



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Petition No. 2105 of 2024**

**QUORUM**

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

**IN THE MATTER OF**

Application under Section 63 read with Section 86(1)(a) & (c) of the Electricity Act, 2003 for adoption of Transmission Charges with respect to the Transmission System being established by Tirwa Transmission Ltd.

**AND**

**IN THE MATTER OF**

**Tirwa Transmission Ltd.**

2<sup>nd</sup> Floor, Niryat Bhawan, Rao Tularam Marg, Vasant Vihar,

Opposite Army Hospital & Referral, New Delhi – 110 057

Through its Authorized Representative

..... Petitioner

**VERSUS**

**1. PFC Consulting Limited**

1<sup>st</sup> Floor, URJANIDHI, 1, Barakhamba Lane,

Connaught Place, New Delhi-110001

Through its General Manager

**2. Uttar Pradesh Power Corporation Limited**

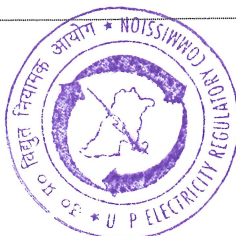
Shakti Bhawan 14 Ashok Marg, Lucknow-226001, U.P.

Through its Chairman

**3. Dakshinanchal Vidyut Vitran Nigam Limited**

Urja Bhawan, NH-2 (Agra-Delhi Bypass Road), Sikandra,

by



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Agra-282007, U.P.

Through its Managing Director

**4. Kanpur Electricity Supply Company Limited**

Headquarters, Kesa House, 14/71 Civil Lines,

Kanpur-209601, U.P.

Through its Managing Director

**5. Uttar Pradesh Power Transmission Corporation Limited**

Shakti Bhawan 14 Ashok Marg, Lucknow-226001, U.P.

Through its Chairman

**6. Madhyanchal Vidyut Vitran Nigam Limited**

Head Office 4-A, Gokhale Marg, Lucknow- 226001, U.P.

Through its Managing Director

**7. Purvanchal Vidyut Vitran Nigam Limited**

Vidyut Nagar, Bhikaripur, P.O – DLW, Varanasi-221010, U.P.

Through its Managing Director

**8. Paschimanchal Vidyut Vitran Nigam Limited**

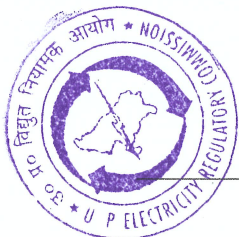
Urja Bhawan Victoria Park, Meerut- 250001, U.P.

Through its managing Director

..... Respondents

**THE FOLLOWING WAS PRESENT**

1. Sh. Anuj Bhave, Advocate, TTL
2. Sh. Abhishek Kumar, Advocate, UPPCL
3. Sh. Nived Veerapaneni, Advocate, UPPCL
4. Sh. Deepak Raizada, CE, UPPCL
5. Sh. S.C. Joshi, SE, UPPCL
6. Sh. Rajiv Singh, EE, UPPCL
7. Sh. Rakesh Kumar, SE, UPPTCL
8. Sh. Nitin Srivastava, EA, PFCCL



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## ORDER

(DATE OF HEARING: 27.02.2025)

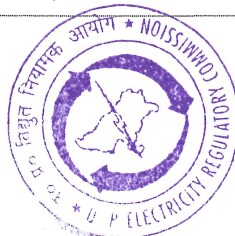
1. The Petitioner, Tirwa Transmission Limited, has filed the instant petition under section 63 with Section 86(1)(a) & (c) of Electricity Act, 2003 (the Act) and in accordance with "Tariff Based Competitive Bidding Guidelines for Transmission Service", issued by Ministry of Power, Govt. of India, for adoption of transmission charges to establish the Intra State Transmission system under Build, Own, Operate and Transfer (BOOT) basis. The Petitioner has made the following prayers:-

- a) Adopt the levelized Transmission Charges of INR 171.50 million discovered through transparent competitive bidding process, for Intra-State "Construction of 220/132/33 kV Tirwa (Kannauj) substation with associated lines and LILO of one circuit of 400 kV D/C (Twin Moose) Shamli-Aligarh line at THDC 2x660 MW Khurja Power Plant" comprising of the elements/ assets as detailed in the present petition/ application.
- b) Allow the "Construction of 220/132/33 kV Tirwa (Kannauj) substation with associated lines and LILO of one circuit of 400 kV D/C (Twin Moose) Shamli-Aligarh line at THDC 2x660 MW Khurja Power Plant" to be part of the InSTs and direct that the recovery of transmission charges shall be in accordance with the terms of the TSA.
- c) Condone any inadvertent errors omissions/ errors / shortcomings and permit the Applicant to add/change/modify/alter these pleadings and make further submissions as may be required at a future date.
- d) Pass any such other order / orders, as may be deemed fit and proper in the facts and circumstances of the case.

### **Brief Facts of the case**

2. U.P. Power Transmission Corporation Limited (UPPTCL) vide letter dated 19.11.2022 appointed PFC Consulting Ltd. (PFCCL) to be Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish transmission system for "Construction of 220/132/33 kV Tirwa (Kannauj) substation with associated lines and LILO of one circuit of 400 kV D/C (Twin Moose) Shamli-Aligarh line at THDC 2x660 MW Khurja Power Plant"

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(herein after referred to as the Project) on build, own, operate and transfer (BOOT) basis through Tariff Based Competitive Bidding (TBCB) process.

3. The Petitioner Company was incorporated on 14.12.2023 under the Companies Act, 2013 by PFCCL as its wholly owned subsidiary to initiate the activities for execution of the Project and subsequently to act as TSP after being acquired by the successful bidder selected through TBCB process. Further, the U.P Govt. granted its prior approval for the said incorporation vide letter dated 09.06.2023 under section 68(1) of the Act.
4. BPC initiated the single stage bidding process for selection of successful bidder in accordance with the Standard Bidding Documents (SBDs), dated 10.08.2021, issued by the Ministry of Power, Government of India under Section 63 of the Act.

Accordingly, BPC started the process with the issuance of Request for Proposal (RfP), Transmission Service Agreement (TSA) and Share Purchase Agreement (SPA) dated 20.02.2023 for Global Invitation for Qualification for selection of TSP on BOOT basis for the Transmission Project in accordance with the TBCB Guidelines 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 and as amended from time to time. The Project consists of following elements as per Section 1 of the RfP:

<b>Transmission System for Construction of 220/132/33 kV Tirwa (Kannauj) substation with associated lines and LILO of one circuit of 400 kV D/C (Twin Moose) Shamli Aligarh line at THDC 2x660 MW Khurja Power Plant</b>		
<b>S. No.</b>	<b>Construction of 220/132/33 kV Tirwa (Kannauj) substation with associated lines</b>	<b>Scheduled COD in months from Effective Date</b>
<b>A</b>	<b>Construction of 220/132/33kV Tirwa (Kannauj) Substation with associated lines</b>	
1	Construction of 220/132/33kV substation, Tirwa (Kannauj) (including following Bay at S/S): - 2x160 + 2x63 MVA (i) 220kV 160MVA ICT Bay- 02 Nos. (ii) 132kV 160MVA ICT Bay- 02 Nos. (iii) 132kV 63MVA ICT Bay- 02 Nos. (iv) 33kV 63 MVA ICT Bay- 02 Nos. (v) 220kV Bay: Feeder Bay- 02 Nos.	18 Months



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	Bus Coupler Bay- 01 Nos. Transfer Bus Bay- 01 Nos. (vi) 132kV Bay: Feeder Bay- 02 Nos. Bus Coupler Bay- 01 Nos. Transfer Bus Bay- 01 Nos. (vii) 33kV Bay: Feeder Bay- 10 Nos. (Including bay for 10MVAR Capacitor bank) Transfer Bus Coupler Bay- 01 Nos.	
2	LILO of 220kV Mainpuri (220) – Bhauti PG (400) S/C line at 220kV Tirwa Substation	
3	LILO of 132kV Dibiyaipur-Bidhuna S/C line at 220kV Tirwa substation	
<b>B</b>	<b>Construction of LILO of one circuit of 400kV D/C (Twin Moose) Shamli-Aligarh Line at THDC 2x660 MW Khurja Power Plant</b>	
1	LILO of one circuit of 400 kV D/C (Twin Moose) Shamli-Aligarh Line at THDC 2x660 MW Khurja Power Plant*	7 Months

\*02 Nos. Bays of 400kV will be provided by THDC Khurja Power Plant.

5. Pursuant to the issuance of RfP, the BPC received (Technical & Financial) responses from two (02) participants. The responses received was opened on 12.05.2023.

S. No.	Name of the Bidder/Consortium	Sole/Consortium
1.	M/s Power Grid Corporation of India Ltd.	Sole
2.	M/s Megha Engineering & Infrastructures Ltd.	Sole

6. The BEC in its second meeting, held on 03.06.2023, decided that the (Technical) Bids of all the two bidders were found meeting the eligibility criteria as prescribed in RfP and were qualified for opening of their RfP (Financial) Bids.

As decided by the BEC, the RfP (Financial) Bids-Initial Price Offers (IPOs) of the above qualified bidders were opened online at MSTC portal on 08.06.2023 at 15:00 hrs. The bidder wise quoted transmission charges as per IPOs are given below:

S. No.	Name of the Bidder	Quoted Transmission Charges from the Initial Offer (in Rs. Million per annum)	Ranking of Bidders based on Levelized Tariffs
1.	M/s Megha Engineering & Infrastructures Ltd.	171.50	L-1

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S. No.	Name of the Bidder	Quoted Transmission Charges from the Initial Offer (in Rs. Million per annum)	Ranking of Bidders based on Levelized Tariffs
2.	M/s Power Grid Corporation of India Ltd.	308.60	L-2

The lowest IPO at MSTC portal was Rs. 171.50 Million per annum, which was the initial ceiling for quoting the final offer during e-reverse auction.

7. The e-reverse auction was initiated at MSTC portal on 09.06.2023 at 10:00 hrs. However, no bid was received during the e-reverse auction. Therefore, as per clause of RfP 3.6.1, which states that, "However, if no bid is received during the e-reverse bidding stage, then the bidder with lowest quoted initial transmission charges ("Initial Offer") during e-bidding stage shall be declared as the successful bidder". Accordingly, the final offers of the bidders (in ascending order) after closing of e-reverse auction is as under:

S. No.	Name of the Bidder	Transmission Charges from the Initial Offer (in Rs. Million per annum)	Transmission Charges from the Final Offer (in Rs. Million per annum)	Rank
1.	M/s Megha Engineering & Infrastructures Ltd.	171.50	171.50	L-1
2.	M/s Power Grid Corporation of India Ltd.	308.60	308.60	L-2

As per the above table, "Megha Engineering & Infrastructures Ltd." emerged as the successful bidder after the conclusion of the e-reverse auction with the lowest Annual Transmission Charges of Rs. 171.50 million per annum, which was also the Final Offer.

8. Based on e-reverse auction, the BEC in its meeting held on 20.06.2023, observed that the Annual Transmission Charges discovered through the bidding process was Rs. 171.50 million per annum, which was in line with the prevalent market prices. The BEC authorized BPC to issue Letter of Intent (LOI) to Megha Engineering & Infrastructures Ltd.

9. LOI was issued by BPC on 30.01.2024 to the successful bidder i.e. Megha Engineering & Infrastructures Ltd.



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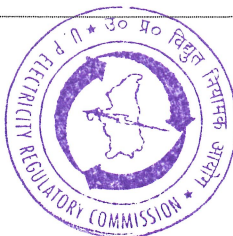
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10. In accordance with Clause 2.15.2 of RfP, the selected bidder shall within ten days of issue of the LOI, accomplish the following, among other tasks:
- (a) provide the Contract Performance Guarantee (CPG) in favour of the Long-Term Transmission Customers (LTTCS);
  - (b) execute the Share Purchase Agreement and the Transmission Service Agreement;
  - (c) acquire, for the Acquisition Price, one hundred percent equity shareholding of the Petitioner Company from PFCCL, along with all its related assets and liabilities;
11. In accordance with Clauses 2.15.4 of RfP, the selected bidder within five days of the issue of the acquisition of the SPV, shall apply to the Commission for grant of transmission licence and make an application to the Commission for the adoption of transmission charges, as required under Section 63 of Act.
12. Subsequently, BPC vide its letter dated 07.03.2024 in terms of Clause 2.15 of RfP extended the date upto 18.03.2024 for completion of all activities by the successful bidder.
13. On 06.03.2024, the selected bidder furnished the CPGs for an aggregate amount of Rs. 5.62 Crores separately in favour of the LTTCS in accordance with the LoI and Clause 2.12 of the RfP, as tabulated below:

S. No.	Bank Guarantee No.	Date	Amount	In Favour of
a)	2268IGPER000424	06.03.2024	Rs. 16,80,000/- (Rupees Sixteen Lakhs Eighty Thousand only)	KESCO
b)	2268IGPER000524	06.03.2024	Rs. 1,23,64,000/- (Rupees One Crore Twenty-Three Lakh Sixty-Four Thousand only)	DVVNL
c)	2268IGPER000624	06.03.2024	Rs. 1,29,26,000/- (Rupees One Crore Twenty-Nine Lakh Twenty-Six Thousand only)	PuVVNL
d)	2268IGPER000724	06.03.2024	Rs. 1,74,22,000/- (Rupees One Crore Seventy-Four Lakh	PVVNL

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			Twenty-Two Thousand only)	
e)	2268IGPER000824	06.03.2024	Rs. 1,18,02,000/- (Rupees One Crore Eighteen Lakh Twenty-Two Thousand only)	MVVNL
<b>TOTAL: Rs. 5,62,00,000</b>				

14. On 07.03.2024, the selected bidder executed the Transmission Service Agreement (TSA) with LTTCs and acquired one hundred percent equity shareholding of the Petitioner Company after execution of the Share Purchase Agreement and completing all procedural requirements specified in the bid documents.

15. Thereafter, on 27.06.2024, Petitioner filed Petition No. 2104/2024 for grant of intra-State transmission license and also filed the instant Petition for the adoption of transmission charges before the Commission under Section 63 of the Act 2003.

16. Further, in order to remove the discrepancies and error from the petition for adoption of Transmission charge, the Petitioner, vide affidavit dated 28.01.2025, submitted the amended petition.

17. In addition to amended petition, the Petitioner filed affidavit dated 14.02.2025, vide which it submitted additional details as directed by the Commission, in the order dated 31.01.2025, containing following directions:

- The Survey Report provided to the bidders under Article 1.5 of the RFP.
- Approval for laying overhead transmission lines under Section 68 of the Electricity Act, 2003.
- Tabular timeline, starting from the publication of the RFP, detailing work completed and work pending in accordance with the RFP.
- Justification for inclusion of bay for 10 MVAR Capacitor Bank at 33 kV Feeder Bay under the Scope of Work.

18. Further, the BPC vide affidavit dated 17.02.2025, submitted the additional requisite documents, as directed by the Commission, in the order dated 31.01.2025, containing following directions:

- Details of the notification through which the Empowered Committee was constituted.





- Details of the notification through which the Bid Evaluation Committee (BEC) was constituted.
- Detailed note on bidding process pursuant to which the petitioner was selected.
- An affidavit confirming that no deviations have been made to the Bidding Documents from the Standard Bidding Documents issued by the Ministry of Power under Section 63 of the Electricity Act, 2003.
- The Technical and Financial Bid Evaluation Report.

**UPPCL and LTTCs Reply dated 17.02.2025**

19. The LOI was issued to MEIL on 30.01.2024, and as per the deadline under Article 3.1.1 of the TSA, MEIL was required to complete the specified activities (CPG submission, acquisition by MEIL and TSA execution) by 09.02.2024. TSA was executed on 07.03.2024, and TTL was acquired by MEIL the same day. However, on the same date i.e. on 07.03.2024, BPC, through a letter, extended the timelines specified under Clause 2.15.2 of the Request for Proposal dated 11.03.2021 (RFP) to 18.03.2024, without marking copies to either UPPTCL or LTTCs.
20. UPPCL further submitted that as per Clause 2.15.3(i) of the RFP, BPC had no authority to extend the timeline stipulated under Clause 2.15.2 of the RFP. This position is reinforced by the Hon'ble Commission's judgment in *Obra-C Badaun Transmission Ltd. v. UPPCL & Ors.*
21. The term "forthwith" in Clause 2.15.3(i) means "immediately" as per legal precedent, reinforcing that BPC had no authority to extend deadlines post-TSA execution. The Supreme Court's rulings in *Kishandas Murlimal (1954)* and *Adani Power (Mundra) Ltd. (2019)* affirm that contractual terms must be interpreted as written.
22. Since BPC is not a party to the TSA and had no authority to grant extensions under it. Its letter dated 07.03.2024, which was not marked to the Respondents (UPPTCL, UPPCL, LTTCs), does not absolve TTL from its contractual obligations.
23. Further, by executing the TSA on 07.03.2024, TTL reaffirmed its obligation to complete key activities—CPG submission, acquisition by MEIL, and TSA execution by the original deadline of 09.02.2024. The TTL also acknowledged

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delays in seeking the transmission license and tariff adoption, due by 23.12.2024.

24. UPPCL submitted that the MEIL, the holding company of TTL, caused significant delays in fulfilling its obligations under the TSA and failed to meet key deadlines. TTL delayed furnishing the CPG by 26 days, executing the TSA by 27 days, and filing petitions for transmission license and tariff adoption by 134 days. These self-inflicted delays cannot be categorized as force majeure under Article 11.3 of the TSA.
25. The article 11.4 of the TSA explicitly excludes from force majeure any delays resulting from TTL negligence, failure to comply with laws, or breach of contract. Since TTL delays fall squarely within these exclusions, there is no basis for extending TSA timelines under Article 3.3.4. Furthermore, TTL failed to comply with the mandatory notice requirements under Article 11.5, which requires force majeure notices to be issued within seven days. The Hon'ble Commission's ruling in *Petition No. 1824 of 2022* and the APTEL judgment in *Talwandi Sabo Power Ltd. v. PSPCL* reinforce that strict adherence to contractual notice provisions is a precondition for claiming force majeure, making TTL claim invalid.
26. Additionally, TTL is liable for furnishing additional CPG of Rs. 0.56 crores for each month of delay, under Article 3.1.3, due to its failure to meet subsequent conditions under the TSA.

**TTL Rejoinder dated 25.02.2025**

27. The objections taken by the Respondent UPPCL in its reply are incorrect and invalid. UPPCL's assertion that the Bid Process Coordinator had no authority to extend timelines is untenable and is contrary to the facts on record.
28. In terms of PFCCL's letter dated 07.03.2024, the deadline for execution of the TSA was extended to 18.03.2024. It was further submitted that Clause 2.15.3 itself clearly stipulates that all decisions taken by the BPC prior to the execution of the TSA shall continue to be binding on the LTTCs.
29. It was submitted that the authority of the BPC would only cease post execution of the TSA, which is 07.03.2024. However, the letter by PFCCL extending the timelines under the RFP was issued before the execution of the TSA. PFCCL had complete authority to extend timelines under the RFP before execution of the TSA, which they have validly exercised.



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30. It was submitted that since the deadline for acquisition of the SPV, execution of TSA and submission of CPGs were extended to 18.03.2024 by PFCCL, therefore the timelines mentioned under the TSA for making an application with the Ld. Commission for grant of adoption of tariff also stood extended. Further, the TTL could only have applied for adoption of tariff once, the TTL was acquired by the successful bidder, MEIL. Before the acquisition by MEIL, TTL was under control of PFCCL and no petitions could have been submitted by TTL before its acquisition.
31. The delay caused in obtaining the adoption of tariff from the Ld. Commission was due to the regulatory processes which was beyond the control of TTL. Further, TTL has actively pursued the matter and has complied with all procedural requirements, including submitting all necessary documents and information as required by the Ld. Commission.
32. The preparation and filing of the petition and providing additional information including affidavits to be filed before the Ld. Commission required extensive documentation and consultations, which took considerable time. The following judicial trajectory is pertinent for the present purposes:
- After completion of all the requisite obligations under clause 3.1.3 of the TSA, TTL filed the Petition for adoption of transmission charges before the Ld. Commission on 26.03.2024 [bearing Petition No. 2077/2024].
  - Pursuant to the Ld. Commission's correspondence, the amended Petition was filed on 19.06.2024 [bearing Petition No. 2103/2024].
  - The first hearing of this Petition before the Ld. Commission for adoption of tariff took place on 16.01.2025.
  - As directed, TTL submitted the amended Petition on 28.01.2025, curing the aforesaid typographical errors. By way of a separate affidavit dated 14.02.2025, TTL has furnished the requisite information, as sought by the Ld. Commission by its Order dated 31.01.2025.
33. It was further submitted that TTL *vide* letter dated 23.12.2024 had issued a notice to UPPCL to comply with the requirements under the TSA for notifying about the force majeure event. The Ld. CERC in the case of *POWERGRID NM Transmission Limited v. IL & FS Tamil Nadu Power Company Limited* (333/MP/2019) granted transmission licence to the Petitioners and adopted transmission tariff after a delay of almost nine months after the expiration of

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deadline as per the TSA. Therefore, TTL seeks an extension of time for fulfilling the obligations under Clause 3.1.3 of the TSA.

34. In view of the delay caused due to regulatory and procedural reasons, the imposition of an additional CPG of Rs. 0.56 Crore per month under Clause 3.3.1 of the TSA would be unduly onerous and unjust. TTL undertakes to complete all necessary regulatory compliances at the earliest and seeks exemption from furnishing the additional CBG.

**Commission View on inclusion of bay for 10 MVAR Capacitor Bank at 33 kV Feeder Bay under the Scope of Work**

35. The Commission in its order dated 27.02.2025, after reviewing the relevant provisions of the RFP and TSA, held that the bidding documents consists of RFP, which includes the TSA. Therefore, the RFP forms part of the bidding documents and sets out various terms and conditions, including the scope of work on which the bidding was conducted. Accordingly, the construction of the bay for the 10MVAR Capacitor Bank falls within the scope of work under the RFP and constitutes an integral part of the bidding documents, necessitating its inclusion in the TSA.

**Hearing dated 27.02.2025**

36. Ms. Abhishek Kumar, Counsel, appeared on behalf of UPPCL submitted that he has filed his reply and the contention raised in his reply is that the Petitioner was required to make an application for grant of transmission license and adoption of transmission Charges before the Hon'ble Commission by 14.02.2024 as per the article 3.1.1 of the TSA. However there was a delay of 137 days in carrying out both the activities by the Petitioner. Therefore, Petitioner is required to submit an additional bank guarantee.
37. He further submitted that after the expiry of deadline under article 3.3.1 of the TSA, the Petitioner, by letter dated 23.12.2024 and 27.12.2024, sought extension of timeline mentioned under article 3.1.3 (a) and 3.1.3 (b) of the TSA, alleging force majeure. Furthermore, he submitted that the Commission may adopt the tariff however, issues related with delay may be dealt separately.
38. Sh. Anuj Bhawe, Counsel, appearing on behalf of Petitioner, submitted that Petitioner in its Petition has prayed to adopt the transmission charges as per the LOI dated 30.01.2024.



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### **Commission View**

39. At the outset, it is to record that under the Order dated 31.01.2025, it has inadvertently been recorded that Sh. Nived Veerapaneni is a proxy Counsel on behalf of Respondent No.2. However, it is clarified that he appeared on the said date as an advocate on record and not as a proxy counsel and the same stands clarified vide this instant Order.
40. Further, the Commission heard the matter at considerable length and have carefully gone through their written submissions/arguments and also taken note of the relevant material available on record during the proceedings. On the basis of the pleadings and submissions available, the following principal issues emerge for the consideration of the Commission: -
- A. Approval of Annual Transmission Charges.
  - B. Whether PFCL (BPC) has the authority to extend the Timeline under Clause 2.15.2, 2.15.3 and 2.15.4 of the RFP through letter dated 07.03.2024.
  - C. Whether, on account of delay in fulfilling the conditions stipulated under Article 3.1.1 of the TSA, TTL is liable to furnish additional Contract Performance Guarantee (CPG) of Rs. 0.56 Crore per month in terms of Article 3.3.1 of the TSA.

### **The Commission Consideration & Analysis: -**

#### **A. Approval of Annual Transmission Charges**

41. It is noteworthy to mention that the Commission vide Order dated 10.02.2025 granted transmission license to the Petitioner after holding public hearing and following due process in accordance with the Act. Accordingly, transmission license no. 2 of 2025, dated 10.02.2025 was issued in the name of Tirwa Transmission Limited.
42. Further, Section 63 of the Act envisages that the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. In this context, Section 63 of the Electricity Act 2003, is being reproduced below:-

***"Section 63. (Determination of tariff by bidding process):***

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*Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."*

43. The Central Government, Ministry of Power has also issued the guidelines contemplated under Section 63, titled "Tariff based Competitive-bidding Guidelines for Transmission Service" and "Guidelines for Encouraging Competition in Development of Transmission Projects" (the Guidelines) and amendments thereof. The relevant extracts of the Guidelines are as under:-

### **"9 Bidding Process**

*9.1. For the procurement of transmission services under these guidelines, BPC shall adopt a single stage two envelope tender process featuring Request for Proposal (RFP). The bid documents shall be prepared in accordance with para 4.1 of these guidelines. The entire bidding process shall be conducted online through electronic medium under e-reverse bidding framework.*

*9.2. RFP notice should be published in at least two national newspapers, website of the BPC and preferably in trade magazines also, so as to accord it wide publicity. The bidding shall necessarily be by way of International Competitive Bidding (ICB). For the purpose of issue of RFP, minimum conditions to be met by the bidder shall be specified in the RFP.*

*9.4.7. Bid evaluation methodology to be adopted by the BPC.*

*The initial price offer submitted online with the RFP shall be evaluated based on annual transmission charges for all components covered under the package as quoted by the bidder. The transmission charges of initial offer shall be ranked on the basis of ascending order for determination of the qualified bidders. Bidders in the first 50% of the ranking (with any fraction rounded off to higher integer) in RFP stage or 4 (four) bidders, whichever is more shall qualify to participate in the e-reverse bidding. In case the number of responsive bidders in RFP stage is between 2 (two) to 4 (four), all will qualify to participate in the e-reverse bidding. In case only one Bidder remains after the responsiveness check, the initial offer of such Bidder shall not be opened and the matter shall be referred to the Government. In the event of identical transmission charges discovered from the initial offer having been submitted by one or more bidders, all such bidders shall be assigned the same rank for the purpose of determination of qualified bidders. In such cases, all the bidders who share the same rank till 50% of the ranks determined above, shall qualify to participate in the e-reverse bidding. In case, 50% of the ranks (with any fraction rounded off to higher integer) is having less than 4 (four) bidders and the rank of the fourth bidder is shared by more than 1 (one) bidder, then all such bidders who share the rank of the fourth bidder shall qualify to participate in the e-reverse bidding. The lowest transmission charges discovered from the initial offers will be the ceiling price for the next round i.e e-reverse bidding stage. During the e-reverse bidding stage, the qualified bidders in the RFP stage would be required to place their bids at*



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least 0.25% lower than the prevailing lowest bid, as long as they wish to continue in the reverse auction. The initial period for conducting the e-reverse bidding should be 2 hours which will be extended by 30 minutes from the last received bid time, if the bid is received during the last 30 minutes of the scheduled or extended bid time. Subsequently, it will be extended again by 30 minutes from the latest received bid time.

9.9. The technical bids shall be examined to ensure that the bids submitted meet minimum eligibility criteria set out in the bid documents on all technical evaluation parameters. Only the bids that meet all elements of the minimum technical criteria set out in the bid documents shall be considered for further evaluation on the transmission charges bids.

9.10. The online initial price bids shall be electronically opened by the bid opening committee in presence of the bid evaluation committee. Only the lowest initial offer (s) shall be communicated to all the Qualified Bidders to participate in the e-reverse bidding process. During the e-reverse bidding process only the lowest prevailing bid should be visible to all the qualified bidders on the electronic platform.

9.11. The transmission charge bid shall be rejected if it contains any deviation from the bid documents for submission of the same.

9.12. The lowest transmission charges discovered from the quoted annual transmission charges during the e-reverse bidding process will be considered for the award. In case, no bid is received during the e-reverse bidding stage then the lowest initial offer shall be deemed to be the final offer.

## **12. Contract award and conclusion**

12.1. After selection and issue of the Letter of Intent (LOI) from the BPC, the selected bidder shall execute the share purchase agreement to acquire the SPV created for the Project to become TSP in accordance with the terms and conditions as finalized in the bid document and execute the TSA.

12.2. The TSP shall make an application for grant of transmission license to the Appropriate Commission within five (5) working days from the date of execution of share purchase agreement for acquisition of SPV.

12.3. The BPC shall make the final result of evaluation of all bids public.

12.4. The final TSA, along with the certification by the bid evaluation committee, shall be forwarded to the Appropriate Commission, for adoption of tariff discovered from the quoted annual transmission charges during the e-reverse bidding process in terms of Section 63 of the Act."

44. The Commission examines the bidding process conducted by Bid Process Coordinator (BPC) for selection of TSP on BOOT basis for the Project following RfP stage and evaluation of the bids by the Bid Evaluation Committee (BEC), which is recorded in the minutes of meeting held for evaluation of RfP (Non-Financial) Bids on 03.06.2023 and for evaluation of RfP (Financial) Bids on 20.06.2023.

45. BEC in its minutes of the second meeting has observed the following:

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- (a) The entire bid process has been carried out transparently in accordance with the "Tariff Based Competitive Bidding Guideline for Transmission Service" and Guidelines for encouraging competition in development of the Transmission Projects" issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.
- (b) The estimated cost of the project as communicated by UPPTCL was Rs. 123.79 Cr.
- (c) As per CERC tariff norms and cost provided by UPPTCL, the levelised transmission charges works out to be Rs. 176.44 Million per annum.
- (d) The lowest transmission charges discovered through the e-reverse auction process is Rs.171.50 Million per annum.
- (e) The rate quoted by the successful bidder i.e. M/s Megha Engineering and Infrastructure Limited is in line with the prevalent market prices.

46. Further, Bid Evaluation Committee (BEC) vide its certificate dated 20.06.2023 certified as under:

*"It is hereby certified that:*

- a) The entire bid process had been carried out in accordance with the "Tariff based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the Transmission Projects" issued by Ministry of Power, Government of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.*
- b) Megha Engineering and Infrastructure Limited emerged as the successful Bidder after the conclusion of e-reverse bidding process with the lowest Quoted Transmission Charges of Rs. 171.50 Million per annum for the above mentioned project.*
- c) The rate quoted by Successful Bidder are in line with the prevailing prices."*

47. Further, BPC, vide affidavit dated 13.02.2025, has certified that the bidding documents (RFP, TSA & SPA) have been prepared for the project based on Standard Bidding Documents & subsequent amendments issued by Ministry of Power, under Section 63 of the Electricity Act, 2003 GoI and no deviation has been sought with respect to SBD issued by MoP.







48. In the light of the discussions in preceding paragraphs and perusal of the documents available on record, the Commission observes that selection of the successful bidder and the discovery of the Annual transmission charges of the Project has been carried out by BPC through a transparent process of competitive bidding in accordance with the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act with lowest annual transmission charges of Rs. 171.50 Million per annum, which seems to be in line with the prevalent market prices.

49. In view of above and based on the certification of the Bid Evaluation Committee, the Commission approves and adopts the annual transmission charges of Rs. 171.50 Million per annum for the Project under Section 63 of the Act. The sharing of transmission charges among the Long-Term Transmission Customers shall be governed by the Transmission Service Agreement and as per applicable Regulations of the Commission. The tariff is adopted for 35 years but as per the provisions of the Act, the term of the transmission license granted to the Petitioner is 25 years. The adoption of tariff beyond 25 years is subject to renewal of transmission license after a period of 25 years.

**B. Whether PFCCL (BPC) has the authority to extend the Timeline under Clause 2.15.2, 2.15.3 and 2.15.4 of the RFP through letter dated 07.03.2024.**

50. The Respondent UPPCL has argued that in terms of the Clause 2.15.3(i) of RFP, PFCCL (BPC) had no authority to extend the timelines stipulated under Clause 2.15.2, 2.15.3 and 2.15.4 of the RFP for the activities set out thereunder.

Further, it has been submitted that the language employed by Article 2.15.3(i) of the RFP i.e., "authority of the BPC in respect of this Bid Process shall forthwith cease". Emphasis is placed on the word "forthwith", which, as per *P. Ramanatha Aiyar's Major Law Lexicon*, means "immediately, at once, without delay or interval." In this context, the Hon'ble Supreme Court in *Kishandas Murlimal v. Doongermal Bachumal Futnani*, (1954) 2 SCC 728, laid down the principle that courts must give effect to the plain language of a document, and if it makes sense as written, the words cannot be rearranged or reinterpreted to imply a different meaning. This principle continues to be upheld, as reiterated by the Hon'ble Supreme Court in *Adani Power (Mundra) Ltd. v. Gujarat ERC*, (2019) 19 SCC. Accordingly, following the acquisition of TTL by MEIL on 07.03.2024, the

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authority of PFCCL ceased forthwith, and any extension granted by it thereafter was beyond its powers.

51. The Commission has observed that Clause 2.15.2 and 2.15.4 of the RFP sets out subsequent conditions to be fulfilled by the Successful Bidder within 10 days and 5 days after receiving the letter of intent and the acquisition of the SPV respectively. Further clause 2.15.3 delineates the cessation of authority of the BPC and the transfer of decision-making responsibilities post-acquisition of the 100% equity shareholding of the SPV. The relevant clauses 2.15.2, 2.15.3, and 2.15.4 of the RFP has been reproduced below:

*"2.15.2. Within ten (10) days of the issue of the Letter of Intent, the Selected Bidder shall:*

- a) provide the Contract Performance Guarantee in favour of the Long Term Transmission Customers per the provision of Clause 2.12;*
- b) execute the Share Purchase Agreement and the Transmission Service Agreement;*
- c) acquire, for the Acquisition Price, one hundred percent (100%) equity shareholding of **SPV [which is under incorporation]** from PFC Consulting Limited, who shall sell to the Selected Bidder, the equity shareholding of **SPV [which is under incorporation]**, along with all its related assets and liabilities;*

*Stamp duties payable on purchase of one hundred percent (100%) equity shareholding of **SPV [which is under incorporation]**, along with all its related assets and liabilities, shall also be borne by the Selected Bidder.*

*Provided further that, if for any reason attributable to BPC, the above activities are not completed by the Selected Bidder within the above period of ten (10) days as mentioned in this Clause, such period of ten (10) days shall be extended, on a day for day basis till the end of the Bid validity period.*

*2.15.3. After the date of acquisition of the equity shareholding of SPV [which is under incorporation], along with all its related assets and liabilities, by the Selected Bidder,*

- i. the authority of the BPC in respect of this Bid Process shall forthwith cease and any actions to be taken thereafter will be undertaken by the Lead Long Term Transmission Customer,*
- ii. all rights and obligations of **SPV [which is under incorporation]**, shall be of the TSP,*



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- iii. any decisions taken by the BPC prior to the Effective Date shall continue to be binding on the Long Term Transmission Customers, and
- iv. contractual obligations undertaken by the BPC shall continue to be fulfilled by the TSP.”

2.15.4. Within five (5) working days of the issue of the acquisition of the SPV by the Successful Bidder, the TSP shall apply to the State Commission for grant of Transmission License and make an application to the State Commission for the adoption of Transmission Charges, as required under Section – 63 of The Electricity Act 2003.”

52. As per Proviso to 2.15.2 (c) of RFP, it is clear that period of 10 days shall be extended on a day for day basis. Further, on plain reading of Clause 2.15.3 along with point no. (i), it is amply clear that the authority of BPC in respect of this Bid Process shall forthwith cease after the date of acquisition of equity shareholding of SPV, along with all its related assets and liabilities, by the Selected Bidder. In this context, the word “forthwith” needs proper examination to understand its import in the present context. For the purpose the term “forthwith” has been examined in the backdrop of its literal legal interpretation.

The term “forthwith” has been succinctly and briefly analysed by Hon’ble Supreme Court in its Judgement Shento Varghese v. Julfikar Husen & Ors. Criminal Appeal No.2531-2532 of 2024. Para 19, 20, 21 & 22 of the above order captures the essence of word “Forthwith” which are being reproduced below:

19. The meaning of the word ‘forthwith’ as used in Section 102(3) has not received judicial construction by this Court. However, this Court has examined the scope and contours of this expression as it was used under the Maintenance of Internal Security Act, 1971; Preventive Detention Act, 1950; Section 157(1) of the Cr.P.C.; and Gujarat Prevention of Anti-Social Activities Act, 1985 in the case of Sk. Salim v. State of West Bengal<sup>24</sup>, Alla China Apparao and Others v. State of Andhra Pradesh and Navalshankar Ishwarlal Dave v. State of Gujrat.

20. This Court, in Rao Mahmood Ahmad Khan v. Ranbir Singh<sup>27</sup>, has held that the word ‘forthwith’ is synonymous with the word immediately, which means with all reasonable quickness. When a statute requires something to be done ‘forthwith’ or ‘immediately’ or even ‘instantly’, it should probably be understood as allowing a reasonable time for doing it.

21. The expression ‘forthwith’ has been defined in Black’s Law Dictionary, 10th Edition as under:

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**"forthwith, adv. (14c) 1. Immediately; without delay. 2. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch"**

Wharton's Law Lexicon, 17th Edition describes 'forthwith' as extracted:

**Forthwith, When a defendant is ordered to plead forthwith, he must plead within twenty four hours. When a statute or rule of Court requires an act to be done 'forthwith', it means that the act is to be done within a reasonable time having regard to the object of the provision and the circumstances of the case [Ex parte Lamb, (1881) 19 Ch D 169; 2 Chit. Arch. Prac., 14th Edition]**

22. From the discussion made above, it would emerge that the expression 'forthwith' means 'as soon as may be', 'with reasonable speed and expedition', 'with a sense of urgency', and 'without any unnecessary delay'. In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

On 07.03.2024, MEIL executed the Transmission Service Agreement and the Share Purchase Agreement, and simultaneously acquired 100% equity shareholding in TTL. Therefore, it is clear that since MEIL executed the Transmission Service Agreement and Share Purchase Agreement and acquired 100% equity shareholding in TTL on 07.03.2024 and any "cessation forthwith" has to be interpreted at the most to mean immediately after 07.03.2024 meaning thereby earliest from 08.03.2024, if not later. Accordingly, as per the clause, the authority of BPC will cease on 08.03.2024 i.e. the day after 07.03.2024, the date of acquisition of equity shareholding of SPV. Further, on 07.03.2024, PFCCL, acting as BPC, issued a letter granting extension to TTL for compliance with the requirements under Clauses 2.15.2, 2.15.3, and 2.15.4 of the RFP until 18.03.2024.

53. In view of reasons mentioned at para 52, the Commission is of the considered view that the authority of the BPC to take decisions in respect of the Bid Process ceased forthwith with effect from 08.03.2024, the date immediately following the acquisition of the SPV, which took place on 07.03.2024. Accordingly, the Commission holds that the BPC retained full authority to act in respect of the Bid Process up to and including 07.03.2024. However, the Commission is constrained to observe that the BPC has not recorded any reasons for extension of timelines for completion of the activities in its letter dated 07.03.2024 and also the copy of extension letter was not marked to LTTCs. As per Clause 2.15.2 of RFP, within ten (10) days of the issue of the Letter of Intent, the Selected



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Bidder was required to execute the Share Purchase Agreement and the Transmission Service Agreement and acquire, for the Acquisition Price, one hundred percent (100%) equity shareholding of TTL from PFCCL, along with all its related assets and liabilities. Further, as per Proviso to 2.15.2 of RFP, this period could have been extended only 'for reason attributable to BPC' and that too on a 'day for day basis'. It is observed that BPC took the decision to extend the deadline unilaterally without mentioning whether delay was caused due to reasons attributable to BPC and that too retrospectively, against the provisions of RFP. This conduct of BPC is prima-facie questionable. The LTTCs should have taken up this matter with BPC before proceeding further, which they failed to do. The Commission is not inclined to take up the matter at this stage as it has become irrelevant now.

**C. Whether, on account of delay in fulfilling the conditions stipulated under Article 3.1.1 of the TSA, TTL is liable to furnish additional Contract Performance Guarantee (CPG) of Rs. 0.56 Crore per month in terms of Article 3.3.1 of the TSA.**

54. The clarification is required in the matter as furnishing additional Contract Performance Guarantee (CPG) in the matter is liable on account of timely obtaining of order of adoption of tariff from this Commission. It is the case of the Respondent that the Petitioner approached the Commission for grant of Transmission Licence and adoption of tariff after a delay of 134 days and has thereby failed to comply with the provisions of Article 3.1.1 and 3.1.3 of the TSA. Consequently, the Petitioner is liable to furnish an additional Contract Performance Guarantee (CPG) of Rs. 0.56 Crore per month until the period of deficiency is cured as per clause 3.3.1.

The Respondent further contended that the Petitioner was well aware of the critical deadlines under the TSA and the consequences of non-compliance. Upon the expiry of the timelines prescribed under Articles 3.1.1 and 3.1.3 of the TSA for fulfilment of Conditions Subsequent, the Petitioner, vide letters dated 23.12.2024 and 27.12.2024, approached the Long-Term Transmission Customers (LTTCs) seeking an extension of timelines under Article 3.1.3(a) and 3.1.3(b), citing occurrence of a force majeure event.

55. On the other hand, the Petitioner has submitted that the delay in obtaining the order for adoption of tariff was occasioned by regulatory processes beyond its

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control. It has further submitted that, vide letter dated 23.12.2024, it issued a notice to UPPCL invoking Clause 11.5 of the TSA, intimating the occurrence of a force majeure event and seeking compliance with the requirements thereunder. The said notice was issued upon expiry of the prescribed timeline of six month under Article 3.1.3 under the TSA, in view of the fact that the order for adoption of tariff had not been issued by this Commission by that date.

56. The Commission has perused the relevant provisions of the TSA. The Article 3.1.3 imposes an obligation on the TSP to complete certain activities within six (6) months from the Effective Date, unless such completion is affected by a Force Majeure Event or waived-off in writing by the Majority LTTCs. The Article 3.1.3 has been reproduced below:-

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*3.1.3 The TSP agrees and undertakes to duly perform and complete the following activities within six (6) months from the Effective Date (except for c) below), unless such completion is affected due to any Force Majeure Event, or if any of the activities is specifically waived in writing by the Majority Long Term Transmission Customers:*

*a. To obtain the Transmission License for the Project from the State Commission;*

*b. To obtain the order for adoption of Transmission Charges by the State Commission, as required under Section 63 of the Electricity Act 2003;*

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57. Article 3.3.1 allows for an additional period of three (3) months for the TSP to fulfil the obligations under Clause 3.1.3. However, in the event of failure to comply even within such extended period, the TSP becomes liable to furnish an additional Contract Performance Guarantee of Rs. 0.56 Crore per month until the Conditions Subsequent are fully satisfied. The Article 3.3.1 has been reproduced below:-

*"3.3 Consequences of non-fulfilment of conditions subsequent*

*3.3.1 If any of the conditions specified in Article 3.1.3 is not duly fulfilled by the TSP even within three (3) Months after the time specified therein, then on and from the expiry of such period and until the TSP has satisfied all the conditions specified in Article 3.1.3, the TSP shall, on a monthly basis, be liable to furnish to Long Term Transmission Customers additional Contract Performance Guarantee of Rs. 0.56 Crores (Rupees Fifty Six Lakh Only) [additional Contract Performance Guarantee to be computed at ten percent (10%) of the original Contract Performance Guarantee amount as per Article*



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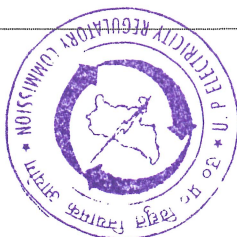




*3.1.1] within two (2) Business Days of expiry of every such Month. Such additional Contract Performance Guarantee shall be provided to Long Term Transmission Customers in the manner provided in Article 3.1.1 and shall become part of the Contract Performance Guarantee and all the provisions of this Agreement shall be construed accordingly. Long Term Transmission Customers shall be entitled to hold and/or invoke the Contract Performance Guarantee, including such additional Contract Performance Guarantee, in accordance with the provisions of this Agreement."*

58. As the Commission in above para no 53 has already held that the extension letter dated 07.03.2024 issued by the BPC is valid. Therefore, considering that the Effective Date is 07.03.2024, the TSP was required to obtain transmission license and order for adoption of tariff within a maximum period of nine months i.e. by 07.12.2024.
59. Upon examining the records, it is observed that the Petitioner initially filed the Petition for grant of Transmission Licence and adoption of Transmission Charges on 27.03.2024, with a minor delay of nine (9) days. Subsequently, pursuant to a query by the Commission for curing certain procedural defects, the Petitioner submitted a fresh Petition on 27.06.2024. It is further noted that the Petitioner for the purpose of evaluating compliance with the TSA obligations, has requested the Commission to consider initial date of 27.03.2024 as the date of filing.
60. The Commission has noted that the consequences of any delay in filing of Petition is provided under Clause 2.15.5 of RFP, which stipulates that if the selected bidder/ TSP fails to comply with the obligations under clause 2.15.2 (that includes filing of petition for adoption of tariff and grant of license), then such failure shall constitute sufficient ground for cancellation of the letter of intent and BPC/its authorized representative(s) shall be entitled to invoke the bid bond of the selected bidder. Therefore, RFP provides a mechanism for any delay in filing of Petition for cancellation of LoI. However, the said option was never exercised by the LTCCs.
61. Further, issue regarding obtaining the order of adoption, the Commission finds that the delay in obtaining the order for adoption of tariff was occasioned due to procedural and regulatory reasons, which were beyond the control of the Petitioner. There is a general view that the Order for adoption of tariff is to be issued subsequent to the license issued by the Commission. It is observed that the license was issued only on 10.02.2025 and subsequently, the Order for

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adoption of tariff in this Petition was reserved for orders on 27.02.2025. It is also pertinent to mention that the Order on adoption of tariff does not affect the working of the project in any manner and to that extent, delay in obtaining the order, may not be an appropriate reason for making it liable for furnishing of additional Contract Performance Guarantee.

62. Accordingly, the Commission is of the view that, in light of the regulatory and procedural nature of the delay, enforcement of the requirement to furnish additional CPG of Rs. 0.56 Crore per month under Clause 3.3.1 of the TSA would be unduly burdensome and inequitable.

63. Accordingly, the Petition is disposed of.

**(Sanjay Kumar Singh)**  
Member



**(Arvind Kumar)**  
Chairman

Place: Lucknow

Dated: 15.05.2025