

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.135/MP/2018

Coram:

Shri I. S.Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 24th November, 2022

In the matter of:

Petition seeking payment of transmission tariff between the date of commissioning and date of charging of Element 2 and Element 3 of transmission assets of Kudgi Transmission Ltd.

And

In the matter of

Kudgi Transmission Limited,
TCTC Building, 1st Floor,
P.B.No.979, Mount Poonamallee Road,
Manapakkam,
Chennai-600089

....Petitioner

Versus

1. Bangalore Electricity Supply Company Limited (BESCOM),
K.R. Circle,
Bangalore-560 001.

2. Chamundeshwari Electricity Supply Corporation Limited,
No.927, L.J. Avenue,
New Kantharaj Urs Road
Saraswathipuram,
Mysore – 570 009

3. Hubli Electricity Supply Company Limited,
Navanagar,
Hubli – 587 117

4. Mangalore Electricity Supply Company Limited,
Paradigm Plaza,
A.B. Shetty Circle,
Mangalore-575 001

5. Gulbarga Electricity Supply Company Limited,
Station Road,

Gulbarga -585 101.

6. Power Company of Karnataka Limited,
Cauvery Bhavan,
K.G. Road,
Bangalore-560 001.

7. Kerala State Electricity Board Limited,
Vydyuthi Bhavanam,
Pattom, Thiruvananthapuram,
Kerala - 695004

8. Tamil Nadu Generation and Distribution Corporation Limited,
10th Floor, NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.

9. Southern Power Distribution Company of Andhra Pradesh Limited,
D.NO:19-13-65/A, Srinivasapuram,
Tiruchanoor Road,
Tirupati - 517503

10. Eastern Power Distribution Company of Andhra Pradesh Limited,
P&T Colony, Seethammadhara,
Visakhapatnam - 530013

11. Southern Power Distribution Company of Telangana Limited
(Formerly Central Power Distribution Company of Andhra Pradesh Ltd.)
6-1-50, Mint Compound,
Hyderabad-500 063.

12. Northern Power Distribution Company of Telangana Limited
(Formerly **Northern** Power Distribution Company of Andhra Pradesh Ltd.)
H.No: 2-5-31/2,
Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda,
Warangal-506001

13. National Thermal Power Corporation Limited,
NTPC Bhawan,
SCOPE Complex, Institutional Area, Lodhi Road,
New Delhi-110 003

14. Power Grid Corporation of India Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016

Also at
Saudamini, Plot No.2,
Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana) – 122001

15. Central Electricity Authority,
Sewa Bhawan,
R. K. Puram, Sector-1,
New Delhi - 110 066

Respondents

Parties Present:

Shri M.G. Ramachandran, Senior Advocate, KTL
Shri Alok Shanker, Advocate, KTL
Shri Sitesh Mukherjee, Advocate, PGCIL
Shri Aryaman Saxena, Advocate, PGCIL
Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Anand K Ganesan, Advocate, NTPC
Shri Ashwin Ramanathan, Advocate, NTPC
Shri Aditya Dubey, Advocate, NTPC

ORDER

The Petitioner, Kudgi Transmission Limited (KTL) has filed the present Petition for seeking payment of tariff for the period between the date of commissioning and date of charging of Element 2 and Element 3 of the transmission system developed by it. The Petitioner has made the following prayers:

- “(a) *admit the present petition;*
- (b) declare that the Petitioner is entitled to recover transmission Charges from the date of commercial operation of Element 2 and Element 3;*
- (c) Direct PGCIL to pay transmission tariff along with an interest at 24% per annum from the date of commissioning of Element 2 and Element 3 till the date of due realisation; and*
- (d) Pass such other and further orders/ directions as the Commission may deem appropriate in the facts and circumstances of the case.”*

Background

2. The Petitioner, KTL was incorporated by REC Transmission Projects Company Limited, the Bid Process Coordinator (“BPC”) in terms of the Tariff Based Competitive Bidding Guidelines for the Transmission Service and Guidelines for Encouraging Competition in Development of Transmission Projects issued by the Ministry of Power, Government of India under Section 63 of the Act for the purpose of establishing “Transmission System required for evacuation of power from Kudgi TPS (3×800 MW in
Order in Petition No. 135/MP/2018

Phase-I) of NTPC” (hereinafter referred to as “Transmission System” or “Project”). The Respondents herein are the Long-Term Transmission Customers (“LTTCs”) of the Petitioner and has entered into Transmission Service Agreement with the Petitioner dated 14.5.2013.

3. Pursuant to the competitive bid process conducted by the BPC in accordance with the Competitive Bidding Guidelines, L & T Infrastructure Development Projects Limited (“L & T Infra”) was selected as the successful bidder and awarded the Letter of Intent on 31.7.2013. Consequent thereto, L & T Infra acquired the 100% equity share of the Petitioner Company on 30.8.2013 and commenced the work of the Project in accordance with the TSA. The Project involved the development of the following elements:

Sr.	Scope of Work	SCOD	Deemed COD	Date of Charging
Element 1	2 Nos. 400 kV D/C transmission line Kudgi TPS to Narendra (New)	28.2.2015	4.8.2015	6.11.2015
Element 2	765 kV D/C transmission line Narendra (New) to Madhugiri	31.12.2015	19.9.2016	24.9.2016
Element 3	400 kV D/C transmission line Madhugiri to Bidadi	31.12.2015	27.7.2016	24.8.2016

4. The Transmission Licence was granted to the Petitioner by the Commission vide order dated 7.1.2014 in Petition No.191/TL/2013 and the transmission tariff as arrived at pursuant to the competitive bidding process was adopted by the Commission vide order dated 8.1.2014 in Petition No. 190/TT/2013.

5. The Petitioner has submitted that Element 2 of the Project was inspected and declared fit for charging on 4.9.2016 and achieved deemed Commercial Operation Date (“COD”) on 19.9.2016. However, Power Grid Corporation of India Limited (“PGCIL”) had not completed its scope of work at that time and as a result, Element 2 was charged 5 days after having achieved deemed COD, on 24.9.2016. The Petitioner has stated that

the per diem tariff of Element 2 is Rs. 43.37 lakh. Accordingly, the Petitioner is entitled to recover additional Rs. 217 lakh for the period between 19.9.2016 and 24.9.2016.

6. Similarly, for the Element 3 of the Project, the Petitioner has submitted that the said element was inspected and declared fit for charging on 4.7.2016 and achieved deemed COD on 27.7.2016. However, Element 3 was charged 29 days after achieving deemed COD, on 24.8.2016. The Petitioner has stated that the per diem tariff of Element 3 is Rs. 8.67 lakh. Accordingly, the Petitioner is entitled to Rs. 252 lakh for the period between 27.7.2016 and 24.8.2016.

Submissions of the Petitioner

7. In support of the prayers made, the Petitioner has mainly submitted as under:

(a) The Petitioner was only required to develop the transmission lines and was not required to develop any sub-station or any other inter-connection facility. In terms of Clause 4.2.1(b) of the TSA, it is the obligation of LTTCs to provide the inter-connection facilities. The details of the relevant inter-connection facilities for Element 2 and Element 3 are as under:

Elements	Details of the inter-connection facility
Element 2	Narendra (New) 765/400 kV Pooling Station-Respective Bays allotted to KTL for Connecting Element 2
Element 2	Madhugiri 765/400 kV Pooling Station-Respective Bays allotted to KTL for Connecting Element 2
Element 3	Madhugiri 765/400 kV Pooling Station-Respective Bays allotted to KTL for Connecting Element 3
Element 3	Bidadi 400 kV Pooling Station-Respective Bays allotted to KTL for Connecting Element 3

(b) Despite the completion of the elements to the best ability of the Petitioner, the same were not charged due to delay on the part of PGCIL in completing its scope of work.

(c) As per the Article 10.1 of the TSA, the Petitioner is entitled to receive tariff from the date of COD of each of the elements of the Project. Further, as per Article 6.2.2 of the TSA, once any element of the Project has been declared to have achieved the deemed COD, such element of the Project shall be deemed to have availability equal to the target availability till the actual charging of the element and to this

extent, shall be eligible for payment of monthly transmission charges applicable for such extent. However, despite the Petitioner completing all the works on each of the element and declaring commercial operation in terms of the TSA, the tariff payments in terms of the TSA did not commence from the COD.

(d) Element 2 was inspected and declared fit for charging on 4.9.2016 and achieved deemed COD on 19.9.2016. However, PGCIL had not completed its scope of work at that time and as a result, Element 2 was charged 5 days after having achieved deemed COD, on 24.9.2016. The per diem tariff of Element 2 is Rs. 43.37 lakh. Accordingly, the Petitioner is entitled to recover additional Rs. 217 lakh for the period between 19.9.2016 and 24.9.2016.

(e) Element 3 was inspected and declared fit for charging on 4.7.2016 and achieved deemed COD on 27.7.2016. However, Element 3 was charged 29 days after achieving deemed COD, on 24.8.2016. The per diem tariff of Element 3 is Rs. 8.67 lakh. Accordingly, the Petitioner is entitled to Rs. 252 lakh for the period between 27.7.2016 and 24.8.2016.

(f) Thus, in accordance with the provisions of the TSA, the Petitioner is entitled to tariff from the date of commissioning of each of the Element as under:

Sr.	Elements	Deemed COD	Date of Charging	Per Day Eligible Tariff	No. of Days' Delay	Total Transmission Charges Payable (Rs. in lakh)
1	Element 2	19.9.2016	24.9.2016	43.37 lakhs	5 days	217.00
2	Element 3	27.7.2016	24.8.2016	8.67 lakhs	29 days	252.00
Total transmission charges payable						469.00

(g) The Petitioner vide letter dated 18.8.2017 requested BESCO, a lead LTTC under the TSA, to make payment of the transmission charges for the period between COD of Element 2 and Element 3 and charging of the lines. Vide said letter, the Petitioner also requested BESCO to inform the other LTTCs and advise them to make payment in this regard.

(h) Notwithstanding above, as per the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (in short "the Sharing Regulations"), in case of delay in the injection of power, the designated ISTS customers shall be responsible for the payment of transmission charges.

(i) In the present case, the entire Project was contemplated for evacuation of power from NTPC's Kudgi power plant. However, the delay in charging of the line was primarily due to non-availability of inter-connection facilities (primary obligation of PGCIL to provide inter-connection facilities) for Element 2 and Element 3. The Sharing Regulations and the TSA entitles the Petitioner to receive the entire tariff notwithstanding the fact that approved injection or drawal has not happened and the Petitioner cannot be penalised for its due compliance of commissioning of Element 2 and Element 3 in accordance with the provisions of TSA.

(j) The issue of entitlement of transmission charges from the date of commissioning (for Element 1 of the Project) had come up for consideration of this Commission in Petition No. 236/MP/2015, filed by the Petitioner due to non-payment of tariff related to Element 1 of the Project. Despite completing the entire scope of work of Element 1 on 27.3.2015, the line was not inspected as both the ends were open. Upon request by the Petitioner, CEA directed for inspection of Element 1, which was duly completed and the line was declared fit for charging on 28.7.2015. As per Article 6.2.1 of the TSA, the line was said to be commissioned after one week of such declaration. Accordingly, the Petitioner declared the Commercial Operation of Element 1 on 4.8.2015. However, the line was charged only on 6.11.2015, leading to a gap of 92 days from the COD to the date of actual charging. Accordingly, the Petitioner had approached the Commission vide Petition No. 236/MP/2015, *inter alia*, praying for a declaration that the Petitioner is entitled to recovery of transmission charges for Element 1 in accordance with the TSA from the date of its completion

(k) The Commission vide its order dated 27.6.2015 framed the following two questions/issues, namely (i) whether the Petitioner is entitled to recover transmission charges from the date of completion of the Element 1 of the transmission project? and (ii) who shall pay the transmission charges from the actual COD or deemed COD till the assets are put to use?

(l) As to the date from which the Petitioner would be permitted to charge the tariff, the Commission in the order dated 27.6.2015 held that the tariff could be charged as per the TSA which is to be one week after the declaration of fitness by CEA.

(m) As to the question of which entity would be required to pay transmission charges for the intervening period, the Commission held that NTPC and PGCIL would be equally responsible for payment of the transmission charges from the date of commissioning to the date of energisation of NTPC bays. From the period from charging of NTPC bays until charging of PGCIL sub-station, PGCIL shall pay the transmission charges to the Petitioner and from such date onwards, NTPC would have to bear the transmission charges as per Regulation 8(5) of the Sharing Regulations.

(n) Applying the aforesaid findings of the Commission to the facts of the present case, it may be seen that the entire delay in charging of the Petitioner's Element 2 & Element 3 was not attributable to the Petitioner and was due to non-availability of the inter-connection facilities. The aforesaid findings are squarely applicable to the facts of the present case. The Respondents, NTPC and PGCIL had filed review petition against the aforesaid order passed by this Commission in Petition No. 236/MP/2015, which, however, came to be disposed of by the Commission upholding its order dated 27.6.2015. Accordingly, the order of this Commission has become final.

(o) The transmission tariff is the primary mode of recovery of the investment made by the Petitioner. In the event the terms for which tariff is paid to the Petitioner is reduced citing reasons which are not attributable to the Petitioner then the viability of the Petitioner would be adversely affected. The Petitioner would be penalised for complying with its obligations under the TSA in letter and spirit as a prudent operator. The Petitioner is being prejudiced due to default of the other stakeholder in this case PGCIL. Delay in payment of tariff to the Petitioner is causing substantial economic and financial prejudice to the Petitioner.

(p) The fundamental basic premise of the contracts entered into under Section 63 of the Act is that the payment shall be made from the time of commissioning of the asset i.e. as soon as the TSP complies with its set of obligations in relation to construction of the Elements, the licensee shall be paid the tariff in terms of the provisions of the TSA. In the event the asset which is complete in all aspects in accordance with the provisions of TSA cannot be put to use for reasons not attributable to the developer of the asset, then the non-usage of the asset due to the default on the part of other parties cannot be raised as a ground to deny the developer the entitled tariff payable in terms of the binding contract and the

developer of the asset cannot be penalised for no fault of them. In the event payments in terms of the TSA are not paid to the Petitioner, the entire bidding process and adoption of tariff by this Commission stand vitiated.

(q) Even in terms of extant regulations, the liability of the beneficiary or the generating station to pay the transmission charges to ISTS licensee is not linked to utilisation of the line but connected with the commissioning of the line. In the event a transmission line which has been commissioned in accordance with the provisions of the extant regulations and the TSP is not able to recover tariff then the same would be contrary to the intent and purpose of the Act.

8. Notice was issued to the parties to file their reply and rejoinders. The Respondent, Mangalore Electricity Supply Company Limited, Bangalore Electricity Supply Company Limited, Kerala State Electricity Board Limited and Power Grid Corporation of India Limited have filed their replies and the Petitioners has filed rejoinder thereof.

Reply of Respondent No.1, Bangalore Electricity Supply Company Limited ("BESCOM")

9. Bangalore Electricity Supply Company Limited in its reply filed vide affidavit dated 25.2.2019 has mainly submitted as under:

(a) Elements 2 and Element 3 could not be charged due to non-availability of inter-connection facility that was to be provided by PGCIL. Therefore, liability, if any, in that regard will be that of PGCIL to pay transmission charges for Element 2 and Element 3 to the Petitioner from deemed commissioning dates of the said element still the actual commissioning dates of elements.

(b) As per 29th meeting of the Empowered Committee, held on June 15, 2012, wherein the scheme for transmission system required for evacuation of power from Kudgi TPS of NTPC was framed, PGCIL had clear obligation to provide inter-connection facility by June 2015. It was also clearly stated that PGCIL has to provide said bays on or before commissioning of the Elements developed by the Petitioner in order to facilitate the TSP commission its Elements.

(c) As per Article 4.1(c) of the TSA as well as various extant regulatory provisions, the Petitioner was required to execute the connection agreement with

PGCIL and NTPC at the initial stage itself, which, however, was executed belatedly and only after the SCOD of Element 1. The absence of connection agreement at the initial stage and lack of coordination between CTU and Petitioner has resulted in delay in commissioning of Element 2 and Element 3. Subsequently, the Petitioner, PGCIL and NTPC have executed the connection agreement on 28.7.2015 and from the perusal of recitals therein it is clear that the PGCIL had clear obligation to provide the inter-connection facility required for commissioning of the Petitioner's Elements.

(d) Contention of the Petitioner that it was the obligation of LTTC to provide interconnection facility is wholly untenable. Article 4.2.1(b) of TSA provides for arranging and making available the inter-connection facilities to enable the TSP to connect the Project. Accordingly, as per request of the Petitioner, the Respondent, BESCOM had requested PGCIL vide its letter dated 8.12.2015 and to CEA vide its letter dated 3.5.2016 and dated 1.6.2016 to make arrangement to provide inter-connection facilities to Element 2 & Element 3 and thus had fulfilled its obligation under TSA, which is limited in nature.

(e) The delay in commissioning of the Project due to non-availability of inter-connection facilities cannot be attributed to the Respondent. The role of Respondent is limited to use of available transmission capacity of the Project and to pay to the Petitioner the transmission charges determined in accordance with the terms of the TSA. However, in the present case, there is no electricity generated by NTPC and transmitted which was used by the Respondent as LTTCs under the TSA. Therefore, the Respondent is not liable to pay transmission charges.

(f) The Commission vide order dated 27.6.2015 of Petition No. 236/MP/2015 has held that transmission charges for Element 1 for the period inter-connection facility was not ready is to be paid by NTPC and PGCIL. In the present case, Element 2 & Element 3 could not be charged due to non-availability of inter-connection facility that was to be provided by PGCIL and the liability of paying charges for delay caused rests with PGCIL. Therefore, the Respondent and LTTCs are not liable to pay the transmission charges from the deemed commissioning of Element 2 & Element 3.

(g) In the event of any loss to any party to the TSA or to others on account of non-completion of works by any other party to the TSA i.e. generator or the

transmission licensee or other, the indemnification of such losses should be the responsibility of the party committing default and not the Respondents. The same has been upheld by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 390 of 2017 in the matter of Punjab State Power Corporation Ltd. V. Patran Transmission Company Limited and Ors. It is a trite law that no transmission charges can be raised against the beneficiaries and beneficiaries are not liable to pay transmission charges until supply of electricity through the line takes place.

Reply of Respondent No.4, Mangalore Electricity Supply Company Limited (MESCOM)

10. Mangalore Electricity Supply Company Limited in its reply dated 18.1.2019 has mainly submitted that the actual charging of the transmission line could not be achieved by the Petitioner due to delay in inter-connection facility provided by PGCIL for inter-connecting Element 2 and Element 3 in spite of the communication on 1.6.2016 by BESCOM. Hence, the tariff entitled for the Petitioner is to be borne by PGCIL and not by any beneficiaries. Further, on the issue of entitlement of transmission charges from the date of commissioning to the date of charging of Element-1 of the Project undertaken by the Petitioner, the Commission in its order dated 27.6.2016 in Petition No.236/MP/2015 has clearly stated that due to delay of the inter-connection facility by NTPC and PGCIL, the total transmission charges for delay between the date of commissioning and date of charging should be paid in the ratio of 50:50 as per Regulation 11 of the Sharing Regulations.

Reply of Respondent No. 14, Power Grid Corporation of India Limited (PGCIL)

11. PGCIL in its reply filed vide affidavit dated 21.2.2019 has mainly submitted as under:

- (a) In the 29th meeting of the Empowered Committee on Transmission held on 15.6.2012, it was agreed that the transmission schemes relating to evacuation of power from Kudgi TPS (3x800 MW Phase 1) were to be taken up through tariff based competitive bidding process, wherein PGCIL was to provide 6 Nos. of 400

kV bays at Narendra (New), 4 Nos. of 400 kV bays at Madhugiri and 2 Nos. of 400 kV bays at Bidadi. To this end, the scope of work relating to Element 1 - Kudgi TPS - Narendra (New) 400 kV 2xD/C quad lines agreed by PGCIL included the “Sub-Station: Extension of Narendra (New) sub-station (GIS) at Kudgi”. It was also agreed that the components viz. (i) 4 Nos. 400 kV line bays at Narendra (New) for Kudgi TPS-Narendra (New) 400 kV 2xD/C quad lines; and (ii) 2 Nos. 400 kV line bays at Narendra (New) for Narendra (New)- Madhugiri 765 kV D/C line initially charged at 400 kV, would also form part of the aforesaid sub-station.

(b) In the 34th SCM of the Southern Region, NTPC informed that their Kudgi TPS Phase-1 is scheduled for commissioning by June, 2015, and accordingly requested for implementation of Kudgi TPS - Narendra Line (TBCB line), being developed by the Petitioner, along with the 400 kV bays to be constructed by PGCIL under a compressed time schedule to match the commissioning of the generating station with transmission system.

(c) The assertion of the Petitioner that “despite the completion of elements to the best ability of the Petitioner, the same were not charged due to delay on the part of PGCIL in completing the scope of work” is factually incorrect.

(d) As per Article 6.2 of the TSA dated 14.5.2013 which pertains to COD of the Project, the Petitioner had to terminate Element 2 and Element 3 at respective gantries of the concerned sub-stations built by PGCIL and subsequent to such termination, the said assets should have been in a condition to be successfully charged.

(e) The sequence of events that took place during the period between deemed COD of Element 2 and Element 3, as claimed by the Petitioner, and their actual commissioning indicate that the Element 2 was not in any position to be charged and corresponding element of the PGCIL pertaining to Element 2 was also ready to be charged before the deemed COD of Element 2, as declared by the Petitioner. Element-wise detailed sequence of events is as under:

Element 3 - Madhugiri– Bidadi transmission line:

(i) PGCIL vide letter dated 25.7.2016, while informing about the readiness of bays at Madhugiri and Bidadi for the Madhugiri-Bidadi transmission line highlighted the pending stringing activity by the Petitioner. Notwithstanding the same, the

Petitioner vide its letter dated 27.7.2016 went ahead to declare deemed COD of the said line w.e.f 13.7.2016 purportedly in line with Clause 6.2.1 of TSA.

(ii) PGCIL, vide e-mail dated 8.8.2016, informed the Petitioner that “*as informed earlier the gantry at Bidadi and Tumkur I & II are ready for stringing work from 5.8.2016. All necessary precautions to be ensured by L&T before starting the work.*” Thereafter, PGCIL, vide letter dated 9.8.2016, had, *inter alia*, once again requested the Petitioner to complete the pending stringing activity. In response, the Petitioner vide letter dated 10.8.2016 requested PGCIL to defer the shutdown planned from 10.8.2016-11.8.2016 to 19.8.2016-20.8.2018 in order to complete the stringing to the gantry and to check their line once again to reconfirm healthiness.

(iii) PGCIL vide letter dated 12.8.2016 further informed the Petitioner regarding very less clearance (of only 4 meters over the structures) noticed at Section AP 41/0 – AP 42/0 after crossing the highway toward Bidadi side and requested to take up the necessary corrective actions. Subsequently, on completion of the pending works by the Petitioner and confirmation of the healthiness of line, the line was commissioned on 24.8.2016.

(iv) The above facts that (i) the line was passing over a building with a clearance of merely 4 meters in violation of the Indian Electricity Rules, 1956 and was a threat to the lives of the people residing in that building; (ii) the Petitioner’s request to defer the shutdown proposed from 10.8.2016-11.8.2016 to 19.8.2016-20.8.2016 clearly demonstrate the non-readiness of the line and wrong declaration of deemed COD of the line (i.e. 13.7.2016) by the Petitioner. Further, charging of the said line is a pre-requisite for power flow in the combined Bidadi-Madhugiri-Narendra transmission system. PGCIL has placed on record the aforesaid correspondence along with photographs of Section AP 41/0 – AP 42/0 before demolition of the structure (right under the line) and after demolition.

Element 2 – Narendra- Madhugiri transmission line:

(v) PGCIL vide letter dated 9.8.2016 had informed the Petitioner that bays at both the ends of line were getting completed and an inspection by CEA was scheduled for 12.8.2016-14.8.2016 thereby requesting the Petitioner to inform the anticipated timeline for completion of the line and to furnish the relevant testing documents for facilitating commissioning activities. In response, the Petitioner vide letter dated

10.8.2016 informed that CEA's inspection for the line was scheduled for 12.8.2016-14.8.2016 and that the readiness for the charging shall be intimated after the CEA report.

(vi) CEA vide letter dated 19.9.2016 provided requisite clearance for charging of the bays at Madhugiri for the Madhugiri – Narendra transmission line for which inspection was done by CEA on 12.8.2016-13.8.2016. Compliance with CEA's observations was achieved by PGCIL on 12.9.2016 and letter to that effect was issued by PGCIL on 12.9.2016.

(vii) It is evident from the above documents that PGCIL's bays were ready on 12.9.2016 much before the alleged deemed COD declared on 19.9.2016 by the Petitioner for the above line. Charging clearance for bays was given by CEA on 19.9.2016 citing PGCIL's compliance letter dated 12.9.2016. Whereas the line was successfully charged on 22.9.2016. Thus, on completion of CEA inspection and fulfilment of all necessary requirements through coordinated efforts, the line was commissioned on 24.9.2016.

(viii) From the above facts, it is evident that delay in commissioning of the Madhugiri – Bidadi transmission line (Element 3) and Narendra-Madhugiri transmission line (Element 2) are not attributable to PGCIL in any manner. The Petitioner has falsely attributed the cause of such delay upon the Respondent and accordingly, on this ground alone, the Petition ought to be disallowed.

(ix) While making the TSA the basis of its plea for recovery of transmission charges from PGCIL, the Petitioner has failed to appreciate that PGCIL is not a party to the TSA and also TSA does not provide for payment of transmission charges by PGCIL. Since PGCIL is neither a party to the TSA nor has signed any indemnification agreement, no liability can be incurred by PGCIL due to mismatch of the commissioning dates of Element 2 & Element 3 of the Petitioner's Project and the inter-connection facilities to be provided by PGCIL. TSA only provides for liability to be incurred by the generator or the LTTCs in case there is a default or a mismatch in the commissioning date of the power plant/ LTTC's ability to off-take power. There is no provision in the TSA that supports the Petitioner's plea to hold PGCIL, a non-signatory, liable to pay transmission charges in the present factual matrix. In any case, the Petitioner's plea for direction to PGCIL for payment of transmission charges is *de hors* the Sharing Regulations.

(x) APTEL in its judgment dated 27.3.2018, in Appeal No. 390 of 2017, titled *Punjab State Power Corporation Limited vs. Patran Transmission Company Limited & Ors.* ("Patran Judgment") has observed that there was no contractual arrangement between the party commissioning its transmission element on time, i.e. Patran Transmission Company Limited, and the defaulting party, i.e. Punjab State Transmission Company Limited (PSTCL). APTEL has held that the only contractual arrangement existed between Patran Transmission Company Limited ('PTCL') and its LTTCs, including with Punjab State Power Corporation Limited ("PSPCL"). PSPCL, as an LTTC, had undertaken the obligation under the TSA to arrange the interconnection facilities for the Project. Accordingly, APTEL fastened the liability upon PSPCL to pay transmission charges, instead of PSTCL. Similarly, in the facts of the instant Petition, there is no *inter se* contractual arrangement between the Petitioner and the alleged defaulting party, i.e., the PGCIL. However, similar to the factual situation in the case of the Patran Judgment, the Petitioner had entered into the TSA dated 14.5.2013 with the various LTTCs, who were the beneficiaries of the Project established by it.

(xi) As per Article 4.2.1 (b) of the TSA dated 14.5.2013, the LTTCs contractually undertook the responsibility for making available the interconnection facilities necessary to enable the regular flow of electricity at either end of the Petitioner's Project. Thus, LTTCs must be held responsible for delay by PGCIL in commissioning the interconnection facilities i.e. bays and pooling stations being established by PGCIL necessary for regular flow of electricity through the Project. Accordingly, any risk associated with the implementation of the inter-connection facilities, including the delay in their implementation has been contractually allocated to the LTTCs. The aforesaid principle has been enunciated by the APTEL in Patran Judgment as well. While there was no *inter se* arrangement between the PTCL and PSTCL, the contractual arrangement existed between PTCL and PSPCL, an LTTC and accordingly, the Patran Judgment held PSPCL liable to bear the transmission charges for the period of delay.

(f) In view of the above, PGCIL is not liable to pay any dues towards transmission charges (i) from the alleged deemed COD i.e. 19.9.2016 to the date of charging i.e. 24.9.2016 for Element 2 of the Petitioner's Project, and (ii) from the alleged deemed COD i.e. 27.7.2016 to the date of charging i.e. 24.8.2016 for the Element 3 of the Petitioner's Project.

Reply of Respondent, Kerala State Electricity Board Limited (KSEBL)

12. The Respondent, Kerala State Electricity Board Limited, in its reply affidavit dated 10.12.2019 has mainly submitted that the decision taken by the Commission including methodology for sharing of transmission charges vide order dated 27.6.2015 in Petition No. 236/MP/2015 squarely applies to the present case. The Petitioner has stated that it could not commission the Element 2 & Element 3 due to delay on the part of PGCIL in completing its scope of work and accordingly, the PGCIL, which was responsible for providing interconnection facilities to the Petitioner, has to bear the transmission charges as claimed by the Petitioner. Accordingly, the necessary directions may be issued to PGCIL that the payment so made by PGCIL may not be included in PoC mechanism and charged on the beneficiaries.

Hearing dated 3.9.2021

13. The matter was heard at length on 3.9.2021. After hearing the learned counsel for the parties, the Commission vide Record of Proceedings for hearing dated 3.9.2021 directed the Petitioner to file details/information viz. (i) Notices issued under Article 6.1 of the TSA for each element, (ii) RLDC Charging certificate certifying the actual date of charging, (iii) Proof of intimation of deemed COD to LTTCs, and (iv) Process followed by the Petitioner while declaring deemed COD, on affidavit with advance copy to the Respondents. The parties were also directed to file their written submissions, if any.

14. Pursuant to the above direction, the Petitioner vide affidavit dated 1.10.2021 has mainly submitted as under:

- (a) By order dated 24.1.2019 in Petition No. 248/MP/2016 in the matter of Kudgi Transmission Limited v. BESCOs and Ors., the Commission has already decided on the deemed COD of Element 2 & Element 3, wherein the Commission has, *inter alia*, observed that the Petitioner has complied with the provisions of the TSA while declaring the deemed COD of Element 2 & Element 3 on 19.9.2016 and 13.7.2016

respectively and accordingly, in terms of the TSA, the Petitioner is entitled for payment of monthly transmission charges with the deemed availability equivalent to target availability till the element is actually charged and put to use.

(b) Thus, the limited issue for consideration in the present Petition is the claim of the Petitioner for transmission charges for the period from deemed COD to date of charging of the Element 2 & Element 3.

(c) In terms of Article 10.1 of the TSA, the Petitioner is entitled to receive tariff from the deemed COD and further in terms of Article 4.2.1(b) of the TSA, it was the obligation of LTTCs to arrange and make available the inter-connection facilities for the Petitioner to connect to the Project. Therefore, insofar as the Petitioner is concerned, the LTTCs are liable to pay the transmission charges to the Petitioner from deemed COD irrespective of any issues with PGCIL in regard to the arrangement for inter-connection facility being not ready. The stand taken by MESCOM, BESCO and KSEBL that they should not be held liable till the date of charging cannot be a ground for denying the liability to pay the Petitioner for transmission charges in view of Article 4.2.1(b) read with Article 10.1 of the TSA. The issue whether PGCIL should be made liable for payment of the transmission charges in place of the LTTCs is for consideration of this Commission. In any event, there cannot be any defence to the claim of the Petitioner for the transmission charges.

(d) With regard to notice issued by the Petitioner under Article 6.1 of the TSA for each element, under normal circumstances of construction and commissioning of a transmission line, the interconnection facility is made available first and line is considered ready only upon connection with such inter-connection facilities. Each of the three elements being constructed by KTL, the scope of KTL was completed prior to the inter-connection facilities being ready for connection. Accordingly, the KTL declared the commissioning in terms of Article 6.2.1 without physical connectivity to the inter-connection facilities. Notice under Article 6.1 could only have been issued when KTL was provided with inter-connection facilities at least 60 days prior to the anticipated date of commissioning of each of the element, which admittedly was not the case and accordingly, no notice under Article 6.1 could be issued prior to COD of the lines.

(e) In terms of the applicable provision, KTL upon completion of each of the elements informed CEA about the readiness of the lines for charging and

requested inspection of the line. Upon inspection of the lines deficiencies, if any pointed out were rectified and the same was intimated to CEA. Upon verification final certificate for charging were issued by CEA. On the basis of the CEA certificate for charging, COD was declared for each of the elements.

(f) The Petitioner has also placed on record the RLDC charging certificate for Elements 2 & 3 and intimation of COD to BESCOM – lead LTTC.

15. The Petitioner has submitted that Element 2 of the Project was inspected and declared fit for charging on 4.9.2016 and achieved deemed COD on 19.9.2016. However, PGCIL had not completed its scope of work at that time and as a result, Element 2 was charged 5 days after having achieved deemed COD, on 24.9.2016. Since, per diem tariff of Element 2 is Rs. 43.37 lakh, the Petitioner is entitled to recover additional Rs. 217 lakh for the period between 19.9.2016 and 24.9.2016.

16. Similarly, with regard to Element 3 of the Project, the said Element 3 was inspected and declared fit for charging on 4.7.2016 and achieved deemed COD on 27.7.2016. However, Element 3 was charged 29 days after achieving deemed COD, on 24.8.2016. Since per diem tariff of Element 3 is Rs. 8.67 lakh, the Petitioner is entitled to Rs. 252 lakh for the period between 27.7.2016 and 24.8.2016.

Written submissions of Power Grid Corporation of India Limited (PGCIL)

17. PGCIL, vide written submissions dated 11.2.2022, has mainly submitted as under:

a) The Petitioner has misplaced its reliance on the order of the Commission in Petition No. 248/MP/2016, which is distinguishable from the present case. The Commission had categorically observed that Element 2 and Element 3 were in fact incomplete as on 31.12.2015 and therefore, the Petitioner could not have gone ahead with declaring the deemed COD of the two elements in terms of Article 6.2 of the TSA. Accordingly, the unavailability of the inter-connecting facility on the SCOD of both the elements cannot be considered as a reason hindering the Petitioner from declaring the deemed COD.

- b) The conduct of the Petitioner and LTTC's itself constitutes a default on their part and as such in the absence of specific communication between the Petitioner and LTTCs under Article 6.1 of the TSA, PGCIL cannot be held responsible for taking due time to ensure all the compliances in terms of Article 6.1.3 of the TSA and applicable regulations under the Grid Code and allowing the inter-connection only after having satisfied itself of all compliance been completed by the Petitioner.
- c) The Petitioner has filed another Petition being Petition No. 210/MP/2017 before the Commission, seeking revision of its quoted transmission tariff approved by the Commission under TSA, on account of various events occurring after the bid due date. PGCIL has not been impleaded as party to the proceedings in the aforesaid petition and is at a loss in responding to any contentions made thereunder. However, the Petitioner's claim in the instant Petition may need to be viewed in light of the submissions and contentions it has placed before the Commission in Petition No. 210/MP/2017.
- d) The Petitioner has failed to incorporate any pleadings with regard to filing and disposal of Petition No. 248/MP/2016. The Petitioner at no point of time placed the orders of the Commission on record and only disclosed it during the course of the final hearing on 27.8.2021.
- e) Under Article 6.1.1 of the TSA, the Petitioner along with the LTTCs were required to provide a notice to CTUIL, at least 60 days prior to the intended date of connecting the transmission elements with inter-connecting facility. As such, in the present case, CTUIL received first intimation from LTTCs of the Petitioner in November, 2015 (on month prior to SCOD) stating that as per the status report provided by the Petitioner to LTTCs, the implementation works with regard to Element 2 & Element 3 are going in full-swing and it is expected that both the elements will be commissioned as per the SCOD, therefore, interconnection facilities were sought to be kept ready for final connection by SCOD i.e. 31.12.2015. PGCIL was not given any formal 60 days prior notice in accordance with Article 6.1.1 of the TSA either by the Petitioner or the LTTCs, even at the time when the expected COD was the SCOD.

f) The moment the Petitioner failed to achieve its COD of Element 2 & Element 3 on their SCOD, there was the requirement of providing a fresh two months advance notice under Article 6.1.1 of the TSA to CTUIL for each element separately and with clear identification of the intended date of connecting with the inter-connection facility in order to ensure that the requirements of Article 6.1.3 of the TSA are complied with by CTUIL before finally granting the permission to the Petitioner for physically connecting Element 2 & Element 3 with inter-connection facility. The Petitioner has itself defaulted in performing their part of the agreement and are now trying to take the benefit of the same for non-compliance by demanding the charges from PGCIL for period which constitutes part of 60 days' notice under Article 6.1.1 of the TSA.

g) With regard to alleged delay in commissioning of the inter-connection facility associated with Element 2 by PGCIL, the Petitioner has violated the express provision of the Article 6.1.1 of the TSA, as it failed to communicate the revised SCOD after the expiry of the SCOD and occurrence of delay on part of the Petitioner. The Petitioner had no clear date of commissioning with it, as it was waiting for the approval of the Right of Way for the land owned by Karnataka Industrial Area Development Board for erecting towers and laying transmission lines on KIADB's land, until June 2016, which was approximately about 12 Km. of foundation, erection and stringing work left with respect to Element 2. The same is also evident from the Commission's order dated 24.1.2019 in Petition No. 248/MP/2016.

h) PGCIL in its letter dated 25.7.2016 had specifically mentioned that since the inter-connection facility for Element 2 is also getting ready soon, the status of commissioning of Element 2 may be provided. PGCIL never received any communication about commissioning of Element 2 prior to 10.8.2016, whereby, the Petitioner informed PGCIL that Element 2 is scheduled for inspection of the CEA between 12.8.2016 to 18.8.2016. Pursuant to the inspection by the CEA, the Petitioner finally complied with the objections raised by the CEA for granting energization approval on 10.9.2016.

i) PGCIL never received 60 days prior notice under Clause 6.1.1 of the TSA intimating the Petitioner about the commissioning and inspection of Element 2 by CEA. The Petitioner never took the express contractual clause of 60 days prior notice as per Clause 6.1.1 of the TSA seriously and only notified the CTUIL after obtaining the charging certificate from the CEA and went on to declare the deemed

CODs without providing the due time of 60 days to CTUIL from the date of intimation / notice under Clause 6.1.1 of the TSA, which is impermissible and patently illegal on part of the Petitioner.

j) With regard to alleged delay in commissioning of inter-connection facility associated with Element 3, the Petitioner after overshooting the SCOD never intimated the CTUIL about their revised COD of the respective elements with respect to Element 3 until 22.6.2016. PGCIL only learnt about the intentions of the Petitioner to connect Element 3 with the inter-connection facility on 22.6.2016 whereas the Petitioner declared its deemed COD on 27.7.2016, even before the approval of charging is accorded by the CEA. Thereafter, the Petitioner wrote a letter to CTUIL on 14.7.2016, intimating the CTUIL that the CEA energization certificate has been obtained on 4.7.2016 and thereby, wanted to connect Element 3 with immediate effect.

k) Obtaining the approval of the CEA for energization is only one of the pre-conditions for granting permission of using and connecting the transmission system with the inter-connection facility. Under Article 6.1.3 of the TSA, CTUIL is required to carry out a detailed inspection to ensure the completeness of the line in terms of the TSA (under Article 6.3.1 (a) of the TSA) and also check whether the licensee requesting for connecting its transmission systems have completed its works in compliance of the provisions of the Grid Code, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and all other Indian legal requirements. Therefore, it is for the Petitioner to ensure that CTUIL is given proper time of 60 days under Article 6.1.1 of the TSA for finalizing and completing all formalities, inspections and compliances / rectifications before finally allowing the Petitioner to connect with the interconnecting facility. In the instant case, the Petitioner gave a formal notice to the CTUIL on 14.7.2016, i.e. 10 days after obtaining the CEA certificate and demanded for the inter-connection facilities to be made available without giving any time to CTUIL to inspect and ensure compliance of safety and standards norms by the Petitioner, which cannot be allowed under any circumstances.

l) The Petitioner had written a letter to CTUIL on 22.6.2016, seeking details of the terminating bays and gantry. Thereafter, a meeting was held between CTUIL and the Petitioner and vide letter dated 30.6.2016, the gantry details were finalized and the same was communicated. Thereafter, the Petitioner obtained the CEA

energization approval on 4.7.2016 and intimated the same to CTUIL and demanded immediate access to the inter-connection facility. As such, the 60 days even considered from the first letter of the Petitioner dated 22.6.2016 provides time to CTU till 23.8.2016 to complete checklist as provided under Article 6.1.3 for allowing the Petitioner to access the interconnection arrangement and terminate Element 3 at Bidadi substation. The scope of work of the Petitioner includes compliance with the provisions of Article 6.1.1 read with Article 6.1.3, for it to be able to exercise the provisions of Article 6.2 to declare deemed COD after commissioning tests have been carried out in accordance with the provisions of the TSA and satisfy the criteria for the Commissioning of each element of the Project. The Petitioner having its actual COD as 24.8.2016 was therefore in line with the provision of Article 6.1 of the TSA and no delay can be attributed to CTUIL for taking its 60 days' time period provided under the Article 6.1 of the TSA for finalizing, inspecting and completing the inter-connection facilities with respect to Element 3.

m) APTEL while answering a similar issue of non-compliance or partial compliance of the provisions of an agreement, has held that a notice has to be given in the same manner and to the same person/authority as provided under the agreement. A partial compliance in form of another notice to other department / officer shall not be treated as notice of compliance under the provisions of the governing agreement. APTEL has also highlighted the fact that default in performing the express terms of the agreement is established by mere absence of relevant communication / notice on record and such party who defaults in performing simple and express conditions of contract cannot seek any reliefs on account of such default. The reliance has been placed on the judgment of APTEL dated 3.6.2016 in Appeal No. 97 of 2016 (Talwandi Sabo Power Ltd. v. PSPCL and Ors.).

n) With regard to Element 3 commissioned by the Petitioner, on 4.7.2016 (date of obtaining the energization approval certificate from CEA), the Petitioner was not in position for using the inter-connecting facilities for connecting Element 3, as several portions of transmission line were still pending for stringing and only upon the completion of the stringing, a survey for compliance of Article 6.1.3(b) is carried out by the CTUIL to ensure that all compliance and standards as specified under the Grid Code and associated regulations are properly complied by the licensee. It is only after rectification of any / all defaults notified by the CTUIL, the permission for interconnection is granted. Therefore, the letter received from the Petitioner

dated 14.7.2016 can at best be considered as the notice required under Article 6.1.1, especially in the absence of any two months advance notice to the CTUIL informing the expected date of inspection by the CEA for grant of energization certificate under Article 6.1.1 of the TSA.

o) Pursuant to the receipt of the letter dated 14.7.2016 from the Petitioner and reading the allegation made therein with regard to non-availability of inter-connecting bays at Madhugiri and Bidadi sub-station, PGCIL vide letter dated 25.7.2016 informed the Petitioner that bays at Madhugiri and Bidadi sub-station have been ready for connection but at present KTL is still completing its stringing activities of certain portion of Element 3 and since the line is not yet ready, the same cannot be allowed to be connected to ISTS. PGCIL had again written to the Petitioner an email dated 8.8.2016 informing the Petitioner of readiness of gantry for completing the stringing activities of Element 3 and thereafter on 9.8.2016 whereby PGCIL proposed to take shut-down for 10th & 11th August, 2016 for completing the final connection of Element 3 with ISTS substation.

p) PGCIL had written to the Petitioner on 12.8.2016 to intimate it that after undertaking the complete survey of Element 3 in terms of Article 6.1.3(b) of the TSA, it had been found that one site of the Petitioner has been reported to be violating the minimum ground clearance norms for laying the transmission lines. Accordingly, it was requested to the Petitioner to rectify the defect and intimate CTUIL of the same. The Petitioner finally rectified the aforementioned defects on 17th August, 2016 and only after the rectification of the defects and completion of stringing activities, the Petitioner finally declared Element 3 as commercially operational on 24.8.2016.

Hearing dated 28.6.2022

18. The present Petition was heard on 3.9.2021, and the Commission, after hearing the learned counsels for the parties, reserved order in the matter. However, as the Petition could not be disposed of, prior to the earlier Chairperson demitting office, the Petition was re-heard on 28.6.2022. During the course of hearing, learned counsel for the parties submitted that the parties have already made their respective submissions in the matter,

which may be considered and accordingly, the Commission reserved order in the matter thereafter.

Analysis and Decision

19. We have considered the submissions made by the Petitioner and the Respondents and also perused the documents available on record. Based on the above, the issue that arises for our consideration is as to whether the Petitioner is entitled to recover the transmission charges for Element 2 and Element 3 from the date of their deemed COD till the date of charging; and who shall be responsible to bear such transmission charges for the aforesaid period.

20. The Petitioner has submitted that as per Article 6.2.2 read with Article 10.1 of the TSA, the Petitioner is entitled to receive the tariff from the date of deemed COD of the Element 2 and Element 3. The Petitioner has submitted that Element 2 and Element 3 were inspected and declared fit for charging on 4.9.2016 and 4.7.2016 respectively and accordingly, were declared to have achieved the deemed COD on 19.9.2016 and 27.7.2016 respectively. However, since PGCIL had not completed its scope of work at that time the Element 2 was charged 5 days after having achieved the deemed COD, whereas the Element 3 was charged only after 29 days after achieving the deemed COD. The Petitioner has submitted that by order dated 24.1.2019 in Petition No. 248/MP/2019, the Commission has already decided on deemed COD of Element 2 and Element 3 and the only issue remains for consideration is the claim of the Petitioner for transmission charges for the period from deemed COD to the date of charging.

21. *Per contra*, the Respondent, PGCIL has vehemently questioned the Petitioner's readiness with respect to completeness of work by Petitioner as on the date of claim of

deemed COD for Element 2 and Element 3. PGCIL, by relying upon the correspondence exchanged with the Petitioner, has submitted such correspondence clearly reveals that Element 2 and Element 3 were not in position to be charged as claimed by the Petitioner. PGCIL has submitted that the Petitioner did not comply with the provision of Article 6.1.1 of the TSA requiring the Petitioner to issue notice to CTUIL at least 60 days prior to the intended date of connecting the transmission elements with the inter-connecting facilities. PGCIL has also submitted that reliance placed by the Petitioner on the order dated 24.1.2019 in Petition No. 248/MP/2016 is misplaced as in the said order, the Commission has categorically observed that non-availability of inter-connection facilities could not be considered as force majeure event and that Element 2 and Element 3 were in fact incomplete as on 31.12.2015 and therefore, the Petitioner could not have gone ahead with declaring deemed COD of the aforesaid elements.

22. We have considered the submissions made by the parties. We observe that Petitioner has submitted that this Commission has already approved deemed COD for the Petitioner through order dated 24.1.2019 in Petition No. 248/MP/2016 and the only question under instant Petition is as to who shall pay the charges for its assets, to counter the rival submissions of PGCIL that Element 2 and Element 3 were not ready as on the date of claimed deemed COD by the Petitioner. We observe that the prayer in Petition No. 248/MP/2016 was about seeking extension of SCOD of Element 2 and Element 3 due to alleged occurrence of various force majeure events. The relevant extract of the said order is extracted as under:

“The Petitioner has made the following prayers:

(a) Admit the present petition:

(b) declare that the Petitioner could not have commissioned the Project without the inter-connection facilities being made available by the LTTCs

(c) set aside the letter dated 5.12.2016 issued by BESCO;

- (d) declare that the Petitioner is entitled to a day to day extension for each day's delay in non-availability of land notified by KIADB for the second element:
- (e) direct return of the original bank guarantees furnished by the Petitioner; and
- (f) pass such other and further orders/ directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case."

23. Further, the relevant portion of order dated 24.1.2019 in Petition No. 248/MP/2016 where deemed COD of Element 2 and Element 3 have been discussed is quoted as below:

36. Article 4.1 of the TSA deals with TSPs obligations in the development of the Project. In terms of the Article 4.1(c), the TSP, at its own cost and expense, observe, perform, comply with, perform, undertake and be responsible for entering into Connection Agreement with the CTU/STU (as applicable), in accordance with the Grid Code. Article 4.2 of the TSA provides for the LTTCs obligations in implementation of the Project, which includes the arranging and making available the interconnection facilities to enable the TSP to connect to the Project. The Petitioner has stated that though the SCOD of Elements 2 and 3 were 31.12.2015, the interconnection facilities required for Elements 2 and 3 were made available by PGCIL only on 6.9.2016 and 28.7.2016 respectively. Article 6.1.2 of TSA dealing with connection with the inter-connection facilities provides as under:

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

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

- (a) it has been completed in accordance with this Agreement and the Connection Agreement;
- (b) it meets the Grid Code, Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 and all other Indian legal requirements and
- (c) The TSP has obtained the approval in writing of the Electrical Inspector certifying that the Element is ready from the point of view of safety of supply and can be connected with the Interconnection Facilities."

37. Further, Article 6.2.1 of the TSA provides as under:

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

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

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

38. As per the above said provisions, an element of the project shall be declared to have achieved COD 72 hours following the connection of the element with the interconnection facilities or 7 days after the date on which it is declared by the TSP to be ready for charging, but is not able to be charged for reasons not attributable to the TSP. Once the element is declared to have achieved the deemed CoD in terms of Article 6.2.1 of the TSA, such element shall be deemed to be availability equal to target availability till the actual charging of the element and is entitled to payment of monthly transmission charges applicable to such element. In the present case, the Petitioner in terms of Article 6.1.2 had intimated BESCO vide letter dated 21.12.2015 about the non-availability of interconnection facilities required for completion of Elements 2 and 3 and the delay in approval by KIADB for commencement of construction activity of Element 2 in KIADB area and accordingly sought the extension of SCOD (from 31.12.2015) of the said Elements by BESCO and other LTTCs. However, neither the CTU nor the LTTCs took any action for deferment of SCOD on account of non-availability of inter-connection facility. Thus, the Petitioner was not in a position to declare the COD of Elements 2 and 3 within the SCOD i.e 31.12.2015 as the construction works were not completed. In our view, even in the absence of any inter-connection facilities, the Petitioner could have declared deemed COD of elements 2 and 3 in accordance with Article 6.2.1 of the TSA, in case these elements were ready and available for charging by 31.12.2015. Having not done so, the Petitioner cannot plead that the delay in completion of the project is on account of the non-availability of inter-connection facilities by PGCIL. In this background, we hold that the non-availability of inter-connection facilities cannot be considered as a “force majeure event” as claimed by the Petitioner. The prayer of the Petitioner on this ground is therefore rejected.

39. It is however noticed that the Petitioner vide letter dated 5.7.2016 informed all the LTTCs that construction work of Element 3 (400 kV D/C TL Madhugiri to Bidadi) had been completed and the said line was ready for charging. The Petitioner also informed that since CEA had approved the energisation of the said line on 4.7.2016, it shall declare deemed COD of Element 3, seven days after the date of the said notice, in the absence of the inter-connection facilities, in accordance with Article 6.2.1 of the TSA. The relevant portion of the letter dated 5.7.2016 is extracted hereunder:

“.....

Sub: Kudgi Transmission Limited- Notice on the readiness of 400 kV Double Circuit (Quad) Madhugiri-Bidadi Transmission line for Charging-reg.

Ref1: Our letter no. KTL-LTTC:2016-17:012 dated 10.5.2016

Ref2: Approval for energization from CEA (Ref no. CAE/4/EI/INSP/2015/dated: 4.7.2016)
xxxxxxxxxxxx

We would like to inform you that the construction works for the 400 kV Double Circuit (Quad) Madhugiri-Bidadi Transmission line are completed however since the interconnection facilities at Bidadi sub-station is not made ready by PGCIL till date, the subject line cannot be charged and any delay in this regard shall not be attributable to KTL.

Further, we are glad to inform that the Electrical Inspectorate, Central Electricity Authority (CEA) has inspected the 400 kV Double Circuit (Quad) Madhugiri-Bidadi Transmission

line and certified the completion of works under the scope of Kudgi Transmission Limited (KTL). Electrical Inspectorate, CEA has not issued the 'Approval for Energization'. Approval copy from CEA is attached for your reference.

xxxxxxxxxxxx

In view of the above clauses your support is solicited in advising PGCIL for providing the inter-connection facilities for Element 3 of the Kudgi project (400 kV Double Circuit (Quad) Madhugiri-Bidadi Transmission line) at the earliest falling which KTL shall be entitled to declare deemed COD 7 (seven) days for Element 3 of Kudgi project from the date of this notice.”

40. Similarly, the Petitioner vide letter dated 12.9.2016 informed all the LTTCs that the construction works of Element 2 (765 kV D/C Narendra (new) to Madhugiri) had been completed and the said line was ready for charging. The Petitioner also informed that since CEA had approved the energisation of the said line on 10.9.2016, it shall declare deemed COD of Element 3, seven days after the date of the said notice, in the absence of the inter-connection facilities, in accordance with Article 6.2.1 of the TSA. The relevant portion of the letter dated 12.9.2016 is extracted hereunder:

“

Sub: Kudgi Transmission Limited- Notice on the readiness of 765 kV Double Circuit (Hex) Narendra (New) - Madhugiri Transmission line for Charging-reg.

Ref2: Approval for energization from CEA (Ref no. CAE/3/EI/INSP/2016/dated: 10.9.2016)
xxxxx

We would like to inform you that the construction works for the 765 kV Double Circuit (Hex) Narendra (New) - Madhugiri Transmission line are completed in all respect and is ready for energization.

Further, we are glad to inform that the Electrical Inspectorate, Central Electricity Authority (CEA) has inspected the 765 kV Double Circuit (Hex) Madhugiri-Bidadi Transmission line and certified the completion of works under the scope of Kudgi Transmission Limited (KTL). Electrical Inspectorate, CEA has not issued the 'Approval for Energization'. Approval copy from CEA is attached for your reference.

Xxxxxxxxxxxx

We once again request you to make the charging facilities available at the earliest. In view of the above clauses, in the absence of the interconnection facilities for energization Element 2 of the Kudgi Project (765 kV Double Circuit (Hex) Narendra (New)- Madhugiri Transmission line) shall be entitled to declared to achieve deemed COD 7 (seven) days after the date of this notice.....”

41. Thereafter, the Petitioner declared the deemed COD of Element 2 on 19.9.2016 and Element 3 on 13.7.2016 after completion of mandatory seven days period in terms of Article 6.2.1 of the TSA and vide letters dated 19.9.2016 and 27.7.2016 informed all the LTTCs about deemed COD of Elements 2 and 3 respectively. In our view, the Petitioner has complied with the provisions of the TSA while declaring the deemed CoD of Elements 2 and 3 as above. Accordingly, in terms of the TSA, the Petitioner is entitled for payment of monthly transmission charges with the deemed availability equivalent to target availability, till the element is actually charged and put to use.

24. We observe that Petitioner had not impleaded PGCIL as party to the Petition No. 248/MP/2016. Therefore, no submissions of PGCIL had been recorded in Petition No.

248/MP/2016. However, in the instant Petition, the Petitioner is claiming compensation from PGCIL and hence has impleaded PGCIL as party to the Petition. Since PGCIL was not made a party by the Petitioner in Petition No. 248/MP/2016, and in this Petition, there was no prayer with respect to approval of deemed COD, it cannot be concluded that date of deemed COD had attained finality without considering submissions of appropriate parties. The date of deemed COD as submitted by Petitioner has been recorded in Order dated 24.1.2019 in Petition No. 248/MP/2016, however the same has not been adjudicated upon. In fact, the date of deemed COD has been recorded as 19.9.2016 for Element 2 and 13.7.2016 for Element 3 whereas the Petitioner in the instant Petition is claiming deemed COD of 19.9.2016 for Element 2 and 27.7.2016 for Element 3. It is noticed that the Petitioner has not filed rejoinder to the reply filed by PGCIL dated 26.2.2019. Keeping in view the aforesaid discussions that date of deemed COD was not adjudicated under Petition No. 248/MP/2016, we proceed to adjudicate as to whether the Petitioner could have declared deemed COD of the Element 2 and Element 3 as claimed by it and whether it was ready as on the claimed date of deemed COD.

25. PGCIL has, submitted that as on the date of deemed COD as claimed by the Petitioner, the said Elements were not actually ready for the charging. PGCIL has mainly submitted as follows:

(a) As per Article 6.2 of the TSA dated 14.5.2013 which pertains to COD of the Project, the Petitioner had to terminate Element 2 and Element 3 at respective gantries of the concerned sub-stations built by PGCIL and subsequent to such termination, the said assets should have been in a condition to be successfully charged. Despite pending gantry end stringing activity with respect to Element 3, the Petitioner went ahead and declared deemed COD w.e.f 13.7.2016.

(b) PGCIL had also pointed out to the Petitioner vide its letter dated

12.8.2016 regarding very less clearance at Section AP 41/0 - AP 42/0 after crossing of the highway towards Bidadi side and to take up the necessary corrective actions, which was taken by the Petitioner only on 17.8.2016 for Element 3. The above facts that (i) the line was passing over a building with a clearance of merely 4 meters in violation of the Indian Electricity Rules, 1956 and was a threat to the lives of the people residing in that building; (ii) the Petitioner's request to defer the shutdown proposed from 10/11.8.2016 to 19/20.8.2016 clearly demonstrate the non-readiness of the line and wrong declaration of deemed COD of the line (i.e. 13.7.2016) by the Petitioner. PGCIL has placed on record the aforesaid correspondence along with photographs of Section AP 41/0 – AP 42/0 before demolition of the structure (right under the line) and after demolition.

(c) For Element 2: PGCIL's bays were ready on 12.9.2016 much before the alleged deemed COD declared on 19.9.2016 by the Petitioner for the above line. Charging clearance for bays was given by CEA on 19.9.2016 citing PGCIL's compliance letter dated 12.9.2016. Whereas the line was successfully charged on 22.9.2016. Thus, on completion of CEA inspection and fulfilment of all necessary requirements through coordinated efforts, the line was commissioned on 24.9.2016.

(d) The Petitioner has failed to issue 60 days' prior notice to CTUIL under Article 6.1.1 of the TSA intimating the intended date of connecting the transmission elements with its inter-connection facilities.

26. As per the above, PGCIL has contended that its bays were ready much before deemed COD on 19.9.2016 by the Petitioner for Element 2 and for Element 3 and the Petitioner's stringing work was left and there was infringement with a building which was pointed out by PGCIL.

27. We observe that Article 6.1.2 of TSA dealing with connection with the inter-connection facilities provides as under:

"6.1 Connection with the Inter-connection facilities

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

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

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

(a) **it has been completed in accordance with this Agreement and the Connection Agreement;**

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

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

Further, Article 6.2.1 of the TSA provides as under:

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

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

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

28. As per the above said provisions, the TSP is required to give the RLDC(s), CTU/STU as the case may be, the Long Term Transmission Customers and any others agencies at least sixty (60) days advance written notice of the date on which it intends to

connect an Element of the Project, which date shall be not earlier than its Scheduled CoD.

29. The Commission categorically asked the Petitioner during hearing on 3.9.2021 about Notices issued under Article 6.1 of the TSA for each element. The Petitioner vide affidavit dated 1.10.2021 has submitted as follows:

“under normal circumstances of construction and commissioning of a transmission line, the interconnection facility is made available first and line is considered ready only upon connection with such inter-connection facilities. Each of the three elements being constructed by KTL, the scope of KTL was completed prior to the inter-connection facilities being ready for connection. Accordingly, the KTL declared the commissioning in terms of Article 6.2.1 without physical connectivity to the inter-connection facilities. The notice under Article 6.1 could only have been issued when KTL was provided with inter-connection facilities at least 60 days prior to the anticipated date of commissioning of each of the element, which admittedly was not the case and accordingly, no notice under Article 6.1 could be issued prior to COD of the lines.”

30. As per above, the Petitioner has submitted that it did not issue the required notice under Article 6.1. Rather the Petitioner claimed that the interconnection facilities were to be made available first that too 60 days prior to anticipated date of commissioning of each element. We disagree with the contention of the Petitioner that notice under Article 6.1 was to be issued only in case of normal commissioning and not in case of deemed COD. Further, the inter-connection facility is planned to match the commissioning of line and cannot be 60 days prior to commissioning of line as it would entail transmission charges for inter-connection facility. Hence it is clear from submission of the Petitioner that it did not satisfy the requirements of TSA as far as notice under Section 6.1.1 of TSA is concerned.

31. Further, it is necessary to go through the correspondence exchanges between the parties for the intervening period.

32. PGCIL vide letter dated 25.7.2016 informed the Petitioner about the readiness of bays at Madhugiri and Bidadi for the Madhugiri-Bidadi transmission line also highlighted the pending stringing activity by the Petitioner. The relevant extracts of letter dated

25.7.2016 is as under:

Ref: PGC/SR-II/PSM/

Date 25.7.2016

To,
Kudgi Transmission Ltd.
#38 Cubbon Road, Bangalore-560001
Ph: 080-25020123

Sub: Implementation of Transmission system associated with NTPC Kudgi (3x800MW) in Phase-I)

Dear Sir,

This is with reference to the letter dated 14.7.2016 regarding the above subject matter. It is to inform that the termination arrangement at Bidadi and Tumkur are ready. However, it is learnt that stringing of Tumkur-Bidadi 400kV D/c is yet to be completed. It is requested to intimate us the anticipated date of readiness of the line.

Also, the 400 kV bays at Tumkur & Kudgi for termination of 765kV Kudgi-Tumkur KTL line are getting ready. It is requested to give us the schedule completion of the line for organizing CEA inspection and clearance of terminal bays.

It is also requested that commissioning team from KTL be deputed to Kudgi, Tumkur & Bidadi end for effective coordination during commissioning works.

33. Vide letter dated 9.8.2016, PGCIL again requested the Petitioner to complete the pending stringing activity and further informed as under:

“This is in continuation of our letter dated 25.7.2016 informing the readiness of termination arrangement at Bidadi and Tumkur substation of POWERGRID for termination of 400 KV Tumkur-Bidadi- 400 KV DC Line of M/S KTL. In this regard, it is found that gantry end stringing at Bidadi Sub-station is yet to be completed by M/s KTL. In order to make the interim termination arrangement. POWERGRID has proposed the shutdown of LILO of existing 400KV Somanhalli – Neelamganga feeder during 10th – 11th Aug’16. However, we are constrained to postpone the same due to the non-readiness of gantry side stringing at Bidadi SS end.

In this regard, it is requested to intimate us the expected completion date of the same. It is also requested that a copy of signature analysis of 400KV Tumkur – Bidadi 400KV D/c line of M/s KTL may be given to us for further review and confirmation of the complete readiness before commissioning.

Also, the 400kV bays at Tumkur and Kudgi substations of POWERGRID for termination of 765kV D/C Kudgi-Tumkur KTL line are getting completed and CEA inspection is scheduled during 12th-14th Aug’16. We are test charging the said termination bays immediately after CEA clearance. It is requested to inform us the anticipated completion of 765kV D/c Kudgi-Tumkur line and also requested a copy of signature analysis of the said line may be given to us for further review and confirmation of the complete readiness of the line before commissioning.

34. In response, the Petitioner vide letter dated 10.8.2016, requested PGCIL to defer the shutdown planned from 10/11.8.2016 to 19/20.8.2016 in order to complete the stringing to the gantry and to check its line once again to reconfirm healthiness. The relevant extracts of letter dated 10.8.2016 is as under:

To

The deputy General Manager – PMS (SRTS-II)
Power Grid Corporation of India Limited.
Bangalore

Sub: Kudgi Transmission Limited (KTL). Implementation of Transmission System associated with NTPC Kudgi (3x800 MW in Phase I) 0 Status of readiness of Transmission System being implemented by M/s KTL.

*Ref: 1) Our letter no. KTL PGCIL: SRTS-II: 2015-16/005 dated 27.06.2016
2) Your letter no. SRTS-II/Engg/1383 dated 30.06.2016
3) Our letter no KTL. PGCIL: SRTS-II: 2016-16/006 dated 08.07.2016
4) Minutes of Meeting with your Engineering dated 12.07.2016
5) Our letter no PGCIL: SRTS-II: 2015-16/007 dated 14.07.2016
6) Your letter no PGC/SR-II/PMS/ dated 09.08.2016*

Dear Sir,

This is with reference to above subject it is to be informed that our 400 kV D/C Madhugiri – Bidadi Transmission Line is inspected by CEA on July 1, 2016 and also the Approval for Energization obtained dated July 4, 2016. We have completed our scope of work from your Madhugiri S/S to our Dead-End tower at Bidadi S/S and were awaiting for your clearance to connect the line to your Bidadi S/S on 08.08.2016 vide email from Bidadi GIS.

In regards to this we have deployed our team at site to start the Stringing work from our Dead – End tower to the gantry and later connection to your line. Also as instructed we have to make the arrangements for connecting our line to your existing 400 kV Somanhalli-Neelmangala line near the Bidadi GIS for which we are yet to receive the material.

We are in readiness to complete the work for the gantry connection by 16.08.2016 (since there is Independence Day in between) and further our connection to your tower. Also, during the course we have started the process of checking the entire line once again to re-confirm the healthiness before energizing.

Considering the above we request you to kindly take the shut-down on 19.08.2016 and 20.08.2016 so that we do not have any slippage in the plan and we can get the line energized. Further, our Element 2 765 kV D/C Narendra (New) – Madhugiri Transmission line is getting inspected by CEA on 12.08.2016 to 14.08.2016. The readiness for charging of the same shall be conveyed to you after the CEA inspection and report thereof.

35. Further, PGCIL vide its Letter dated 12.8.2016 informed the Petitioner regarding very less clearance (of only 4 metres over the structures) noticed at Section AP 41/0 – AP 42/0 after crossing the highway towards Bidadi side and requested to take up necessary corrective action. The relevant extracts of letter dated 12.8.2016 is as under:

To,
M/s. L&T IDPL
Kudgi Transmission Ltd.
#38 Cubbon Road, Bangalore-560001

Kind Atten: Shri P G Suresh Kumar, Director.

Dear Sir,

Subject: Kudgi Transmission Limited (KTL)-Implementation of transmission System associated with NTPC Kudgi (3x800 in Phase I)-Clearance violation 400kV Madhugiri-Bidadi Transmission Line.

This has reference to your letter KTL; PGCIL: SRTS-II 2015-16/006 dated 28.7.2016 informing that your 400 kV D/C Quad Madhugiri-Bidadi Transmission line is complete in all respect and is ready for energisation process. In this regard, it is to inform you that, our site has reported a clearance infringement observed with respect to the hotel building constructed on the side of the highway, after crossing the highway towards Bidadi side, between loc. Nos. AP-41/0 & AP/41/0. It is reported that the clearance from the bottom conductor to the top of the building is only 4.0 Mtrs. You are requested, to please look into the matter immediately and take necessary steps to correct the same and ensure necessary clearance. Please also intimate the completion of corrective action..”.

36. Before granting any relief to the Petitioner, it has to be seen whether the Petitioner was ready to avail the inter-connection facilities being developed by PGCIL. A series of above referred correspondences reveal that as on 25.7.2016, there were pending stringing activity to be undertaken by the Petitioner. The Petitioner vide letter dated 10.8.2016, requested PGCIL to defer the shutdown planned from 10/11.8.2016 to 19/20.8.2016 in order to complete the stringing to the gantry and to check its transmission line once again to re-confirm healthiness. Thus, there were pending activities of the petitioner. Further, PGCIL vide its letter dated 12.8.2016 reported a clearance infringement observed with respect to the hotel building constructed on the side of the

highway, after crossing the highway towards Bidadi side, between loc. Nos. AP-41/0 & AP/41/0. As soon, as the Petitioner completed its pending activities, it got connected to the inter-connection facilities. The Petitioner has also violated Article 6.1.1 of the TSA and did not issue any Notice as required.

37. Accordingly, we are of the view that the Petitioner was not ready for getting connected to the inter-connection facilities. The Petitioner itself has contributed to delay in getting connected to inter-connection facilities. Therefore, the Petitioner shall not be liable for the transmission charges for Element 2 for the intervening period of declaration of deemed CoD till charging of the elements.

38. In terms of the aforesaid findings, the Petition No.135/MP/2018 stands disposed of.

Sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member