

No. N/56/2019

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 14.09.2021

Present

Shri Shambhu Dayal Meena	: Chairman
Shri H.M. Manjunatha	: Member
Shri M.D. Ravi	: Member

OP No.20/2019

BETWEEN:

Solitaire Powertech Private Limited,
A616A, 16A, Sixth Floor,
Devika Tower,
Nehru Place,
New Delhi-110 019.
Represented by its General Manager)

..... PETITIONER

(Represented by Sri Hemanth Sahai, Advocate
for M/s HSA Advocates)

AND:

- 1) The Secretary,
Karnataka Power Transmission Corporation Limited,
2nd Floor, KPTCL,
Kaveri Bhavan,
Bengaluru-560 009.
- 2) The Managing Director,
Solar Energy Corporation of India Limited,
1st Floor, D-3, A-Wing, District Centre,
Religare Building, Saket,
New Delhi 110 017.

.....RESPONDENTS

(Respondent No.1 represented by
Ms. Priyanka Ajjanavar, Advocate for
M/s ALMT Legal, Advocates & Solicitors &
Respondent No.2 remained absent though
notice served)

ORDERS

1. The present petition is filed under Section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs to:

- a) Allow the present petition and issue appropriate directions to Respondents to complete construction/commissioning of requisite infrastructure beyond the Delivery Point required for evacuation of the entire contracted capacity of 30 MW in a time bound manner;
- b) Issue directions to Respondent No.1 to compensate Petitioner for the losses of Rs.8,56,98,766 (Rupees Eight crore Fifty six lakh Ninety eight thousand seven hundred sixty six only) due to generation losses as quantified in the present petition, incurred by the petitioner due to evacuation restrictions beyond the Delivery Point for supply of contracted capacity of power till January 2019 along with interest @ 18% P.A.,
- c) Issue directions to Respondent No.1 to compensate Petitioner for losses suffered for the period after January 2019 till final disposal of the petition due to generation losses incurred by the Petitioner due to evacuation restrictions beyond the Delivery Point for supply of contracted capacity;
- d) Direct the Respondents to pay costs of this petition to the petitioner and;
- e) Grant such order, further relief (s) in the facts and circumstances of the cases as this Hon'ble Commission may deem just and equitable in favour of the petitioner.

2. The material facts required for the disposal of the controversies involved in the case, as can be gathered from the pleadings and documents produced by the petitioner may be stated as follows:

a) The petitioner is a Special Purpose Vehicle (SPV) incorporated by Hindustan Cleanenergy Limited (HCeL) for setting up of the Solar Power Project, as per Letter of Intent (LoI) dated 02.07.2016 (Annexure-P3) issued by the 2nd Respondent - Solar Energy Corporation of India Limited (SECI), pursuant to the Request for Selection (RfS) inviting proposals for setting up of grid connected solar power projects in Karnataka on 'Build Own Operate' basis for an aggregate capacity of 1000 MW, in furtherance of the mandate of JNNSM Phase-II, Batch-III, envisaged to add a Solar PV capacity of 2000 MW through VGF mode as per JNNSM Guidelines (Annexure-P1). The petitioner being the successful bidder, the 2nd respondent (SECI) issued LoI dated 02.07.2016 (Annexure-P3). The LoI (Annexure-P3) states that the petitioner was required to develop 30 MW capacity Solar Power Project (Project for short) at Kanajanahalli village, Hiriyur taluk, Chitradurga district, at a tariff of Rs.4.43 per unit and that the evacuation of power from the Project was to take place at 66/11 kV P.D. Kote Sub-station (S/s), maintained by the 1st respondent (KPTCL). The LoI also states that the power generated from the project was to be sold to 2nd respondent (SECI) and also contains the other terms & conditions to be fulfilled by the petitioner.

- b) Prior to submitting its bid, the petitioner approached 1st Respondent (KPTCL) seeking connectivity of the proposed 30 MW solar PV project with the State Grid at a voltage level of 66 kV. In response thereto, 1st Respondent (KPTCL) issued a letter dated 05.04.2016 (Annexure-P2), wherein it confirmed the technical feasibility of the connectivity of the proposed 30 MW solar PV project with the State Grid from 66/11 kV, P.D. Kote S/s in Chitradurga district (Technical Feasibility Confirmation). It was further undertaken by 1st Respondent (KPTCL) in the said letter that grid connectivity would be provided in a period of 13 months from the date of signing of Power Purchase Agreement (PPA) between the petitioner and 2nd respondent or any further period as intimated by the petitioner along with confirmation from the 2nd respondent for such extended period.
- c) Pursuant to the issuance of the Lol, the petitioner entered into PPA dated 02.08.2016 (Annexure-P4) with the 2nd Respondent (SECI) for supply of contracted capacity of 30 MW of power. The Scheduled Commissioning Date (SCD) would be 02.09.2017 in terms of the PPA dated 02.08.2016 (Annexure-P4) and the Commercial Operation date (COD) would be the date after 30 days from the date of actual commissioning.
- d) The petitioner filed application dated 01.10.2016 (Annexure-P5) before the 1st respondent (KPTCL) seeking evacuation scheme approval to evacuate power generated from the project to the P.D. Kote S/s. The

1st respondent (KPTCL) issued tentative evacuation scheme approval dated 28.03.2017 (Annexure-P6) subject to certain conditions including the condition that the proposed evacuation of power from the project would commence only after completion and commissioning of the following works by KPTCL:

(i) 66 kV 2nd Circuit line between P.D. Kote and Hariyabbe S/s with Coyote conductor;

(ii) 66 kV 2nd Circuit line between 220/66 kV Hiriyur and up to Hariyabbe Tap Point with Coyote ACSR conductor.

- e) Pursuant to the terms of tentative evacuation scheme, the petitioner intimated vide letter dated 30.03.2017 (Annexure-P7), its acceptance to the conditions stipulated in the tentative evacuation scheme and requested for issue of regular evacuation scheme approval.
- f) Subsequently, the 1st respondent (KPTCL) issued the regular evacuation scheme approval dated 08.05.2017 (Annexure-P8) for the project, again incorporating that the proposed evacuation of power would commence only upon completion of the works as mentioned in the tentative evacuation scheme approval and also with some other terms & conditions stated therein.
- g) Considering the difficulties faced by the petitioner and various other similar Solar Power Developers (SPDs), the 2nd respondent (SECI) was allowed to revise the Scheduled Date of Financial Closure & Fulfilment

of Conditions Subsequent (FC&FCS) with the approval of Ministry of New & Renewable Energy (MNRE).

- h) The 1st respondent (KPTCL) issued the Provisional Interconnection Approval to the petitioner dated 06.02.2018 (Annexure-P9) subject to the condition that the evacuation of power shall be limited to safe loading capacity of the transmission network as agreed by the petitioner vide letter No.SPPL/30MW/CTA/KPTCL/DEC/02/2017-18 dated 26.12.2017 till the strengthening work was completed as per approved evacuation scheme and also with certain other conditions stated therein.
- i) In the meantime, the petitioner had taken steps to file an application on 10.11.2017 under Section 109 of the Karnataka Land Reforms Act, 1961 and also gave an undertaking dated 12.02.2018 (Annexure-P10) to SECI, thereby in terms of the said undertaking, the revised FCS date was 10.11.2017 as a result of which the SCD of the PPA stood extended to 10.05.2018 i.e., within six months after the date of revised FCS.
- j) Subsequently, the project was commissioned on 08.03.2018 and COD was declared on 07.04.2018, i.e., subsequent to 30 days from 08.03.2018. Thereby the 1st respondent (KPTCL) granted extension of provisional interconnection approval from time to time and up to 30.04.2019 vide letter dated 21.01.2019 (Annexure-P11) intimating that regular interconnection would be communicated only after completion and

commissioning of the pending works by KPTCL stated in tentative and regular evacuation schemes.

- k) The petitioner wrote letter dated 27.02.2018 (Annexure-P12) to the Director (Technical), KPTCL, Kaveri Bhavan, Bengaluru, informing that the transmission line connecting the project to the P.D. Kote S/s was got charged on 12.02.2018 and thereafter, the project was regularly exporting power to the grid and that unfortunately, the power evacuation had been curtailed to 2 MW by the local KPTCL authorities citing grid congestion, this would result in great loss to the petitioner. Therefore, it was requested to take up and commission the pending transmission line works stated in the evacuation scheme approvals. It is also requested that in the meanwhile to increase the evacuation limit of the project to at least 15 MW.
- l) The petitioner successfully commissioned the project on 08.03.2018 and the COD for complete capacity was declared on 07.04.2018. A copy of the provisional commissioning certificate dated 26.07.2018 issued by KREDL as well as a copy of letter dated 17.12.2018, evidencing these facts are produced at Annexure-P13 (collectively).
- m) Subsequent to commissioning of the project on 08.03.2018, the petitioner wrote several letters to different authorities pointing out that non-completion of transmission lines by 1st respondent (KPTCL), between P.D. Kote and Hariyabbe S/s and Hiriyyur S/s and Hariyabbe Tap Point as noted in evacuation scheme approvals, prevented the petitioner from

injecting the entire 30 MW Solar Power into the grid, leading to heavy pecuniary loss. The petitioner received a few communications by way of reply from different authorities. The particulars of the correspondences may be stated in a tabular column for the sake of clarity and brevity, as follows:

Annexure No.	Date	Communications addressed to/by	Particulars of letter.
1	2	3	4
P14 (colly)	12.03.2018	To the Director (Tech), KPTCL, Kaveri Bhavan by the petitioner.	Restriction in evacuation of power from the Project due to non-completion of transmission lines by the 1 st respondent (KPTCL).
	23.03.2018	- " -	- " -
P15 (colly)	20.04.2018	To the Director (Tech), KPTCL, Kaveri Bhavan. Bengaluru, by the petitioner.	Restriction in evacuation of power from the Project due to non-completion of transmission lines by the 1 st respondent (KPTCL).
	14.06.2018	- " -	- " -
	02.07.2018	To the Managing Director, SECI, New Delhi, by the petitioner.	- " -
P16 (colly)	12.07.2018	To the Addl. Chief Secretary, Energy Dept. by the petitioner.	Restriction in evacuation of power from the Project due to non-completion of transmission lines by the 1 st respondent (KPTCL).
	18.07.2018	To the Director (Transmission), KPTCL, Kaveri Bhavan by the petitioner.	Restriction in evacuation of power from the Project due to non-completion of transmission lines by the 1 st respondent (KPTCL). Further offering that petitioner would like to propose the 1 st respondent KPTCL that the petitioner was ready to do the bay extension work required at P.D. Kote S/s & Hariyabbe S/s on behalf of KPTCL (on standard rates), while the construction of DC line between PD Kote S/s to Hariyabbe S/s to be taken up by the KPTCL on priority basis, enabling the petitioner to evacuate the entire power from 30 MW capacity Project of the petitioner.
	23.07.2018	To the Chief Engineer (Ele.) Transmission Zone, Tumakuru by the Chief Engineer (Ele.) (Planning & Coordination), KPTCL, Kaveri Bhavan.	The petitioner & M/s Welspun Renewable Energy Pvt. Ltd., wrote letters stating that due to delay in execution of the upstream transmission line works, load restriction of power flow from their pooling station was imposed as a result they could not inject full capacity of 30 MW, therefore, it was requested to take personal attention and

1	2	3	4
			Further, explaining that restriction in generation was resulting in revenue loss of around Rs.2 cr. per month and that the delay in completion of the pending transmission line works was unreasonable and completely attributable to KPTCL.
P20	25.10.2018	To the Secretary, MNRE, New Delhi, by the petitioner.	Explaining the delay in completion of the pending transmission line works and requesting to intervene in the matter.
P21	08.11.2018	DO letter addressed to ACS, Energy Dept. GoK, by the MD, SECI.	Requesting to look into the matter and to direct the concerned to take necessary remedial measures.
P22	04.12.2018	To the Director (Tech.), KPTCL, Kaveri Bhavan, by the petitioner.	Requesting to share the up-dated status regarding the pending works of transmission lines to be carried out by KPTCL as noted in evacuation approvals. Further intimating that there was still no physical progress on the field.
P23 (colly)	04.01.2019 13.02.2019	Meeting Notice issued by the o/o the CE (Ele) (P&C), KPTCL, Kaveri Bhavan to the petitioner and to (1) Clean Solar Power (Gulbarga) Pvt. Ltd., and also to the concerned officials of KPTCL. The Meeting Proceedings dated 13.02.2021 of the Joint Meeting held on 08.01.2019 sent to the petitioner & M/s Clean Solar Power (Gulbarga) Pvt. Ltd., & other concerned officials of KPTCL.	To examine the modalities for execution of upstream strengthening of 66 kV line at P.D. Kote to Hariyabbe and P.D. Kote to 220/66 kV Station at Hiriyur, in the meeting to be held on 08.01.2019 at 11.00 a.m. at 1 st Floor, Conference Hall, KPTCL, Kaveri Bhavan, Bengaluru-1. The relevant part of meeting proceedings reads as follows: Executive Engineer (PSS) made a brief presentation indicating approved evacuation scheme communicated to M/s Clean & M/s Solitaire. In the approved evacuation scheme it was indicated that stringing of 2 nd circuit of 66 kV lines between P.D. Kote to Hariyabbe & strengthening of Hariyabbe tap line by KPTCL. Detailed load flow analysis for the following conditions was discussed. a) Second circuit between P.D. Kote to Hariyabbe. It was observed Hariyabbe tap line is loaded beyond its line capacity. b) With the second circuit between P.D. Kote to Hariyabbe & 66 kV link line between CB Gere – P.N. Halli being executed under self-execution basis by M/s Global Tech Power Pvt. Ltd. It was observed with 80% despatch from M/s Solitaire Pvt. Ltd., & M/s Clean Solar Power Pvt. Ltd., all the transformer elements in and around P.D. Kote no violations are observed.

			<p>(Note: The petitioner has disputed 80% despatch as observed above and contended that the despatch from the Project was only up to 10-12 MWs).</p> <p>In respect, of KPTCL 66 kV line strengthening as per SEE (W&M), Davanagere report it was informed that line survey work is completed, report to be submitted by the survey agency. After the receipt of the report detailed estimate will be prepared & submitted to Corporate Office for obtaining administrative approval.</p> <p>It was also informed that 3rd 100 MVA 220/66 kV power transfer at Hiriyr is likely to be completed by March 2019. Developers also informed the estimated cost towards construction of 2nd circuit between P.D. Kote & Hariyabbe may be intimated.</p> <p>Normally, the tendering process requires 60 days & award thereafter another 60 days. After award the time for completion of work is 12 months (approx.) was informed to the developers.</p>
P24	Nil	--	<p>Table showing calculation of total generation loss till the filing of the petition. In this table Generation loss due to evacuation restriction, revenue loss at tariff of Rs.4.43 per kWh., on the generation loss interest at 18% on the amount on generation loss are shown. Totally a sum of Rs.8.56,98,766 is shown as loss due to evacuation restriction.</p>

n) In support of the prayers made in the petition, the petitioner has urged the following material grounds:

- (i) That the 1st respondent (KPTCL) was under statutory obligation to build, operate and maintain an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres, as per Section 39 (2) (c) of the Act. As such, the action of 1st respondent (KPTCL) in not providing the petitioner with an adequate and

requisite transmission system to evacuate the entire contracted capacity of 30 MW from the Project, smacks of arbitrariness and is thus illegal and arbitrary and is in dereliction of its statutory duty.

- (ii) Promissory Estoppel and Legitimate Expectation: The petitioner submitted its bid based on the Technical Feasibility Report dated 05.04.2016 (Annexure-P2) issued by 1st respondent (KPTCL) and the representations made therein i.e., that connectivity to the State Grid would be provided within a period 13 months from the signing of the PPA etc. In fact, Clause 4.2 of the JNNSM Scheme/Guidelines categorically states that State Transmission Utility is required to provide connectivity to the Solar Projects with the Grid. The petitioner has acted on these promises and altered its position by constructing the Project by investing huge sums of money. These promises/representations are thus, enforceable on the principles of 'promissory estoppel' and 'legitimate expectation'.
- (iii) Generation Loss: Due to the inaction on the part of the 1st respondent (KPTCL), in completing the commissioning of upstream transmission line works, petitioner's Solar Power Project is kept idle and generating only up to 2 MW to 12 MW power (except for the last two months when the evacuation has increased to 22 MW due to non-operation of another power plant of 30 MW capacity). Thereby the petitioner sustained loss of Rs.8,56,98,766 as quantified in Annexure-P24.

3. The 2nd respondent (SECI) remained absent though a notice was issued by the Commission. It may be noted that the 2nd respondent (SECI) is only a formal party and the petitioner has not claimed any relief against it.
4. The 1st respondent (KPTCL) appeared through counsel and filed its Statement of Objections denying the claims of the petitioner. The material part of the Statement of Objections of 1st respondent (KPTCL) may be stated as follows:
 - a) That the petitioner filed applications requesting evacuation scheme approval for the Project vide letters dated 01.10.2016 (Annexure-R1) and dated 30.01.2017 (Annexure-R3) addressed to the Chief Engineer (Ele.)(Planning & Coordination), KPTCL, Kaveri Bhavan, Bengaluru and to the Director (Transmission), KPTCL, Kaveri Bhavan, Bengaluru, respectively. The Chief Engineer (Ele.) (Planning & Coordination), KPTCL, Kaveri Bhavan, Bengaluru, addressed letter dated 07.02.2017 (Annexure-R6) to the Chief Engineer (Ele.) (Transmission Zone), KPTCL, Tumakuru, asking to furnish the field/inspection report in respect of the request made by the petitioner duly furnishing the details as per the Annexure enclosed with the said letter. In response, the Chief Engineer (Ele.) (Transmission Zone), KPTCL, Tumakuru, sent his reply vide letter dated 13.03.2017 (Annexure-R7) after getting the field reports from the concerned officials to the Chief Engineer (Ele.), (Planning & Coordination), KPTCL, Kaveri Bhavan, Bengaluru.

- b) The 1st respondent (KPTCL) admitted having issued, tentative evacuation scheme approval dated 28.03.2017 (Annexure-P6=Annexure-R8) and also regular evacuation scheme approval dated 08.05.2017 (Annexure-P8=Annexure-R12). The 1st respondent (KPTCL) relied upon the conditions imposed for allowing evacuation of power as mentioned in tentative and regulation evacuation schemes.
- c) That the petitioner accepted/confirmed of the conditions stated in tentative evacuation scheme approval by way of letter dated 30.03.2017 (Annexure-R9), the material part of which reads as follows:

"We hereby agree to comply with all the conditions mentioned in your letter referred (4) above, and like to request you to regularize our Tentative Evacuation Scheme. Further we may also need your kind support and advice for the land to be required for the construction of TB(s) at 66/11 kV P.D. Kote S/s.

Anticipating your kind support and cooperation for the successful implementation of the project."

- d) Pursuant to the 126th T.B. Committee Meeting proceedings dated 12.06.2017 (Annexure-R13), a decision was taken to spare available KPTCL land for construction of one number of 66 kV Terminal Bay along with metering arrangement at 66/11 kV P.D. Kote S/s to the petitioner, on payment of one-time land lease rent etc.,
- e) The petitioner issued letter dated 26.12.2017 (Annexure-R14) requesting to provide provisional inter-connection approval for the Project by submitting the necessary documents required for issuing provisional inter-connection approval. The petitioner also gave

another letter dated 26.12.2017 (Annexure-R16) in response to the conditions stated in regular evacuation scheme undertaking that “we are not claiming anything from the KPTCL for the loss of generation that may arise owing to grid constraints/at the time of line/bus faults. Kindly do the needful action at the earliest.” In response to it, the 1st respondent (KPTCL) issued the provisional inter-connection approval dated 06.02.2018 (Annexure-P9=Annexure-R15).

f) The 1st respondent (KPTCL) in paras 18 & 19 of its Statement of Objections, has stated as follows:

“18. It is also relevant to submit that in light of certain grid constraints, the answering respondent has initiated necessary action and a proposal for strengthening the grid has been approved by the Technical Coordination Committee of the answering respondent. Furthermore, upon the approval of the aforesaid proposal by the Chief Engineer (Ele.) Transmission Zone, Tumkur, the Chief Engineer has invited tenders for undertaking line-surveys and the same is in progress.

19. Under such circumstances, the petitioner's claims against the answering respondent towards delays in strengthening of the transmission line, and towards compensation for the alleged losses, smacks of mala fides and is not sustainable. Furthermore, the petitioner having acquiesced to the conditions laid down in the tentative and regular evacuation schemes, and thereafter issuing letters acknowledging that no claims would be made against this answering respondent for loss of generation, is now estopped from making claims for loss of generation that may have arisen owing to grid constraints and restrictions. Therefore, the claims made by the petitioner against this respondent are false, arbitrary, untenable, and therefore liable to be rejected to be in limine. “

g) The 1st respondent (KPTCL) in paras 28 & 30 of its Statement of Objections, has stated as follows:

“28. Re-paragraph 5 to 5.2: The allegations made in the referenced paragraph that the alleged abdication of duty of this answering respondent thereby allegedly causing severe financial losses to the petitioner is false and therefore denied. The petitioner having acquiesced to the conditions laid down in the tentative and regular evacuation schemes, and thereafter issuing letters acknowledging that no claims would be made against this answering respondent for loss of generation, cannot now make such claims against the answering respondent for the alleged losses incurred by the petitioner.

30. Re-Paragraph 5.4: The doctrine of promissory estoppel and the principle of ‘legitimate expectation’ and the citations referred thereto cannot be applied to the instant matter, in view of the representations and communications shared with the petitioner, along with the acknowledgements received by the answering respondent from the petitioner in that regard. Furthermore, the answering respondent is not privy to the promises or conditions arising from the Power Purchase Agreement between the petitioner and the 2nd respondent. Therefore, the aforesaid doctrine and principles along with their corresponding citations and judgment extracts cannot be read de-hors of context and circumstances that have arisen in the present case.”

h) The 1st respondent (KPTCL) has not denied the issuance of Technical Feasibility Report dated 05.04.2016 (Annexure-P2). The 1st respondent (KPTCL) has denied all other adverse allegations against it, stated in the petition and prayed for the dismissal of the petition.

5. The petitioner has filed rejoinder to the statement of objections on 11.09.2019. The gist of it may be stated as follows:

a) In respect of conditions imposed in evacuation scheme approvals that the evacuation of power from the Project to be established would commence only after completion of certain upstream transmission lines works and the acceptance of the said conditions by the petitioner as per letter of undertaking dated 26.12.2017 (Annexure-R16) not to claim for the loss of generation that might arise owing to grid constraints/at the time of line/bus faults, the petitioner has stated in the middle of para 3 of the rejoinder as follows:

"Pertinently, the said letter was written by the petitioner on 26.12.2017 before the commissioning of the plant. Without issuing the said letter, petitioner would not have received provisional interconnection approval dated 06.02.2018. Subsequently, the plant was charged on 12.02.2018 and the plant got commissioned on 08.03.2018. Thereafter, CoD for the entire capacity was achieved on 07.04.2018. Thus, the said letter issued prior to commissioning cannot be read to be such alleged concession which will be operative in perpetuity towards Respondent No.1 to deny petitioner the losses suffered due to Respondent No.1's inaction. In any case, the Respondent No.1 cannot take shelter of the said letter dated 26.12.2017 as an excuse to avoid performance of its statutory obligation and duties arising in terms of the Electricity Act, 2003."

b) That the 1st respondent (KPTCL) in its Statement of Objections has made no submission and is conspicuously silent on the feasibility letter dated 05.04.2016 (Annexure-P2), confirming the technical feasibility of the connectivity of the proposed project with the State Grid from 66/11 kV P.D. Kote S/s in Chitradurga district, within a period of 13 months from signing of the PPA, etc.,

- c) The petitioner requested the 1st respondent (KPTCL) multiple times to expedite the construction of the pending upstream works of the transmission lines and in spite of it, the 1st respondent (KPTCL) has not executed the pending works.
- d) The petitioner has denied the correctness of the other contentions raised by the 1st respondent (KPTCL) in its statement of objections.
6. During the pendency of the hearings, the Commission has directed the 1st respondent (KPTCL) to furnish the details of the status report of the pending works concerned in this case. The 1st respondent (KPTCL) furnished the details of the status reports along with certain documents on 19.08.2020, 15.09.2020, 18.12.2020, 18.02.2021 & 09.04.2021. The status report submitted on 09.04.2021 directly addressed to the Secretary, KERC, was again submitted through Advocate for the 1st Respondent on 15.06.2021.
7. The petitioner filed statements of generation loss accrued during the pendency of the petition.
8. We have heard the learned counsel for the parties. They have also filed written arguments. The counsel for the petitioner relied upon certain judgments of the Hon'ble ATE as well as the Hon'ble Supreme Court of India. We have gone through the various decisions cited by the learned counsel for the petitioner.

The learned counsel for the petitioner submitted that the 1st respondent (KPTCL) having provided the Technical Feasibility Report dated 05.04.2016 (Annexure-P2) prior to the inception of the Project,

cannot now go back in time and change its stance. Therefore, he claimed compensation for loss of generation from the Commercial Operation Date of the Project. Alternatively, he submitted that the KPTCL cannot claim indefinite period for completion of the pending works to evacuate the entire energy generated from the Project. Such action/inaction on the part of the 1st respondent (KPTCL) is akin to misfeasance on its part and as such consequential losses caused by the petitioner are liable to be duly compensated by the 1st respondent (KPTCL). He submitted that even after lapse of years together, the 1st respondent (KPTCL) had only awarded tender for execution of one limb of work, but it had only floated the tender for execution of 2nd limb of work and no Lol had been issued with respect to works associated with construction of 20 km long line connecting Hariyabbe to Hariyabbe Tap Point to Hiriyur. Therefore, he submitted that the conduct of 1st respondent (KPTCL) amounts to gross negligence and is completely arbitrary.

The learned counsel for the 1st respondent (KPTCL) submitted that at the initial stage itself, the 1st respondent (KPTCL) had intimated that the injection of power could be only after completion of the upstream strengthening of transmission line works stated in evacuation scheme approvals and the petitioner has knowingly accepted those conditions and has also given unconditional undertaking not to claim any compensation for loss of generation until completion of the pending

works. He submitted that the 1st respondent (KPTCL) acted honestly in executing the pending works.

9. The issues arising from the pleadings of the parties and the documents produced by them and the submissions of the learned counsel for the parties. are as follows:

Issue No.1: Whether the petitioner is entitled to claim promissory estoppel on the basis of the representation made in the Technical Feasibility Report dated 05.04.2016 (Annexure-P2) in view of the subsequent retraction by the 1st respondent (KPTCL) of such representation in the subsequent evacuation approvals issued by it?

Issue No.2: Whether the 1st respondent (KPTCL) having not undertaken in a time-bound period to complete the upstream strengthening of the transmission line works stated in the evacuation scheme approvals, can claim an indefinite period for completion of the said works?

Issue No.3: What could be taken as reasonable period for completion of the upstream strengthening of the transmission line works in question and from which date this period could be made applicable?

Issue No.4: Whether the petitioner is entitled to any compensation/ damages for the generation loss, and if so from which date?

Issue No.5: Whether the petitioner is entitled to interest on the claim of generation loss?

Issue No.6: What Order?

10. After considering the records and the submissions of the parties, our findings on the above issues are as follows:

11. Issue No.1: Whether the petitioner is entitled to claim promissory estoppel on the basis of the representation made in the Technical Feasibility Report dated 05.04.2016 (Annexure-P2) in view of the subsequent retraction by the 1st respondent (KPTCL) of such representation in the subsequent evacuation approvals issued by it?

a) Prior to submitting its bid, the petitioner approached 1st respondent (KPTCL) seeking connectivity of the proposed 30 MW solar PV project with the State Grid at a voltage level of 66 kV. In response thereto, 1st respondent (KPTCL) issued the letter dated 05.04.2016 (Annexure-P2), wherein it confirmed the technical feasibility of the connectivity of the proposed 30 MW solar PV project with the State Grid from 66/11 kV, P.D. Kote S/s in Chitradurga district (Technical Feasibility Confirmation). The material part of Annexure-P2 reads as follows:

"1. M/s Solitaire Powertech Private Limited, New Delhi has approached us for providing connectivity for a Solar PV Project having a cumulative capacity of 30 MW; proposed to be located at Kanajanahalli village, Hiriya Taluk, Chitradurga District, with the state grid at a voltage level of 66 kV.

2. We confirm the Technical feasibility of the connectivity of the plant with the State grid from 66/11 kV, P.D. Kote S/s in Chitradurga district.

3. We further undertake that the connectivity with the grid will be provided within a period of 13 (Thirteen) months from signing of PPA between M/s Solitaire Powertech Private Limited, New Delhi and Solar Energy Corporation of India

Limited (SECI) or any further period as intimated by M/s Solitaire Powertech Limited, New Delhi along with confirmation from SECI for such extended period."

- b) Annexure-P2 dated 05.04.2016 is signed by the Chief Engineer (Electy), (Planning & Coordination), shown as an Authorised Signatory of the KPTCL. The representation made in this letter, that the connectivity with the grid would be provided within a period of 13 months from signing of the PPA between the petitioner and the SECI or any further period as intimated by the petitioner along with confirmation from SECI for such extended period, is very clear and unambiguous. Such representation would have been clearly amounted to promissory estoppel as against the 1st respondent (KPTCL), had there not been subsequent retraction of such representation by it. As already noted, the tentative evacuation scheme dated 28.03.20217 (Annexure-P6) as well as the regular evacuation scheme dated 08.05.2017 (Annexure-P8) state that evacuation of power from the project would commence only after completion and commissioning of strengthening work of upstream transmission lines stated in the said approvals. The petitioner accepted the said condition stated in tentative evacuation scheme as per letter of acceptance dated 30.03.2017 (Annexure-R9) and requested to issue the regular evacuation scheme. Further, the petitioner while requesting to issue provisional interconnection approval on 26.12.2017 gave an undertaking not to claim generation loss as against the 1st respondent (KPTCL), as per letter dated 26.12.2017 (Annexure-R16).

c) In such circumstance, the 1st question that arises for consideration is as to whether the 1st respondent (KPTCL) can retract from the earlier representation made as per Annexure-P2 dated 05.04.2016, and if so at what stage and what would be the rights & liabilities of the parties? This question is dealt with in the decision cited in (1995) 6 Supreme Court Cases 363 between State of H.P. & Others Vs. Ganesh Wood Products & Others. In para 55 of the said judgment, it is held as follows:

“.....The rule of promissory estoppel being an equitable doctrine, has to be moulded to suit the particular situation. It is not a hard and fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. If it is more just from the point of view of both promisor and promisee that the latter is compensated appropriately and allow the promisor to go back on his promise, that should be done; but if the Court is of the opinion that the interests of justice and equity demand that the promisor should not be allowed to resile from his representation in the facts and circumstances of that case, it will do so. This, in our respectful opinion, is the proper way of understanding the words “promisee altering his position”. Altering his position should mean such alteration in the position of the promisee as it makes it appear to the Court that holding the promisor to his representation is necessary to do justice between the parties. The doctrine should not be reduced to a rule of thumb. Being an equitable doctrine it should be kept elastic enough in the hands of the Court to do complete justice between the parties” All that we wish to emphasise is that anything and everything done by the promisee on the faith of the representation does not necessarily amount to altering his position so as to preclude the promisor from resiling from his representation. If the equity demands that the promisor is allowed to resile and the promisee is compensated appropriately, that ought to be done. If, however, equity demands, in the light of the things done by the promisee on the faith of the representation, that the promisor should be precluded from resiling and that he should be held fast to his

representation, that should be done. To repeat, it is a matter of holding the scales even between the parties – to do justice between them. This is the equity implicit in the doctrine.”

In the same judgment at para 57 further it is stated as follows:

“57. It may perhaps be appropriate to point out that what we have said above is consistent with the doctrine as stated in Motilal Padmpat Sugar Mills and the subsequent decisions. In Motilal Padampat Sugar Mills, it has been held firstly that: (SCC p. 443, para 24)

“But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies”

and then it is observed: (SCC p.444, para 24)

“But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise ‘on giving reasonable notice, which need to be a formal notice, giving the promisee a reasonable opportunity of resuming his position’ provided of course it is possible for

the promisee to restore the status quo ante. If, however, the promisee cannot resume his position, the promise could be final and irrevocable. Vide Emmanuel Adyodeji Ajay Vs. Briscoe. (1964) 3 ALL ER 556 1964)1 WLR 1326."

It is this aspect which has been elaborated by us keeping in mind the facts and circumstances of this case."

- d) Prior to retracting the earlier representation vide tentative evacuation scheme approval dated 28.03.2017 (Annexure-P6) by the 1st respondent (KPTCL), the petitioner had participated in the bid proceedings, executed the PPA and purchased the lands required for the project. The purchase of lands is asserted in Annexure-R3 dated 30.01.2017, the 2nd application filed by the petitioner requesting for issue of evacuation scheme approval. Generally, the land value of the project would be less than 8% of the total project cost. In the absence of evacuation facility from the project site to the State grid, it appears there could not have been any liability on the part of the petitioner to pay the damages to SECI for non-implementation of the project in terms of the PPA. The petitioner had a cause of action for claiming the damages against the 1st respondent (KPTCL) for having retracted from the representation made earlier as per Annexure-P2 dated 05.04.2016. However, the petitioner has not taken any steps to protest against the retraction of the earlier representation or to get an assurance from the 1st respondent (KPTCL), the time period within which the proposed transmission line works would be completed, before further proceeding with the Project work. On the other hand, the petitioner accepted the conditions

imposed for issuance of the evacuation approvals and for evacuation of power from the project site to the State grid. Such act or omission of the petitioner amounts to estoppel from claiming generation losses as contended by the 1st respondent (KPTCL). This amounts to an estoppel against an estoppel.

e) As noted above at the time of the retraction of the earlier representation by the 1st respondent (KPTCL), the Project work was at preliminary stage and the petitioner had not incurred any considerable amount except purchasing the lands required for the Project. As already noted such expense would be less than 8% of the total of the Project cost. For one or other reason, the 1st respondent (KPTCL) thought that it could not keep up the earlier representation for giving grid connectivity within a period of 13 months from the date of PPA. For that reason, it had imposed the conditions in the tentative evacuation approval. As the Project work was at preliminary stage it cannot be said that the 1st respondent (KPTCL) should not be allowed to resile from its earlier representation. The petitioner had the choice to protest against the conditional evacuation approvals and to claim damages at that stage or to give consent for the conditions imposed in the evacuation approval. The petitioner knowingly accepted the conditions imposed in the evacuation approvals.

f) In the above facts and circumstances, we are of the considered view that the petitioner cannot rely on the representation made to it by the

1st respondent (KPTCL) as per Annexure-P2 dated 05.04.2016, regarding the undertaking given by the 1st respondent (KPTCL) for connectivity of the project with the grid, for evacuation of power.

g) For the above reasons, we hold Issue No.1 in the negative.

12. Issue No.2: Whether the 1st respondent (KPTCL) having not undertaken in a time-bound period to complete the upstream strengthening of the transmission line works stated in the evacuation scheme approvals, can claim an indefinite period for completion of the said works?

a) The 1st respondent (KPTCL) is the State Transmission Utility (STU) as stated in Section 39 of the Electricity Act, 2003. The relevant portion of Section 39 (2) describing the functions of the STU is as follows:

“39 (2) The functions of the State Transmission Utility shall be –

(a) To undertake transmission of electricity through intra-State transmission system;

(b) To discharge all functions of planning and co-ordination relating to intra-State transmission system with –

(i) Central Transmission Utility;

(ii) State Governments;

(iii) Generating Companies;

(iv) Regional Power Committees;

(v) Authority;

(vi) Licensees;

(vii) Any other person notified by the State Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

(d) xxxxxxxxxxxxxxxx”

b) The 1st respondent (KPTCL) has issued tentative evacuation scheme approval dated 28.03.2017 (Annexure-P6) and regular evacuation scheme approval dated 08.05.2017 (Annexure-P8) and the petitioner proceeded with the Project work and the Project was commissioned on 08.03.2018. At the time of commissioning of the Project, the evacuation of the power from the Project was limited to 2 MW, subsequently it was increased to 10-12 MW and for some days or months it was up to 20-22 MW when another Project in the vicinity was not generating power for some reason. Even for the present, the upstream strengthening works of transmission lines stated in the evacuation scheme approvals, so as to enable evacuation of entire 30 MW power from the Project, is not completed and commissioned. The petitioner has made repeated reminders requesting for completion of the Project. It can be seen that even after 3½ years from the date of commissioning of the Project, the pending works are not yet completed. Now, it is an established principle as laid down by the Hon'ble Supreme Court of India, that *“In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently.”*

c) We are of the considered view that there is a duty cast on the 1st respondent (KPTCL) to complete the pending works stated in the evacuation scheme approvals, within a reasonable time, though the KPTCL had not specifically mentioned that it would complete the

upstream strengthening of transmission lines, it cannot claim an indefinite period for completion of the said work at its whims and fancy. In case of inordinate delay in completing the evacuation system which amounts to negligence on the part of the 1st respondent (KPTCL) attracting tortious liability, it cannot rely on the undertaking given by the petitioner not to claim generation loss for delay in completing the evacuation system. In this regard, the learned counsel for the petitioner relied upon the decision cited in "*(1994) 1 Supreme Court Cases 243 between Lucknow Development Authority Vs. M.K. Gupta*". Therefore, one has to conclude that even in the absence of a timeline specified in the evacuation scheme approvals, the KPTCL is bound to complete it within a reasonable time and it cannot claim indefinite time period for completing the said work.

d) For the above reasons, we hold Issue No.2 is held in the negative.

13. Issue No.3: What could be taken as reasonable period for completion of the upstream strengthening of the transmission line works in question and from which date this period could be made applicable?

a) The pending works shown in tentative evacuation scheme approval dated 28.03.2017 (Annexure-P6) are as follows:

- (i) 66 kV 2nd circuit line between P.D. Kote and Hariyabbe S/s with coyote conductor; and
- (ii) 66 kV 2nd circuit line between 220/66 KV Hiriur and up to Hariyabbe Tap Point with Coyote ACSR conductor.

- b) In addition to the above pending works, in the letter dated 19.09.2018 (Annexure-P18), the 1st respondent (KPTCL) intimated the petitioner that to evacuate full capacity of 30 MW in the vicinity of P.D. Kote, the completion of the following works are also necessary:
- (i) Installation of 3rd 100 MVA power transformer at 220 kV Hiriya S/s.
 - (ii) Construction of 66 kV SC link line between Hulikunte and P.N. Halli.
- c) Both the parties have not produced any evidence or other relevant material in their pleadings for deciding the question involved in Issue No.3, framed above. The second document dated 13.02.2019 in Annexure-P23, namely; the copy of Joint meeting proceedings of the meeting held on 08.01.2019 between KPTCL and M/s Clean Solar Power Private Limited and the petitioner, to examine the modalities for execution of upstream strengthening of 66 kV line at P.D. Kote to Hariyabbe and P.D. Kote to 220/66 kV Station at Hiriya, would throw some light on this question. After detailed discussion of the pending works and the detailed load flow analysis etc., it was informed to the Developers that normally, the tendering process would require 60 days and thereafter, the work award would require another 60 days and after work award, the time for completion of work would require 12 months (approximately). We think this 16 months' time estimated, would refer to complete the pending works concerned in this case, so as to enable the evacuation of entire generation from the projects of these Developers.

d) During the pendency of the hearings, the Commission has directed the 1st respondent (KPTCL) to furnish the details of the status report of the pending works concerned in this case. The 1st respondent (KPTCL) furnished the details of the status reports along with certain documents, on 19.08.2020, 15.09.2020, 18.12.2020, 18.02.2021 & 09.04.2021. The status report submitted on 09.04.2021 directly addressed to the Secretary, KERC, was again submitted through Advocate for the 1st respondent (KPTCL) on 15.06.2021.

e) In the status report filed on 19.08.2020, the KPTCL's letter dated 29.02.2020 signed by the Financial Adviser, KPTCL, Kaveri Bhavan, Bengaluru, is produced. Regarding the status report, the said letter states as follows:

"In this regard following are the submissions of KPTCL:

1. *During the 75th TCCM meeting held on 04.11.2017 the following additional works pertaining to said subject is approved which includes:*

a) *Stringing of 2nd circuit with coyote conductor between PD Kote and 66 kV Hariyabbe S/s on existing DC towards for a distance of 12.25 kms along with 2 Nos. of terminal bays, one at P.D. Kote and one at Hariyabbe Station.*

b) *Replacement of existing 66 kV SC coyote line on SC towers between 66 kV Hariyabbe S/s and Hariyabbe Tap Point by 66 kV DC Drake line on DC towers for a distance of 10.25 kms and creation of one number of terminal bay at Hariyabbe S/s for providing LLO arrangement.*

c) *Replacement of existing 66 kV DC Coyote line on DC towers between 220/66 kV Hiriyur S/s and Hariyabbe Tap Point by 66 kV DC drake line on DC towers for a distance of 18 kms.*

2. *In this regard, the estimates have already been submitted and approval for the DPR for the said work is under process. After approval of DPR, tender will be floated and after finalization of the tender process finally the DWA will be issued for the subject work, then the work will be taken up as per norms. Likely date of completion of line work is 14.12.2021.*

Calendar of events:

- *Survey Estimate submitted to Circle Office, Davanagere: 09.07.2018.*
- *Technical Sanction at Circle Office, Davanagere: 13.07.2018.*
- *Work Order Issued at Division Office, Davanagere: 07.08.2018.*
- *Tender floated at Circle Office, Davanagere: 27.08.2018.*
- *Award issued at Circle Office, Davanagere: 21.12.2018.*
- *Detailed survey and collection of documents: 06.09.2019.*
- *Estimate submitted to Circle Office, Davanagere: 13.09.2019.*
- *Estimate forwarded from Circle Office to Zonal Office: 19.09.2019.*
- *Revised Estimate submitted: 06.11.2019.*
- *Estimate submitted to the CEE (Plg): 13.12.2019.*
- *DPR sent to O/o the DGM (Tech) for administrative approval: 07.01.2020.*

3. *Also with regard to establishing 2x100 MVA 220/66 kV S/s in P.D. Kote, Hiriyur taluk, the Government land is identified and acquired as per norms, 22 kV and connected 66 kV link lines detailed survey completed, Geo-technical survey completed and awaiting for reports."*

- f) *In the status report filed on 15.09.2020, the same facts stated as in the earlier status report dated 19.08.2020, are reiterated. Further, it is also stated that "Estimate in DPR format submitted on 13.09.2019. DPR approved vide B19/819/9394/05.02.2020 for Rs.1965 lakhs. Tender is invited at Corporate Office on 11.03.2020 and also extended further, but no bids received and re-tender is under process."*

- g) In the status report submitted on 18.12.2020, addressed to the Secretary, KERC, the further facts stated are as follows:

"In continuation to the earlier submissions made before the Commission, it is to inform that Chief Engineer, Electy., Transmission Zone, KPTCL, Tumakuru has already called for Short Term tender for "Stringing of 2nd circuit between 66 kV P.D. Kote and 66 kV Hariyabbe S/s on existing DC towers for a distance of 12.54 kms along with two new terminal bays, one at P.D. Kote S/s and one at Hariyabbe S/s on 13.11.2020 for a period for 10 days. The technical bid was opened on 27.11.2020 wherein a single bidder has participated.

Now, the price bid will be opened shortly after completion of Technical evaluation which is under process and if the bidder is found responsive, the work will be awarded to take-up the project on top-priority. Hence, the estimated completion date shall be informed after work is awarded.

In view of the above mentioned facts, KPTCL (Respondent No.1) once again respectfully prays to grant 1 month' time to provide detailed action plan and estimated completion date of the said work."

- h) In the status report filed on 18.02.2021, the following further facts are stated as follows:

"3. In continuation to the earlier submissions made before the Commission, it is to inform that Superintending Engineer Ele., Transmission Works Circle, KPTCL, Davanagere has issued the Letter of Intent to Award the Contract to Ms. SLR Power Services vide LOI No.SEE/W&M/DVG/EE/AEE-2/F-114/20-221/6585-99 (Supply Portion), 6600-14 (Erection Portion), 6615-29 (Civil Portion) Dated: 05.02.2021 for "Stringing of 2nd Circuit between 66 kV P.D. Kote and 66 kV Hariyabbe S/s on existing DC towers for a distance of 12.354 kms along with two new terminal bays, one at P.D. Kote S/s and one at Hariyabbe S/s.

4. The period of completion of the said work will be 9 (nine) months from the date of Letter of Intent to Award the Contract including monsoon period.

5. Further, the Detailed Work Award will be issued by the Superintending Engineer, Ele., Transmission Works Circle, KPTCL, Davanagere on receipt of acceptance/execution of contract agreement and furnishing of Performance Bank Guarantee.

6. In view of the above mentioned facts, KPTCL (Respondent No.1) once again respectfully submits above mentioned information for kind consideration."

i) In the status report filed on 09.04.2021 & 15.06.2021, the single line diagram showing the locations of different places from 220/66/11 kV SRS Hiriyyur (A) to Hariyabbe Tap Point (B), Hariyabbe Tap Point (B) to 66/11 kV Hariyabbe Station (C) and 66/11 kV Hariyabbe Station (C) to 66/11 kV P.D. Kote Station (D) are shown.

The further facts stated in this report are as follows:

Tender floated by the Corporate Office, KPTCL, Kaveri Bhavan, Bangalore	
A-B: Conversion of D/C coyote ACSR to Drake ACSR conductor (Existing DC line) – 18.92 kms.	Techno commercial bids were opened on 09.03.2021. Four bidder have participated and the tender is under evaluation. Completion Period: 12 months from the date of award (including monsoon period).
B-C: Conversion of S/C coyote on SC Towers to D/C Drake Conductor on DC Towers – 9.628 kms.	
DWA Issued by the SEE, W&M Circle, Davanagere.	
C.D: Stringing of 2 nd circuit from 66/11/ kV Hariyabbe station to PD Kote station on existing DC tower using coyote conductor – 12.354 kms. And construction of 2 Nos. of terminal bays at Hariyabbe station and one No.at PD Kote S/s.	LOI issued to M/s. SLR Power Services, Bangalore on 05.02.2021. Target Date for completion of work: 04.11.2021.

Along with this Status Report dated 15.06.2021, the statement of latest report on tendering and construction of the Transmission Lines of Challakere and Hiriyyur taluks of Chitradurga district as on March, 2021 is produced. In this latest report recently commissioned works, on-going

works and works to be taken up are shown. A load flow map of various Sub-stations of Chitradurga district is also filed.

- j) On perusal of the status report submitted on 15.06.2021 (09.04.2021), it can be said that the work relating to points C to D refers to the 1st work namely; "a) 66 kV 2nd Circuit line between P.D. Kote & Hariyabbe S/s with coyote conductor" and that the works relating to points A to B & B to C refer to the 2nd work namely; "b) 66 kV 2nd Circuit line between 220/66 kV Hiriyur & up to Hariyabbe Tap Point with Coyote ACSR conductor" stated in tentative evacuation scheme approval dated 28.03.2017 (Annexure-P6).
- k) Further, the status report submitted on 15.06.2021 (09.04.2021) shows that the installation of 3rd 100 MVA power transformer at 220 kV Hiriyur S/s was completed on 06.02.2020. It can be said that the installation of 3rd 100 MVA power transformer at 220 kV Hiriyur S/s relates to the 1st work stated in Annexure-P18 dated 19.09.2018. It cannot be ascertained as to whether the 3rd work stated in Annexure-P18 namely; "Construction of 66 kV SC link line between Hulikunte and P.N. Halli" is taken up for execution or not.
- l) Along with the memo dated 07.07.2021 filed by the learned counsel for the 1st respondent (KPTCL), the additional submissions dated 05.07.2021 made by the Financial Adviser, Regulatory Affairs, KPTCL, is enclosed. In this additional submissions it is stated as follows:

"The subject matter was heard for final arguments through video conference on 17.06.2021 before KERC, wherein KPTCL furnished the latest report on stringing of 2nd circuit between PD Kote and 66 kV Hariyabbe S/s for a distance of 12.354 kms. along with one terminal bay at PD Kote and one terminal bay at Hariyabbe.

In continuation to the earlier submissions made before the Commission, it is to inform that the Chief Engineer, Electricity, Tendering and Procurement, KPTCL, Bengaluru, has issued Letter of Intent (Lol) to Award the contract to M/s Vijayalakshmi Enterprises on 01.07.2021 vide Lol No.CEE/T&P/SEE/EE(T-2)/KCO-154/32011/2021-22/2617-32 (Supply Portion)/2633/48 (Erection Portion)/2649-64 (Civil Works Portion) for the works of "Replacement of existing 66 kV DC Coyote line on DC towers between 220/66/11 kV Hiriur Station to Hariyabbe tap point by 66 kV DC drake line on DC towers for a distance of 18.928 km and replacement of existing 66 kV SC Coyote line on SC towers between 66/11 kV Hariyabbe S/s to Hariyabbe tap point by 66 kV DC drake line on DC towers for a distance of 9.628 kms. in Challakere taluk, Chitradurga district.

The period of completion of the said works will be 12 (twelve) months from the date of Letter of Intent to Award the Contract including monsoon period. However as per Lol, it is preferred for early completion of works."

- m) It is also to be noted that on the final date of arguments on 08.07.2021 through video-conferencing, the learned counsel for the petitioner requested the Commission to direct the 1st respondent (KPTCL) to adhere to the timeline of the 1st respondent (KPTCL) and then to consider the payment of damages. Thereafter, the case was reserved for orders.
- n) As already noted, the pleadings of the parties do not throw any light on the question as to what could be taken as reasonable period for

completion of the pending works. It may be noted that the 1st respondent (KPTCL) should have pleaded the reasons for the delay in completion of the pending works. But it had stuck to the defence that it was not liable for payment of any compensation/damages for delay in completion of the pending works, as the evacuation scheme approvals were given with such conditions and the petitioner had accepted it. From the various status report submitted by the 1st respondent (KPTCL), it can be said that number of works relating to System Improvement in Challakere taluk & Hiriur taluk of Chitradurga district were required to be carried out for smooth evacuation of the power from different Solar Power Plants which had come up in that area. Further, it can be noted that the 1st respondent (KPTCL) had to follow the Karnataka Transparency in Public Procurement, Act, 1999 and the number of competitors for undertaking these works were also a very few. Some time, no one participated to offer bid in tender proceedings for executing the works. The petitioner has merely relied upon the undertaking given by the 1st respondent (KPTCL) as per technical feasibility of the connectivity dated 05.04.2016 (Annexure-P2), to contend that there was inordinate delay in giving connectivity to the grid, as against the undertaking given. The petitioner also accepted the conditional evacuation approvals wherein no timeframe was stated for completion of the pending works. Only in the Minutes of Meeting (MoM) dated 13.02.2019, a specific time period of 12 months (approximately) was mentioned for completion of the pending works, after issuance of Lol.

o) Considering all the above facts, we are of the considered view that reasonable period for completion of the upstream strengthening of the transmission line works can be approximately considered as 16 months and this period shall start from 13.02.2019, the date of MoM. Therefore, this period could be taken as ending on 31.07.2020 by giving margin of about six weeks from 13.06.2020. Therefore, the subsequent delay from 01.08.2020 should be treated as unreasonable delay in executing the pending works.

p) Hence, Issue No.3 is held accordingly.

14.Issue No.4: Whether the petitioner is entitled to any compensation/damages for the generation loss, and if so from which date?

a) In view of the findings on Issue No.3, it is to be held that the petitioner is entitled to compensation/damages for the generation loss to the extent to which the generation from the power project of the petitioner could not be evacuated between 01.08.2020 till the transmission congestion/constraint subsists.

b) The petitioner has claimed compensation of Rs.8,56,98,766 for generation loss and interest at the time of filing the petition and of Rs.15,36,67,027 up to the date of filing the rejoinder (11.09.2019) and of Rs.36,73,40,941 up to March 2021 as per the statement showing the details of actual generation achieved, the energy evacuated, the revenue loss at the agreed tariff and the interest at 18%. The petitioner has not pleaded or explained how it arrived actual generation achieved for different billing

months stated in the tabular columns. The 1st respondent (KPTCL) has not replied on this aspect in its statement of objections or in any further pleadings. As the petitioner has not produced any satisfactory material to establish the generation deemed to have been achieved and quantified by it, we are not in a position to arrive at a quantum of generation loss, pleaded by the petitioner.

c) For the above reasons, we hold Issue No.4 accordingly.

15.Issue No.5: Whether the petitioner is entitled to interest on the claim of generation loss?

a) We found that the petitioner is entitled to compensation/damages for the generation loss to the extent to which the generation from the power project of the petitioner could not be evacuated between 01.08.2020 till the transmission congestion/constraint subsists. This period relates to the period subsequent to filing of the petition. The petitioner has not made a specific prayer for future generation loss subsequent to the passing of the Orders in this case. However, we think it is just and proper to allow the relief for the compensation/damages from 01.08.2020 up to the date of the transmission congestion/constraint remains. The said claim is in the nature of future mesne profits.

b) A claim for interest prior to filing of the suit or petition on compensation/damages payable on tortious liability is not maintainable. The award of interest from the date of suit till the date

of realisation of the amount ordered to be paid, is governed by the principles stated in Section 34 of the CPC. The Court has the discretion to award interest subsequent to the date of suit taking into consideration the relevant facts of the case in this regard. This principle is also applicable for awarding interest by this Commission. Due to non-evacuation of entire generation, the 1st respondent (KPTCL), has also not derived any benefit. The liability to pay the compensation was fixed against the 1st respondent (KPTCL) on the basis of tortious liability arising out of negligence in completing the evacuation facility within reasonable time.

- c) Therefore, we are of the considered view that the interest may be awarded at 6% per annum, but not at 18% per annum as claimed by the petitioner in the petition.
- d) For the above reasons, we hold Issue No.5 accordingly.

16. Issue No.6: What Order?

- a) The 1st prayer made in the petition relates to issue of appropriate direction to the 1st respondent (KPTCL) to complete the evacuation infrastructure in a time bound manner. The 1st respondent (KPTCL) has already undertaken to complete the evacuation infrastructure. The Commission cannot fix a deadline for completing the said work. However, the Commission can allow compensation for not having

completed the required work within the reasonable time as may be determined by it. Therefore, the 1st prayer cannot be allowed.

b) So far as the 2nd & 3rd prayers, regarding payment of compensation/damages and interest on it, we have already dealt with and the said prayers are to be partly allowed.

c) For the foregoing reasons, we pass the following:

ORDER

The petition is partly allowed holding that:

- (i) the petitioner is entitled to compensation/damages at the rate of agreed tariff of Rs.4.43 per unit for the generation loss to the extent for which the generation from the Power Project of the petitioner could not be evacuated between 01.08.2020 till the transmission congestion/constraint subsists;
- (ii) the petitioner shall submit to the Commission, the calculation showing compensation/damages becoming due based on the monthly generation losses from 01.08.2020 to the date of this Order within eight weeks from the date of this order, marking a copy of the same to the 1st respondent (KPTCL);
- (iii) the amount so claimed in sub-para (ii) of this Order would be verified and determined by the Commission after hearing the 1st respondent (KPTCL) and the petitioner, and the amount so determined and found due shall be paid in lump-sum by the 1st respondent (KPTCL) to the petitioner within 8 (eight) weeks from the date of order verifying and determining the calculations submitted by the petitioner. In default of payment of compensation by the 1st respondent (KPTCL), it

shall pay interest at 6% per annum on the said amount so found due from the date of default till the date of payment;

(iv) the petitioner shall submit its claims for compensation/ damages at the rate of agreed tariff of Rs.4.43 per unit for the generation loss to the extent for which the generation from the Power Project of the petitioner could not be evacuated between the date of this Order and the dates up to which the transmission congestion/constraint subsists on monthly basis to the 1st respondent (KPTCL), and the compensation/damages so claimed shall be paid within one week from the date of receipt of such monthly claims, in default the 1st respondent (KPTCL) shall pay interest at 6% per annum on the monthly amount claimed from the date of default till the date of payment; and

(v) except to the extent stated above, the petitioner is not entitled to any other reliefs as prayed for in the petition.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member