

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 108/TT/2016**

**Coram:**

**Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K Singh, Member**

**Date of Order : 09.05.2023**

**In the matter of:**

Reconsideration of the order dated 15.5.2018 in Petition No.108/TT/2016 and the order dated 30.12.2019 in Review Petition No.25/RP/2018 pursuant to the directions of Appellate Tribunal for Electricity in its judgment dated 18.8.2022 in Appeal No. 55 of 2022.

**And in the matter of:**

Teestavalley Power Transmission Limited,  
2<sup>nd</sup> Floor, Vijaya Building,  
17, Barakhamba Road, New Delhi – 110001.

**..... Petitioner**

**Vs**

1. Teesta Urja Limited,  
2<sup>nd</sup> Floor, Vijaya Building,  
17, Barakhamba Road, New Delhi-110001.
2. PTC India Limited,  
2nd Floor, NBCC Tower,  
15, Bhikaji Cama Place, New Delhi – 110066.
3. Energy and Power Department,  
Government of Sikkim,  
Kazi Road, Gangtok – 737101, Sikkim.
4. Sneha Kinetic Power Projects Private Limited,  
Sonam Complex, Jeevan Theng Marg Development Area,  
Near Little Pixel International School,  
Gangtok – 737101, Sikkim.
5. Powergrid Corporation of India Limited,  
Saudamini, Plot No.2, Sector 29,



Near IFFCO Chowk,  
Gurgaon – 122001, Haryana.

6. Punjab State Power Corporation Limited,  
The Mall, Patiala – 147001, Punjab.
7. Uttar Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Plot No. C16, Sector-6,  
Panchkula – 134109, Haryana.
8. Dakshin Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Vidyut Nagar,  
Hisar – 125005, Haryana.
9. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula – 134109, Haryana.
10. Ajmer Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road  
Ajmer– 305004, Rajasthan.
11. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur - 302005, Rajasthan.
12. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur – 342003, Rajasthan.
13. Rajasthan Urja Vikas Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jyoti Nagar Jaipur – 302005, Rajasthan.
14. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawa, 14, Ashok Marg,  
Lucknow – 226001, Uttar Pradesh.

...Respondents

**For Petitioner** : Shri Ankur Gupta, Advocate, TPTL  
Shri Tarun Johri, TPTL  
Ms. Sharda, TPTL

**For Respondents** : Shri Ashish Chandra Barnard, Advocate, PTC India Ltd.  
Shri Paramhans Sahani, Advocate, PTC India Ltd.



## ORDER

Appellate Tribunal for Electricity (hereinafter referred to as "APTEL") has set aside the orders dated 15.5.2018 in Petition No. 108/TT/2016 and 30.12.2019 in Review Petition No.25/RP/2018 to the limited extent of condonation of time over-run from 1.7.2016 to 14.11.2016, vide judgment dated 18.8.2022 in Appeal Nos. 55 of 2022, and has remanded the matter to the Commission with the direction to reconsider the same in the light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings. The relevant portion of the APTEL judgment dated 18.8.2022 is as follows:

*“6. In the above facts and circumstances, we set aside the impugned order to the extent thereby the prayer for condonation of delay for the period 01.07.2016 to 14.11.2016 has been declined. The issue to that extent is remitted to the Central Commission with a direction to consider it again in light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings. Given the contrary view taken vis-à-vis Circuit 1(b) by the subsequent order dated 22.01.2020, it will be advisable for the Central Commission to bear in mind the approach taken in such other matter as well. “*

### Background

2. Brief facts of the matter are as follows:

- a) Teestavalley Power Transmission Limited (“TPTL/Petitioner”) filed Petition No. 108/TT/2016 for determination of tariff for 400 kV D/C Teesta III HEP-Rangpo Section upto LILO point at Rangpo under Teesta III Rangpo Section for the control period of 2014-19 under Section 62 and Section 79(1)(d) of the Electricity Act, 2003.
- b) The annual fixed cost was granted for 400 kV D/C Teesta III HEP-Rangpo Section upto LILO point at Rangpo under Teesta III Rangpo Section on provisional basis for inclusion in the PoC charges as provided under Regulation 7(7) of the Central Electricity Regulatory Commission (Terms and



Conditions of Tariff) Regulations, 2012 (hereinafter referred to as “2014 Tariff Regulations”) vide order dated 26.10.2016. The Petitioner was informed that the tariff approved vide order dated 26.10.2016 could not be considered on pro-rata basis for one circuit of 400 kV D/C Teesta III Rangpo line and was advised to claim tariff separately for each circuit of Teesta III-Rangpo line. Accordingly, the Petitioner claimed tariff separately for the elements as shown below:

Srl. No.	Name of the Asset
1	Circuit-2: 400 kV D/C Teesta III-Rangpo line (One ckt line from Powergrid LILO point to gantry tower at Teesta-III)
2	Circuit-1(a): 400 kV D/C Dikchu-Teesta-III line (One ckt line from Teesta-III switchyard to LILO tower of Dikchu)
3	Circuit-1(b): 400 kV D/C Dikchu HEP-Rangpo line (One ckt line)

c) The Commission vide order dated 15.5.2018 in Petition No. 108/TT/2016 approved tariff for Circuit-2 and Circuit-1(a) and tariff was not allowed for Circuit-1(b) as it was not put into commercial operation. The relevant portion of the order dated 15.5.2018 is as follows:

*“25. Circuit 1(b) is not commissioned yet and it is not certain when it will achieve its COD. Accordingly, we are not inclined to grant tariff for Circuit 1(b) in the present petition. The Petitioner is directed to file a fresh petition after the COD of Circuit 1(b).”*

d) While allowing the tariff of Circuit-2 and Circuit-1(a) for 2014-19 tariff period, the Commission declined to condone the time over-run in case of Circuit-2 and Circuit-1(a) from 1.7.2016 to 14.11.2016 (4 months and 13 days) as the Petitioner did not explain the reasons for delay in time taken for stringing. The relevant portion of the order dated 15.5.2018 is as follows:

*“47. We have considered the submissions of the Petitioner. The delay in obtaining the approval under Section 164 of the Electricity Act, 2003 was subsumed by the time taken for obtaining the forest approval. As per the Forest (Conservation) Amendment Rules, 2004 notified by the MoEF dated 3.2.2004, the timeline for forest approval is 210 days by the State Government (Stage-I)*



and 90 days by Forest Advisory Committee of the Central Government (Stage-II) i.e. total of 300 days. In the instant case, the Petitioner applied for forest clearance on 7.12.2009, IA on 9.11.2009 and obtained the same on 7.9.2011. Thus, it took 17 months and 6 days, from the date of financial closure, for obtaining the forest clearance. As the timeline specified for issue of forest clearance is 10 months, we are of the view that time period beyond 10 months is not within the control of the Petitioner. Accordingly, 7 months and 6 days taken beyond 12 months for obtaining forest clearance is condoned. 48. The other major reason for time over-run in the instant case is the RoW issues. The Petitioner faced RoW problems from 22.7.2011 to 26.3.2016 at location nos. 9/1, 10, 11, 12/2, 14A, 14B, 14C, 14N, 15, 16, 17/1, 18, 14N, 17, 36A, 42, 4361-62.

48. The Petitioner has submitted the correspondence made with various authorities to sort out the RoW issues and the documents in support of the same. We have considered the justification and the documents submitted by the Petitioner. The Petitioner has faced RoW problems from 22.7.2011 to 26.3.2016 that was beyond the control of the petitioner. As per the Petitioner's affidavit dated 18.9.2017, the tower foundation and erection work was to be completed by 31.12.2012 and stringing was to be completed by 31.1.2013. Thus, the Petitioner provided for one month for completion of stringing after the completion of tower foundation and erection work. But, it is observed that though the RoW issues were resolved on 26.3.2016, the stringing was completed on 14.11.2016 and Circuit 2 and Circuit 1(a) were ready for commissioning only on 26.11.2016 and 24.11.2016 respectively. Even in the instant case, the petitioner completed tower foundation and erection on 1.6.2016. Hence, as per the planned timeline, it should have completed stringing by 11.7.2016 which was actually completed on 14.11.2016. The Petitioner has not explained the reasons for delay in stringing time taken from 1.7.2016 to 14.11.2016. Hence, this period from 1.7.2016 to 14.11.2016 (4 months 13 days) is not condoned for both Circuit 2 and Circuit 1(a)."

- e) Aggrieved with the Commission's decision of non-condonation of time over-run from 1.7.2016 to the COD of the respective assets and double deduction of ₹858.01 lakh in case of Circuit-2, the Petitioner filed Review Petition No. 25/RP/2018 seeking review of the order dated 15.5.2018 in Petition No.108/TT/2016.
- f) The Petitioner in the said review petition had contended that in spite of specific submissions made in the main petition, time over-run on account of delay in stringing work due to issues with landowners was condoned by the Commission. The Petitioner had also placed on record on additional documents over and above what was submitted earlier in Petition No.



108/TT/2016 which the Commission did not consider.

- g) The Commission vide order dated 30.12.2019 in Petition No. 25/RP/2018 declined to grant any relief as the documents submitted by the Petitioner in the main petition were already considered in order dated 15.5.2018 and with respect to additional documents, the Commission observed that the Petitioner had failed to exercise due diligence in bringing facts on record and its failure cannot be entertained at the stage of review. The relevant portion of the order dated 30.12.2019 is as follows:

*“12. It is observed that the Commission considered the time over-run due to landowners resistance beyond the vacation of stay by order of Hon’ble High Court of Sikkim dated 26.3.2016, up to 30.6.2016. Further, the Commission while arriving at its finding of condonation of delay due to RoW issues also took into consideration all the documents on record. In support of its claim for condonation of time over-run beyond 30.6.2016, TPTL has not placed any document on record in the main petition. The documents submitted by TPTL were already considered in the order dated 15.5.2018 and there is no merit in TPTL’s contention that the documents submitted by TPTL were not considered by the Commission.*

*13. TPTL has submitted two set of documents in the instant Review Petition as “Annexure 2 – High court order and Correspondence between TPTL & respective authorities,” and “Annexure 3 – Correspondence between TPTL & respective authorities”. The documents at Annexure 2 were filed by TPTL in the main petition and they were already considered by the Commission in order dated 15.5.2018 as stated above. TPTL has filed four documents as Annexure 3 in the instant Review Petition, which were not submitted in the main petition. These documents are dated 3.5.2016, 17.8.2016, 19.8.2016 and 8.9.2016. Two of the documents were written by TPTL, one document is from Energy and Power Department, Sikkim to TPTL and the other is an order issued by District Magistrate, East Sikkim where TPTL is a party. Thus, all the four documents were in the knowledge of TPTL. The Commission, vide Record of Proceedings dated 11.7.2017 in main petition, directed TPTL to submit the detailed reasons and chronology of time over-run alongwith documentary proof and TPTL vide affidavit dated 8.9.2017 submitted the documents in support of its claim. Thus, TPTL had been given opportunity in 2017 in the main petition to submit the reasons for time over-run alongwith documentary proof. However, TPTL did not file these documents in the main petition and has filed them now in the instant Review Petition. During the hearing in the instant matter on 22.1.2019, learned counsel for TPTL submitted that the letter dated 17.8.2016 addressed to the District Collector, East Sikkim and 8.9.2016 requesting Superintendent of Police, East Sikkim to intervene and provide police protection to TPTL site officials were not readily available with it and it came in its possession subsequently. Both the letters referred by TPTL during the hearing were written by TPTL and the other two documents filed as Annexure 3 in the instant Review*



*Petition were within the knowledge of TPTL. We are not able to agree with TPTL that the said documents were not in its possession during the proceedings in the main petition. We are of the view that TPTL has failed to exercise due diligence in bringing facts on record and its failure cannot be entertained at the stage of review ignoring the provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908, Thus, there is no error on the face of record or other sufficient reason which mandates review or modification of the Commission's decision to disallow part of the time over-run."*

h) Aggrieved with the order dated 15.5.2018 in Petition No. 108/TT/2016 and the order dated 30.12.2019 in Review Petition No.25/RP/2018, Petitioner filed an appeal before APTEL bearing Appeal No. 55 of 2022. APTEL vide judgment dated 18.8.2022, has partially set aside the Commission's orders and remanded the matter to the Commission with the direction to reconsider the time period from 1.7.2016 to 14.11.2016 in the light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings.

i) The Petitioner filed Petition No.368/TT/2018 claiming tariff for Circuit-1(b), i.e. 400 kV D/C Dikchu HEP-Rangpo line (One ckt line) claiming its date of commercial operation as 2.7.2018. The scheduled COD of the transmission project, including Circuit-1(b), was 28.2.2013 and as it was put into commercial operation on 2.7.2018, therefore there is a time over-run of 1950 days. The entire over-run upto 2.7.2018 was condoned by the Commission vide order dated 22.1.2020 in Petition 368/TT/2018.

3. The instant petition is reopened as per APTEL's direction in judgment dated 18.5.2022 for reconsideration of issue of time over-run in case of Circuit-2 and Circuit-1(b) in the light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings.



4. The instant petition was heard on 9.2.2023. The learned counsel for the Petitioner submitted that the information/ documents which were filed by the Petitioner vide affidavit dated 19.8.2017 in Petition No.108/TT/2016 were in response to the queries raised by the Commission in RoP dated 11.7.2017. He also submitted that the time over-run was due to RoW issues in the stringing of the Circuit-2 and Circuit-1(a) leading to time over-run of 31 months from August 2013 to March 2016 and afterwards due to the hurdles created by the local landowners which could be cleared in November 2016 on the intervention of the administration. He prayed that the documents placed in the Review Petition No. 25/RP/2018, which were not considered at the stage of review, may be considered as per the APTEL's direction.

5. The Commission directed the Petitioner to submit the documents placed in the Review Petition No. 25/RP/2018 by 20.2.2023 with an advance copy to the Respondents and Respondents to file their reply by 6.3.2023 and the Petitioner to file rejoinder, if any, by 17.3.2023.

**Written submissions of the Petitioner**

6. Pursuant to the directions of the Commission vide RoP dated 9.2.2023, the Petitioner has filed its written submissions dated 20.2.2023, wherein the following submissions are made praying of condoning the time over-run in stringing time taken from 1.7.2016 to 14.11.2016 (4 months and 13 days) in respect of Circuit-2 and Circuit-1(a):

- (a) The time over-run of 1995 days in case of Circuit-1(b) of same transmission project i.e. 400 kV D/C Teesta Teesta-III to Rangpo Section upto LILO point at Rangpo due to RoW issues was condoned vide order dated 22.1.2020 in





Petition No.368/TT/2018. Accordingly, the time over-run of 4 months and 13 days in case of Ckt-2 and Ckt-1(a) may also be condoned.

(b) The Petitioner vide affidavit dated 16.9.2017, filed in response to the queries raised by the Commission in Petition No.108/TT/2016, had submitted a detailed explanation for the time over-run till November 2016, while stating that RoW issues were resolved only after the intervention of District Collector and stringing work started in October, 2016 and completed in November, 2016. The reasons for time over-run in stringing works as submitted vide affidavit dated 16.9.2017 is as follows:

Sl. No.	ACTIVITY	PERIOD OF ACTIVITY		REASON FOR TIME OVER-RUN
		PLANNED	ACHIEVED	
10.	Stringing	31.1.2013	14.11.2016	<p>(1) Delay due to Tower Foundation &amp; Erection Commencement of stringing activity was delayed due to delay of tower foundation and erection as mentioned above.</p> <p>(2) ROW issue at tower location AP 9/1-10. ROW issues have hampered stringing activity between tower location /span 9/1-10 due to construction of house built near the location after detailed survey and commencement of work in the preceding locations. This caused a delay of more than 17 months (531 days) i.e. 17.05.2013 to 30.10.2014. For further details and documentary evidence, please refer paragraph 4.10.1 (Page No. 0022) of the Petition No. 108/TT/2016 submitted on 24.06.2016.</p> <p>(3) ROW issues at tower location AP 10 - ROW issues have hampered construction activities in this location as work was stopped by locals who demanded compensation more than the compensation approved by local authority. This caused a delay of</p>



				<p>more than 15 months i.e. from 12.08.2013 to 30.10.2014. For further details and documentary evidence, please refer Serial No. 2 (Page No. 0026) of Petition No. 108/TT/2016 submitted on 24.06.2016.</p> <p>(4) ROW issues at tower location AP- 11- ROW issues have hampered construction activities in this location because even after joint inspection with revenue official and land owner, the owner did not sign the NOC. This caused a delay of more than 31 months i.e. from 13.08.2011 to 01.03.2014. For further details and documentary evidence, please refer Serial No. 2 (Page No. 0026) of Petition No. 108/TT/2016 submitted on 24.06.2016 and letter to district collector (Page No. 0873) of Petition No. 108/TT/2016.</p> <p>(5) ROW issues between tower location/span AP 61-62. ROW issues have hampered construction activities in this location as landowners did not allow construction work in this area and filed petition in High Court Lok Adalat and then to High court in Sikkim against construction works in these locations. This caused delay of 31 months from August 2013 to March 2016. The decision of Sikkim high court was delivered on 26 March 2016 and even after that the local landowner kept on creating hurdles and did not allow the work of stringing to be commenced there. Finally, after the intervention of the District Collector the matter could be resolved and stringing work started on October 2016 and completed in November 2016. For further details and documentary evidence, please refer para 4.10.5 (Pg. No.0025) of Petition No. 108/TT/2016 submitted on 24.06.2016.</p>
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				(6) ROW issues at tower location/span AP 42, 43 - Landowner was not allowing the stringing works in spite of the TPTL seeking for Police. This caused delay of 10 months from November 2015 to September 2016, please refer paragraph 4.10.5 (Page No. 0028) of Petition No. 108/TT/2016 submitted on 24.06.2016.
11.	Testing & Commissioning	28.2.2013	24.11.2016	(1) Testing & Commissioning was delayed due to delay in tower foundation, Erection and Stringing works as mentioned above. (2) Testing & Commissioning was also delayed due to completion of stringing in the last span i.e. location 61-62 which was completed in November 2016 after resolution of court cases in March 2016 and further consent of the landowners in November 2016.

(c) The Petitioner had given detailed explanation for time over-run in stringing works of tower AP 61-62 till November 2016, in the original Petition No 108/TT/2016.

(d) The Commission in order dated 15.5.2018 in Petition No. 108/TT/2016 took note of the submissions of the Petitioner, which is as follows:

*“v) Tower Location AP 61-62: .....  
Finally, the High Court of Sikkim vide Order dated 26.03.2016 disposed the Writ Petition in favor of the Petitioner. In spite of High Court decision, landowners were not allowing stringing works. The Petitioner vide letter dated 30.03.2016 requested SP East Sikkim to intervene to enable completion of priority line. The matter is still unresolved and pending before ROW issues with intimation to the Petitioner on 03.05.2016.”*

(e) The Petitioner had always maintained that despite the judgment of Hon'ble High Court of Sikkim dated 26.3.2016, the RoW issues could not be resolved, as the landowners were not allowing stringing works, resulting in delays, beyond the control of the Petitioner. Therefore, the conclusion drawn that RoW



issues were resolved by 26.3.2016, are contrary to the documentary evidence on record.

- (f) The Petitioner's letter dated 30.3.2016 and Notification dated 8.4.2016 enclosed with Petition No.108/TT/2016, clearly establish that RoW issues were not resolved as on 26.3.2016.
- (g) Perusal of additional documents i.e. letter dated 17.8.2016 issued to the District Collector, East Sikkim; order dated 19.8.2016 passed by the District Magistrate, East Sikkim in Misc. Case No.207 of 2016 and letter dated 8.9.2016 issued to the Superintendent of Police, East Sikkim, shows that RoW issues were not resolved on 26.3.2016 as observed in order dated 15.5.2018 in Petition No. 108/TT/2016.
- (h) Therefore, the documents placed on record corroborated the fact that delay in stringing works w.e.f. 1.7.2016 till 14.11.2016 i.e. (4 months and 13 days) had resulted due to existence of RoW issues, which were completely beyond the control of the Petitioner.

7. The Commission vide letter dated 15.3.2023 raised certain queries in respect of delay in stringing works w.e.f. 1.7.2016 till 14.11.2016 i.e. (4 months and 13 days). The Petitioner vide affidavit dated 22.3.2023 has filed its response to the queries raised by the Commission. The Petitioner has submitted that due to RoW issues in span of tower location no. AP 61-AP, 62-AP and AP-63 i.e. 1.5 km, construction activities were hampered since August, 2013. The gist of the submissions made by the Petitioner are as follows:

- (a) On 26.9.2013, Shri S.T. Bhutia (affected persons') submitted written application to the concerned District Collector (DC) raising their concerns.



The DC after more than 3 months obtained spot verification report from the concerned administration on 10.1.2014.

(b) Thereafter on 3.6.2014, after lapse of another 5 months, affected persons filed pre-litigation stage petition before High Court, Lok Adalat for amicable settlement. The Hon'ble High Court of Sikkim, Lok Adalat, vide order dated 9.8.2014 directed DC to make efforts to resolve disputes and submit Compliance Report. The said report was submitted by DC on 5.9.2014. The Hon'ble High Court of Sikkim, vide its order dated 6.9.2014 disposed of the matter as not settled.

(c) On 12.12.2015, the affected persons filed a Writ Petition (C) No.47 of 2014 before the Hon'ble High Court of Sikkim and vide its order dated 9.2.2015, the Hon'ble High Court of Sikkim directed the Petitioner to maintain *status quo* in respect of stringing works over land of affected persons. Finally, the Hon'ble High Court of Sikkim vide judgment dated 26.3.2016, disposed of the Writ Petition in favour of the Petitioner.

(d) The Petitioner has submitted that in spite of High Court judgment dated 26.3.2016, the landowners were not allowing the Petitioner to carry out stringing works.

(e) Accordingly, the Petitioner vide letter dated 30.3.2016 requested S.P., East Sikkim, to intervene to enable completion of priority line. Further, Energy and Power department vide its letter dated 3.5.2016, informed the Petitioner that on 8.4.2016 Government of Sikkim, Home Department constituted committees to address RoW issues of the transmission corridor of the 400 kV D/C Quad Moose Teesta-III to Kishanganj Transmission Line. However, the matter remained unresolved. Thus, the Petitioner continued



to face stiff resistance from the landowners and requested district administration and police for necessary support in resolving the issue. The Petitioner has placed the following correspondences in support of the time over-run till November 2016:

(i) The Petitioner vide its letter dated 17.8.2016 to the District Collector, East Sikkim submitted that out of the Priority portion (36 km) of the line, only stringing of 1.5 km (i.e. location No. AP-61, AP-62 and AP-63) was pending, due to fresh compensation issue being raised by Shri Bhutia (landowner).

(ii) The Petitioner again approached Superintendent of Police, East Sikkim vide letter dated 8.9.2016, requesting to intervene and provide police protection to TPTL site officials due to stiff resistance and possibility of manhandling by landowners who were not allowing stringing works between the location no. AP-61, AP-62 and AP-63.

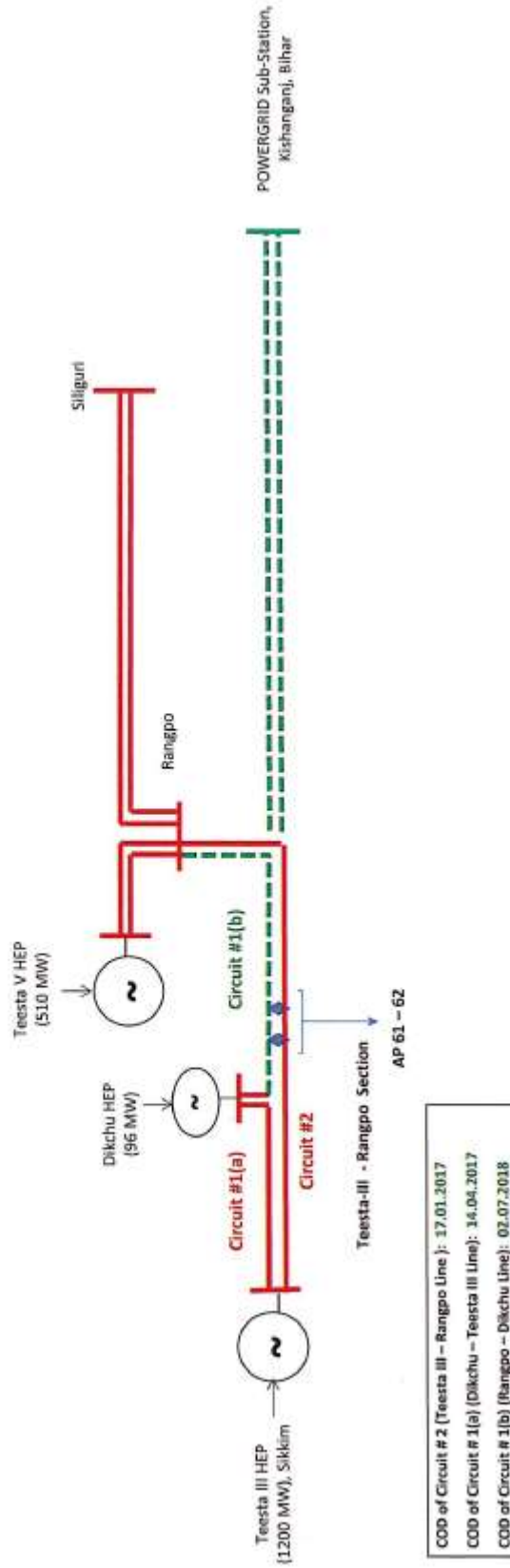
(iii) The issue was finally resolved with the help of the District Administration and the stringing works between the location no. AP-61, AP-62 and AP-63 could resume on 25.9.2016 and got completed before 15.11.2016 (the compliance report submitted to CEA).

(f) The Petitioner has also submitted the following SLD:





## Single Line Diagram



## **Analysis and Decision**

8. We have perused the APTEL's judgement dated 18.5.2022 in Appeal No. 55 of 2022 and the submissions made by the learned counsel for TPTL after remand. APTEL has set aside the Commission's orders and has remitted back the matter to the Commission with the direction to reconsider the time period from 1.7.2016 to 14.11.2016 in the light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings. The relevant extract of the APTEL's judgement dated 18.8.2022 is as follows:

*"6. In the above facts and circumstances, we set aside the impugned order to the extent thereby the prayer for condonation of delay for the period 01.07.2016 to 14.11.2016 has been declined. The issue to that extent is remitted to the Central Commission with a direction to consider it again in light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings. Given the contrary view taken vis-à-vis Circuit 1(b) by the subsequent order dated 22.01.2020, it will be advisable for the Central Commission to bear in mind the approach taken in such other matter as well.*

9. It is observed that tariff for 400 kV D/C Teesta III Rangpo line was claimed by the Petitioner separately and accordingly Petitioner claimed tariff for Circuit-2, Circuit-1(a) and Circuit-1(b) separately. Tariff for Circuit-2 and Circuit-1(a) has been dealt in Petition No. 108/TT/2016 and tariff for Circuit-1(b) has been dealt in Petition No. 368/TT/2018.

10. As per the Investment Approval (IA), the project was scheduled to be commissioned within 35 months from the date of financial closure. The date of financial closure was 31.3.2010. Accordingly, the scheduled date of commercial operation (SCOD) was 28.2.2013. The COD of Circuit 2, Circuit 1(a) and Circuit 1(b) was approved as 17.1.2017, 14.4.2017 and 2.7.2018 respectively. Thus, there was a time over-run of 46 months and 20 days, 49 months and 17 days and 64.11 months (i.e. 1950 days) respectively. The Petitioner has submitted that the time over-run was due





to (a) delay in grant of approval under Section 164 of the Electricity Act, 2003, (b) delay in accord of forest clearance, (c) force majeure events viz. earthquake, collapse of Ranchang Khola Bridge, (d) delay on account of Right of Way issues, (e) delay due to stay granted by the High Courts of Delhi and Sikkim, (f) blockage of National Highway 31A due to Gorkhaland Movement, and (g) delay in erection, stringing and civil works including foundation due to geological surprise. The Petitioner submitted that the reasons for time over-run are common for the Circuits 2, 1(a) and 1(b) of Teesta III-Rangpo section and detailed justification of time over-run has been submitted.

11. It is observed that the instant assets were scheduled to be put into commercial operation on 28.3.2013 against which Circuit-2 and Circuit-1(a) achieved COD on 17.1.2017 and 14.4.2017 respectively within a time-over run of 46 months and 20 days in case of Circuit 2, 49 months and 17 days in case of Circuit 1(a). It is observed that the Commission in its order dated 15.5.2018 in Petition No 108/TT/2016 had condoned the entire time over-run except for the period of time over-run from 1.7.2016 to 14.11.2016 as the Petitioner did not submit the reasons for that period of time. The relevant portion of the order dated 15.5.2018 is extracted hereunder.

*“48. The other major reason for time over-run in the instant case is the RoW issues. The Petitioner faced RoW problems from 22.7.2011 to 26.3.2016 at location nos. 9/1, 10, 11, 12/2, 14A, 14B, 14C, 14N, 15, 16, 17/1, 18, 14N, 17, 36A, 42, 4361-62. The Petitioner has submitted the correspondence made with various authorities to sort out the RoW issues and the documents in support of the same. We have considered the justification and the documents submitted by the Petitioner. The Petitioner has faced RoW problems from 22.7.2011 to 26.3.2016 that was beyond the control of the petitioner. As per the Petitioner’s affidavit dated 18.9.2017, the tower foundation and erection work was to be completed by 31.12.2012 and stringing was to be completed by 31.1.2013. Thus, the Petitioner provided for one month for completion of stringing after the completion of tower foundation and erection work. But, it is observed that though the RoW issues were resolved on 26.3.2016, the stringing was completed on 14.11.2016 and Circuit 2 and Circuit 1(a) were ready for commissioning only on 26.11.2016 and 24.11.2016 respectively. Even in the instant case, the petitioner completed tower foundation and erection on 1.6.2016. Hence, as per the planned*



*timeline, it should have completed stringing by 11.7.2016 which was actually completed on 14.11.2016. The petitioner has not explained the reasons for delay in stringing time taken from 1.7.2016 to 14.11.2016. Hence, this period from 1.7.2016 to 14.11.2016 (4 months 13 days) is not condoned for both Circuit 2 and Circuit 1(a)."*

12. As regard to Circuit 1(b), the same was dealt in Petition No. 308/TT/2018. The instant asset was scheduled to be put into commercial operation on 28.2.2013, against which the asset was put into commercial operation on 2.7.2018 after a time over-run of about 1955 days. The Petitioner while explaining the reasons for time over-run in case of Circuit 1(b) had submitted that the reasons for time over-run are common for the Circuits 2, 1(a) and 1(b) of Teesta III-Rangpo section. Accordingly, the Commission while taking into consideration order dated 15.5.2018 in Petition No. 108/TT/2016 wherein the time over-run from 22.7.2011 to 26.3.2016 was condoned, the Commission vide order dated 20.1.2020 in Petition No. 368/TT/2018 condoned the entire time-over run from 28.1.2013 to 26.6.2018 being not attributable to the Petitioner. The relevant extracts of the order dated 20.1.2020 in Petition No. 368/TT/2018 is as follows:

*"24. The Commission has already condoned the time over-run from the scheduled COD of 28.2.2013 to the actual COD of 17.1.2017 and 14.4.2017 in case of Circuit 2 and Circuit 1(a) respectively, except for the period of time over-run from 1.7.2016 to 14.11.2016, as the reasons for time over-run were not attributable to the Petitioner. The same set of reasons is also applicable to the instant asset, i.e. Circuit 1(b). The time over-run with respect to RoW problems pertaining to Circuit 1(a) and Circuit 2 for the time period from 22.7.2011 to 26.3.2016 has already been condoned. Therefore, the time overrun upto 26.3.2016 in case of the instant asset is condoned and we examine the time over-run beyond 26.3.2016 in the following paragraphs.*

*25. The petitioner has submitted that Circuit-1(b) could not be put into commercial operation alongwith Circuit-1(a) due to RoW problems faced by the Petitioner at tower location No 36A, hindrances created by land owners between tower location No 61 and 62 and 42 and 43 and hindrances created by house owners against dismantling of houses which has been constructed during the construction period of the line. We have gone through the correspondence made by the Petitioner with the various government authorities and other agencies. It is observed that the Petitioner has completed the construction of Circuit-1(b) in all respects, including stringing, on 15.11.2016 but the Petitioner has faced RoW problems at location No 36A, 61 and 62, 42 and 43. The Petitioner has faced RoW problems at tower location No. 36A from 23.1.2013 to 26.6.2018, tower location No 42 and 43 from 26.11.2015 to 12.8.2016, tower location No. 61 and 62 from 26.9.2013 to 11.11.2016. It is further observed that the ELIM*



*Church authorities constructed illegal Church below the transmission line due to which the Circuit-1(b) could not been charged. As per the chronology of the activities for time over-run submitted by the Petitioner, it is observed that the Petitioner has completed construction activities including stringing on 15.11.2016 but the Petitioner has faced RoW problems at Location No. 36A. The Petitioner has submitted that the RoW problems at location No. 36A started from 29.1.2013 and was finally resolved on 26.6.2018. The Commission has already condoned the time over-run due to RoW problems at locations No. 9/1, 10, 11, 12/2, 14A, 14B, 14C, 14N, 15, 16, 17/1, 18, 14N, 17, 36A, 42, 43, 61 and 62 upto 26.3.2016. The Petitioner has submitted documentary evidence in support of RoW problems faced by the Petitioner from 28.1.2013 to 26.6.2018 at location No. 36A. The time over-run at location No. 42 and 43, 61 and 62 is subsumed in the RoW problems faced by the Petitioner at location No. 36A. Accordingly, the time over-run at location No. 42 and 43, 61 and 62 is not dealt separately. We are of the view that the time over-run from 28.1.2013 to 26.6.2018 is due to RoW problems and it was beyond the control of the Petitioner and the same is accordingly condoned. Therefore, the total time delay of about 1995 due to Row problems is condoned. In view of the above, the IDC and IEDC for the period of time over-run of 1950 days are allowed to be capitalized.”*

13. The Petitioner being aggrieved by the disallowance of time over-run from 1.7.2016 to 14.11.2016 of Circuit 2 and Circuit 1(a) filed Review Petition No. 25/RP/2018. In the said review petition, the Petitioner submitted that the time over-run for the period 1.7.2016 to 14.11.2016 i.e. 4 months and 13 days, was not condoned on the ground that TPTL did not explain the time taken for stringing of Circuit No. 2 and Circuit No. 1(a). The Petitioner in the review Petition submitted that specific submissions were made in the main petition for the said duration of time over-run but the Commission inadvertently did not take into consideration the time over-run after the Hon'ble High Court of Sikkim disposed the case filed by the land owners vide order dated 26.3.2016 in favour of TPTL and thereby vacating the stay against stringing work. Further, in spite of High Court decision, landowners did not allow stringing works. TPTL vide letter dated 30.3.2016 requested Superintendent of Police, East Sikkim to intervene to enable completion of the instant transmission assets. A Committee was formed by Government of Sikkim on 8.4.2016 to resolve RoW issues. However, the matter remained unresolved and was only resolved with the intervention of the district administration on 25.9.2016. As per the compliance



report submitted to CEA, the work was completed before 15.11.2016. The Petitioner submitted that the above facts were not considered in order dated 15.5.2018, thereby resulting in non-condonation of delay for the period 1.7.2016 to 14.11.2016 i.e. 4 months and 13 days.

14. The Petitioner had filed an appeal before the APTEL being aggrieved by the Commission's order dated 15.5.2018 in Petition No. 108/TT/2016 and order dated 30.12.2019 in Review Petition No.25/RP/2018. APTEL vide its judgment has 18.8.2022 in Appeal No. 55 of 2022 has allowed the appeal and has remanded back the matter to the Commission with the direction to consider the limited issue of time over-run with respect to Circuit 2 and 1(a) in the light of the pleadings and entire material submitted in support including the additional documents presented in the review proceedings.

15. Pursuant to the directions of the APTEL and petition was taken up for hearing on 9.2.2023. It is observed that the Commission vide its order dated 15.5.2018 in Petition No. 108/TT/2016 had condoned the entire time over-run except for the period 1.7.2016 to 14.11.2016 as the Petitioner failed to explain the reasons for delay in stringing time taken from 1.7.2016 to 14.11.2016. The relevant extract of the order dated 15.8.2018 is extracted as under:

“ .....

*48. We have considered the justification and the documents submitted by the Petitioner. The Petitioner has faced RoW problems from 22.7.2011 to 26.3.2016 that was beyond the control of the petitioner. As per the Petitioner's affidavit dated 18.9.2017, the tower foundation and erection work was to be completed by 31.12.2012 and stringing was to be completed by 31.1.2013. Thus, the Petitioner provided for one month for completion of stringing after the completion of tower foundation and erection work. But, it is observed that though the RoW issues were resolved on 26.3.2016, the stringing was completed on 14.11.2016 and Circuit 2 and Circuit 1(a) were ready for commissioning only on 26.11.2016 and 24.11.2016 respectively. Even in the instant case, the petitioner completed tower foundation and*



*erection on 1.6.2016. Hence, as per the planned timeline, it should have completed stringing by 11.7.2016 which was actually completed on 14.11.2016. The petitioner has not explained the reasons for delay in stringing time taken from 1.7.2016 to 14.11.2016. Hence, this period from 1.7.2016 to 14.11.2016 (4 months 13 days) is not condoned for both Circuit 2 and Circuit 1(a)."*

16. On perusal of the order dated 15.5.2018, it is observed that Commission took a view that RoW issues were resolved on 26.3.2016 and stringing work was completed on 14.11.2016. Hence, the Commission took a view that since the Petitioner did not explain the reasons for delay in stringing time taken 1.7.2016 to 14.11.2016, the said period was not condoned. However, on perusal of the following additional documents submitted by the Petitioner shows that inspite of High Court decision dated 23.3.2016, landowners did not allow stringing works even after 23.3.2016:

(a) The Petitioner's letter dated 30.3.2016 to superintendent of Police, Sikkim apprising about the resistance made by the land owners against the start of stringing work despite the Hon'ble High Court judgment dated 26.3.2016 and seeking police assistance for carrying out stringing activities and thereafter a Committee being formed by Government of Sikkim on 8.4.2016 to resolve RoW issues.

(b) Thereafter on 3.5.2016, the Petitioner was intimated about the constitution of the Committee formed by Government of Sikkim for addressing the RoW issues.

(c) On 17.8.2016, Petitioner wrote a letter to District Collector, Sikkim and apprised that out of the total length of 35.688 km of the priority section, 34.188 km was completed and only 1.5 km comprising three sections was pending for stringing due to hindrances created by land owners. Accordingly,



the Petitioner sought police intervention so that the matter could be resolved and the stringing work in three sections of East Sikkim could be completed.

(d) Thereafter Petitioner filed Misc. Case No. 207 of 2016 before the District Magistrate (DM), East Sikkim and DM vide order dated 19.8.2016 permitted the Petitioner to exercise their powers to place the transmission lines as empowered under the Telegraph Act, 1885.

(e) On 8.9.2016, the Petitioner wrote a letter requesting Superintendent of Police, East Sikkim to intervene and provide police protection to TPTL site officials against the possible manhandling and threatening by the landowners against the carrying out of stringing work by the Petitioner.

17. Therefore, taking into consideration the above documents, we are of the view that though High Court decision on the dispute relating to the Right of Way (RoW) issues was rendered on 26.3.2016, the resistance from the land owners had continued beyond 23.3.2016 as a result of which the Petitioner had to approach the civil authorities/police for aid and assistance. On perusal of the correspondences exchanged during the period 1.7.2016 to 14.11.2016, it is clear that the stringing work started in October, 2016 and the Petitioner was not able to complete the same in November, 2016, with the assistance civil authorities. Accordingly, we condone the time over-run from 17.2016 to 14.11.2016 (4 months & 13 days) which was due to RoW issues and was not attributable to the Petitioner.

18. The consequential revision in tariff of Circuit 2 and Circuit 1(a) due to condonation of the time over-run from 1.7.2016 to 14.11.2016 will be considered at the time of truing up of the 2019-24 tariff period.



19. Petition No. 108/TT/2016 (on remand) is disposed of in terms of the above discussions and findings.

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

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

**sd/-**  
**(I. S. Jha)**  
**Member**

