

1	Quoted and adopted levelized transmission charges		98.702
2	Increase in levelized tariff by 10.45% on account of increase of Indices, increase in Service Tax, increase in Excise Duty and exchange rate, etc. for the period from February 2012 to April 2014 towards delay in grant of licence and clearance to go ahead for implementation of the project vide Order dated 16.4.2014 i.e. (10.45% of 98.702)- Rs. 10.314 crore.	10.314	109.016
3	Cost Overrun of Rs. 455.49 crore due to Change in Law and Force Majeure Events during Project Execution. Increase in tariff allowed over and above levelized tariff as per Change in Law provisions of TSA (i.e. 0.32% increase for every cumulative increase of cost by Rs. 3.3 crore) i.e. (0.32%) * (Rs. 455.49 crore)*109.016/3.3 crore - Rs. 48.151 crore	48.151	157.167
4	Interest expenses and incidental expenses during intervening period from the date of charging of "Nagapattinam Pooling Station-Salem 765 kV D/C Line" (23.10.2016) to COD of Project (26.1.2019) (0.32%) * (Rs. 145.57 crore * 109.016)/ 3.3 crore – Rs. 15.39 crore	15.389	172.556
5	Final levelized tariff		172.556

14. The Petition was listed for hearing on 26.5.2020 and notices were issued to the Respondents to file their reply. Pursuant to the above, the Respondents, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO') and IL&FS Tamil Nadu Power Company Limited ('IL&FS') have filed their replies and the Petitioner has also filed its rejoinder to the same.

15. Further, vide Record of Proceedings for the hearing dated 26.5.2020, the Petitioner was also directed to furnish the certain details, which were filed by the Petitioner vide its affidavit dated 25.6.2020.

Reply of Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)

16. TANGEDCO, in its replies dated 15.6.2020 and dated 21.7.2020, has

submitted as under.

(a) The Petitioner, a subsidiary of PGCIL, has executed the transmission project exclusively designed for evacuation of power from the Independent Power Producers (IPPs), namely, NSL Power Pvt. Limited, PEL Power Limited and IL&FS Tamil Nadu Power Company Limited based on the Bulk Power Transmission Agreement ('BPTA') executed between the Petitioner and IPPs. The proposal for the said system was arranged by CTUIL exclusively for the purpose of evacuation of power from the IPPs based on the target region provided by them and approved in the 31st and 32nd meetings of Standing Committee on Power System Planning held on 16.11.2010 and 8.6.2011.

(b) The Commission vide order dated 31.5.2010 accorded approval for the aforesaid transmission system exclusively for evacuation of power as agreed between IPPs and the Petitioner. The entire cost invested by PGCIL was at the behest of the generators and if the generator does not commission its plant, the transmission system was required to be revisited and modified to suit the revised generation capacity. As for the generation which did not come up "as contracted and approved by the Commission" in Petition No. 233 of 2009, PGCIL should file a Petition seeking damages as contained in the contract between them. PGCIL cannot go ahead with the approved transmission project when even after knowing the status of generation projects and claim the same to be included in PoC.

(c) Based on the LTA granted to IPPs by CTUIL, BPTA was executed between PGCIL, IL&FS Tamil Nadu Power Company Limited and PEPL on 24.10.2010. Subsequently, PELPL relinquished 987 MW of LTA vide notice dated 26.7.2013 and IL&FS relinquished 540 MW of LTA w.e.f. 3.5.2017. However, as per the provisions of the BPTA, the generators are liable to pay the transmission charges for the untied LTA quantum or relinquishment charges. However, despite publication of the relinquishment charges by such generators by CTUIL in terms of the direction of the Commission vide order dated 8.3.2019 in Petition No. 92/MP/2015, none of the generators have paid the relinquishment charges. Yearly Transmission Charges of the assets associated with IPPs have been included in PoC and shared by all the DICs, which is gross abuse of process of law by the Petitioner.

(d) The Petitioner had also prayed to merge the transmission system as part of the TSA approved under the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 ('Sharing Regulations, 2010') in Petition No. 122 of 2012 despite the fact that the liability of payment of transmission charges for the instant transmission lines with IPPs who have entered into BPTA. The Commission vide order dated 9.5.2013 had granted approval for merger of transmission scheme under the new TSA. However, it was clarified that till the generator identifies the long-term beneficiaries of the project who will utilize the transmission line for evacuation of power, the generator shall have the liability to pay the transmission charges. It is evident from the above that the Petitioner is aware that once the transmission assets are merged with new TSA, then all the DICs in Southern Region who are sharing the transmission charges should have been impleaded in the Petition subsequent to the said order. The Petition is devoid of non-joinder of necessary parties i.e. all the DICs of SR including PELPL and therefore, the present Petition is not maintainable.

(e) The Petitioner has not complied with the provisions of Regulation 10 (2) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of grant of transmission licence and other related matters) Regulations, 2009, which requires the licensee to build the project in a time bound, efficient, coordinated and economic manner.

(f) As per Article 3.3.4 of the TSA, the Petitioner should have terminated the TSA due to delay exceeding 180 days. However, the Petitioner failed to terminate the agreement despite inordinate delay in commencement of the Project.

(g) The inordinate delay in execution of the Project and associated cost implications were neither brought to the knowledge of the Commission nor any of the DICs in Southern Region.

(h) The Petitioner has not acted diligently and the provisions of the Regulations, TSA and the direction of the Commission have been violated by the Petitioner. Also, the Respondent is in no way connected to or responsible for either the BPTA /TSA or the approval of the transmission system or the commissioning of the generators. In such circumstances, it is no justifiable to put the burden of all

the lapses of PGCIL/ CTUIL on the distribution licensee. Reliance has been placed on the judgment of APTEL dated 19.5.2020 in Appeal No. 266 of 2016.

(i) As observed by the Commission vide order dated 20.6.2013 in Petition No. 121 of 2012, the Petitioner did not make effort to pursue the matter for early grant of transmission licence before the Commission. Therefore, the Petitioner is not entitled for any relief for delay in obtaining the transmission licence.

(j) As per Article 11.5 of the TSA, the Petitioner is bound to give notice for any force majeure condition and to seek extension of time. The extension of time is allowable on 'day to day' basis as per Article 4.4 of the TSA up to a maximum of 180 days only. Since the Petitioner has not obtained any consent from LTTCs, the Petitioner is not entitled to any relief under the provisions of TSA.

(k) The events claimed by the Petitioner as Force Majeure viz. Court Cases, unprecedented rains, public agitation are not covered under Article 11 of the TSA. The Petitioner is liable to foresee such eventualities and act accordingly rather than passing the burden of such eventualities on the beneficiaries. The total cost increased due to Change in Law and Force Majeure conditions is around Rs. 455.49 crore is exorbitant and defeats the very purpose of the competitive biddings.

Rejoinder to reply of TANGEDCO

17. The Petitioner, vide its rejoinders dated 10.7.2020 and dated 28.7.2020, has mainly submitted as under:

(a) At the outset, TANGEDCO has confused the status of the Petitioner and that of PGCIL/CTUIL and the respective agreements signed by them and roles assigned to them. The present Petition has been filed by the Petitioner, as a transmission licensee who has implemented the Project under TBCB route in its own right and in relation to the TSA executed by it. The role of PGCIL and CTUIL vis-à-vis other LTA customers under the agreements entered into by them is not relevant for the present Petition or otherwise related to the Petitioner herein.

(b) TANGEDCO is seeking to raise irrelevant issues which have no relation to

the issues at hand and expand the scope of the Petition which is not permissible. TANGEDCO is deliberately seeking to confuse the issue by raising issues which have nothing to do with the maintainability of the Petition.

(c) It is denied that the Petitioner has executed the transmission project exclusively for the three IPPs or based on the BPTA. The Petitioner has executed the TSA with only IL&FS and has no agreement or relation with other IPPs. The transmission project has been implemented based on the TSA signed with IL&FS and in pursuance to a competitive bid and not based on BPTA signed by any of the generators or any of the Respondents with PGCIL for other lines. Further, the transmission service agreement with IL&FS was executed while the Petitioner was still a subsidiary of and under control of the bid process coordinator. The bidders had no role to play in this regard either with respect to scope of the transmission system finalized/ agreed for the generators or signing of agreements.

(d) It is not open for TANGEDCO to raise issues of establishment of transmission system at this belated stage when the transmission system has already been established after grant of approvals and licence. TANGEDCO had never raised an issue at the relevant time when the bid was being conducted and when the approval under Section 63 of the Act was granted or even when the transmission licence was granted. It is also relevant to note that TANGEDCO has been utilizing the services of transmission system since October 2016.

(e) The Petitioner is not concerned with the BPTA or the intended IPPs who had signed the BPTA or even otherwise the IPPs who were intended beneficiaries of the transmission system as per the Power System Planning. The Petitioner has not signed the BPTA and has not signed any agreement with NSL Power Pvt. Ltd. or PEL Power Ltd. TANGEDCO is mixing up the BPTA with TSA. It is denied that the Petitioner has executed the transmission project exclusively for the three IPPs or based on BPTA. The Petitioner has no privity of contract with NSL Power Pvt. Ltd or PEL Power Limited and cannot make any claim against them. It is, therefore, not open to TANGEDCO to claim that there is any non-joinder or misjoinder of parties.

(f) TANGEDCO has to address the issues of BPTA with PGCIL/CTUIL or

otherwise based on power system planning or order dated 31.5.2010 of the Commission. The Petitioner is not PGCIL. The Petitioner is seeking relief under the provisions of the TSA dated 2.2.2012 in which the beneficiary is only IL&FS. The entitlement or otherwise of damages under other contracts and against other generators is not relevant to the present case. Further, matter regarding relinquishment of LTA by the parties and payment of relinquishment charges thereon as per the order dated 8.3.2019 in Petition No. 92/MP/2015 is not under the purview of the Petitioner.

(g) TANGEDCO cannot now raise the issue on the transmission Project, namely, when it is implemented and successfully commissioned. The RfP recognized that the beneficiaries could be added or deleted. The TSA was executed prior to the issuance of Letter of Intent (LoI) and had been signed only with IL&FS and based on the above, the tariff was adopted, transmission licence was granted, transmission system was constructed and commissioned. There was no due diligence or otherwise any discretion with the Petitioner with regard to the other IPPs.

(h) The Petitioner's TSA remains with IL&FS. The payment of transmission charges by the beneficiaries is in terms of the Regulations but this does not mean that all the beneficiaries are to be impleaded as the Respondents. The principle beneficiary under TSA is IL&FS. The fact that liability to pay transmission charges related to the capacity by beneficiaries of IL&FS is because of their contract with IL&FS.

(i) Even as per TANGEDCO, the Commission in paragraph 15 of its order dated 9.5.2013 had directed the Petitioner to resolve issues with IL&FS. Thus, even at the time when the TSA merging was discussed, the Commission had recognized the only relevant party to be IL&FS. Therefore, it is not clear on what basis the other DICs should be impleaded. If the contention of the TANGEDCO based on PoC is accepted, then all transmission related Petitions should implead every DIC in the entire country which is neither feasible nor practicable.

(j) The issue of relinquishment charges is extraneous to the present issue and is not relevant to the Petitioner. The determination of relinquishment charges and its recovery cannot affect the claims of transmission charges and of increase in transmission charges in light of Force Majeure and Change in Law events.

(k) Whether the Petitioner can call upon the PGCIL to seek damages under the BPTA (even assuming but not admitting that the same can be claimed) is not an issue to be decided in the present Petition and does not involve the Petitioner. The issue of relinquishment of LTA and compensation for the same as well as inclusion in the PoC are decided as per the relevant regulations and orders and are not the subject matter of the present Petition. The contention that the transmission charges related to relinquished capacity should not be part of PoC is contrary to the Regulations and the scheme framed by the Commission.

(l) With regard to relinquishment by IL&FS, the Petitioner was required to implement the transmission system based on competitive bid and the transmission service agreement and the Petitioner had no role to play to decide on the scope of transmission capacity and whether it should be created or not. As far as the Petitioner is concerned, it has implemented the Project and providing service to the beneficiaries as per the provisions of the TSA. Hence, the Petitioner is entitled to be paid the transmission charges for the system implemented and duly compensated for adverse impact on the capital cost on account of changes, unforeseen and uncontrollable events not attributable to the Petitioner, encountered during execution of the Project. There was no intentional wrong or contumacious act or otherwise any wrong by the Petitioner.

(m) The sharing of transmission charges and the consequences of relinquishment are provided by the Commission by notified Regulations which are binding and TANGEDCO cannot claim otherwise. The compensation, if any, payable by IL&FS is also provided as per the Regulations read with orders of the Commission.

(n) In any event, the contention of TANGEDCO with regard to issues of relinquishment charges and PoC charges cannot be raised in the present Petition seeking compensation towards Force Majeure and Change in Law and the consequent time overrun and cost overrun. The claims of the Petitioner are to be considered irrespective of the relinquishment of any capacity. The Petitioner has implemented the transmission system and cannot be denied costs including increase in tariff due to events beyond its control. The fact that IL&FS relinquished capacity subsequently does not alter the fact that the transmission system was implemented. The consequences of relinquishment are provided in

the Regulations and the same does not change the right of the Petitioner to recover the yearly transmission charges including increase in tariff or their inclusion in PoC.

(o) The regime of PoC was introduced under Sharing Regulations, 2010 and the inclusion of transmission charges in PoC cannot also be questioned in the present Petition. TANGEDCO has not challenged any of the orders including order dated 9.5.2013 for inclusion in the PoC.

(p) TANGEDCO has raised the issues on implementation of the transmission project which cannot be raised in the present Petition which is for consequences of Change in Law and Force Majeure events nor can the implementation of the Project be questioned at this stage. The Project has already been implemented and transmission charges are already included in the PoC regime based on the orders and Regulations of the Commission. It is not open to TANGEDCO to now raise any issues in this regard. It is clear that the intention of TANGEDCO is to prolong the litigation, which is an abuse of process of law and should be outrightly rejected.

(q) The contention of TANGEDCO that the Petitioner should have abandoned the Project cannot be raised in the present Petition besides being completely frivolous and mischievous. The Petitioner had no authority to abandon the Project and there was no obligation on the Petitioner to unilaterally terminate the agreement. This is particularly when the issue was pending before the Commission and the Petitioner had sought specific directions from the Commission in regard to the Project. In any case, it had been clarified that the IL&FS project was going ahead.

(r) There is no obligation on the Petitioner to terminate an agreement particularly when it has already made investment and has incurred expenditure. The transmission projects get delayed due to various reasons including right of way issues but this does not mean that every project that gets delayed should be abandoned causing loss to the transmission licensee and also to the nation.

(s) Reference to decision of Appellate Tribunal for Electricity (APTEL) in Appeal No. 266 of 2016 dated 19.5.2020 in the case of PEL Power Limited is misconceived. The said judgment is related to planning of transmission system

by CTUIL and relates to BPTA. The Petitioner is an independent entity and is a special purpose vehicle for implementing transmission system in relation to IL&FS. There was no cancellation or abandonment of the generating project of IL&FS. When there was uncertainty regarding IL&FS, it was brought to the notice of the Commission and the process was suspended until there was clarity. Only on receiving go ahead from the Commission, the Petitioner proceeded with the Project. In fact, the said judgment supports the Petitioner's claim that when there is uncertainty, the work on transmission system could not be commenced.

(t) TANGEDCO has not properly gone through the various issues raised by the Petitioner and has causally commented only on the issues of court cases, unprecedented rains and public agitation. It is denied that the above would not be covered under Force Majeure and Change in Law clauses of the TSA. TANGEDCO has not denied the events but has only claimed that it does not fall within Force Majeure/Change in Law.

(u) The Petitioner had issued notices to LTTCs at appropriate times. The Respondent No. 2 is confusing the issue with claiming a requirement of consent from LTTCs. Firstly, the only relevant party is IL&FS and secondly, there is no requirement of consent. It cannot be that the beneficiary refuses to accept Force Majeure event and the Transmission Service Provider has no other avenue. This would be self-serving as no beneficiary would give consent and the Transmission Service Provider cannot suffer for the same. While the beneficiary can consent to the extension but even if they don't, the dispute may be raised with the Commission as per the provisions of the TSA. The Commission is entitled to adjudicate all disputes and grant extension of time even if the beneficiary does not consent.

(v) The time period of 180 days is only that after such time, either the TSP or beneficiary can terminate the TSA. Since the TSA has not been terminated and the transmission system has been implemented, the said time limit has no meaning. The interpretation of 180 days limit is for the purpose of invoking termination provisions of TSA (Article 13.5), if any, and not a limiting provision for providing time extension in case of Force Majeure events. As per Article 11.7 of TSA, no party shall be in breach of its obligation when the performance of its obligation was prevented, hindered or delayed due to Force Majeure event. The

issue is not foreseeability of the eventualities but the provisions of the TSA. If the event is a Force Majeure event (Article 11) and Change in Law (Article 12), the same is to be allowed. There is no requirement of whether the same was foreseeable. In any case, the Petitioner could not have foreseen the delay as had occurred.

Reply of IL&FS Tamil Nadu Power Company Limited (IL&FS)

18. The Respondent No.1, IL&FS Tamil Nadu Power Company Limited ('IL&FS'), in its reply dated 16.7.2020 has mainly submitted as under:

(a) The argument of the Petitioner that there is a delay of 25 months in commissioning of the transmission system built by the Petitioner on account of uncertainty in grant of NGT clearance for the generation project does not hold any merit since any uncertainty pertaining to the establishment of generation project cannot be linked with the commissioning of the transmission system built by the Petitioner.

(b) The Commission vide its order dated 9.5.2013 in Petition No. 121/TL/2012 with IA No. 5/2013 had directed the Petitioner to go ahead with the implementation of the transmission project. Further, vide order dated 20.6.2013, the Commission also held that the execution of the transmission project by the Petitioner cannot at all be affected on account of any apprehension generated regarding viability of the generation project. Hence, today the Petitioner cannot seek its Project got delayed because it awaited the outcome of the NGT proceedings, before the competing the Project.

(c) The Commission vide order dated 16.4.2014 in Petition No. 121/TL/2012 again took cognizance of the fact and specifically observed that the Petitioner itself contributed to the delay in execution of transmission project. As a result, the present Petition has become infructuous as the issue of delay has been settled vide the aforesaid order whereby it has been held that the Petitioner itself contributed to delay in implementing the transmission project.

(d) Delay in commissioning of the transmission system by the Petitioner is not at all attributable to the Respondent as the Respondent achieved the commercial operation of two units of the generating station on 29.9.2015 and 30.4.2016