

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY
COMMISSION SHIMLA**

Petition No: 12 of 2021
Date of Filing: 02.02.2021
Arguments Heard on: 02.04.2022
Decided on: 02.05.2022

M/s Tidong Power Generation Pvt. Ltd.
Grover Cottage, 2nd Floor (above HDFC Home Loans)
Chotta Shimla, Kasumpti Road Shimla-171002

.....Petitioner

Versus

1. The HP Power Transmission Corporation Ltd.,
HIMFED Bhawan, Panjari, Near MLA Quarters,
Shimla-171004
2. The Himachal Pradesh Power Corporation Ltd.
HIMFED Building, BCS, New Shimla-171009

.....Respondents

Petition under Section 86 (1) (c) and (f) of the Electricity Act, 2003 read with Regulation 14 of the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium-Term Intra-State Open Access and related matters) Regulations, 2010 and Form CB-6 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business Regulations, 2005).

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**BHANU PRATAP SINGH
MEMBER**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

Present:-

Sh.Shakya Chaudhary, Ld. Counsel for the Petitioner.
Sh. Rohit Chauhan, Ld. Counsel for the Respondent No.1
Sh. Surender Saklani, Ld. Counsel for Respondent No. 2

ALONGWITH

Petition No: 48 of 2021
Date of Filing: 02.11.2021
Arguments Heard on: 02.04.2022
Decided on: 02.05.2022

The HP Power Corporation Ltd.
Himfed Building, BCS,
New Shimla, -171009.
Versus

.....Petitioner

1. The HP Power Transmission Corporation Ltd.
Himfed Bhawan, Panjari, Below Old MLA Quarters,
Tutikandi, Shimla-171005
2. M/S Tidong Power Generation Private Ltd.
Grover Cottage, 2nd Floor, above HDFC Home Loan,
Chhota Shimla 171002
3. The HP State Electricity Board Ltd.
Vidyut Bhawan, Shimla-171004
4. Directorate of Energy
Shanti Bhawan, Phase-III, Sector-6
New Shimla-171009

.....Respondents

CORAM
DEVENDRA KUMAR SHARMA
CHAIRMAN

BHANU PRATAP SINGH
MEMBER

YASHWANT SINGH CHOGAL
MEMBER (Law)

Petition under section 86 (1) (c) and (f) of the Electricity Act 2003, read with Regulation 7 of the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Intra-state Open Access and related matters) Regulations, 2010 and Form CB-6 of the HPERC (Conduct of Business) Regulation, 2005).

Present:-

- Sh. Surinder Saklani, Ld. Counsel for the Petitioner.
Sh. Vikas Chauhan, Ld. Counsel for Respondent No. 1
Sh. Sakya Chaudhary, Ld. Counsel for Respondent No. 2
Sh. Kamlesh Saklani, Authorised Representative for Respondent No. 3
Sh. Shanti Swaroop, Legal Consultant for Respondent No. 4

ORDER

Petition No. 12 of 2021 has been filed by M/s Tidong Power Generation Private Limited (Tidong-I HEP for short) and Petition No. 48 of 2021 has been filed by Himachal Pradesh Power Corporation Limited (HPPCL for Short) under section 86 (1) (c) and (f) of the Electricity Act, 2003 (the Act for short) read with Regulations 7 and 14 of the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term, Intra-State Open Access and related matters) Regulations, 2010 (Open Access Regulations, 2010 for short) in respect of grant of Long Term Open Access/ Long Term Access (LTOA/LTA for short). Both the Petitioners had filed the applications for LTOA for their respective projects during the month of October, 2019 but the application of Tidong-I HEP(100 MW) was allowed whereas the application of HPPCL for stages II and III of Integrated Kashang Hydro Electric Project (IKHEP for short) has not been considered. Since a common issue is involved in both the Petitions, as such, both the Petitions are being taken up for disposal together.

Summery of pleadings in Petition No. 12 of 2021

2. This Petition has been filed by Tidong I HEP seeking direction against the Respondent No.1, Himachal Pradesh Power Transmission Corporation Ltd. (HPPTCL for short) for signing LTOA agreement. The case of the Petitioner, in brief, is that M/s Nuziveedu Seeds Ltd. (NSL) entered into a memorandum of understanding with the Government of Himachal Pradesh (GoHP for short) to execute Tidong-1 Hydro Electric Project (100 MW), a run of the river project near

village Rispa, Tehsil Moorang, Distt. Kinnaur, Himachal Pradesh and the Implementation Agreement was entered into between NSL & the GoHP on 28.06.2006. A Special Purpose Vehicle Company named M/s NSL Tidong Power Generation Private Limited was created for the construction of the project and a tripartite agreement was entered into between NSL, GoHP and M/s NSL Tidong Power Generation Private Limited on 16.09.2008. The GoHP vide letter dated 01.08.2019 allowed NSL to change the name of the project as Tidong Power Generation Private Limited. The Petitioner vide letter dated 30.07.2011 applied for the connectivity of the project to the grid of the Respondent as the generated power was proposed to be wheeled over 220 kV D/C transmission lines from the project to Kashang Hydro Electric project, a 24 km line, to be constructed by the Respondent HPPTCL beyond Kashang Hydro Electric Project. The power generated was to be wheeled over 220kV D/C transmission lines upto Sherpa Colony Pooling Station, which too was to proposed to be constructed by the Respondent HPPTCL so that power is ultimately connected to the existing Pooling Station of Power Grid Corporation India Ltd. (PGCIL) at Sherpa Colony after stepping up to 400kV. The Petitioner Tidong-I HEP complying with the provisions of Open Access Regulations, 2010 submitted the application on 30.07.2011 supported by an affidavit, as per the format alongwith a cheque of Rs.6,00,000/- and other requisite documents in accordance with clause 2 of the procedure for making the application for grant of connectivity in Intra-State Transmission System Procedure for the grant of connectivity .(Annexure-1)

3. Certain the objections on the application were raised by the Respondent No. 1 vide letter dated 02/12/2011, and the requisite certificates/No objection were provided by the Petitioner on 02.12.2011, 20.12.2011 and 26.12.2011. Meanwhile, in the 30th meeting of the Standing Committee of Power System Planning of the Northern Region held on 19.12.2011, the following arrangement was proposed by CEA:-

“HPPTCL informed that Tidong-I (100MW) was under construction and likely to be commissioned by December 2014. Since, Jangi Pooling Station may not come up by December 2014, Tidong-I power shall be temporarily evacuated by LILO of one circuit of 220 kV D/C Kashang-Bhaba line at Tidong-I HEP. These works shall be carried out by HPPTCL. Later on when Jhangi P.S. is commissioned, Tidong-I Jhangi 220 kV D/C line shall be constructed and also Kashang-Jangi 220 kV D/C line with single HTLS conductor shall be established. These works are proposed to be carried out by HPPTCL.”

Copy of the minutes of meeting are Annexed as Annexure-III.

4. On 30.03.2012, the Petitioner intimated the Respondent No. 1 HPPTCL that the expected commercial operation dates of the 1st and 2nd units of their project are September, 2014 and October, 2014 respectively (Annexure-IV) and the Petitioner Tidong-I HEP was intimated by Respondent No. 1 HPPTCL vide letter dated 18.04.2012 (Annexure-V), regarding grant of grid connectivity for the project as per procedure of Open Access Regulation, 2010 specifying the point of connectivity as LILO point of 220 kV Kashang-Bhaba, D/C line and it was also mentioned in letter dated 18.04.2012 that the following transmission system is required for connectivity:-

*“LILO of one circuit of 220kV Kashang-Bhaba D.C line
220kV Kashang-Bhaba D/C line*

*LILO of both circuits of 220kV Kashang-Bhaba D/C line at Wangtoo
Proposed LILO of both circuits of 400kV Wangtoo-Abdullah D/C line.”*

5. Besides, the Petitioner was also asked to furnish detail for signing the Connection Agreement as per the format given in the Open Access Regulations, 2010. The requisite detail was provided by the Petitioner vide letter dated 17.06.2013 (Annexure-VI) and thus, the connectivity was granted to the Petitioner for the ISTS at LILO point of 220 kV Kashang-Wangtoo-Bhaba D/C line vide letter dated 18.07.2013, (Annexure-VII) and the Petitioners and Respondent No.1 HPPTCL signed the connection agreement (Annexure-VIII) on 11.03.2014. The Petitioner vide letter dated 25.10.2014 requested the Respondent No. 1 HPPTCL to issue NOC on the prescribed format to be submitted to Power Grid Corporation of India (PGCIL for short) for connectivity of the Project to be connected at 220/400 kV, Sub-Station under construction at Wangtoo. The Respondent No. 1 HPPTCL vide letter dated 14.11.2014 (Annexure IX) issued the NOC and it was also mentioned in the letter that the point of connection would be 224/400 kV Pooling Station under construction at Wangtoo by LILO of both circuits of 220 kV Kashang-Bhaba and 400 kV Karchham-Wangtoo-Abdullapur D/C lines upto the ceiling limits for injection at 100 MW.

6. It is averred that on receipt of NOC from Respondent No. 1 HPPTCL vide letter dated 14.11.2014, the Petitioner could not effectively carry out process of LTOA owing to financial distress but in 2016 Strategic Debt Restructuring (SDR) of the Project was initiated by the lenders of the Petitioner which resulted into the change of ownership of the Project and the Project was taken over by Statekraft IH

holding AS (Statekraft for short) in September, 2018 after the State Government conveyed no objection vide letter dated 22.08.2018 (Annexure-X).

7. Thereafter, the Petitioner in accordance with Open Access Regulation, 2010 filed an application on 06.10.2019 (Annexure-XI) for grant of LTOA/LTA with requisite documents. The said application was allowed vide letter dated 29.10.2019 (Annexure-XII) and the Respondent No. 1 HPPTCL granted long term access in respect of Project for a period of 25 years for transmission system including 220 kV Kashang-Wangtoo-Bhaba D/C line and 400/200/66 kV Substation at Wangtoo by LILO of 400 kV Karchham-Wangtoo-Abdullapur D/C line of PGCIL and LILO of 220 kV Kashang-Bhaba D/C line at Wangtoo for a period of 25 years from 01.10.2021 to 31.09.2046.

8. The Petitioner vide communication 22.11.2019 (Annexure-XIII) requested the Respondent No.1 HPPTCL for signing LTOA agreement and also shared the draft agreement. The Petitioner vide letter dated 20.01.2020 (Annexure-XIV) also informed the Respondent No. 1 HPPTCL that it has received in principle approval from the Directorate of Energy (DOE) for enhancing the capacity of the project from 100 MW to 150 MW and fresh TOR for the 3rd unit of 50 MW from the Ministry of Environment, Forest and Climate Change (MOEF) and also requested the Respondent No. 1 HPPTCL for approval of evacuation of additional 50 MW power from the Project. As per the Petitioner, the evacuation of the additional 50MW infact, had no relation with the signing of LTOA agreement for 100 MW for which LTOA was granted. On 06.01.2021, the GoHP and the Petitioner also

signed Supplementary Implementation Agreement (SIA) (Annexure-XV) for the enhanced capacity of 150 MW of the Project incorporating basic mandatory provisions in line with the prevailing Hydro Power Policy of the State and the detail of additional charges at the rate of 20 lakh per MW was also mentioned in the SIA.

9. It is averred that the Respondent No. 1 HPPTCL has not signed the LTOA agreement on the ground that the Petitioner's connectivity and access to use the Kashang-Bhaba line is temporary in nature till setting up of Jangi Sub-stations and commissioning of units-II and unit-III of the Kashang Project of Respondent No. 2 HPPCL, which is illegal on both facts and law as the Petitioner has followed all norms and applied as per the procedure for grant of connectivity as per Open Access Regulations, 2010 and is entitled for signing the LTOA agreement. Not only this, the Petitioner has proceeded on the understanding that project would be connected to the Kashang-Bhaba line for which NOC was granted followed by LTOA in the year 2019. Further on various occasion, the Respondent No. 1 HPPTCL has demonstrated as if Kashang-Bhaba line is a dedicated line constructed for the exclusive use of Kashang project of the Respondent No. 2 HPPCL, which can not be a ground for not signing of LTOA which amounts to unduly favouring the Respondent No. 2 HPPCL and discrimination against the Petitioner as the Kashang-Bhaba line is a Transmission line, subject to rules of Open Access. Further neither the letter granting LTA to the Petitioner nor the format LTA-5 mention that the LTOA is temporary and subject to commissioning

of Jhangi Pooling Station. On the contrary, the Respondent No.1 HPPTCL had completed entire procedure before granting LTOA and the Regulation 14 of the Long Term Access Regulations, 2010 also provides for signing the agreement for Long Term Open Access with State Transmission Utility, (STU) Respondent No. 1. It is averred that signing of LTOA agreement is important for the Petitioner to avail Long Term Access and non signing thereof by the Respondent No. 1 is contrary to the Regulations (ibid) and the procedure for grant of LTOA. It is also averred that despite the requests, the Respondent No. 1 HPPTCL has willfully neglected the signing of LTOA agreement. Also averred that IKHEP cannot retain the first right of use of the system. Hence the Petition.

Response of Respondents in Petition No. 12 of 2021

10. The Petition has been resisted and contested by the Respondents by filing separate replies.

11. The Respondent No. 1 HPPTCL in their reply has averred that the Petition is neither competent nor maintainable as the basic issue qua status of Kashang-Bhaba Transmission line is under question in Petition No. 73 of 2020 whereby the Petitioner has sought Review of the tariff order passed by the Commission in respect of the transmission line. As per them, from the very inception, the Power from the Tindong I HEP has been planned to be evacuated through Jangi Pooling Station to be set up by PGCIL. Further during discussion for revision of Transmission Master Plan for Himachal Pradesh held in Central Electricity Authority (CEA for short) on 13.03.2020 (Annexure R/1), a system was proposed

for the temporary evacuation of power of the Project and pursuant thereto, the Petitioner made submission to the CEA vide letter dated 12.06.2020 (Annexure R/2) and the CEA proposed certain changes in the evacuation arrangements wherein it was agreed that as an interim arrangement, the power from the Project may be evacuated temporarily by LILO of Kashang-Wangtoo section with ACSR Zebra conductor at its switchyard and thereafter carry out the re-conducting of the LILO portion matching with time frame of commissioning of Kashang Stages II, III and IV. Furthermore, upon commissioning of Jangi Pooling Station, the Project would be connected to the same. A letter dated 18.06.2020 (Annexure R/3) was received from CEA in this regard. Accordingly, the replying Respondent vide letter dated 22.07.2020 (Annexure R/4) called the Petitioner for a meeting to finalize the evacuation arrangements on account of certain N-1 issues arising in said arrangement and also to discuss the matter of grant of LTOA to IKHEP Stages II and III and the project of the Petitioner (Annexure R/5). The meeting was held on 19.08.2020. Thus, the replying Respondent vide letter dated 05.09.2020 (Annexure R/5) informed the Petitioner that the capacity of their Project has been enhanced to 150 MW and, therefore, the enhanced capacity can be allowed to be evacuated from Kashang-Bhaba line on MTOA basis till IKHEP Stages II, III and IV are commissioned.

12. It is averred that the Petitioner has concealed vital detail and unless it is established that the power from Petitioner's Projects can be evacuated on long term basis through the Kashang-Bhaba Transmission line, the LTOA agreement

can not be signed. It is also averred that the Kashang-Bhaba Transmission line is a dedicated line and the Respondent is under legal and contractual obligation to grant user first right for evacuation of power from the IKHEP. Further averred that the work of 220kV D/C Kashang-Bhaba Transmission line was conceptualized and planned for the exclusive evacuation of the power of IKHEP. Also averred that the HPSEBL, predecessor in interest of Respondent No.1, had also arranged common funding of Rs.200/-Crore from M/s Power finance Corporation (Annexure R/6) for Kashang integrated Scheme for the development of Kashang Electric Project along with its dedicated transmission line for power evacuation and such development of dedicated transmission line by the HPSEB was not in contravention of Section 10 (1) of the Act. After the formation of Himachal Pradesh Power Transmission Corporation Ltd. (Respondent No.1 out of erstwhile HPSEBL), the Transmission line was transferred to replying Respondents and MOU dated 06.04.2009 (Annexure R/7) was signed between Respondent No. 1 HPPTCL and Respondent No. 2 HPPCL for the development of the Kashang-Bhaba Transmission line. Further Clause 2 of MOU dated 06.04.2009 provides that the developed transmission system will be treated as part of the State Transmission Network to be owned, operated and maintained by the Respondent No. 1 HPPTCL and it was also agreed under clause 9 of the MOU that the first right to use transmission asset shall always be of HPPCL (Respondent No. 2).

13. It is averred that the issue of evacuation of power from the project was also deliberated in the 30th meeting of the standing committee on Power System

Planning of CEA held on 19.12.2011, wherein it was agreed that Jangi Pooling Station may not come up by the time of commissioning of Tidong-I (100W) and its power shall be temporarily evacuated by the LILO of one circuit of 220 kV D/C Kashang-Bhaba line at Tidong-1 HEP and upon the commissioning of Jhangi Pooling Station, the project was to be connected to Jhangi Pooling Station. Further in view of the uncertainty in the commissioning schedule of the stages II, III and IV of the IKHEP and based on the decision taken on 30th meeting of the standing committee on Power System Planning of Northern Region held on 19.12.2011, the Connectivity to the Project of the Petitioner was provided by LILO of one circuit of 220 kV D/C Kashang-Bhaba line and subsequently, connection agreement was signed on 11.03.2014 and consent for LTOA for the Project (100 MW) was granted on 29.10.2019 as only one unit (65 MW) of Kashang HEP is under operation. Later on, it was gathered that scheduled date of Commissioning of Stages II and III of IKHEP is by October, 2025 and also in view of the pendency of Petition No. 3 of 2020, wherein approval of status of Kashang-Bhaba Transmission line was sought as dedicated line, by the replying Respondent, the proceedings for signing of LTOA agreement were kept on hold.

14. Further, averred that there was no final augmentation plan in respect of unavoidable N-1 contingency which will continue to ail the system even if the changes proposed by CEA are implemented. Also averred that the evacuation arrangement of the Power of the Tidong I HEP was again discussed in a meeting held in CEA on 13.03.2020 (Annexure R-1) wherein it was reiterated that the

arrangement for evacuation for power of the Project (Tidong I HEP) through 220kV D/C Kashang-Bhaba transmission line is a temporary arrangement till Commissioning of Jhangi Pooling Station. Therefore, taking into consideration the said aspect and meeting dated 19.08.2020, the Petitioner was asked vide letter dated 05.09.2020 that only MTOA can be granted for three years i.e. the maximum period provided as per Open Access Regulations, 2010. Thus, the LTOA agreement could not be signed. It is averred that the supporting permanent Long Term Transmission right for evacuation of the power as sought by the Petitioner is not legally permissible.

15. Also averred that during discussion on 19.08.2020, it was observed that matter regarding grant of LTOA to the project needs to be reviewed. Also averred that the Open Access Regulations, 2010 notified on 2nd May, 2010, have prospective application whereas the MoU of replying Respondent with Respondent No. 2 dates back to 06.04.2009 and thus, being dedicated line, Respondent No. 2 has the first right and the reliance by the Petitioner on the Open Access Regulations, 2010 is erroneous and without substance. Therefore, the Respondent has not acted contrary to the Act Open Access Regulations, 2010 or the provisions of grid code. Also averred that the grant of consent for LTOA ipso facto does not create any right in favor of Petitioner unless LTOA Agreement is signed. Also stated that the Respondent No.1 HPPTCL had also conducted necessary system study and it was learned that even after care and necessary augmentation proposed by CEA vide letter dated 18.06.2020, interim

arrangements as suggested were not possible owing to transformer constraints at Wangtoo Sub-Station and cable constraints at Kashang HEP and the Petitioner was intimated of the same vide letter dated 22.07.2020.

16. The Respondent No. 2 in its reply has also denied the contents of the Petition reiterating the stand as taken by the Respondent No.1. As per them, after detailed study of Open Access Regulations, 2010 and the Procedure devised by the Commission, there is no provision of granting connectivity/or LTOA for a temporary/interim arrangement. Therefore, it was not permissible for the Respondent No.1 to grant connectivity to the Tidong I HEP which was also contrary to the decision of CEA as approved in the 30th meeting of the standing committee. Further averred that the replying Respondent has also submitted LTA application for Stages II and III of IKHEP on 09.10.2019 (Annexure-E) whereas the Petitioner Tidong-I HEP submitted the application on 06.10.2020 for LTOA of their Project. Therefore, the Respondent No. 1 was required to wait till the end of the month and to process the applications together received during the month but LTOA was granted by Respondent No. 1 to the Petitioner on 29.10.2019 without considering the application of replying Respondent. Therefore, the Respondent No. 1 HPPTCL has granted the LTOA to Tidong I HEP in a great hurry without following the procedure. Therefore, the LTOA granted on 29.10.2019 to the Petitioner is null and void. Further, it was expected from the Respondent No. 1 to have carried out joint study in respect of the Project of the replying Respondent No.2 and the Petitioner and that no response of the application of Respondent

No.2 dated 09.10.2019 has been received till date. Further, in view of the enhanced capacity of the Project of the Petitioner from 100MW to 150 MW, fresh application alongwith fee was required.

17. In rejoinder, the contents of replies have been denied and these of the Petition have been reiterated by the Petitioner.

Summary of Pleadings in Petition No. 48/2021

18. This Petition has been filed under section 86 (1) (c) and (f) of the Electricity Act 2003 by HPPCL averring that the Petitioner Company was incorporated in December, 2006 with an objective to plan, promote and organize the development of all aspects of hydro electric power on behalf of the Government of Himachal Pradesh (GoHP for short) and Himachal Pradesh State Electricity Board Limited (HPSEBL for short). As per the Petitioner, the Integrated Kashang Hydro Electric Project (IKHEP for short) has been proposed for development of Hydro Electricity by using waters of Kashang and Kerang streams, tributaries of river Satluj in District Kinnaur (HP). The Commercial Operation Dates (COD for short) of Unit-I, Unit-II and Unit-III of IKHEP (3x65 MW) had been declared as under:

Unit No.	COD Date
Unit-I	31.03.2017
Unit-II	01.09.2016
Unit-III	03.03.2017

19. As per the Petition, the water conductor system for Stages II, III of the IKHEP are still under construction and only one (1) machine is being run. It is claimed that a memorandum of understanding (MOU for short) was signed on 06.04.2009 (Annexure-A) between the Petitioner and Respondent No.1 HPPTCL

to the effect that Respondent No.1 would construct 220 kV Kashang-Bhaba double circuit transmission line for evacuation of power from IKHEP into the grid, a dedicated line for IKHEP. Further during pendency of Tariff Petition by Respondent No.1 for Kashang-Bhaba Transmission line, it was ordered by the Commission that the Petitioner will apply for Long Term Open Access for stages II and III of IKHEP but the application was filed only for stage I (65MW) because the water conductor system for remaining units was not ready. The LTA was granted by Respondent No.1 HPPTCL for IKHEP Stage-I on 18.06.2019 and accordingly, LTOA agreement between Respondent No. 1 HPPTCL and Petitioner HPPCL was executed on 10.01.2020 (Annexure-B). The application for LTA of Stages-II and III of IKHEP (130MW) was submitted by the Petitioner with Respondent No.1 on 09.10.2019 (Annexure-C) but the response on said application is still awaited. However, the LTA for the same evacuation arrangement was granted by Respondent No.1 HPPTCL to Respondent No. 2 Tidong-I HEP on 29.10.2019 (Annexure-D) but no agreement for LTOA between the Respondent No. 1 and 2 has been executed. As per the Petitioners, a meeting was held between the Representatives of Petitioner, Respondents No.1 and Respondent No. 2 on 19.08.2020 and pursuant to said meeting, the Respondent No.1 vide letter dated 05.09.2020 (Annexure-E) informed the Petitioner that Tidong-I (100 MW) can be granted Medium Term Open Access (MTOA for short) for the use of above said system for three years which may be extended subsequently based on Commissioning of IKHEP Stages-II, III and IV.

20. As per the Petitioner, before incorporation of Respondent No. 1, the Kashang-Bhaba transmission line was part of the DPR of IKHEP, as a dedicated transmission line as per copy of TEC (Annexure-F) and the project developers (HPSEBL Respondent No.3 and the Petitioner) had incurred an expenditure of Rs.66.08 crores on the same. Further, an MOU had been signed between the Petitioner and the Respondent No.1 on 6th April, 2009 and it is mentioned in Clause-9 of the MOU that in case any other project(s)/developer(s) use the said transmission line for the evacuation of their power in the State/Regional grid, the wheeling charges shall be shared proportionality between the developers of the new project and the first party provided the first right shall always be of the first party and the First party in the MOU is the Petitioner (HPPCL). Thus, the first right to use the line is that of the Petitioner. As per the Petitioner, the CEA on 18.06.2020 reiterated the earlier decision of 2011 that the Tidong –I power shall be temporarily evacuated by LILO of one circuit of 220 kV D/C Kashang-Bhaba line at Tidong-I HEP and later on, when the Jhangi Pooling Station is commissioned, Tidong-I-Jhangi 220 kV D/C line shall be constructed and also Kashang-Jangi 220 kV D/c line with single HTLS conductor shall be established. Therefore, Tidong-I HEP is planned to be connected at Jangi Power Station and its connection to D/C Kashang Bhaba line is temporary in nature. As per them, the LTA granted by the Respondent No. 1 to the Respondent No. 2 (Tidong-I HEP) is not of permanent nature and may be Short Term Open Access (STOA).

21. It is claimed that neither Open Access Regulations, 2010 nor the procedure devised by Respondent No.1 HPPTCL for making applications for grant of connectivity in Intra-State Transmission System (ISTS for short) provide for granting connectivity and/or LTA for temporary/interim arrangement. Further the Respondent No. 2 (Tidong-I HEP) and the Petitioner filed applications for grant of LTA in the month of October, 2019 and as per Clause 24.1.1 of the procedure approved by the Commission for making applications for LTA clearly states that the applications received during the month and up to the last day of the month shall be construed to have arrived concurrently, therefore, the day of filing of the application cannot be made a basis for preferring Respondent No.2 over the Petitioner for granting LTA but the Respondent No. 1 has granted LTA in favour of Respondent No. 2 (Tidong-I HEP) on 29.10.2019 without taking into consideration the application of Petitioner which was submitted on 09.10.2019 during the same month. Not only this, clause 24.1.2.6.i (Annexure-I) of the procedure of Respondent No.1 for ISTS provides that if there is more than one application, a joint study was required to be carried out and a consolidated proposal was required to be prepared in the given scenario but ignoring the same, LTA was granted to the Respondent No.2(Tidong-I HEP). Still further, as per Open Access Regulations, 2010, the time limit for processing, beginning the last day of the month in which the application was received by the nodal agency is 120 days but no response has been given by the Respondent No.1 HPPTCL on the application of Petitioner despite repeated reminders. Therefore, the LTA granted

by Respondent No. 1 to Respondent No. 2 vide letter dated 29.10.2019 is illegal and liable to be held null and void.

22. As per the Petition, the Respondent No. 2 had requested for approval of evacuation of additional 50MW power from Tidong-I HEP for the enhanced project installed capacity and also sought increase of LTOA from 100 MW to 150 MW but as per clause 4.1 of the Procedure devised by the Respondent No.1 HPPTCL for grant of Long Term Access to ISTS (Annexure-K), “any material change in the location of generation project/drawl point or change(by more than 2 MW) in the quantum of power to be interchanged with the intra-state transmission system shall require filing of fresh application with applicable fees and the already filed application shall be considered to be disposed of with forfeiture of fee of earlier application. Thus, Respondent No.2 was liable to submit fresh application for MTOA/STOA. Still further, the Respondent No.2 (Tidong-I HEP) vide letter dated 13.07.2021 has requested the Directorate of Energy (DOE) for one time amnesty and LTOA issue and a meeting was held on 09.08.2021 (Annexure-L) in the office of DOE with all the stakeholders in which Respondent No.1 HPPTCL suggested that Tidong HEP may sign Medium Term Open Access with HPPTCL upto 2025 until then Jangi Pooling Sub-station would possibly come up and then, the Respondent No.2 may apply for connectivity to Central Transmission Utility (CTU) and evacuate Tidong-I HEP power through CTU system. Therefore, the action of Respondent No.1 HPPTCL granting LTA to Tidong I HEP is contrary to their own decision dated 09.08.2021. Also averred that the Commission in its

order dated 26.08.2020 (Annexure-M) regarding Approval of Capital Cost and determination of tariff for 220kV D/C Kashang-Bhaba Transmission line for the period from COD to Financial Year 2023-2024 (FY17-FY24) of Himachal Pradesh Power Transmission Corporation Limited (HPPTCL) has clearly mentioned as under:-

4.11.15

“based on the various submissions with regard to the beneficiaries of the Kashang-Bhaba line, it is observed that the line has been constructed as a dedicated line to evacuate 195 MW of power of Kashang HEP. Initially at the time of conceptualization, the transmission line was also part of the Kashang HEP and was later transferred to HPPTCL. Also, as per MOU and subsequent submissions of the Petitioner, HPPCL has already entered into and LTA for 65 MW and proposes to undertake LTA for the balance capacity of 130 MW from Kashang HEP as well.”

23. It is averred that the charges of Kashang-Bhaba line have been borne by the Petitioner. As per them, in view of MOU dated 06.04.2009 and procedure for Long Term Access devised by Respondent No.1 HPPTCL, the action of Respondent No.1 is not correct. The Petitioner has prayed that the Open Access granted to the Respondent No. 2 (Tidong-I HEP) be cancelled and the application for LTA of IKHEP stages II and III be granted and also that the Respondent No. 1 be also directed to decide the application of the Petitioner in accordance with provisions of law, Regulations and Procedure in a time bound manner.

Response of the Respondents in Petition No. 48 of 2021

24. The Petition has been resisted and contested by the Respondents by filing separate replies.

25. The Respondent No.1 HPPTCL in their reply have averred that it is designated State Transmission Utility (STU for short) under the Act for the Transmission of Electricity and mandated for the Planning, Formulation, Upgradation/Execution of the transmission network and to create transmission infrastructure and to facilitate evacuation/transmission of power intra-state and inter-state. As per them the Petition is not maintainable as the cause of action is already under adjudication before the Commission in a previously instituted Petition No.12 of 2021. As per them, the power from the project of Respondent No.2 Tidong I HEP was planned to be evacuated through Jhangi Pooling Station from the very inception. Further, during discussion held in CEA on 13.03.2020, for revision of Transmission Master Plan for Himachal Pradesh, a temporary evacuation of power from the project of Respondent No. 2 Tidong I HEP was proposed to be evacuated through Kashang-Bhaba line uptill the Commissioning of Jhangi Pooling Station and a communication to this effect was received from CEA on 18.06.2020 (Annexure R-1/A). Also averred that the replying Respondent entered into a connection agreement with a Respondent No. 2 (Tidong-I HEP 100 MW) for the evacuation of power of the project of the Respondent No.2 and also initiated the formal proceeding for Long Term Open Access (LTOA) but LTOA agreement was not signed with the Respondent No. 2. Also averred that the Respondent No. 2 submitted the DPR of Tidong-1, Phase-II (50 MW HEP) vide letter dated 16.03.2020 (Annexure R-1/B) for confirmation of power evacuation arrangement and the replying Respondent observed therein that 150 MW of power

from the project of Respondent No.2 cannot be evacuated through the allowed temporary arrangement after the Commissioning of IKHEP stages II and III of the Petitioner HPPCL for the reason that the system shall not be N-1 compliant, as such, LTOA agreement has not been signed. The replying Respondent vide letter dated 05.09.2019 (Annexure R-I/C), also intimated Respondent No.2 (Tidong-I HEP) that far evacuation of 150 MW power from the project of Respondent No. 2, only a Medium Term Open Access (MTOA) for the use of Kashang-Bhaba line for three years maximum period as per the Open Access Regulations 2010, can be granted extendable for further period based on Commissioning of IKHEP Stages-II, III and IV as the scheduled dates of commissioning of Stages II and III was intimated as 2024-2025.

26. Further averred the Petitioner HPPCL has been allowed the first right on the Kashang-Bhaba line as per MOU dated 06.04.2009 (Annexure-A). Also averred that as per Clause-2 of MoU dated 06.04.2009, the 220 KV Kashang-Bhaba Double Circuit Transmission line shall be treated as State Transmission Utility/HPPTCL Transmission Line and not as dedicated project power evacuation line. Also averred that the Clause-9 of the MoU dated 06.04.2009 further stipulate that in case any other project use the said Transmission Line for evacuation of their power in the State/Regional grid, first right shall always be of the Petitioner. It is also averred that in view of the temporary nature of the arrangement and taking into consideration that upon shifting of Tidong-I HEP to Jangi Pooling Station and entire cost of augmentation of Kashang-Bhaba line was to be borne by

the Petitioner(HPPCL), it was prudent to enter MTOA with Respondent No.2 Tidong-I HEP. Also averred that there was uncertainty on the commissioning of date of IKHEP Stages II and III before 2024-25 and upon receiving application from Respondent No. 2 for LTA of 100 MW, LTA was granted to Respondent No.2 on 29.10.2019.

27. The Respondent No.2 Tidong-I HEP in its reply has also denied the contents of the Petition that the Petition is based on conjectures and surmises and also suffers from delay and laches and that the petitioner has approached the Commission with ulterior motives to primarily interfere with the LTA granted by the Respondent No.1 HPPTCL to Respondent No.2. Also averred that the Petitioner has not challenged the non-consideration of their LTA application for two years. Also averred that the Respondent No. 2 has entered into a Long Term Power purchase agreement with the Uttar Pradesh Power Corporation Limited (UPPCL for short) for supplying 75 MW of Electricity from the Project during the period of May to October for 25 years and the flow of power is expected from May, 2023. As per Respondent No. 2, the Petition does not disclose the present status of the construction and Commissioning of Stages-II and III of the IKHEP and in response to interrogatory of the Respondent No. 2 in Petition No. 12 of 2021, the Petitioner has mentioned that Commissioning of the Stages-II and III of their project would be delayed. As per the Respondent No.2, the Petitioner HPPCL is required to demonstrate its entitlement for applying for LTOA after the disclosing the correct status of Stages-II and III of their Project. As per them,

220kV D/C Kashang-Bhaba Transmission line, being part of the State Transmission Utility System, is a national resource and by way of erroneous claim, the Petitioner HPPCL is trying to squat on the Transmission capacity of the 220kV D/C Kashang-Bhaba Transmission line. Also averred that the Open Access has to be granted without discrimination and on priority in case of restricted capacity, to the project which is ready for Commissioning at an earlier date. Further the Petitioner has tried to mislead the Commission by not bringing on the record the material facts in as much as that even order dated 08.6.2021 (Annexure-R-1) passed in Review Petition No. 73 of 2020 has not been placed on record while mentioning Petition No. 3 of 2020. As per the replying Respondent, the Commission in its order dated 08.06.2021 in Review Petition No. 73 of 2020 has observed that the HPPTCL (Respondent No.1) misinformed the Commission regarding dedicated nature of the 220kV D/C Kashang-Bhaba Transmission Line and, therefore, the issue raised by the Petitioner in this regard is barred by the Principles of Res Judicata. Copy of order dated 08.06.2021 in Petition No. 73 of 2020 is annexed as Annexure R-I.

28. It is also averred that the Petition is an attempt to block the Transmission Capacity of the 220kV D/C Kashang-Bhaba Transmission line and interference in execution of the LTA (LTOA) agreement between the Respondent No. 1 HPPTCL and replying Respondent No.2 and to derail the Project of answering Respondent. It is averred that Respondent No.1 has rightly not considered the application of the Petitioner for grant of LTA as only one unit of IKHEP was commissioned. As per

them, the signing LTA agreement has been wrongly withheld by the Respondent No.1 despite completing all the formalities. Also averred that in view of the execution of Long-term PPA with UPPCL and other procurers, the replying Respondent is gravely aggrieved of such action of Respondent No.1. It is claimed that LTA (LTOA) to the project of replying Respondent was granted on 29.10.2019, after following the due procedure and thus, the question of grant of Medium Term Open Access (MTOA) to the project of Respondent No. 2 does not arise and the stand of Respondent No.1 to grant MTOA is contrary to the provisions of the Act and the Open Access Regulations, 2010. As per replying Respondent their project is likely to be commissioned by November, 2022. It is averred that the reliance by the Petitioner on the minutes of meeting of the 30th CEA meeting held on 19.12.2011 (AnnexureR-4) is completely misconceived as it was clearly mentioned in the minutes that Stage-II of the IKHEP was subject to the same condition as Tidong HEP (Project of Petitioner) in terms of its being connected to Jhangi Pooling Station and the Stage-II of the IKHEP was not planned to be connected to Kashang-Bhaba line. It is denied that only a temporary connectivity was granted to the Petitioner on 29.10.2019, as neither the procedure nor the Open Access Regulations, 2010 provide for temporary grant of LTA. It is denied that any preferential consideration has been given to the application of replying Respondent while granting LTA. In so far as the consideration of the another application for additional 50 MW is concerned, it is averred that the same would be considered on its own merits. Also averred that the subsequent proposal

to grant MTOA by the Respondent No.1 is abuse of their position being sole STU in the State to unduly favor the Petitioner, being a government entity. As per them, the questions of law are without any legal basis and in view of the settled principles of law, the Petitioner can not raise the same issue of dedicated nature of line subsequently which has already been considered and finally decided by the Commission vide order dated 06.08.2021 in Petition No. 73 of 2020. No reply has been filed by the Performa Respondents.

29. No reply has been filed by the Proforma Respondents in Petition No. 48/2021.

30. In rejoinders, the contents of the replies filed by the Respondents No. 1 and 2 have been denied and those of the Petition have been reiterated.

Submissions of Ld. Counsel for the Parties

31. We have heard Sh. Shakya Chaudhry, Ld. Counsel for the Petitioner in Petition No. 12/2021 and Respondent No. 2 in Petition No. 48/2021, Sh. Vikas Chauhan, Ld. Counsel for Respondent No. 1 in both the Petitions, Sh. Surinder Saklani, Ld. Counsel for the Petitioner in Petition No. 48/2021 and Respondent No. 2 in Petition No. 12 of 2021, Sh. Kamlesh Saklani, Authorized Representative of Respondent No. 3 and Sh. Shanti Swaroop, Ld. Legal Consultant for Respondent No. 4 in Petition No. 48 of 2021 and have pursued the entire record with minutes care.

32. Sh. Shakya Chaudhary, Ld. Counsel for Tidong-I HEP has submitted that the application for Long Term Access as per the procedure prescribed under Open

Access Regulations, 2010 and the procedure devised by the Respondent HPPTCL was lawfully considered and granted by HPPTCL but later on, owing to the pressure of HPPCL, a government entity, the signing of Long Term Access Agreement has been withheld and instead the Petitioner Tidong-I HEP has been asked to sign MTOA which is illegal and contrary by the procedure and Open Access Regulations, 2010. He has also submitted that though, Himachal Pradesh Power Corporation Limited (HPPCL) had also filed an application for the Long Term Access for Stages II and III of the IKHEP but there was no occasion for the HPPTCL (STU) to consider their application for the reasons that only one unit (Stage-I) of IKHEP is under operation and there is uncertainty about the schedule commercial operation dates of Stages II and III of said Project. According to him, the HPPTCL and HPPCL have withheld material detail from the Commission in respect of the minutes of meetings held in Central Electricity Authority (CEA) which clearly show that till the Jangi Pooling Station is constructed the Power from Tidong-I HEP shall temporarily be evacuated by LILO of one circuit of D/C of Kashang-Bhaba Line which and on Commissioning of Jhangi Pooling Station, Tidong-I HEP shall be connected to the same. According to him, on grant of LTA on 29.10.2019 by HPPTCL, Tidong-I HEP has entered into an agreement for supply of 75 MW Power with Uttar Pradesh Power Corporation Limited (UPPCL) but the action of the HPPTCL by not signing the Long Term Access Agreement is likely to put the Power evacuation in Jeopardy, which would result in huge loss to the Tidong-I HEP. He has also submitted that the Respondents i.e. HPPTCL and

HPPCL have also withheld the relevant information regarding the status of the Kashang-Bhaba Line which is not a dedicated line and this issue is no longer Res Integra in view of the order dated 08.06.2021 the Review Petition No. 08 of 2021. Therefore, the subsequent Petition No. 48 of 2021 is clearly barred by the Principles of Res Judicata and a frivolous plea has been raised in this regard by HPPCL.

33. Sh. Vikas Chauhan, Ld. Counsel for the HPPTCL has submitted that on the receipt of the communication dated 18.06.2020 from the CEA (Annexure R/3) pursuant to meeting held on 13.03.2020 in CEA to discuss the revision of master plan for the State of Himachal Pradesh and evacuation of power of Tidong-I HEP (150 MW) likely to be commissioned in 2021 and Stages II to IV of IKHEP likely to be commissioned by 2024-25, a meeting was held with the Petitioner Tidong-I HEP and HPPCL on 19.08.2020 regarding grant of LTA to the Tidong-I HEP and the Petitioner Tidong-I HEP was informed that Tidong-I HEP (150 MW) can be allowed to evacuate the power through Kashang-Bhaba Line only on MTOA basis till IKHEP Stages II to IV are Commissioned. Therefore, no wrong, whatsoever, has been committed by the Respondent HPPTCL in asking the Petitioner Tidong-I HEP to sign MTOA, which will not impact the evacuation of power of their Project in any manner.

34. Shri Surinder Saklani, Ld. Counsel for Petitioner in Petition No. 48 of 2021 and Respondent No.2 and in Petition No. 12 of 2021 has submitted that LTA to the Tidong-I HEP was illegally granted by ignoring the application of HPPCL for

Long Term Access which was also filed in the month of October, 2019 when the Tidong-I HEP also filed their application for LTA. He has submitted that both the applications as per the Open Access Regulations, 2010 and the procedure devised by HPPTCL for granting LTA were required to be considered simultaneously, waiting till the end of the month but ignoring the application of the HPPCL, the LTA was illegally granted to the Tidong-I HEP and that too on 29.09.2019 without waiting till the end of the month.

Points for determination

35. Out of the pleadings of the Parties in both the Petitions and submissions of the Ld. Counsel and authorized representative for the parties, the following points arise for the determination in both the Petitions:-

- 1) Whether the Kashang-Bhaba Power Transmission Line is a dedicated line of transmission of power of the Himachal Pradesh Power Corporation Limited (HPPCL) for evacuation of Power of IKHEP and long term access was wrongly granted to Tidong-I HEP ignoring the first right of IKHEP on the same?
- 2) Whether the Petitioner in Petition No. 12 on 2022 Tidong-I HEP had fulfilled all the terms and conditions of Long Term Open Access and there is default in not signing of Long Term Open Access Agreement consequent upon grant of LTA by the Himachal Pradesh Power Transmission Corporation Limited?

- 3) Whether the applications of Tidong-I and Himachal Pradesh Power Corporation Limited received during the month of October, 2019 were required to be considered together and the Himachal Pradesh Transmission Corporation Limited has illegally withheld the Long Term Open Access to IKHEP?
- 4) Relief.

Answer on the Points for determination

36. For the reasons to be recorded hereinafter in writings while discussing the above points, our point wise findings are as under:

- 1) Point No.1: No.
- 2) Point No. 2: Partly Yes.
- 3) Point No. 3: Yes.
- 4) (Relief): Petition No. 12/2021 and Petition No. 48/2021 are partly allowed per operative part of the order.

Reasons for findings

37. Before advertng to the respective stand of the parties, it is relevant to refer to certain undisputed facts which are as under:-

- i) The HPPTCL vide letter dated 18.07.2013 has granted connectivity to the Tidong-I HEP for aSTS at LILO point 220 kV Kashang-Wangtoo-Bhaba D/C line.
- ii) The HPPTCL has issued NOC in format LTA-3 to the Petitioner Tidong-I HEP vide letter dated 14.11.2014 for applying for LTA for submission

to PGCIL for connectivity of 100 MW Tidong-I HEP at 220 kV Substation under construction at Wangtoo by LILO of both circuits of 220 kV Kashang-Bhaba and 400 kV Karcham-Wangtoo-Abdullapur D/C lines upto the ceiling limits for injection at 100 MW.

- iii) Long Term Access to IKHEP, Stage-I (65 MW) has been granted by HPPTCL to HPPCL on 18.06.2019 and agreement for LTOA has been signed on 10.01.2020 by HPPCL with HPPTCL.
- iv) The installed capacity of the IKHEP is 3x65 MW+1x48MW. However, only one unit (Stage-I 65 MW) is commissioned and water conductor system and other work for remaining stages II and III is under progress whereas stage IV work is at a very initial stage.
- v) The CEA in its meeting on 19.12.2011 and 13.03.2020 has made arrangement of evacuation of Power of Tidong-I HEP as also of IKHEP.
- vi) The CEA vide letter dated 18.06.2020 on the request of the developers of Tidong-I has proposed changes in the earlier evacuation arrangement made in meetings dated 19.12.2011 and 13.03.2020.
- vii) The capacity of Tidong-I HEP has been enhanced from 100 MW to 150 MW and Tidong-I HEP and Government of Himachal Pradesh has signed Supplementary Implementation Agreement on 06.01.2021 to this effect after in principle approval was granted by Department of Energy on 20.01.2020. However, LTA has been sought only for evacuation of 100 MW.

38. In view the aforesaid admitted facts and submissions, we can now advert to adjudicate the Points for determination.

Point No. 1

39. The entire thrust of the HPPCL (Respondent No. 2 in Petition No. 12 of 2021 and Petitioner in Petition No. 48 of 2021) is that Kashang-Bhaba transmission line was constructed as a dedicated line for IKHEP and the HPPCL has first right to evacuate the power of IKHEP through said line. The stand of HPPTCL on this point is not very clear. The HPPTCL in its reply has stated that as per Clause-2 of MoU dated 06.04.2019, the 220 kV Kashang-Bhaba D/C Transmission line shall be treated as STU line.

40. On careful perusal of the record, it is evident that the issue of Kashang-Bhaba transmission Line, being a dedicated line, is no more res integra. It is evident from MOU dated 6th April, 2009 (Annexure-F at page 236 of the reply of HPPCL in Petition No. 12/2021) that 220 kV Kashang-Bhaba Double Circuit transmission line was ordered to be treated as State Transmission Utility/HPPTCL transmission line and not as a dedicated project power evacuation line and all the funds incurred on the construction of said line by way of loan etc. and other liabilities were transferred to the HPPTCL. Therefore, said line is n more a specific project line for IKHEP as projected and is the asset of HPPTCL. No doubt, Clause 9 of the aforesaid MOU provides that in case any other Project (s)/Developer (s) use the said transmission line for evacuation of their power in the State/Regional grid, the wheeling charges shall be shared proportionately between

said developer (s) of new project(s) provided the first right shall always be of the first party (HPPCL) but once the transmission line was ordered to be treated as HPPTCL transmission line with transfer of all liabilities, said clause is insignificant and HPPCL, in principle, can't claim its first right on the same.

41. Significantly, the power of the IKHEP 1st Unit is already being evacuated through said line. The carrying capacity of the line is enough to accommodate Tidong I HEP, and only after such system study, LTA was granted to Tidong I HEP. Therefore, the asset can't be allowed to go idle in view of said clause especially when the line has the capacity to carry more load. Also there is uncertainty about commissioning of other stages of IKHEP and the issue was also before CEA which has proposed interim arrangement. This issue was also in consideration before the Commission in Petition No. 8 of 2020 and the order dated 08.06.2021 reveals that the actual status of the aforesaid transmission line was not brought before the Commission by HPPTCL and rather, the HPPTCL misinformed the Commission about the status of the aforesaid line and it was held by the Commission that the aforesaid line is not a dedicated line and that the Commission was misinformed about its status. Therefore, the contentions of both HPPTCL and HPPCL are incorrect that the Kashang-Bhaba line is a dedicated Project line only for IKHEP. In view of the same, the line is asset of HPPTCL (STU) and is subject to the rules of open access and the HPPTCL is competent to allow transmission through the same as per the carrying capacity of the line. This

point is accordingly decided against the HPPCL (Petitioner in Petition No. 48/21 and Respondent No. 2 is Petition No. 12/21.)

Points No. 2 and 3

42. Both these points being interlinked and interconnected are being taken up together for discussion and adjudication.

43. It is evident from minutes of the 30th meeting of the standing committee on power system planning of Northern Region of CEA held on 19.12.2011 that the issue of evacuation of Power was deliberated in the meeting keeping in view the Commissioning of Kashang-I of IKHEP and Tidong-I HEP in 2013 and 2014 respectively and an interim arrangement was proposed by the CEA regarding evacuation of the Power from these projects. The relevant portion of minutes dated 19.12.2011 is being reproduced as under:

“HPPTCL representative stated that Kashang-I was likely to be commissioned by 2013. For evacuation of power from Kashang-I, they are constructing a 220 kV D/C line from Bogtu to Kashang. Accordingly, power can be evacuated through Bogtu-Bhaba 220 kV D/C line. HPPTCL informed that Tidong-I (100 MW) was under construction and likely to be commissioned by December 2014. Since, Jangi Pooling station may not come up by December, 2014, Tidong-I power shall be temporarily evacuated by LILO of one circuit of 220 kV D/C Kashang-Bhaba line at Tidong-I HEP. These works shall be carried out by HPPTCL. Later on when Jhangi P.S. is commissioned, Tidong-I-Jhangi 220 kV D/C line shall be constructed and also Kashang-Jangi 220 kV D/C line with single HTLS conductor shall be established. These works are proposed to be carried out by HPPTCL.”

It is, therefore, evident that arrangement of evacuation of power of Tidong-I as also Kashang-I HEP was proposed/suggested by the standing committee on Power System Planning on the Northern Region (CEA) in its 30th meeting.

44. It is evident from the record that LTA for Kashang-I HEP (65 MW) was granted on 18.06.2019 and LTOA agreement has also been executed on 10.01.2020 and the Power thereof is being evacuated through Kashang-Bhaba transmission line.

45. The issue of evacuation of power of Tidong-I HEP was again considered by the CEA in its meeting held on 13.03.2020 during revision of master plan for the State of Himachal Pradesh as evident from Annexure R/I (page 165 of the reply of Respondent No. 1 in Petition No. 12 of 2021,) wherein it was proposed by the CEA as under:

“the evacuation system of Tidong-I HEP consists of LILO of one circuit of 220 kV Kashang-Bhaba D/C line (with Zebra conductor) at Tidong-I. HPPTCL informed that LTA was granted to Tidong-I as per 100 MW capacity of through LILO of the line, as only one unit of Kashang-I HEP was available of 65 MW and there was no certainty of Kashang-II & III & IV (2x65+48 MW) due to water shortage. Subsequently, there was proposal of diverging water from other canal for Kashang II-IV, the issues has been cleared by National Green Tribunal and as of now the expected commissioning date Kashang II and the other units is by 2024/2025. With this the combined capacity of Tidong-I (150 MW) + Kashang-I, II, III & IV (243 MW) would be 393 MW. With one double circuit line from Kashang-Wangtoo, the existing evacuation arrangement needs upgradation to utilize this capacity with n-1 outage criteria.”

The above minutes further show that the CEA accepted the proposal of HPPTCL for evacuation of Power and proposed as under:-

“Considering the site condition and the urgent need for Tidong to evacuate its power, the HPPTCL proposal with the following system was agreed for evacuation of power from Tidong (150 MW) and Kashang HPEs stage I to IV (243 MW)

- i) Re-conductoring of the 220 kV Kashang to Wangtoo line and 220 kV Kashang-Bogtu-Wangtoo line with HTLS conductor.*

ii) *LILO of Kashang-Wangtoo 200kV line (direct line) at Tidong HEP Sw. yard with HTLS conductor.*

HPPTCL further requested that they are planning to include this proposal in GEC-I as some funds are left. For, this, CEA stated that as the timeline of GEC-I is December, 2020, therefore it would be difficult to reconductor the line in that time frame.

b) Transformation capacity at Wangtoo

HPPTCL stated that there are 7 single phase, 400/220kV transformers at Wangtoo S/s, with a total of 630 MVA capacity, including one spare unit. HPPTCL enquired whether this S/s can be considered as n-1 complaint.

In this regard, CTU stated that under n-1 condition, capacity left would be 315 MVA and the time gap required for the spare unit to come into service is around 10-12 hours. Therefore, spare unit cannot be considered to meet n-1 condition.

HPPTCL stated that there is space constraint at Wangtoo S/s therefore it is difficult to augment the transformer capacity at Wangtoo.

CEA stated that augmentation may not be required with implementation of Tidong-I HEP. However, with other units of Kashang HEP, the augmentation may be required. HPPTCL suggested that at that time, the proposal of Jangi 400/220 kV PS needs to be considered and the Tidong HEP could be connected with Jangi PS. ”

46. By virtue of Section 38 of the Electricity Act, 2003 (Act for Short), the Central Transmission utility is empowered to undertake transmission of Electricity through Inter-State Transmission System and shall discharge its functions of planning and co-ordination relating to interstate transmission system with State Transmission Utility and others. Section 39 of the Act requires the State Transmission Utility to undertake transmission of electricity through Intra-state Transmission System and to ensure development of an efficient, coordinated and economical system of Intra-state Transmission lines for smooth flow of electricity from a generating station to the load centres and to provide non-discriminatory Open Access to its transmission system for use by generating Companies on

payment of transmission charges. Section 73 of the Act empowers the CEA to formulate short term and perspective plans for development of the electricity system and for coordinating the activities of the planning agencies for the optimal utilization of resources to subserve the interest of national economy.

47. It is clear from the aforesaid that in view of the Powers vested in it, the CEA has proposed an interim arrangement for evacuation of power not only for Tidong-I HEP but also for remaining Stages of IKHEP. It is also evident from the record that the aforesaid line is a Double Circuit line and ultimately on commissioning of Jangi Pooling Station, the Tidong-I HEP shall be connected to the same and the transmission work will be carried out by the Respondent No.1 HPPTCL.

48. The procedure for the Long Term Open Access is provided under Regulations 10 of the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long Term and Medium Term Inter-state Open Access Regulations, 2010 (Open Access Regulations 2010). The provisions of Sub-regulation (2) read as under:-

“The applications for the long-term open access or the medium-term open access shall, as far as possible, be processed on first-cum first served basis for each of the aforesaid types of access:

Provided that applications received during a month shall be construed to have arrived concurrently:

Provided further that while processing applications for medium-term open access received during a month, the applications seeking access for a longer term shall have higher priority:

Provided further that in the case of applications for long-term access requiring planning or augmentation of transmission/distribution system, such planning or augmentation, as the case may be, shall be considered on 30th of June and 31st of December in each year in order to develop a co-

ordinated transmission/distribution plan, in accordance with the perspective transmission/ distribution plans developed by the State Transmission Utility/licensee.”

49. Obviously, the arrangement of evacuation as suggested by CEA is only till the construction of Jangi Pooling Station.

50. The record shows that on the basis of NOC for LTOA in favour of Tidong-I HEP, the application for LTOA was filed by the Petitioner Tidong-I HEP with HPPTCL on 6 October, 2019 for evacuation on 100 MW power alongwith requisite fee and supporting documents. The said request of Tidong-I was considered and vide letter dated 29.10.2019 (Annexure-12) permission for Long Term Access (LTA) was granted as per format LTA-5 of the approved procedure for grant of connectivity and Open Access in Intra-state transmission system. Pursuant thereto, a request was made by Tidong-I HEP for signing of the Long Term Open Access Agreement in respect of the Tidong-I HEP by the Petitioner but no action has been taken by the Respondent HPPTCL and agreement is yet to be signed.

51. As per Open Access Regulations, 2010, LTOA Agreement is required to be signed by the Petitioner Tidong-I HEP and HPPTCL pursuant to grant of LTA. It is the case of Tidong-I HEP that several requests were made to the HPPTCL but they have not signed the LTOA Agreement. According to the Petitioner Tidong-I HEP, they have entered into an agreement with Uttar Pradesh Power Corporation Limited and other procurers for the sale of 75 MW of power from the Project and are in process of finalization of the sale of balance power for which the signing of

LTOA agreement is necessary failing which they shall not be able to evacuate the energy and honour the agreement signed with Uttar Pradesh Power Corporation Limited. The Petitioner Tidong-1 HEP in its reply has stated that the flow of power is expected from May, 2023. Therefore, an immediate arrangement of evacuation of power is required to be made for this purpose not only in the interest of Tidong-I HEP but also for making Optimum Utilization of the asset.

52. It is also evident from the record of Petition No. 48 of 2021 that the HPPCL has also filed an application on 09.10.2019 for Long Term Open Access of Stages II and III of IKHEP alongwith requisite fee and the bank guarantee that connectivity to the IKHEP (65 MW) has already been granted at 66/220/400kV, 2x315MVA Sub Station at Wangtoo vide letter dated 26.10.2015 (as mentioned in Annexure-C of the Petition No. 48 of 2021). However, the application dated 09.10.2019 has not been considered by HPPTCL till date. Significantly, as per Open Access Regulations, 2010, the applications for LTA are to be considered within a period of 120 days.

53. Coming to Regulation 10 of the Open Access Regulations, 2010, it is clear that the applications received during a month for LTA shall be construed to have arrived concurrently. The application for LTA was filed by HPPCL on 09.10.2019 i.e. in the same month when the Tidong-I HEP also filed the application on 06.10.2019. Therefore, in terms of the Open Access Regulations, 2010, both the applications were required to be considered together presuming that both have arrived concurrently and the decision on both the applications was required to be

taken simultaneously. However, the application of Tidong-I HEP was granted on 29.09.2019 without waiting for the last day of the month but no decision on the application of HPPCL has been taken.

54. Though no explanation to this effect has come from HPPTCL but the record suggests that commissioning of Stages II and III of IKHEP is likely to be delayed, giving rise for a cause to keep said application pending. Though, the project developers of Tidong-I HEP have sought permission for augmentation of the capacity of the Project to 150 MW from 100 MW and in principle approval was granted by DoE to the same and Supplementary Implementation Agreement has also been signed on 06.01.2021 but in the month of October, 2019 when both the applications for LTA were filed for Tidong-I HEP (100 MW) and HPPCL for Stages II and III of IKHEP, no such proposal for augmentation of the capacity was in the knowledge of HPPTCL nor such detail was mentioned in the applications. Thus, the applications received during the month of October, 2019 were required to be decided together on the basis of the capacity for which such applications had been filed. The aforesaid action of HPPTCL, therefore, is per-se contrary to the Open Access Regulations, 2010.

55. Still further, the grant of LTA to Tidong-I HEP (100MW) vide letter dated 29.10.2019 for a period of 25 years w.e.f. 01.10.2021 to 30.09.2046 is contrary to the proposal/arrangement made by CEA in its meeting held on 19.12.2011, 13.03.2020 and subsequent letter dated 18.06.2020. As per said arrangement as proposed by CEA in meeting dated 13.03.2020, the arrangement of evacuation of

Power of Tidong-I HEP is temporary till the commissioning of Jangi Pooling Station as on commissioning of the Jangi Pooling Station, Tidong-I HEP would be connected to Jangi Pooling Station through 220kV D/C line. Therefore, LTA granted to Tidong-I HEP has to be essentially till the commissioning of Jangi Pooling Station and thereafter another arrangement has to be made.

56. Significantly, the CEA re-considered the matter of evacuation of Power of Tidong-I HEP on the request of Tidong-I HEP in the month of June, 2020 and vide letter dated 18.06.2020 has proposed the following arrangement:-

- (1) *Tidong-I may execute the LILO of one circuit of the Kashang-Wangtoo line at Tidong HEP with ACSR Zebra conductor to evacuate its power.*
- (2) *Based on the timeframe of Kashang-II, III, IV, HPPTCL to carry out reconductoring of Kashang-Wangtoo line and Kashang-Bogtu-Wangtoo line. Tidong developer should also reconductor, the LILO portion of the Kashang-Wangtoo line at Tidong HEP, matching with the Kashang II, III and IV time frame, so that there is no power evacuation constraint from Kashang HEP under N-I condition.*
- (3) *In the event of any power evacuation constraint during any line outage, adequate backdown should be carried out by the Tidong HEP in consultation with the SLDC.*
- (4) *In case of outage of transformer at Wangtoo, the loss of generation if any shall be borne by Kashang and Tidong-I in proportion to their generation.*
- (5) *On commissioning of Jhangi Pooling Station, Tidong-I HEP would also be connected to Jhangi Pooling Station.*

57. As observed above, the CEA is vested with the Powers of making transmission plans under Section 73 of the Act. Therefore, the arrangement as proposed by the CEA was required to be followed in the facts and circumstances of the matter and the evacuation arrangement is required to be in accordance with the arrangement made by the CEA.

58. Ultimately the power has to be evacuated and the CEA has already proposed the evacuation arrangement in its meeting held on 19.12.2011 and 13.03.2020 and 18.06.2020. The arrangement though is interim in nature as proposed and suggested by the CEA but will continue till the construction and commissioning of Jangi Pooling Station. Therefore, there was no occasion for the HPPTCL to ask the Tidong-I for signing of MTOA.

59. It emerges from the record that as per the proposed arrangement suggested for the Tidong-I HEP and IKHEP, by the CEA, ultimately the Tidong-I shall be connected to Jangi Pooling Station on its Commissioning. Both Tidong-I HEP and HPPTCL have been required to do some work by the CEA vide letter dated 18.06.2020 so that there is smooth evacuation of Power of Tidong-I. It is also apparent from the record that the application of HPPCL dated 09.10.2019 for LTA of (IKHEP Stages II and III) is pending with HPPTCL. The carrying capacity of Kashang-Bhaba Line is enough to accommodate Tidong-I HEP and Stages II and III of IKHEP. The said line is Double Circuit line. Though, the Scheduled date of commissioning of IKHEP Stages II and III are said to be 2024-25 but as per reply to the interrogatories sought by Tidong-I HEP, HPPCL has stated that Stages II and III may be delayed. Therefore, in view of uncertainty of the completion of dates of IKHEP Stages II and III, it is unlikely that there would be any problem of evacuation of Power of Tidong-I HEP (100 MW) for which LTA has already been issued.

60. None of the parties have said anything about the completion of Jangi Pooling Station, a lot about which has been stated by CEA in meetings dated 19.12.2011, 30.03.2020 and finally vide letter dated 18.06.2020. We presume that said Pooling Station would come up soon so as to facilitate the smooth flow of Power. In this regard, we are directing HPPTCL to take up the issue with concerned authorities for speeding up of the work of Jangi Pooling Station and to seek alternate arrangement, if there is delay in completion of the same.

61. No doubt, LTA dated 29.09.2019 granted to Tidong-I HEP was considered in isolation despite pendency of the application of HPPCL for LTA for IKHEP Stages II and III and prayer has been made by HPPCL to cancel the same but it is apparent on record that said LTA was granted after following the procedure and taking into consideration the minutes dated 19.12.2011 and 30.03.2020 of CEA and letter dated 18.06.2020 of CEA. There is not even an iota in the Petition (Petition No. 48/2021) that said application of Tidong I was defective in nature and could not have been considered. Connectivity to the Tidong I HEP and permission for applying LTA had been granted by HPPTCL to Tidong-I. Though the application of HPPCL for Stages II and III was required to be considered together with applications of Tidong I HEP but for the reasons best known to the HPPTCL, no decision on said application has been taken. Apparently, the application of HPPCL has not been rejected and is still pending. Hence, as a matter of fact HPPCL is not aggrieved in any manner by the grant of LTA to Tidong I HEP. Therefore, non consideration of the applications together at the end

of month is a mere irregularity and not illegality. Otherwise also, no action has been taken by HPPCL to get their application considered for such a long period and only when the Petition was filed by Tidong-1 HEP, the HPPCL has filed the Petition. Thus, it would not be appropriate to interfere with the grant of LTA to Tidong I HEP on 29.10.2019.

62. The only flaw in said LTA dated 29.10.2019 granted to Tidong-1 HEP is that the same has been allowed for 25 years upto 30.09.2046 which is contrary to the minutes of CEA and letter of CEA dated 18.06.2020 as on commissioning of Jangi Pooling Station, Tidong-I HEP would be connected to the same. Hence, the LTA dated 29.09.2019 is liable to be revised by HPPTCL to the extent that the same shall be till the commissioning of Jangi Pooling Station and thereafter the Tidong-I HEP will have to seek fresh LTA.

63. The IKHEP Stages II and III may come up in the year 2025 or may be delayed. The application for LTA of HPPCL is pending with HPPTCL. Hence, it would be appropriate to direct the HPPTCL to consider and allow said application dated 09.10.2019 of LTOA for IKHEP Stages II and III.

64. Though, The CEA in the letter dated 18.06.2020 has stated that in the event of power evacuation constraint during any line outage, adequate backdown should be carried out by the Tidong-I HEP in consultation with SLDC and in case of outage of transformer at Wangtoo, the loss of generation, if any, shall be borne by Kashang and Tidong-I in proportion to their generation but said arrangement of adequate backdown to be carried out by the Tidong-I HEP as suggested by the

CEA is improper and discriminatory. Admittedly, the power of IKHEP Stage I is already being evacuated and there is no dispute with regard to the same. The LTA has been obtained by Tidong-I HEP and IKHEP had also sought the LTA for Stages II and III (130 MW) during the same month i.e. October, 2019. Therefore, in the event of power evacuation constraints during any line outage, the adequate backdown should be carried out proportionately by Tidong-I HEP and IKHEP Stages II and III.

65. We make it very clear that Tidong-I HEP has to execute the LILO of one circuit of Kashang-Wangtoo line at Tidong HEP with ACSR Zebra conductor to evacuate its power. Further the Tidong-I HEP will also re-conductor the LILO portion of Kashang-Wangtoo line at Tidong HEP, matching with the Kashang Stages II and III time frame so that there is no power evacuation constraints from Kashang HEP under N-1 condition.

66. In view of the foregoing, Point No. 2 is answered partly in favour of the Petitioner Tidong-I HEP in Petition No. 12/2021 and partly against them. Point No.2 on the other hand is decided in favour of the HPPCL in Petition No. 48/2021.

Final Order (Relief)

67. In view of our above said discussion and findings on points No. 1 to 3, both the Petitions succeed in part and allowed partly. The Respondent HPPTCL is directed to reconsider the LTA dated 29.09.2019 granted to the Petitioner Tidong-I HEP for a period of 25 years and grant such LTA restricting the same till commissioning of Jangi Pooling Station.

68. The HPPTCL is also directed to consider the LTA application of IKHEP for Stages II and III and grant the LTA to them in accordance with the Open Access Regulations, 2010 within a period of 30 days from today.

69. However, the claim of the HPPCL in Petition No. 48/2021 that Kashang-Bhaba Transmission line is dedicated line for IKHEP is rejected.

70. It is ordered that in the event of power evacuation constraints during any line outage, the adequate backdown should be carried out proportionately by Tidong-I HEP and IKHEP Stages II and III.

71. It is also ordered that Tidong-I HEP has to execute the LILO of one circuit of Kashang-Wangtoo line at Tidong HEP with ACSR Zebra conductor to evacuate its power. Further the Tidong-I HEP will also reconductor the LILO portion of Kashang-Wangtoo line at Tidong HEP, matching with the Kashang Stages II and III time frame so that there is no power evacuation constraints from Kashang HEP under N-1 condition.

72. The HPPTCL is also directed to take up the matter with the concerned authorities for speeding up of the work of construction of Jangi Pooling Station and if there are some hindrances, to take appropriate steps for getting the same removed so that there is smooth evacuation of Power.

A signed copy of the order be placed in both the files. The file after needful be consigned to records.

-Sd- (Yashwant Singh Chogal) Member(Law)	-Sd- (Bhanu Pratap Singh) Member	-Sd- (Devendra Kumar Sharma) Chairman
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