GM(HR) of the appellant including therein the data relating to bandhs/curfew etc. for the entire time duration between 26.4.2008 and 31.12.2014. From page No.267 onwards are the copies of various prohibitory orders under Section 144 of CrPC issued by District Magistrate, Kokrajhar during the years 2013-2014 as well as newspaper clippings reflecting the situation in the district during the said period. From page Nos.295 to 322 is the list of incidents of Bandh / curfew etc. that had taken place during the year 2014, published by South Asia Terrorism Portal.

17. A bare perusal of these documents would reveal that the situation in Kokrajhar District, where the power project in question was being constructed by the appellant, remained volatile and affected by regular Bandhs / curfew / prohibitory orders etc. throughout the years 2013-2015 and the situation returned to normal in January, 2015. We find it incomprehensible how and why the Commission overlooked all

these documents and did not consider them while returning findings on this issue.

18. As submitted by appellant's counsel, it appears that the Commission has taken note of only one page which bears details of Section 144 prohibitory orders enforced between 2.5.2014 to 2.6.2014 and thus condoned the delay of these 32 days only whereas ignoring the entire set of documents filed by the appellant in support of its claim with regards to the remaining period of time.

19. Hence, the findings of the commission on this issue are absolutely erroneous and unjustified, which cannot be sustained. The same are hereby set aside. We remand the matter back to the Commission to **decide the issue afresh after hearing the parties and in the light of whole bunch of documents filed by the appellant, as noted hereinabove.**

16. With regard to the prayer of the Petitioner for condonation of the delay of 30 days on account of the change of course of the Champamati river, the Commission, in its order dated 22.5.2017, held as under:

"26. As regards time over-run due to change of course of Champamati river, the petitioner has submitted that due to change in course of river near intake well, the flow of water was heavily reduced near intake well, due to which makeup water pumps were not able to provide required quantity of raw water for sustained operation of the generating station at full load. It is noticed that the said activity took place during the period from 1.10.2015 to 31.12.2015, which was just after the period of heavy rainfall i.e. 1.6.2015 to 30.9.2015. In view of this, it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall. Due to lack of adequate/proper justification of the delay under the head, we are not inclined to condone the delay of 30 days on account of change in course of Champamati river."

17. In Petition No. 29/RP/2017 filed by the Petitioner against the above order, the prayer was rejected by the Commission vide order dated 23.7.2018 as under:

"26. The matter has been examined. It is evident from order dated 22.5.2017 that the submissions of the petitioner had been rejected after considering all relevant documents and submissions made by the parties. It is settled law that review would lie only for patent error and cannot be an appeal in disguise whereby an erroneous decision is reheard and corrected. Having considered the submissions of the petitioner, the Commission by a conscious decision had rejected the same on merits. The reliance made by the petitioner to the "study on change of course of river and the special characteristics of river Champamati" in review, cannot be considered as the petitioner cannot be permitted to raise new grounds in justification of its prayer for review of the said order. Nothing prevented the petitioner from placing the said study/document during the proceedings in the original petition. Accordingly, we find no reason to allow the prayer of the petitioner for review of order dated 22.5.2017. In our view, the petitioner has sought to reopen the case of merits and the same is not permissible on review. In this background, the submissions of the petitioner are rejected and review on this count fails."

18. In the said appeal (Appeal No. 137/2019) filed by the Petitioner against the above order, the APTEL vide its judgment dated 19.11.2024 set aside the findings and remanded the matter to the Commission, with the following observations:

“21. We find the reasoning of the Commission in rejecting the claim of the appellant under this head also beyond comprehension. Admittedly, there had been heavy rainfall in the area from 1.6.2015 to 30.9.2015. It was the contention of the appellant that makeup water for the plant was taken from the Champamati river for which makeup water pumps were erected in the river but due to heavy rainfall, high deposition of silt occurred which caused the change in the course of Champamati river near the intake well due to which there was not sufficient water required for pumps to operate. These contentions of the appellante have nowhere been discussed by the Commission in the relevant portion of the impugned order on this issue. It is neither unbelievable nor uncommon that on account of heavy rainfall in a particular area, the waterflow in the river flowing through the area also increases which may cause the river to change its course leaving one of its banks with reduced water level. The appellant has filed at page 370 of appeal paper book, image of Champamati river showing that the water level is below the intake window of makeup water pump house. Therefore, the observation of the Commission to the effect, “it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall.”, is not only incomprehensible but based on mere assumptions and conjectures. It was not the case of the appellant that the water level of entire Champamati river had reduced drastically after the heavy rainfall. The Commission has, manifestly, misdirected itself by not considering the actual import of the submissions made on behalf of the appellant and thus, has erred in refusing to condone the delay under this head.

22. Hence, we set aside the findings of the Commission on this issue as well and remand the same back to the Commission for a fresh consideration, after hearing the parties again.”

19. With regard to the disallowance of IDC and IEDC, the APTEL directed the same to be reworked, in terms of its decision on the aforesaid issues.

20. Before proceeding to examine the issues remanded, we take note, that the Objector, Ms. Bezbaruah in its response dated 26.3.2025, while stating that the decision of the Commission was logical and correct, has remarked that the ‘lack of representation before APTEL from the Commission’ has led to the ‘reopening of the case’, where the interest of the public not safeguarded. This remark of the objector is in extremely poor taste, perhaps due to her ignorance of the Court proceedings /orders and the judicial hierarchy therein. The Objector is well advised to show restraint in its comments/remarks, in the future, and instead focus on the issues involved, in case it

has to file objections, in any matter. Interestingly, it is noticed that while the Objector, in its reply affidavit dated 4.6.2019 (in Appeal No.137/2019), has faulted the Commission's order dated 22.5.2017 alleging (i) deviation from the statutory regulations (ii) the non-consideration of the APTEL judgment dated 27.4.2011 in Appeal No.72/2010 (iii) Commission not providing adequate justice to consumers, it has, in the present remand proceedings, placed reliance on the Commission's order (as being logical and correct) and submitted that (i) APTEL has erred in its judgment as the Petitioner misguided APTEL by not filing the entire tariff petition, to get a favourable order (ii) APTEL has failed to appreciate the absence of the technical and financial information (reg SCOD, time and cost overrun and reasons thereof) and (iii) APTEL relying only on the submissions of the Petitioner. The aforesaid submissions of the Objector lack merit and also fall beyond the scope of the remand proceedings for consideration. It is pertinent to note that the Petitioner has clarified that the entire set of pleadings before this Commission was filed before APTEL, as part of its rejoinder. Even otherwise, in case the Objector was aggrieved by the APTEL judgment, it could have sought an appropriate remedy under law, rather than questioning the findings of APTEL, in these proceedings.

21. One more submission of the Objector is that the Commission, during the hearing of the petition, on 25.2.2025, had agreed that there were mistakes in the clubbing of Petition Nos. 243/GT/2017 and 409/GT/2019 (along with this petition), but they were not reflected in the ROP for the said hearing. This submission of the Objector is misconceived and baseless. It is noticed from records that, on the submission of the Objector that no notice of hearing was served upon it, the Registry staff of the Commission had clarified that notice was served on the Objector. The Commission, during the proceedings, had not made observations regarding any mistake in the

clubbing of the petitions, as alleged by the Objector, and therefore, the same was not reflected in the ROP dated 25.2.2025. In case the said ROP aggrieved the Objector, she or her representative was free to approach the Commission for rectification, if any, at the earliest. Having not done so, the Objector cannot now, under the umbrella of 'protection of consumer interest,' make baseless allegations in the remand proceedings, to stall the implementation of the APTEL judgment. The submission of the Objector is therefore rejected.

22. Reverting back, it is evident that APTEL vide its judgment, has remanded the matter to this Commission, only to decide the issues (a) and (b) afresh and consequently (d), after hearing the parties, and in the light of a whole bunch of documents already filed by the Petitioner. However, we notice that the Respondent APDCL and the Objectors, have attempted to expand the scope of the present remand proceedings, by alleging that the (i) written notice of the occurrence of the force majeure event was not given to the other party by the Petitioner (ii) Petitioner had concealed before this Commission the actual reason for time and cost overrun, as the project was actually delayed due to failure of the contactors (M/s SPML Infra and M/s Punj Lloyd) engaged in civil works package; and (iii) Petitioner had not filed tariff petition before this Commission as per the regulations, and those submitted was with manipulations to get a higher tariff, thereby seeking to reopen the entire issue of time overrun, decided in the order dated 22.5.2017, treating it as an 'open remand'.

23. With regard to remand, the APTEL in *Meghalaya State Electricity Board v. MSERC* (judgment dated 10.8.2010 in Appeal No. 37/2010) the APTEL, after referring to the various judgements of the Hon'ble Supreme Court, held that the principles of remand laid down were as under:-(i) The Court below to which the Superior Court remands the matter is bound to act within the scope of remand. It is not open to the

Court below to do anything but to carry out the terms of the remand in letter and spirit;

(ii) Ordinarily, the Superior Court can set aside the entire judgment of the Court below and remand it to the subordinate court to consider all the issues afresh. This is called 'Open Remand'. The subordinate court can decide on its own afresh on the available materials; and (iii) The Superior Court can remand the matter on specific issues with a specific direction through a 'Remand Order'. This is called a 'Limited Remand' order. In case of a Limited Remand order, the jurisdiction of the Court below is confined only to the extent to which it was remanded. Further, the APTEL, in its judgment dated 6.2.2025 in Appeal No. 373/2024, has laid down the main principles of a 'Limited Remand' as follows: (i) when a matter is remanded by the Superior Court to the subordinate court for rehearing in light of observations contained in the judgment, then the same matter is to be heard again on the materials already available on record. Its scope cannot be enlarged by the introduction of further evidence, regarding the subsequent events, simply because the matter has been remanded for a rehearing or de novo hearing; (ii) the court below to which the matter is remanded by the superior court is bound to act within the scope of remand. Seen in the above backdrop, the APTEL judgment dated 19.11.2024, according to us, is a 'limited remand', to be confined to the re-examination of the issues (a) and (b) and consequently (d), based on the documents already available on record, and is not an 'open remand', as projected by the Respondent/Objectors. In fact, the APTEL in its judgment has pointed out the various documents filed by the Petitioner (in Petition No.45/GT/2016) with regard to violence/bandhs and wondered as to how the Commission overlooked / ignored the said documents, while deciding on the issue. It is in this context that the APTEL had directed the Commission to decide the issue, in the light of the bunch of documents filed by the Petitioner. By no stretch of imagination can this be construed as a direction to reopen the entire time overrun of the project, as argued by the

Respondent APDCL and the Objectors. As regards the contention of the Objectors, that the actual delay was due to failure of the contactors engaged in civil works package, which was cancelled and re-awarded on 29.9.2014 and the non-consideration of the APTEL judgment in Appeal No.72/20210, regarding time overrun, we note that the Objector raised these issues in the said appeal, which APTEL did not entertain in its judgment dated 19.11.2024. In this background, we find no reason to entertain the above submissions of the Respondent/ Objectors, with the same being outside the scope of the remand proceedings. We, therefore, proceed to examine the issues (a, b and d) as stated in the subsequent paragraphs.

Issue (a): Refusal to condone the time overrun for the period from April 2013 to January 2015 on account of violence and bandh in the concerned area/region.

24. The Petitioner has pointed out that the Commission had refused to condone the delay for the period (671 days) except for the period of 32 days, on the ground of non-submission of the prohibitory orders by the Petitioner issued during the period in question. However, it has been submitted that the APTEL has held that the Commission had taken note of only one page, which bears details of Section 144 prohibitory orders enforced between 2.5.2014 to 2.6.2014 (and thus condoning the delay of only 32 days). The Petitioner has submitted that it has provided several other documents to support its claim that the project work was seriously impeded on account of violence and bandh from April 2013 to January 2015, but the same has not been considered. Accordingly, the Petitioner, for the sake of convenience, filed a compilation to summarize all the documents, i.e., bandhs/prohibitory orders/newspaper clippings/South Asia terrorism portal incidents (NFDB), etc., that were filed before this Commission in the tariff proceedings. The Petitioner has contended that a perusal of these documents clarifies beyond doubt that the prohibitory orders remained in force right from April 2013 till January 2015, since all the orders read that they would be in

force till further orders and only in the order dated 20.1.2015, the cessation of the prohibitory order is indicated. The Petitioner has added that though on a daily basis new prohibitory orders will not be issued, for the sake and convenience of the Commission, the issuance and sustenance of the prohibitory orders filed in the tariff proceedings is summarized and attached as Appendix-A. In addition, the Petitioner has pointed out that the APTEL has also held that the situation in Kokrajhar district, where the power project was being constructed, remained volatile and was affected by regular bandhs/curfew/prohibitory orders, etc., throughout the years 2013-15. The situation returned to normal in January 2015. Therefore, a delay of 671 days (on account of ethnic violence and bandh) during this period is to be condoned, considering the overlapping period. Per contra, the Respondent APDCL has submitted that the Petitioner ought to have approached the law and order authority for timely and proper additional protection force, if needed. It has also been stated that the prohibitory orders for the period from April 2013 to January 2015 are basically the imposition of a Section 144 order, and as such, there was the least possibility of gathering of anti-social elements, since the prohibitory orders were extended on a continuous basis. It has been added that there were no incidents of disturbance in and around the project site, as evidenced by the documentary records.

25. We have considered the submissions. APTEL, in its judgment (as quoted in para 15 above), has observed that the Commission, while condoning the delay of only 32 days, has ignored the entire set of documents filed by the Petitioner in support of its claim for condonation of delay for the period April 2013 to January 2015 on account of violence and bandhs. Pursuant to this, the documents filed by the Petitioner in the original tariff petition, (compilation from Page nos. 887-963 of the consolidated pleadings), summarizing all the documents, as stated below, have been examined.

- (a) Documents showing the agitational programme of various organization in the year 2013. (from 8.4.2013 to 31.12.2014);
- (b) Data/orders related to Bandhs, etc. given by various organizations and curfew imposed by the District Administration (from 26.4.2008 to 31.12.2014);
- (c) Prohibitory orders under Section 144 of the CrPC issued by the Additional District Magistrate, Kokrajhar;
- (d) Newspaper clippings reflecting the situation of the district during this period. (from 27.12.2013 to 5.6.2014); and
- (e) Copy of the list published by the South Asia Terrorism Portal in regard to the violent incidents (NDBF) that occurred in Kokrajhar district.

26. It is evident from the above documents, that during the year 2013 (from 8.4.2013), around 67 agitational programmes were held by various organisations and groups, like Asomiya Ukhya Manch, AASAA, ABYCF, AKRSU, OBS/MP, NLSA/AT, Adivasi Jatiya Sangh, BYCF, KDCBYF, BJP, NDFB, Asomia Ukhya Mancha, Bengali Jatiya Parishad Adivasi National Convention Committee, Adivasi Militants ceasefire group, etc., with different demands. Also, during the year 2014 (from 3.1.2014) around 43 agitational programmes were held by the various groups such as SUCI(c), KLO, ABMSU, KDCBYF, AKRSU, A-BORO Suraksha Samiti, Adivasi Jatiya Masabha, AABYSF, AASAA, BPCPI, ATTSA, NDFB, KLO, SUCI, etc. It is worth mentioning that on certain dates, multiple organizations had called for simultaneous agitation. The Petitioner has also furnished the data/details relating to the bandh call given by the various organizations and the curfew imposed by the District Administration, Kokrajhar, for the period from 26.4.2008 till 31st December 2014. Similarly, it has furnished copies of the prohibitory/relaxation orders (under Section 144 of Cr.PC) issued by the Additional District Magistrate, Kokrajhar (around 21 nos-for 550 days.) during the period from 11.4.2013 till 20.1.2015. In addition, the Petitioner, has also provided the newspaper clippings dated 27.12.2014 and 2.5.2014, reflecting the situation in the Kokrajhar district during the period, along with a compilation of documents related to the communal riots in 2014. Further, the Petitioner has furnished the details of the

incidents and statements involving NDFB in regard to the violent incidents which occurred in the different parts of the State of Assam for the period from 1.1.2014 to 31.12.2014. These details include the dates, locations, incidents along with their nature (e.g., violent, non-violent, statement, clashes etc.,) to establish that the security situation in the State of Assam during this period was unstable and potentially hazardous. On a closer scrutiny of the documents furnished, it is noticed that some of the prohibitory/relaxation orders, issued under Section 144, covering the period 2013-15, overlap with the Bandh dates, specifically between 2nd May 2014 and 17th May 2014. In the backdrop of these documents, the Petitioner, vide its affidavit dated 8.8.2016, has submitted the detailed reasons for the delay, under this head, which are extracted below.

“19.1 Bandhs: Bongaigaon TPS is situated in Kokrajhar district in the state of Assam and it falls under Bodoland Territorial Area Districts (BTAD) region which is a sixth schedule Area i.e. disturbed area from law and order point of view. Since inception of the project, the locality has experienced calls of bandhs on 296 days called by various groups like Bodo Land People Front, Bodo Peoples Forum, Birsa Commando Force, ULFA, BTC etc. In view of poor law and order situation in Kokrajhar area, workers did not turn up for the job or turned up in very small number during bandh calls. It is further submitted that the bandhs also had a cascading effect as the workers did not turn up on the previous day of the bandh or the following day of the bandh and all the activities of the project stopped during the Bandhs and work on all fronts came to near halt. Moreover, the working momentum during the bandh call is disturbed and it takes time to bring the progress back to the same momentum which existed prior to the bandh. In addition, the movement of goods, vehicles etc. are also affected during the bandhs. On an average, each bandh had an effect of minimum of 2 working days. It is submitted that approximately 564 working days were lost due to Bandhs. However, after excluding the bandh days overlapping with the period of violence, the effective delay comes out to be 331 days i.e. approximately 11 months. The supporting documents related to Bandhs issued by office of the District Magistrate, Kokrajhar, Government of Assam and newspaper clippings are attached as Annexure-F. The Hon'ble Commission may be pleased to condone this delay of 11 months caused due to Bandh calls which is beyond control of the Petitioner.

19.2) Ethnic Violence and related Bandhs: Kokrajhar region witnessed the outbreak of violence many times during the project construction period which resulted in loss of lives and the administration imposed prohibitory orders under Section 144 and also curfew was imposed during the period...

xxx

19.2.3) April 2013 to Jan 2015: During this period prohibitory orders were imposed in Kokrajhar by the administration under section 144, parliamentary elections were held, shoot at sight orders were issued by the administration, curfews were imposed and approximately 100 times bandhs were called by local groups, resulting in complete

stoppage of project construction. Communal violence also broke out in the area in Dec. 2014 which again resulted into mass exodus of workers. It is submitted that the project was delayed approximately by 22.5 months because of the unrest during this period. Copy of orders from administration and copy of letter issued by office of the District Magistrate, Kokrajhar, Government of Assam regarding Bandhs, newspaper clippings and various report regarding violence in the region are attached as Annexure I.

It is submitted that the violence and unrest in the region had a cascading effect on the progress of the project as almost entire work force fled site during the period and it took months to bring back the site to the original strength after peace returned in the region. The incidents lead to mass exodus of laborers and proved detrimental to the progress of the project. It is submitted that the total loss due to such violence was much more as the workers feared for their life and barring a few refused to return to site. The problems faced in project construction were also deliberated/ appreciated in a meeting of the State High Power Central Projects Coordination committee held on 19th Sept 2011 (Minutes of the meeting are attached as Annexure- J). It is submitted that though there was relaxation in curfews/ section 144 intermittently during the period but the construction of project could be started in full swing only after normalcy returned in the region because the workers turned up for the job only after there were signs of peace in the region. Since the project delay during this period was due to prevailing unrest in region and was beyond control of the Petitioner, the Hon'ble Commission may be pleased to condone this delay of 22.5 months caused due to imposition of section 144, imposition of curfew and due to Bandh calls."

27. The Petitioner has further submitted that the project construction activities were affected due to the unrest, violence, etc. caused in the Kokrajhar district, where the project is located and has also provided the documents indicating the time overrun, progress bar chart, etc., for the activities affected. As submitted by the Petitioner, due to the poor law and order situation and bandh calls, in the Kokrajhar area, the workers had not turned up for work or were available in small numbers, which had a cascading effect, as the work on all fronts came to a near halt. In addition, the movement of goods and vehicles was affected during the bandh. Also, these disturbances/law and order issues have disrupted the normal project operations, thereby leading to significant delays in the project development activities. Thus, the participation of the various groups in bandhs, resulted in deliberate, organized actions, potentially driven by underlying political or ethnic tensions, that disturbed the peace and stability of the entire region, including the project area. The contention of the Respondent that there were no incidents of disturbances in and around the project site is contrary to the documentary evidence furnished by the Petitioner. From the prohibitory order dated

11.4.2013, it is evident that there have been instances of group clashes, leading to the loss of lives, in the Kokrajhar district and in order to prevent such group clashes and communal disturbances, the same was issued. Further, the prohibitory order dated 18.4.2013 was issued, based on reports of extremists near the Indo-Bhutan border, on the Indian side, leading to the prohibition in the movement of any person, material, or vehicular traffic, within one km of the border, under the Kokrajhar district. These orders continued to remain in force till further orders to ensure peace and tranquility in the Kokrajhar district, where the project is located. It is only by the District Magistrate's order dated 20.1.2015 that the prohibitory order issued on 28.12.2014, prohibiting the movement of any person, material, vehicular traffic of any description of any road, street, lane, by-lane, passage, thoroughfare, village paths or tracks in the entire Kokrajhar district, was withdrawn. Even though the curfew /section 144 order was relaxed intermittently during the period, the mass exodus of labourers fearing the loss of lives due to the communal violence and bandhs proved detrimental to the progress of the plant, and barring a few, most of the workers refused to return to the site. Incidentally, we note that in Petition No. 243/GT/2017 filed by the Petitioner for truing up of tariff of this project (which has also been reserved for orders), we note that the Superintendent of Police, Kokrajhar district, vide his letter dated 15.12.2013, has alerted the GM of the Project, about the possibility of the extremists targeting the senior executives/contractors of various companies, including the Petitioner company, from the worksites or during movements and had advised to take their PSOs attached to them always and to take proper precaution till the neutralization of the threat. Further, the Petitioner vide its letter dated 30.8.2014, had brought to the notice of the Chief Secretary of Assam, as to (i) how the erection and commissioning of the project, was being adversely affected due to law and order problems, bandhs, communal strife (ii) how the disturbed atmosphere was causing problems to the contracting agencies

working there, including causing fear psychosis on the executives and their families (iii) threat calls/text messages to resolve issues with NDFB(S) of the executives; with request to intervene and to tighten the security around the plant and township through deployment of additional force, to alleviate the morale of the executive and workforce for a period of atleast six months /one year, till commissioning of the first unit. These documents also demonstrate the fact that the situation in Kokrajhar district, where the project is located, remained volatile. Further, the newspaper clippings dated 27.12.2014 and 2.5.2014, reflecting the situation of the district, are basically the compilation of all the riots, violence, bandhs and curfew imposed in the State of Assam, including the Kokrajhar district, as a result of which, the project, remained disturbed, thereby affecting the project construction work, including the transportation of the construction materials. Further, the scrutiny of the list of the violent incidents involving NDFB (as published in the South Asia terrorism portal) for the period 1.1.2014 to 31.12.2014, establishes the fact that the security situation in the State of Assam (including Kokrajhar district) was unstable and potentially hazardous during the period, causing immense hardship to the Petitioner to complete the project work. From the submissions and documents enclosed, the Petitioner has amply demonstrated that the project's construction activities were badly affected due to regular bandhs, prohibitory orders, and riots/violence across parts of Assam, including Kokrajhar district, during the period. This is also evident from the observations of APTEL in its judgment dated 19.11.2024, as extracted below:

17. A bare perusal of these documents would reveal that the situation in Kokrajhar District, where the power project in question was being constructed by the appellant, remained volatile and affected by regular Bandhs / curfew / prohibitory orders etc. throughout the years 2013-2015 and the situation returned to normal in January, 2015

28. As stated, the Petitioner, in Appendix-A has also submitted a tabular statement indicating the date of the prohibitory order and the period of enforcement/revocation,

during the period 2013-2015, which works out to a delay of 550 days, inclusive of the delay of 32 days allowed for the period 2.5.2014 to 2.6.2014 vide Commission's order dated 22.5.2017. In consideration of the above submissions and the documents available on record, we condone the total delay of 550 days (which is inclusive of the 32 days delay already allowed vide order dated 22.5.2017), for the period 2013-15, after adjusting the overlapping period, since the said delays, due to violence/riots/incidents relating to NDBF/Bandhs and Prohibitory orders, in Kokrajhar district, were all beyond the control of the Petitioner. In other words, for the period 2013-15, an additional delay of 518 days (550-32) has been allowed in this order, in terms of the submissions/documents, and based on the findings of the APTEL judgment.

Issue (b) Refusal to consider delay of 30 days on account of change of course of Champamati river.

29. The Petitioner has submitted that the Commission had refused to condone the delay of 30 days, under this head, on the ground that the reason of heavy rainfall which occurred just before the said activity took place during the period from 1.10.2015 to 31.12.2015. It has pointed out that the APTEL in its judgment has held that the contention of NTPC, that the make-up water for the plant was taken from the Champamati river, for which make-up water pumps were erected in the river, but due to heavy rain fall, high deposition of silt occurred, which caused the change in the course of Champamati river, near the intake well due to which there was insufficient water for pumps to operate, was not considered by this Commission. The Petitioner has also pointed out that, in its compilation (pages 964-967 of the consolidated petition) extracted the relevant documents which were available in the original petition filed before this Commission. *Per contra*, the Respondent APDCL has submitted the following:

(a) On the issue of the change of course of the Champamati river, the Commission had elaborately and rightly dealt with the issue in paragraphs 23 to 26 of the order

dated 23.7.2018. The Petitioner has not submitted any supporting material that there is a change in the course of the Champamati river, and as such, there seems to be little dearth of evidence in this regard.

(b) The activities of intake well took place during the period from 1.10.2015 to 31.12.2015, which was just after the period of heavy rainfall (from June 2015 to September, 2015). It is worth mentioning that there is a small hydroelectric project of 4.05 MW located around 15 kms from the project of the Petitioner and draws water from the Champamati river, and the discharge water of that project is released in the same river.

(c) That hydro project is generating energy throughout the whole year and selling energy to the Respondent. Under such a scenario, there is little possibility that the water level can drastically go down in the Champamati river immediately after the high rainfall period.

30. In response, the Petitioner has clarified the following:

(a) APTEL has set aside the Commission's order on this issue and observed that the Commission has nowhere discussed the contentions of the Petitioner in the relevant portion of the order on this issue. APTEL also pointed out the observation of the Commission to the effect that 'it is not clear how the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall' as not only incomprehensible, but based on mere assumptions and conjectures.

(b) Both, the rainfall and change in course of the river, go hand in hand since the excessive and heavy nature of rainfall during the period from 1.6.2015 to 30.9.2015 caused the heavy deposition of silt on the banks of the Champamati river, which in turn caused the change in course of the river, especially where the water pumps were erected, to ensure the makeup water supply to the station.

(c) The Petitioner had provided the photograph showing that the river water level is far below the intake well window. High deposition of silt occurs due to heavy rain, causing floods, which causes a change in the course of the river. Regarding the behaviour of rivers, the Petitioner had submitted a study on the change of the course of the river and the special characteristics of the river Champamati. The river is a rapidly rushing Himalayan stream which meets with river Brahmaputra. The study clearly shows that due to floods, heavy silting occurs, which causes a change of course of the river, which exactly occurred in the case of the Champamati River.

(d) APDCL cannot compare the issues faced by a thermal station in one region with the performance of a small hydro power station of 4 MW capacity, which is 15 kms away. Such a comparison is grossly inaccurate and lacks any relevance, since it says nothing about the difficulties faced by the generating station, in the present case. In any case, the Respondent has not provided details of the small hydro power station, claiming to supply power to it.

31. We have examined the submissions. The Commission, in its order dated 22.5.2017, while rejecting the prayer of the Petitioner for condonation of delay, under

this head, mainly observed as under:

“26..... It is noticed that the said activity took place during the period from 1.10.2015 to 31.12.2015, which was just after the period of heavy rainfall i.e. 1.6.2015 to 30.9.2015. In view of this, it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall. Due to lack of adequate/proper justification of the delay under the head, we are not inclined to condone the delay of 30 days on account of change in course of Champamati river.”

32. However, APTEL vide its judgment dated 19.11.2024, while setting aside the Commission's order and remanding the matter, observed as under:

“21. We find the reasoning of the Commission in rejecting the claim of the appellant under this head also beyond comprehension. Admittedly, there had been heavy rainfall in the area from 1.6.2015 to 30.9.2015. It was the contention of the appellant that makeup water for the plant was taken from the Champamati river for which makeup water pumps were erected in the river but due to heavy rainfall, high deposition of silt occurred which caused the change in the course of Champamati river near the intake well due to which there was not sufficient water required for pumps to operate. These contentions of the appellate have nowhere been discussed by the Commission in the relevant portion of the impugned order on this issue. It is neither unbelievable nor uncommon that on account of heavy rainfall in a particular area, the waterflow in the river flowing through the area also increases which may cause the river to change its course leaving one of its banks with reduced water level. The appellant has filed at page 370 of appeal paper book, image of Champamati river showing that the water level is below the intake window of makeup water pump house. Therefore, the observation of the Commission to the effect, “it is not clear that how can the water level of the Champamati river reduced drastically immediately after the months of heavy rainfall.”, is not only incomprehensible but based on mere assumptions and conjectures. It was not the case of the appellant that the water level of entire Champamati river had reduced drastically after the heavy rainfall. The Commission has, manifestly, misdirected itself by not considering the actual import of the submissions made on behalf of the appellant and thus, has erred in refusing to condone the delay under this head.

33. It is evident that APTEL had set aside the order dated 22.5.2017 on the ground that the Petitioners contention with regard to the impact of heavy rainfall and the subsequent change in the course of the Champamati River, leading to insufficient water levels for the makeup water pumps, were not addressed by the Commission in the impugned order, and that the actual import of the submissions made by the Petitioner has not been considered. It is well documented that heavy rainfall in a specific region can significantly increase water flow in rivers, often resulting in the river altering its course. Such changes can leave certain areas, including riverbanks, with reduced water levels, particularly near infrastructure like intake wells or pump houses.

Having considered the submissions and examined the documents on record, including the photographic evidence, we observe that the heavy rainfall is a well-documented cause of significant siltation and the erosion in river systems, particularly in the flood-prone areas. The Petitioner's assertion that the heavy rainfall from June to September 2015 resulted in substantial silt deposition, thereby altering the course of the Champamati River near the intake well, is both credible and consistent with the established hydrological principles. The Petitioner's submission pertains specifically to the water level at the intake well, a localized point along the river, which was adversely affected by the river's altered course. In our view, the river channel shifts due to the sediment accumulation and the increased water flow are common occurrences, as evidenced by numerous examples in the river systems across India and globally. Also, in the study submitted by the Petitioner earlier, with regard to the change of course of the river and the special characteristics of the river Champamati, it is shown that due to floods, heavy silt occurs, which causes a change in the river's course. The comparison made by the Respondent on the issue faced by the thermal station of the Petitioner, with the performance of a small hydro power station (4 MW) which is 15 kms away, is grossly inaccurate, as the hydro station draws water from the river, which is built on its banks and generates electricity from the river spread over a wider area. It also lacks any relevance, as the Respondent has furnished no details of the small hydro. The photographic evidence furnished by the Petitioner to justify its claim that the water level below the intake window of the pump house was insufficient for the pumps to operate, which provides evidence of the fact that insufficient water availability at the intake well severely hindered its capacity to operate the makeup water pumps, which are essential to plant's operation. As observed by APTEL, the alteration in the river's course was a direct result of natural phenomena-specifically, heavy rainfall and subsequent siltation-and the same cannot be attributed to any negligence, oversight,

or failure on the part of the Petitioner. To us, the Petitioner's inability to access adequate water for its operations was thus an unavoidable consequence of these external and uncontrollable environmental factors, and the delay on account of the same cannot be attributed to the Petitioner. In this background, we condone the 30-day delay on account of the change of course of the Champamati river.

34. As stated, the total time overrun of 1886 days, considering the SCOD was claimed by the Petitioner. However, the Commission vide its order dated 22.5.2017 had condoned the total time overrun of 1303 days in the commissioning of Unit-I of the project. Based on the APTEL judgment dated 19.11.2024, and in view of the discussions and findings above, the cumulative delay condoned due to various reasons stands revised to 1851 days (518 days on account of violence/ riots/ curfew and prohibitory orders, etc., and 30 days on account of change of Champamati river) for Unit-I of the generating station. Accordingly, the SCOD has been re-evaluated and reset after considering the time overrun as under:

Date of Investment Approval (IA)	Date of the Main plant award	Scheduled COD as per IA, i.e. 36 months from the date of the main plant award	Actual COD	Time overrun considering SCOD (days)	Time overrun allowed (days)	SCOD for IDC/IEDC computation
30.1.2008	5.2.2008	4.2.2011	1.4.2016	1886	1851	29.2.2016

35. Though the time overrun considering the SCOD is mentioned as 1886 days above, we note that the same is an inadvertent typographical error, and after rectification, the same shall be 1883 days. The time overrun earlier condoned vide order dated 22.5.2017 is revised from 1303 days to 1851 days (1303 + 548). However, after rectification, the time overrun for the computation of revised SCOD for IDC and IEDC is shown as 29.2.2016 and considered accordingly. The period of time overrun condoned has a consequential impact on the capital cost (including IDC, IEDC and

other associated costs) as well as tariff components such as depreciation, return on equity, interest on loan and interest on working capital, as approved vide order dated 22.5.2017.

36. However, considering the fact that Petition No.243/GT/2017, filed by the Petitioner for truing up of tariff of the project, for the period 2014-19, is under consideration for issuance of orders, the consequential impact of the revision in the time overrun condoned on the capital cost and related tariff components (including IDC, IEDC and other associated costs) shall be appropriately considered and given effect to, while issuing the orders in the said petition.

37. With the above, the directions contained in the APTEL judgment dated 19.11.2024 in Appeal No. 137/2019 stand implemented.

**Sd/-
(Ravinder Singh Dhillon)
Member**

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

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

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