

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

Petition No: 33 of 2022
Instituted on: 31.05.2022
Heard on: 17.12.2022
Decided on: 13.02.2023

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

In the matter of :

M/s DLI Power (India) Pvt. Ltd. through its Authorised Representative,
Sh. V.S.V.A. Rao, Divisional Manager (Commercial), having its office in H.P. at
House No. 16, HP Officers Colony (West End),
Panthaghati, Shimla-171013

..... **Petitioner**

Versus

1. The HP Power Transmission Corporation Limited through its,
Managing Director,
Himfed Bhawan, Panjari, Near ISBT,
Shimla-171004.
2. The HP State Electricity Board Limited, through its
Chief Engineer (System Operation),
Vidyut Bhawan, Shimla-171004.
3. The State of Himachal Pradesh through,
the Additional Chief Secretary (MPP & Power),
to the Govt. of Himachal Pradesh,
Shimla-171002.

.....**Respondents**

**Petition under Section 86 (1) (f) and other enabling provisions of Electricity
Act, 2003 and Regulations 53, 68 & 70 of the Himachal Pradesh Electricity
Regulatory Commission (Conduct of Business) Regulations, 2005 for
adjudication of dispute qua the demand of Transmission Charges raised by**

the Respondent No.1 vide letter dated 05.05.2022 in respect of Raura SHP (12 MW).

Present:

For the Petitioner:	Sh. L.S. Mehta, Ld. Counsel.
For the Respondent No.1:	Sh. Vikas Chauhan, Ld. Counsel
For the Respondent No. 2:	Sh. Surinder Saklani, Ld. Counsel and Sh. Kamlesh Saklani, Authorised Representative.
For the Respondent No. 3:	Sh. Shanti Swaroop, Ld. Legal Consultant.

ORDER

This Petition has been filed by the Petitioner under Section 86 (1) (f) and other enabling provisions of the Electricity Act, 2003 read with Regulations 53, 68 & 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for adjudication of a dispute qua demand of transmission charges. M/s DLI Power (India) Pvt. Ltd. (the Petitioner for short) has set up Raura Small Hydro Project 12 MW on Raura Khad, a tributary of Satluj River in Distt. Kinnaur, HP (the Project for short) has been synchronized with the Grid on 09.09.2019 and the power is being sold to the Respondent No. 2 i.e. the Himachal Pradesh State Electricity Board Limited (HPSEBL for short) under short term Power Purchase Agreement (PPA for short) under REC Mechanism.

FACTUAL MATRIX

2. According to the Petitioner, the Respondent No. 1 i.e. the Himachal Pradesh Power Transmission Corporation Limited (the Respondent No. 1 for short) is State Transmission Utility (STU for short) which is obligated to ensure

the development of an efficient, coordinated and economical system of Intra-state Transmission lines for smooth flow of electricity from generating stations to the load centers and to provide non-discriminatory open access to its transmission system. The HPSEBL is the Distribution Licensee. The Petitioner signed Implementation Agreement (IA for short) on 24.03.2008 (Annexure P-2) with the Government of Himachal Pradesh (GoHP for short) for setting up the Project for 8 MW capacity.

3. The Petitioner applied for the connectivity vide letter dated 08.08.2011 (Annexure P-3 Colly) that the nearest 66 kV Sub-station is proposed at Village Urni at a distance of 2 km from the Project's switch yard and Respondent No. 1 intimated the Petitioner of grant of connectivity wherein the Schedule Date of Commissioning (SCOD for short) was stipulated as January, 2014 and the interconnection point was mentioned as 66 kV Switching Station, Urni.

4. It is averred that the Commission vide order dated 16.07.2012 in Petition No. 137 of 2011 (Annexure P-4) has determined the Average Pooled Power Purchase Cost (APPC for short) for the year 2012-13 under the REC mechanism specifying therein that the transmission charges are not applicable on power sale to the HPSEBL.

5. The Respondent No. 1 vide letter dated 24.05.2014, sent minutes of meeting of the 35th meeting of STU coordination committee (MoM for short) that the transmission Projects within the State are planned to be built by ADB loan in Tranche-II and the time line for completion of 66 kV GIS Switching Station at

Urni and 66 kV Urni-Wangtoo D/C Line was scheduled in April 2015 (Annexure P-5 Colly).

6. Meanwhile, the capacity of the Project was increased from 8 MW to 12 MW and the increase of such capacity was accorded vide Order dated 08.10.2015 by the Directorate of Energy, specifying the amended interconnection point for the Project for evacuation of power by interfacing with 66 kV Switching Station at Urni. Accordingly, the Petitioner vide letter dated 17.10.2015 (Annexure P-7 Colly) submitted fresh application for grant of connectivity as per procedure along with required documents and fee. The Respondent No. 1 vide letter dated 26.10.2015 (Annexure P-7 Colly) intimated the Petitioner of connectivity with SCOD of the Project as January, 2017 and the connectivity was stated to be applicable from the date of Commissioning of lines and Sub-station at Wangtoo and Urni. On 06.01.2016, MoM (Annexure P-8) of 42nd meeting of STU held on 15.12.2015 were sent to the MD, HPSEBL vide which the time line for completion of 66 kV GIS Switching station at Urni and 66 kV Urni-Wangtoo D/C line was revised as 31.12.2016.

7. The Petitioner signed Connection Agreement with Respondent No. 1 on 23.06.2016 (Annexure P-9) agreeing to pay monthly transmission tariff including HPSLDC charges for the use of Intra-State Transmission System so long, medium and short-term open access is availed by the applicant.

8. The Petitioner vide letter dated 13.07.2017 (Annexure P-10) informed the Respondent No. 1 that the Project is going to be commissioned in next 8/9

months and requested the Respondent No. 1 to confirm power evacuation arrangement of the Petitioner's project in case the system at Urni and/ or Wangtoo is delayed. The Petitioner vide letter dated 16.09.2017 (Annexure P-11) also informed the Respondent No. 1 that SCOD of the Project is April, 2018 and in case Urni Sub-station or Urni-Wangtoo 66 kV D/C line is not commissioned prior to the commissioning of the project, interim power evacuation arrangement be made.

9. The Respondent No. 1 vide letter dated 26.09.2017 (Annexure P-12) sent MoM of 45th meeting held 20.09.2017 (Annexure P-12) that the Project is targeted for commissioning in April, 2018 which has been granted connectivity at 66 kV at Urni which shall be ready for commissioning by the said date and the interim evacuation arrangement is required to be planned and the committee directed the HPPTCL to finalize the interim evacuation arrangement. Pursuant thereto, a meeting was held on 17.10.2017 with HPPTCL where the Petitioner apprised about the readiness of its project by April, 2018 and submitted three proposals for interim evacuation arrangement. The Respondent No. 1 apprised the Petitioner to take further action for implementation of the interim arrangement with DGM (Projects) and Senior Manager, Bhabhanagar.

10. The Respondent No. 1 approved tapping arrangement at 66 kV circuit of 220 kV Kashang-Bhabha D/C line as evident from letter dated 23.10.2017 (Annexure P-13). The HPPTCL vide letter dated 23.01.2018 (Annexure P-14) informed the Petitioner that the 66 kV GIS Switching Sub-station at Urni shall be

ready for synchronization by April, 2018 and in order to plan activities related to charging of the Sub-station and testing of protection equipment, status of completion of 66 kV line from the project is required.

11. The Petitioner signed Supplementary Implementation Agreement (SIA for short) on 01.02.2018 for the enhanced capacity of 12 MW with the GoHP which was followed by the 2nd SIA dated 12.02.2019 (Annexure P-15 Colly) wherein the revised interconnection point was defined as:-

“physical touch point at 66 kV Switching station of Respondent No. 1 at Urni where projects transmission line for evacuating the power from the project is connected to the Grid.”

12. On providing the interim evacuation arrangement, the Petitioner executed Interim Power Transmission Agreement (IPTA) on 05.02.2018 with the Respondent No.1 (Annexure P-16) wherein it was agreed as under:-

- *Whereas 66 kV switching substation at Urni and 66/220/400 kV Sub Station at Wangtoo are under construction and Raura SHP have not availed Open Access from HPPTCL and Long Term Access applications are still to be filed;*
- *And whereas as discussed in various STU Meetings, it has been decided to provide an interim arrangement, for evacuation of the power generated by the Applicant till the commission of 66 kV switching substation at Urni, 66 kV line from Urni to Wangtoo and 66/220/400 kV Sub Station at Wangtoo and physical connection of the applicant to Urni S/Stn.*
.....
- *“(A) As an interim power transmission arrangement in national interest the HPPTCL has agreed to the connection of Raura SHP (12 MW) at Tower No. 61 of one of the 220 kV Kashang-Bhabha D/C Transmission line and charging it at 66 kV.*

- *(B) The power shall be transmitted at 66 kV level to 22/66/220 kV Sub Station of HPSEBL atBhabha Power House.*
- *(D) Monthly Transmission Tariff*
- *(a) The Interim Transmission charges shall be calculated @ 14 paise per unit of the energy wheeled including the O&M charges. The data/quantum of the energy generated and transmitted for the purpose of calculation of the interim Transmission Charges shall be as per the meter reading recorded at the meter installed at Raura Switch Yard*
- *The interim tariff remain in force till the final outcome of MYT petition filed by HPPTCL for determination of Tariff for FY 2016-17 to FY 2018-19 of 220 kV D/C Kashang-Bhaba Transmission line and Tariff will be applicable as per HPERC Order. The excess/less amount so charged shall be adjustable by either side accordingly as per HPERC Order.”*

13. On 11.06.2018 MoM of 46th meeting of STU held on 29.05.2018 (Annexure P-17) were sent to the HPSEBL that though 66 kV switching station at Urni shall be ready for commissioning on 31.12.2018 but the 12 km long 66 kV Urni-Wangtoo associated line is delayed and cannot be commissioned before 30.06.2019. The Respondent No. 2 vide letter dated 14.08.2018 sent MOM of 47th meeting of STU held on 25.07.2018 (Annexure P-18) to the HPSEBL that 66 kV Urni-Wangtoo D/C line will be commissioned by March/ April, 2019.

14. The Petitioner also obtained information under Right to Information Act (RTI for short) on 20.12.2018 and 10.01.2019. Meanwhile, the Directorate of Energy (DoE for short) vide letter dated 10.01.2019 (Annexure P-19) informed the Petitioner that SCOD of the project has been extended upto 08.01.2019 based upon delays not attributable to the Petitioner and in particular the transmission facility being not available.

15. The Petitioner vide letter date 01.01.2019 (Annexure P-20 Colly) informed the DoE that SCOD of the Project is 28.02.2019 and the DoE vide letter dated 07.01.2019 (Annexure P-20 Colly) informed the Respondent No.1 and the HPSEBL to submit the report on various aspects with clear cut recommendations regarding commercial production of the Project as per Govt. notification so that the Project could be permitted to declare COD.

16. The Respondent No. 1 vide letter dated 07.02.2019 (Annexure P-21 Colly) sent MoM of 48th meeting of STU held on 03.01.2019 (Annexure P-21 Colly) that 66 kV Urni-Wangtoo D/C line under all circumstances, can be completed only on 30.12.2019. In response to letter dated 07.01.2019 of the DoE, the HPPTCL vide letter dated 30.01.2019 (Annexure P-22) informed the DoE that the readiness of the designated regular evacuation facility of the Project is delayed and targeted for completion by September, 2019 but interim connectivity has been provided to the Project to evacuate the power partially. The HPSEBL vide letter dated 12.02.2019 intimated the Respondent No. 1 that even the partial evacuation of power of the Project through 220 kV D/C Bhabha-Kunihar line during peak generation period (May to September) is not possible as 220 kV Bhabha-Kunihar Circuit-I and II are already overloaded and existing IPP (the Project) has to backdown its generation during this period and the Respondent No.1 was requested that evacuation of power of the Project may be allowed only after commissioning of 400/220 kV Sub-station Wangtoo. The HPSEBL continued with the same approach vide letters dated 06.04.2019, 08.04.2019 and

24.04.2019 (Letters dated 12.02.2019, 06.04.2019, 08.04.2019 and 24.04.2019 annexed as Annexure P-23 Colly).

17. Meanwhile, the DoE vide letter dated 12.04.2019 (Annexure P-24) requested the Respondent No. 1 to furnish detailed comments with regard to delay of commissioning of the Project and for resolving the issue that the project is likely to commission during the month of May, 2019. The Respondent No. 1 vide letter dated 04.06.2019 (Annexure P-25) informed the DoE about the constraints even in partial evacuation of power through 220 kV D/C Bhabha-Kunihar line during peak generation period and that till commissioning of 400/220 kV Wangtoo Sub-station during July/ August, 2019, the Project can partially evacuate its power.

18. Meanwhile, the Petitioner and the HPSEBL filed a Joint Petition No. 60/2019 on 10.06.2019 for the approval of the Power Purchase Agreement (PPA for short) before the Commission and in the Petition, the HPSEBL declared its commitment of purchasing the power at the interconnection point which clearly limited the Petitioner's responsibility to deliver the power at the said interconnection point duly documented as 220 kV Kashang-Bhabha D/C line of the HPPTCL and 'Interconnection Facilities' as the Project shall be connected at Tower No. 61 of the 220 kV Kashang Bhabha D/C line and charging it at 66 kV. The said Joint Petition was allowed by the Commission vide Order dated 24.06.2019 and draft PPA was approved on APPC sale, inter-alia, to purchase the power at the said 'interconnection point' where the Petitioner's responsibility

ends (Copy of Joint Petition and Order dated 24.06.2019 are annexed as Annexure P-27 Colly). The Petitioner executed the PPA with the HPSEBL on 25.07.2019 clearly defining interconnection point in Clause 2.2.47. Not only this, as per Clause 6.1 of the PPA, the Petitioner had to deliver the energy from the Project at the said 'interconnection point' and the free power (Govt. supply) free of cost and that the HPSEBL agreed to purchase the net saleable energy at the said 'interconnection point'. Thus, as per the Commission's order and the PPA (Annexure P-28) the responsibility of the Petitioner to inject and deliver the power is upto the said interconnection point only (Tower No. 61 at 220 kV Kashang-Bhaba Line) and beyond that it is the responsibility of the HPSEBL to wheel energy by its own arrangement.

19. It is averred that a meeting was held on 02.08.2019 between the Respondent No. 1 and the HPSEBL about the interim power evacuation arrangement (Annexure P-30) wherein the Petitioner was asked to lay a line for temporary evacuation and following the resolution, the Petitioner commissioned the transmission line for interim connection from Raura switchyard to Tower No. 61 of Kashang-Bhabha Line by incurring cost of Rs. 43 lakhs over and above the expenditure on already constructed designated line from the Project to Urni Switching Sub-Station.

20. The Project was synchronized with the Grid on 09.09.2019 with limitation of power evacuation i.e. 1-4 MW. The DoE extended the SCOD of the project upto 09.09.2019 vide letter dated 27.01.2021. The DoE vide letter dated

16.11.2019 (Annexure P-31) intimated the Petitioner that in view of the Notification dated 17.08.2016 and subsequent amendment Notification dated 10.10.2017, the mandatory reports with recommendations required for declaration of COD have been received from the authorities and permission was granted to certify the declaration of COD w.e.f 30.09.2019. The HPSEBL vide letter dated 21.10.2019 (Annexure P-31 Colly) intimated the DoE that the Project be declared commercially operated w.e.f. 30.09.2019.

21. The Petitioner informed the DoE of limited evacuation of Power vide letter dated 22.11.2019 (Annexure P-32). The Respondent No. 1 vide letter dated 16.07.2020 (Annexure P-33) confirmed completion of cable system and that full power generated from the Project is being successfully evacuated through Wangtoo switching station.

22. As per the Petitioner, the Respondent No. 1 and the HPSEBL were to deliberate on evacuation of interim power arrangement of the Project in view of MoM of 45th STU Meeting held on 20.09.2017 but the Petitioner without waiting for the same, continued paying transmission charges @ 14 paise per unit to the Respondent No. 1 from the date of synchronization of the Project i.e. 09.09.2019 upto May, 2020 aggregating to Rs. 25,85,722/- which were not liable to be paid by the Petitioner. Therefore, the Petitioner requested the Respondent No. 1 vide letter dated 08.06.2020 (Annexure P-34) that the transmission charges should not have been levied on the Petitioner as the power is being sold to the HPSEBL at APPC rate and that it had laid regular 66 kV transmission line upto Urni

switching station as per the original requirement and in addition have spent almost 2 Crores to lay additional line for solid tap connection from the Project switch yard to Tower No. 61 of Kashang-Bhabha line and another line through cable from Tower No. 92 to 66 kV feeder at Wangtoo. Further, since the Urni-Wangtoo D/C line was appearing unlikely the continuance of charges @ 14 paise per unit cannot be sustained as debt servicing has become difficult. In any case, the payment of transmission charges are exempted for the use of Intra-state Transmission Network as well as during sale of power to the HPSEBL at HPPC rate. According to the Petitioner, the transmission charges @ 14 paise per unit as per IPTA dated 05.02.2018 are not required to be paid by the it and the Petitioner requested the Respondent No. 2 to refund the same and return the bank guarantee.

23. The Respondent No. 1, in response to letter dated 08.06.2020, conveyed to the Petitioner vide letter dated 26.08.2020 that the interim arrangement as made vide IPTA shall remain in force till commissioning of 66 kV Urni-Wangtoo transmission line and the interim tariff was up till the determination of tariff of 220 kV D/C Kashang-Bhabha transmission line and the excess/ less amount so charged shall be adjusted by either side accordingly as per the Order of the Commission.

24. It is also averred that the Commission approved the tariff of 220 kV D/C Kashang-Bhabha line for the period from COD to FY 2023-24, applicable from 26.08.2020, to open access customers but the Petitioner was not a party to the Petition. The Petitioner vide letter dated 31.08.2020 (Annexure P-38) requested

for exemption from payment of charges @ 14 paise per unit in view of order dated 24.06.2019 passed by the Commission in a Petition for approval of PPA but the Respondent No. 1 vide letter dated 24.09.2020 (Annexure P-39) informed that the transmission charges are required to be paid.

25. The Respondent No. 1 vide letter dated 10.11.2020 (Annexure P-40) informed the Petitioner that after the shutdown given by the project, the Urni Switching station was successfully charged via Raura-Urni 66 kV line on 26.09.2020 but Urni-Wangtoo 66 kV D/C line was still under construction.

26. The Respondent No. 1 issued notice on 01.02.2021 (Annexure P-41) to the Petitioner invoking Clause D (b) of the IPTA dated 05.02.2018 for making payment of Rs. 19,62,751/- from the month of June/ July, 2020 failing which the supply of the Petitioner will be disconnected which was replied to on 01.02.2021 (Annexure P-41) giving detailed account as to how the charges are not being paid. The issue of non-payment of charges was also discussed in a meeting held on 08.02.2021 with Respondents No. 1 and 2, the MoM whereof were conveyed vide letter dated 24.02.2021 that the transmission charges from June/ July 2020 are required to be paid as per IPTA and advised the Petitioner to take up the issue relating to interconnection point and the PPA with the HPSEBL, being a bilateral arrangement.

27. It is averred that on account of the following, the charges are not required to be paid by the Petitioner :-

- (i) As per HPERC Order for approval of PPA of Raura SHP, interconnection point is at Tower No. 61 of the 220 kV Kashang Bhabha D/C line at which the Petitioner's responsibility to inject and deliver power to Respondent No. 2 comes to an end.
- (ii) While signing the IPTA, the Petitioner neither had any PPA nor it had taken or asked to sign STOA / LTOA / MTOA by the Respondents. The PPA was signed with Respondent No.2/HPSEBL on 25.07.2019 and the provisions of IPTA cannot be applied contrary to the law.
- (iii) The Petitioner provided documents citing HPERC's various orders confirming explicit exemption from transmission charges on power sale to HPSEBL on APPC mode.
- (iv) IPTA provisions and principles as per HPERC Order on transmission charges for Kashang Bhabha line dated 26.08.2020 are relevant only during open access sale to entities other than HPSEBL.

The copy of letter dated 24.02.2021 and MoM dated 08.02.2021 are annexed as Annexure P-43 (Colly).

28. The Petitioner vide letter dated 09.02.2021 again requested for exemption from transmission charges @ 14 paise per unit especially on the ground that the power is being sold to the HPSEBL at APPC rate and till the issue of refund/ adjustment of payment made towards transmission charges from September, 2019 to May, 2020 is resolved, the notice dated 01.02.2021 be withdrawn and also requested the Respondent No. 1 to modify the bill. The Petitioner vide letter dated 02.03.2021 (Annexure P-45) also apprised the Respondent No. 1 that the

matter has been taken up with the Respondent No. 2 and requested the Respondent No. 1 for not taking coercive action of disconnection of supply.

29. It is averred that the Petitioner obtained information under Right to Information Act from the HPPTCL which was provided vide letter dated 02.03.2021 (Annexure P-46) wherein it has been mentioned at many places that the charges beyond interconnection point has i.e. Tower No. 63 is to be charged from HPSEBL, which is reproduced as under:-

Point No. 62

“As per the Page No. 7 of the PPA of the IPP with HPSEBL, Interconnection Point as an interim measure has been defined as Project shall be connected at 220 kV Kashang Bhabha D/C line of HPPTCL (Clause 2.2.47 of the PPA). Further HPSEBL has undertaken to provide suitable evacuation system beyond interconnection point as per Clause 9.2 of the above PPA.”

Point No. 64:

As such the charges beyond Interconnection Point shall be charged to HPSEBL.

Point No. 66:

“When Raura HEP has tapped one ckt of 220 kV Kashang Bhabha D/C line (charged at 66 kV) is the Interconnection Point. The metering of Raura energy is done at Raura PH S/Yard. Accordingly, charges beyond I/C should be payable by HPSEBL, please.”

Point 81 & 82:

One of the grounds on which exemption has been sought is that as per Clause 2.2.47 of the PPA between HPSEBL and DLI Power, the interim arrangement has been defined as per IPTA between HPPTCL and DLI Power. In this regard, it is clarified that although the IPTA specifies the point of connection for Raura SHEP at Tower No. 61 of Kashang Bhabha D/C line, but it gives no clarity as to what will be the interim interconnection point for HPSEBL. Furthermore, even in the PPA between HPSEBL and Raura SHEP it has not been mentioned clearly as to which point shall be treated as Interim interconnection point for the purpose of sale of energy.”

Therefore, DLI Power needs to take up the matter with HPSEBL and revise their PPA accordingly if needed. In addition to this, the existing IPTA between HPPTCL and DLI Power needs to be revised to

incorporate the changes in the point of evacuation of Raura SHEP from Bhoktoo S/S to Wangtoo S/S.”

30. The Respondent No. 1 vide letter dated 15.03.2021 informed the Petitioner that the PPA has been signed with the HPSEBL to which the Respondent No. 1 is not a party and since no response was given by the HPSEBL to the request of the Petitioner, the transmission charges as per IPTA be deposited. The Respondent No. 1 also sent E-mail to the Respondent No. 2 of the interim evacuation arrangement till the commissioning of Urni switching station and as per IPTA dated 05.02.2018 under Clause D (a), the Petitioner is bound to pay the transmission charges @ 14 paise per unit. Further that since the PPA has been signed with the HPSEBL and the Petitioner had been paying the charges without any objection as per IPTA till May, 2020. Also averred that the Petitioner vide letter dated 08.06.2020 intimated the Respondent No. 1 that charges @ 14 paise per unit need to be recovered from the HPSEBL as the power is being sold on APPC rate and earlier charges paid be refunded.

31. The Petitioner vide letter dated 31.08.2020 again requested the Respondent No. 1 that the interim interconnection point of the Project is the tap point at Kashang-Bhaba line, thereby fixing the onus of payment of transmission charges on the HPSEBL but the Respondent No. 1 vide letter dated 24.09.2020 clarified that issue regarding provisions of the PPA be first taken up and confirmed with the HPSEBL. Thereafter, a meeting was held in the office of Respondent No. 1 on 08.02.2021 and the issue was discussed and the Petitioner

re-asserted its stand in the meeting but the Respondent No. 1 made it clear that the PPA being bi-lateral agreement between the HPSEBL and the Petitioner, the Petitioner cannot refuse to obey the IPTA and that the issue regarding interconnection point be taken up with the HPSEBL.

32. The Petitioner vide letter dated 09.02.2021, requested the HPSEBL to deposit the outstanding transmission charges as per IPTA dated 05.02.2018 amounting to Rs. 19,62,751/- either with the Respondent No. 1 or refund the same to the Petitioner and also requested the Respondent No. 1 for modifying the outstanding amount. Also averred that in view of the tariff order in respect of 220 kV D/C Kashang-Bhaba line, the ARR is being recovered from the H.P. Power Corporation Ltd. (HPPCL for short) but the transmission charges collected from other beneficiaries are to be adjusted/ refunded to the HPPCL. E-mail dated 30.07.2021 is annexed as Annexure P-48 (Colly).

33. As per the Petitioner, the Respondent No. 1 apprised the Petitioner vide letter dated 05.05.2022 (Annexure P-49), that the matter was taken up with the Respondent No. 2 by the Respondent No. 1 but the Respondent No. 2 informed that the Petitioner shall be responsible for the payment of transmission charges as per PPA/ IPTA and the Respondent No. 1 also enclosed provisional interim transmission charges bill for the period of August, 2020 to April, 2022 amounting to Rs. 93,68,264/- subject to adjustment as per tariff order dated 26.08.2020 and fresh bank guarantee towards security deposit in terms of Clause (E) of the IPTA

be also deposited within 30 days. Therefore, the Petitioner is compelled to file the present Petition.

34. It is averred that neither the Petitioner has availed the open access nor has sold the power to any other utility except the HPSEBL, therefore, the demand of transmission charges is unjustified, illegal, arbitrary, discriminatory and without any basis and that the responsibility of the Petitioner is to inject and deliver the power at the interconnection point and beyond the same, it is obligatory upon the HPSEBL to make its own arrangement for transmission of power. Also that the Commission vide order dated 16.07.2012 passed in Petition No. 137/2011 while determining the APPC for the FY 2012-13 under the REC Mechanism has held that transmission charges are not applicable when the power is supplied to the local DISCOM at APPC rate and since the power is being supplied by the Petitioner as per PPA under APPC rate valid up till 31.03.2023, no transmission charges can be levied upon the Petitioner.

35. It is averred that though as per PPA, the interconnection point where the Petitioner has to inject and deliver the Power is at Sub-station Urni but the Petitioner has signed the PPA under REC mechanism which has been extended upto 31.03.2021 and as per the interim arrangement as defined in the PPA, the Project has been connected at 220 kV Kashang-Bhabha D/C line to enable evacuation of electricity output from the Project in accordance with the agreement which is at Tower No.61 of one of the 220 kV Kashang Bhabha D/C Line and charged at 66 kV and the definition further provides that power shall be

transmitted at 66 kV level to 22/66/220 kV sub-station of HPPTCL at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of HPSEBL at Bhabha Power House. As per the Petitioner, the Petitioner has been compelled to sign the IPTA as the permanent system was not ready and for the fault of Respondent No. 1, the Petitioner can't be held liable to pay the transmission charges of interim evacuation arrangement.

36. The Petition has been resisted by the Respondents No. 1 and 2 by filing separate replies.

37. The Respondent No. 1 in its reply has averred that the Petitioner has no cause of action to maintain the Petition which has been filed to avoid the liability which has accrued in favour of the Respondent No. 1 and that the transmission charges for the 220 kV Kashang-Bhabha D/C transmission line, as an interim evacuation arrangement from Raura SHP 12 MW, are to be borne by the Petitioner in terms of the IPTA dated 05.02.2018 (Annexure P-16). Further, that the Petitioner has agreed to pay monthly tariff including HPSLDC charges for the use of Intra-state Transmission System as and when long term/ medium term/short term open access is availed by the Petitioner in accordance with the Regulations vide connection agreement dated 23.06.2016.

38. According to the Respondent No. 1, 66 kV Switching Station at Urni was under construction at the time of commissioning of the Project and, therefore, Interim evacuation arrangement was allowed connecting the Project at one of the circuits of 220 kV Kashang-Bhabha transmission line and charging it at 66 kV.

As per the HPPTCL, the Petitioner has made the payment towards the transmission charges upto May, 2020 as per the IPTA dated 05.02.2018 but thereafter has not paid the charges for the reasons detailed in letter dated 08.06.2020 (Annexure P-34). It is averred that several requests were made to the Petitioner for payment of charges but in vain and the Petitioner was also asked to approach the HPSEBL to raise issues qua the provisions of PPA, in case the Petitioner is not bound to pay the transmission charges to the Respondent No. 1. Further, that a meeting was also held on 08.02.2021 (Annexure R-1/A) in which the Petitioner denied its responsibility to pay the charges that the same are to be borne by the HPSEBL but the Respondent No. 1 insisted for the same in terms of IPTA dated 05.02.2018. Further, the Respondent No. 1 asked the Petitioner to persue issue of interconnection point with the HPSEBL as per the terms and conditions of the PPA to which Respondent No.1 is not a party.

39. It is averred that the Respondent No. 1 vide letter dated 15.03.2021 took cognizance of the fact that the matter regarding issue of the interconnection point and payment of transmission charges was taken up by the Petitioner with the HPSEBL vide letter dated 09.02.2021 and the replying respondent also requested the Petitioner to deposit the transmission charges as per IPTA dated 05.02.2018 for the month of June and July, 2020 which shall be subject to adjustment/ refund based on confirmation by the HPSEBL.

40. The Respondent No. 1 vide E-mail dated 30.07.2021 and letter dated 16.12.2021 sought clarification from the HPSEBL regarding the onus of payment

of the transmission charges for evacuation of power of Raura SHEP through Kashang-Bhabha line. The HPSEBL vide letter dated 26.04.2022 informed the Respondent No. 1 that the Petitioner shall be responsible for the payment of transmission charges in terms of the PPA and IPTA, and thus, the Respondent No. 1 vide letter dated 05.05.2022 further requested the Petitioner to deposit the interim evacuation transmission charges w.e.f. June, 2020 to April, 2022 which would be subject to adjustment in line with the Tariff order dated 26.08.2020 passed by the Commission in respect of 220 kV Kashang-Bhabha transmission line and also requested the Petitioner to sign Long term/ Medium Term Open Access Agreement as per Clause 2.1.24 of the Tariff order dated 26.08.2020. The copy of letters/ E-mail dated 09.02.2021, 15.03.2021, 30.07.2021, 16.12.2021, 26.04.2022 and 05.05.2022 are annexed as Annexure R/1-B (Colly). Further, the Respondent No. 1 vide demand notice dated 30.05.2022 (Annexure R-1/C) has raised demand of Rs. 1,13,31,015/- from the Petitioner for the period w.e.f. June, 2020 to April, 2022 as per IPTA which are bound to be paid by the Petitioner.

41. As per the Respondent No. 1, the Petitioner is liable to pay the transmission charges for the use of the system on payment of transmission charges as per Regulations 2.32, 2.33, 2.34, 5 and 16 of the Himachal Pradesh Electricity Regulatory Commission (General Conditions of Transmission License) Regulations, 2004 and Sections 39 and 40 of the Electricity Act, 2003 which have been produced in verbatim.

42. As per the Respondent No. 1, the interim arrangement of the transmission line being utilized by the Petitioner to sell its power to the HPSEBL is through the Transmission Line/ Asset of the Respondent No. 1 and any dispute between the Petitioner and the HPSEBL over the payment of transmission charges cannot be a ground to deny the lawful dues of the Respondent No. 1. Otherwise also, it is not the case of the Petitioner that the Respondent No. 1 is not entitled for the transmission charges for the use of interim arrangement and that as per IPTA dated 05.02.2018, the charges are to be paid by the Petitioner to the Respondent No. 1 which may subsequently, be adjusted as per Tariff order dated 26.08.2020 and such charges may be claimed by the Petitioner from the HPSEBL as per PPA as claimed by the Petitioner. It is averred that the Petition is not maintainable as the transmission facility of the Respondent No. 1 is being utilized by the Petitioner and the HPSEBL for evacuation of power for which the charges are required to be paid. In nutshell, the case of the Petitioner has been denied.

43. The Respondent No. 2, the HPSEBL, in its reply has averred that the Petitioner has signed PPA with the HPSEBL on 25.07.2019 (Annexure P-28) under REC Mechanism for the sale and purchase of power and for the purpose of signing the said PPA, the Petitioner had submitted copy of the Connection Agreement dated 23.03.2016 (Annexure P-9) signed by the Petitioner with the Respondent No. 1 which provides for interconnection point of the Project at 66 kV Switching Station at Urni. It is averred that the Petitioner also provided a copy of IPTA dated 05.02.2018 (Annexure P-16) for facilitating evacuation of

power with interim arrangement/connection at Tower No. 61 of one of the 220 kV Kashang-Bhabha D/C Transmission line and charging it at 66 kV that the power shall be transmitted at 66 kV level to 22/66/220 kV Sub-station of the Respondent No. 1 at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of the HPSEBL at Bhabha Power House on payment of transmission charges @ 14 paise per unit including O&M charges which were provisional and subject to the order of the Commission in MYT Petition filed by the Respondent No. 1 for determination of tariff for FY 2016-17 to FY2018-19 of the 220 kV D/C Kashang-Bhabha Transmission line. It is averred that the charges as agreed under the IPTA are unequivocal and mutually agreed by both the parties, which are irrespective of the mode of sale to be opted by the Petitioner. The Petitioner had willfully agreed to pay such charges for the use of Kashang-Bhabha line and, therefore, there is no conflict over the payment of the same to the Respondent No. 1.

44. As per the HPSEBL, it is imperative to sign connection agreement between the (Petitioner) and the Respondent No. 1 as per the Regulations framed by the Commission for the purpose of connectivity to the Grid system and the connection agreement has been made an integral part of the PPA, if the generator opts to sell the power to the HPSEBL through any available mode of sale. It is reiterated that the Petitioner had provided the connection agreement dated 23.06.2016 (Annexure P-9) and IPTA dated 05.02.2018 (Annexure P-16) for the

purpose of signing the PPA and on the basis of the interim connectivity, the PPA was executed on 25.07.2019.

45. It is averred that the Petitioner had never informed the HPSEBL of not abiding with the terms and conditions of the IPTA relating to the payment of transmission charges. It is also averred that there was no conflict about payment of transmission charges, as such, the PPA is silent about the onus of payment of transmission charges for the usage of Kashang-Bhabha line which are to be dealt as per the IPTA and since the HPSEBL is not a party to the IPTA dated 05.02.2018, it is the Petitioner which has to honor the contractual obligations as per said agreement and, therefore, the plea of the Petitioner that it is not liable to pay the transmission charges to the Respondent No. 1 is without any basis and afterthought.

46. Also averred that Clause 4.4 of the PPA dated 25.07.2019 explicitly provides that in the event of non-availability of permanent evacuation arrangement, the parties may mutually agree for interim arrangement till such time the regular arrangement is put in place. Clause 4.4 of the PPA is reproduced as under :-

“In case power cannot be evacuated from the Project at the Interconnection Point due to non-commissioning of the Project Line, non availability of evacuation system beyond the Interconnection Point or any other technical constraints, the Parties may mutually agree to an interim arrangement, alongwith the terms and conditions thereof, for evacuation of power from the Project till such time the same can be evacuated under the regular arrangement envisaged in the Agreement. However, the Deemed Generation benefit under Section 6.4 or any other

provisions of the Agreement shall not be available to the Company for the period during which power is evacuated under such interim arrangement.”

47. According to the HPSEBL, the Petitioner has agreed for interim connectivity at Tower No. 61 of the Kashang-Bhabha transmission line on payment of transmission charges for the usage of the same as per IPTA dated 05.02.2018. It is averred that being stranger to the IPTA dated 05.02.2018, the Petitioner cannot shift its liability to the HPSEBL and the Petitioner cannot be allowed to frustrate the terms and conditions of the IPTA dated 05.02.2018 and PPA dated 25.07.2019 to its own suitability which is not permissible under the law. Hence, the HPSEBL is not liable to pay the same. It is averred that no legal or vested rights have been infringed, as such, the Petitioner had no right to invoke the jurisdiction of the Commission. As per the HPSEBL, it is none of the case of the Petitioner that the legal binding of IPTA is rendered otiose. Also that on the one hand the Petitioner wants to use the benefit of connectivity under IPTA but on the other hand has refused to pay the transmission charges and instead wants to shift the liability on the HPSEBL despite that the HPSEBL is not a party to the IPTA. Thus, the Petition is not maintainable.

48. It is averred that as per the PPA, the interconnection point of the project is at 66 kV Switching Station Urni and reiterated that once the Petitioner has mutually agreed to pay the transmission charges during the interim transmission arrangement as per IPTA dated 05.02.2018 (Annexure P-16), the Petitioner is bound to pay the same and the Petition is afterthought.

49. As per HPSEBL, the questions of law as formulated are mere assumptions and hypothecation of the Petitioner and based on conjectures and surmises having no foundation to stand. Also averred that the Petitioner has misplaced its reliance in order dated 16.07.2012 passed in Petition No. 137 of 2011, MA No. 71/ 2022 in determining the Average Pooled Power Purchase Cost (APPC) for the FY 2012-13 under REC Mechanism as the interconnection point of the Petitioner is at Urni Switching Station and beyond the interconnection point, the HPSEBL shall bear the transmission charges, hence the said order is of no help to the Petitioner.

50. No reply has been filed on behalf of the Respondent No. 3.

51. In separate rejoinders, the contents of the replies have been denied and those of the Petition have been reaffirmed.

Submissions of the Ld. Counsel

52. Sh. L.S. Mehta Ld. Counsel for the Petitioner has submitted that the demand of interim transmission charges @ 14 Paise per unit on the basis of IPTA dated 05.02.2018 is not only contrary to the Commission's Order dated 16.07.2012 in Petition No. 137 of 2011 determining the APPC rate under which the transmission charges are not required to be paid by the generator supplying Power to the HPSEBL at the APPC rate but also against the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium Term Open Access in Inter-state Transmission and Related Matters) Regulations, 2010 as the Petitioner has neither availed the Open Access nor sold

the Power other than the Respondent No. 2/HPSEBL, as such, the demand is unreasonable and arbitrary. It has also been submitted by him that the liability of the Petitioner comes to an end with supply of power at the interconnection point (Tower No. 61) as per the PPA dated 25.07.2019 and beyond the interconnection point, it is the responsibility of the HPSEBL to bear the transmission charges which also renders the demand untenable. He has also submitted that the metering point of the Project is at Switch yard of the Project and the interconnection point of the Project is at Tower No. 61 at 220 kV Kashang-Bhaba Double Circuit line charging at 66 kV, as defined under the PPA dated 25.07.2019 and the demand made by the Respondent No. 1/ HP Power Transmission Corporation Limited is illegal, arbitrary, discriminatory and contrary to law and the charges paid are liable to be refunded to the Petitioner and charges w.e.f June, 2020 are liable to be paid by the Respondents No. 2/ HP State Electricity Board Limited (HPSEBL).

53. Sh. Vikas Chauhan Ld. Counsel for the Respondent No. 1 on the other hand has submitted that due to the non availability of the regular evacuation system, interim connectivity was provided to the Petitioner, at its request and the Petitioner signed the IPTA dated 05.02.2018 with Respondent No. 1 for evacuation of power on payment of transmission charges @ of Rs. 14 Paise per unit, beyond interim interconnection point at Tower No. 61 and, therefore, the Petitioner is liable to pay the charges for the use of Intra-state Transmission System of the Respondent No.1. It has also been submitted that the Petition has

been filed to avoid the liability accrued in favour of the Respondent No. 1 and the Petitioner cannot back out from the agreed terms and conditions of the agreement dated 05.02.2018. Further that the Petitioner was specifically asked several times to raise the issue of interconnection point with HPSEBL and the Respondent No. 1 had also taken up the matter with the Respondent No. 2 HPSEBL but the HPSEBL has made it clear that the charges @ 14 Paisa per unit are to be borne by the Petitioner.

54. Sh. Kamlesh Saklani, Authorised Representative of the Respondent No. 2 has submitted that the HPSEBL is not a party to the IPTA dated 05.02.2018 and, as such, the liability to pay the transmission charges, as agreed, cannot be shifted to the HPSEBL. He has also submitted that for want of regular evacuation system, the interim evacuation arrangement was provided to the Petitioner by the Respondent No. 1 connecting at 220 kV Kashang-Bhaba transmission line at Tower No. 61 charging at 66 kV but the permanent interconnection point of the Project is at Urni Switching Station where the Petitioner is liable to deliver the net saleable energy to the HPSEBL as per PPA dated 25.07.2019 and, therefore, the HPSEBL is not liable to pay the transmission charges @14 paisa per unit as claimed by the Petitioner for temporary evacuation of Power to Bhawa Power House as per interim arrangement by using the system of Respondent No. 1. Sh. Shanti Swaroop, Ld. Legal Consultant appearing on behalf of Respondent No. 3 has stated that the dispute is inter-se the Petitioner and Respondents No. 1 and 2

and the transmission charges are required to be paid as agreed upon by the parties as per the IPTA dated 05.02.2018.

POINTS FOR DETERMINATION

55. We have carefully gone through the submissions of the Ld. Counsel for the Petitioner and the Respondents No. 1 and 2. We have also perused the entire record carefully. On the basis of submissions of the Ld. Counsel and the averments made in the Petition and the replies, the following points arise for determination in the present matter:-

Point No. 1

Whether the permanent interconnection point of the Project at Urni Switching Station has been changed and fixed at Tower No. 61 at 220 kV Kashang-Bhaba transmission line on providing the interim connectivity by the Respondent No. 1?

Point No. 2

Whether the the liability of the Petitioner comes to an end by supplying the Power at interim interconnection point at Tower No. 61 at 220 kV Kashang-Bhaba transmission line as alleged?

Point No. 3

Whether the Petitioner is not liable to pay the transmission charges @ 14 Paise per unit to the Respondent No. 1, as agreed by the Petitioner vide agreement dated 05.02.2018 and the charges beyond Tower No. 61 upto Bhaba Power House are required to be borne by the HPSEBL?

Point No. 4

Whether no transmission charges are required to be paid by the Petitioner on supply of the power to HPSEBL at APPC rate?

Point No. 5 (Final Order)

56. For the reasons to be recorded hereinafter in writing, while discussing the aforesaid points, our point wise findings are as under:-

Point No. 1:	No.
Point No. 2 :	No.
Point No. 3 :	No.
Point No. 4 :	No.
Point No. 5 : (Final Order)	The Petition dismissed per operative part of the Order.

Reasons for findings**Points No. 1 to 4**

57. All these points being interlinked and inter-connected are being taken up together for adjudication.

58. In this case, the Petitioner, in order to substantiate the claim, has raised four main contentions i.e. (i) the interim interconnection point of the Petitioner as per PPA is Tower No. 61 at 220 kV Kashang-Bhaba transmission line; (ii) the liability of the Petitioner is to deliver the power only at the interconnection point at Tower No. 61 at 220 kV Kashang-Bhaba Transmission line and beyond which the HPSEBL is liable to transmit the same; (iii) the transmission charges @ 14 paise per unit as per agreement dated 05.02.2018 for interim evacuation are not

liable to paid by the Petitioner and rather, the same are liable to paid by the HPSEBL and (iv) the Petitioner has agreed to supply the power at APPC rate and as per the order dated 16.07.2012 passed by the Commission in Petition No. 137/2011 determining the Average Pooled Power Purchase Cost, under REC Mechanism and as per said order, such charges are required to be borne by the HPSEBL.

59. The Respondent No. 1 on the other hand has claimed that system of the Respondent No. 1 is being used by the Petitioner for transmitting the energy and as agreed under IPTA dated 05.02.2018, the transmission charges are required to be paid by the Petitioner and that the Petitioner has already paid such charges upto May, 2020, without any interruption or objection but has refused to pay such charges w.e.f. June, 2020. It is also the stand of the Respondent No. 1 that the dispute regarding the interconnection point is between the Petitioner and the Respondent No. 2, which cannot be a ground for non-payment of the transmission charges as agreed vide agreement dated 05.02.2018.

60. The Respondent No. 2 on the other hand has claimed that the interim evacuation arrangement to the Petitioner was provided by Respondent No. 1 at Tower No. 61 at 220 kV Kashang-Bhaba transmission line as the regular evacuation arrangement/system of the Respondent No. 1 was not in place for which the Petitioner has signed the IPTA on 05.02.2018 agreeing to pay the transmission charges @ 14 paise per unit and being a bilateral contract between the Petitioner and the Respondent No. 1, the burden to pay the transmission

charges cannot be shifted upon the Respondent No. 2. It is also the case of the Respondent No. 2 that the Petitioner is bound to supply the power at the permanent interconnection point at Urni switching station which has never been shifted and the Petitioner cannot absolve it from liability of paying the transmission charges as agreed vide ITPA dated 05.02.2018.

61. Before appreciating the rival contentions, it is relevant to refer to the admitted facts that on the request of the Petitioner vide letter dated 08.08.2011 (Annexure P-3 Colly), the connectivity was provided to the Petitioner to the system of the Respondent No. 1 clearly mentioning the interconnection point as 66 kV, Switching Station Urni. On enhancing the capacity of the Project from 8 MW to 12 MW, as per order dated 08.10.2015, the interconnection point for the project was also mentioned and kept as Switching Station Urni and pursuant thereto, a fresh request of the connectivity was made on 17.10.2015 (Annexure P-7 Colly) which was accorded vide letter dated 26.10.2015 (Annexure P-7 Colly) by the Respondent No. 1 clearly mentioning that the connectivity shall be applicable from the date of commissioning of the lines and Switching Station at Wangtoo and Urni. It is also an admitted fact that the Petitioner expressed the willingness to commission the Project before the regular evacuation system being ready and requested for confirmation of power evacuation arrangement in case the system at Wangtoo and Urni is delayed and it is the Petitioner who submitted the proposal for interim evacuation arrangement of connecting at 220 kV Kashang-Bhaba line and, therefore, on 23.10.2017, the Respondent No. 1

approved tapping arrangement at 66 kV circuit of 220 kV Kashang-Bhaba line at Tower No. 61. It is also admitted case that the Petitioner has signed the Connection Agreement dated 23.06.2016 (Annexure P-9) and IPTA dated 05.02.2018 for interim evacuation arrangement. It is also admitted case of the Petitioner that SIA and 2nd SIA dated 12.01.2018 and 12.02.2019 were signed by it on enhancing the capacity of the Project, wherein the interconnection point was defined as physical touch point at 66 kV Switching Station of Respondent No. 1 at Urni where Project transmission line for evacuating the power from the Project is connected to the Grid.

62. The Petitioner has not placed any document on record much less any agreement that it had made any request for changing the permanent interconnection point from 66 kV Switching Station Urni to Tower No. 61 at 220 kV Kashang-Bhaba transmission line to the authorities concerned or that Tower No. 61 is connected to the Grid or Tower No. 61 could be a permanent interconnection point. On the contrary, it is evident from the letter dated 13.07.2017 (Annexure P-10) of the Petitioner that the Project is going to be commissioned in the next 8-9 months and a request was made by the Petitioner to confirm the power evacuation arrangement in case the system at Urni/ Wangtoo gets delayed beyond said period of 8-9 months. The said request was considered vide letter dated 16.09.2017 (Annexure P-11 Colly) and on 17.10.2017, a meeting took place between the Petitioner and the Respondent No. 1, as evident from summary of record of discussion (Annexure P-13) that the Petitioner

expressed readiness of the Project by April, 2018 and submitted three proposals for interim evacuation arrangement.

63. It is evident from the record that since the regular evacuation arrangement at Wangtoo and Urni was not nearing completion, as requested by the Petitioner, the Respondent No. 1 approved tapping arrangement at 66 kV circuit of 220 kV Kashang-Bhabha line, as an interim evacuation arrangement only to facilitate the Petitioner so that the Power from the Project is evacuated. It is also evident from the record that on providing the interim evacuation arrangement for the Project of the Petitioner, the Petitioner executed the Interim Power Transmission Service Agreement (IPTA) on 05.02.2018 wherein it was agreed as under:-

- *(A) As an interim power transmission arrangement in national interest the HPPTCL has agreed to the connection of Raura SHP (12 MW) at Tower No. 61 of one of the 220 kV Kashang-Bhabha D/C Transmission line and charging it at 66 kV.*
- *(B) The power shall be transmitted at 66 kV level to 22/66/220 kV Sub Station of HPPTCL at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of HPSEBL at Bhabha Power House.*
- *(D) Monthly Transmission Tariff*
- *(a) The Interim Transmission charges shall be calculated @ 14 paise per unit of the energy wheeled including the O&M charges. The data/quantum of the energy generated and transmitted for the purpose of calculation of the interim Transmission Charges shall be as per the meter reading recorded at the meter installed at Raura Switch Yard.*
The interim tariff remain in force till the final outcome of MYT petition filed by HPPTCL for determination of Tariff for FY 2016-17 to FY 2018-19 of 220 kV D/C Kashang-Bhabha Transmission line and Tariff will be applicable as per HPERC Order. The excess/less amount so charged shall be adjustable by either side accordingly as per HPERC Order.

64. It is, thus, evident that the connectivity as provided for the Project of the Petitioner at Tower No. 61 of one of circuits of 220 kV Kashang-Bhaba D/C transmission line and charging it at 66 kV is/was purely an interim arrangement, so as to facilitate power evacuation from the Project of the Petitioner because the regular evacuation system of the Respondent No. 1 was not ready for commissioning. This interim evacuation system was to come to an end commissioning of the regular evacuation system.

65. The Petitioner has produced a large number of correspondence and MoM of the STU Co-ordination Committee meetings held on various dates to show that there was delay in commissioning the system at Wangtoo and Urni, as a result, the Petitioner has delayed the SCOD of the Project but the record reveals that the Project has been synchronized only on 09.09.2019 and was declared commercially operated on 30.09.2019, as evident from the letter dated 31.10.2019 (Annexure P-32). Though, on an earlier occasion on 01.01.2019 (Annexure P-20 Colly), the Petitioner had informed the DoE of the SCOD of the Project as 28.02.2019 and the DoE had also issued necessary instructions to the field agencies seeking requisite reports but fact remains that the Project has been declared commercially operated only on 30.09.2019. However, controversy in the present Petition is limited only to the payment of transmission charges @ 14 paise per unit during interim evacuation arrangement.

66. Otherwise also the Petitioner has not signed the Long Term or Medium Open Access Agreement making it entitled for the compensation for the alleged

delay. Therefore, the large number of correspondence and MoM regarding delay in commissioning of the system at Wangtoo and Urni are not relevant to decide the controversy in the present Petition as the entire Petition is silent that the commissioning of regular facility at Urni/ Wangtoo was intentionally delayed by the Respondent No. 1. Rather, it is evident from the record that a significant time was consumed for getting permission from Ministry of Environment and Forest. No doubt, the DoE had asked, the Respondents No. 1 and 2 for comments with regard to delay but the Respondent No. 1 has apprised the authorities from time to time of the progress of the System and the constraints, therefore, there is nothing to infer that the commissioning of the system was willfully delayed.

67. The Petitioner has also claimed that pursuant to a resolution passed in a meeting held on 02.08.2019 (Annexure P-30), the Petitioner had to lay a line for the interim evacuation from the Project switchyard to the interim connection point (Tower No. 61) in addition to the designated line from the Project to Urni Switching Station and thereby has incurred huge expenditure. Here, it relevant to refer that connectivity to the Project as per letter dated 26.10.2015 Annexure P-7 (Colly) has been provided from the date of commissioning of lines and Switching Station Urni but at the request of the Petitioner, interim evacuation arrangement by connecting at Tower No. 61 of 220 kV Kashang-Bhaba D/C line was provided by the Respondent No. 1 only to facilitate the Petitioner and for this purpose, the said temporary line has only to be constructed by the Petitioner from its switch yard to the Tower No. 61 which has also no bearing with the controversy in hand.

68. The Petitioner has placed much reliance in Order dated 24.06.2019 (Annexure P-27) passed in the joint Petition for the approval of PPA that in the Joint Petition, the HPSEBL had declared its commitment of purchasing the power at the interconnection point i.e. Tower No. 61 which clearly limit the liability of the Petitioner to deliver the power at the 'interconnection point' duly documented as 220 kV Kashang-Bhaba D/C line and the definition of the 'Interconnection Facilities' further define the same that the Project shall be connected at Tower No. 61 of the 220 kV Kashang-Bhaba D/C line charging it at 66 kV. Not only this, the Petitioner has claimed that in the PPA executed on 25.07.2019, the interconnection point was clearly defined in Clause 2.2.47 as Tower No. 61 at 220 kV Kashang-Bhaba line and as per Clause 6.1 of the PPA, the Petitioner is liable to deliver the energy from the Project at the said 'interconnection point' at Tower No. 61 and the free power (Government supply) at free of cost and the HPSEBL has agreed to purchase the net saleable energy at the said interconnection point at Tower No. 61. On the strength of aforesaid, the Petitioner claims that beyond the said interconnection point at Tower No. 61 at 220 kV Kashang-Bhaba line, it is the responsibility of the HPSEBL to wheel energy by its own arrangement. The Petitioner has also relied upon the internal notings of the Respondent No. 1, as received by the Petitioner under Right to Information Act, vide letter dated 02.03.2021 (Annexure P-46) that in said noting, it has been mentioned at various places that the charges beyond interconnection point have to be charged from HPSEBL.

69. A careful perusal of the PPA dated 25.07.2019 nowhere shows that the permanent interconnection point of the Project has been changed from Urni Switching Station to Tower No. 61 at Kashang-Bhaba Transmission line. Rather, the ‘interconnection point’ was specifically defined in Clause 2.2.47 of the PPA as under:

“Interconnection Point” means the physical touch point where the Project Line (s) and the allied equipment forming a part of the Interconnection Facilities are connected to HPPTCL’s 66 kV Switching Sub-station at Urni, District Kinnaur, Himachal Pradesh. However as an interim arrangement, the project shall be connected at 220 kV Kashang-Babha D/C line of HPPTCL to enable evacuation of electrical output from the Project in accordance with the Agreement.”

70. Not only this the ‘Interconnection Facility’ was also defined in Clause 2.2.46 as under :

“Interconnection Facilities” means all the facilities which shall include, without limitation, switching equipment, protection, control and metering devices etc. for the incoming bay(s), to be installed and maintained by the HPPTCL at their 66 kV Switching Sub-station at Urni, District Kinnaur, Himachal Pradesh. However, as an interim arrangement the Raura SHP 12 MW shall be connected at Tower No. 61 of one of the 220 kV Kashang-Bhaba D/C line and charging it at 66 kV. Further the power shall be transmitted at 66 kV level to 22/66/220 kV Sub-station of HPPTCL at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of HPSEBL at Bhabha Power House. The connectivity issued by HPPTCL is attached as Annexure-IV and interim connectivity issued vide dated 05.02.2018 is attached as Annexure-V.

71. Admittedly, the connectivity to the Petitioner vide letter dated 26.10.2015 (Annexure P-7 Colly) had been provided from the date of commissioning of lines and Switching Station at Urni and it is only on the request of the Petitioner that interim evacuation arrangement was made by connecting at Tower No. 61 at 220 kV Kashang-Bhaba D/C line of HPPTCL as a interim evacuation arrangement to enable evacuation of electrical output from the Project. Therefore, the permanent interconnection point of the Petitioner is and has remained Urni Switching Station for all intents and purposes and the same had not been changed to Tower No. 61 at 220 kV Kashang-Bhaba D/C line of HPPTCL as claimed. Not only this, the 'Interconnection Facilities' clearly defines that as an interim arrangement, the Raura SHP 12 MW shall be connected at Tower No. 61 of one of the 220 kV Kashang-Bhaba D/C line and charging at 66 kV and the power shall be transmitted at 66 kV level to 22/66/220 kV Sub-station of HPPTCL/ Respondent No. 1 at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of HPSEBL/ Respondent No. 2 at Bhabha Power House. The Petitioner has, therefore, tried to misinterpret Clause 2.2.47 of the PPA to its suitability that the interconnection point for the Project has been fixed as Tower No. 61 at 220 kV Kashang-Bhaba line.

72. A careful perusal of Article 6.1 of the PPA dated 25.07.2021 also nowhere provides that the Petitioner shall supply the energy at Tower No. 61. Rather, the net saleable energy shall be received by the HPSEBL/ Respondent No. 2 at the interconnection point which is 66 kV Urni Switching Station. Since

in order to facilitate the Petitioner to evacuate the power for want of commissioning the regular evacuation facility at Wangtoo and Urni Switching Station, this temporary arrangement, as per the request of the Petitioner, was provided by providing interim interconnection at Tower No. 61 so that the power from the Project of the Petitioner is evacuated as prayed, failing which the Petitioner would have waited till the commissioning of the regular interconnection facility. For this purpose the Petitioner has signed IPTA on 05.02.2018 agreeing to pay transmission charges of interim evacuation @ 14 Paise per unit for using the system of the Respondent No. 1. It is clear from the definition of 'Interconnection Facility' that the Respondent No. 2/HPSEBL has specifically agreed to receive the energy during interim evacuation period at Bhaba Power House. Therefore, neither the 'interconnection point' for the Project of Petitioner was ever changed to Tower No. 61 at 220 kV Double Circuit Kashang-Bhaba line nor the HPSEBL/ Respondent No. 2 had agreed to receive the energy at Tower No. 61 at 220 kV Kashang-Bhaba Double Circuit line nor had signed the IPTA dated 05.02.2018 and, thus, the Petitioner has unreasonably and without any basis tried to shift the burden upon HPSEBL/ Respondent No. 2 to pay the transmission charges beyond Tower No. 61.

73. Here it is also relevant to reproduce Clause 4.4 of the PPA which is reproduced as under:

“In case power cannot be evacuated from the Project at the Interconnection Point due to non-commissioning of the Project Line, non availability of evacuation system beyond the Interconnection Point

or any other technical constraints, the Parties may mutually agree to an interim arrangement, alongwith the terms and conditions thereof, for evacuation of power from the Project till such time the same can be evacuated under the regular arrangement envisaged in the Agreement. However, the Deemed Generation benefit under Section 6.4 or any other provisions of the Agreement shall not be available to the Company for the period during which power is evacuated under such interim arrangement.”

74. The Petitioner has signed IPTA on 05.02.2018 wherein it has specifically agreed to pay the transmission charges @ 14 Paise per unit of energy wheeled including the O&M charges as under:

- *(A) As an interim power transmission arrangement in national interest the HPPTCL has agreed to the connection of Raura SHP (12 MW) at Tower No. 61 of one of the 220 kV Kashang-Bhabha D/C Transmission line and charging it at 66 kV.*
- *(B) The power shall be transmitted at 66 kV level to 22/66/220 kV Sub Station of HPPTCL at Bhoktoo, stepped up to 220 kV and wheeled to 220 kV system of HPSEBL at Bhabha Power House.*
- *(D) Monthly Transmission Tariff*
- *(a) The Interim Transmission charges shall be calculated @ 14 paise per unit of the energy wheeled including the O&M charges. The data/quantum of the energy generated and transmitted for the purpose of calculation of the interim Transmission Charges shall be as per the meter reading recorded at the meter installed at Raura Switch Yard.*
The interim tariff remain in force till the final outcome of MYT petition filed by HPPTCL for determination of Tariff for FY 2016-17 to FY 2018-19 of 220 kV D/C Kashang-Bhaba Transmission line and Tariff will be applicable as per HPERC Order. The excess/less amount so charged shall be adjustable by either side accordingly as per HPERC Order.

75. Significantly, Clause (C) of IPTA dated 05.02.2018 clearly stipulates that the Agreement dated 05.02.2018 is not in supersession of the connectivity agreement already executed between the parties. The HPSEBL/ Respondent No.

2 is not a party to the IPTA dated 05.02.2018 and rightly so, the interim connectivity was provided by the Respondent No. 1 for the use of its system and the petitioner during interim evacuation arrangement had agreed to deliver the energy at Bhaba Power House and, therefore, it is the responsibility of the Petitioner to bear the charges of wheeling the energy upto Bhaba Power House as agreed. This agreement being bilateral between the Petitioner and Respondent No. 1, the same is binding upon the Petitioner and can't be thrust upon the HPSEBL/ Respondent No. 2. Even the internal notings of HP Power Transmission Corporation Limited (HPPTCL) as produced by the Petitioner vide letter dated 02.03.2021 are of no help to the Petitioner as the HPSEBL/ Respondent No. 2 is stranger to agreement dated 05.02.2018 and HPSEBL/ Respondent No. 2 had clarified the Respondent No. 1 in clear terms that it is the Petitioner who has to pay the transmission charges.

76. Even the another contention of the Petitioner that the Petitioner is supplying the energy to HPSEBL/ Respondent No. 2 at APPC rate for which no transmission charges are required to be paid by the Petitioner and in this regard, a reliance has been placed in the Order of the Commission dated 16.07.2012 in Petition No. 137/2011 but this contention is also misplaced and has no basis as the Respondent No. 2 has not refused to receive the energy during interim evacuation period or on commissioning of the regular evacuation system but it is for the Petitioner to deliver the same at the defined permanent interconnection point i.e. 66 kV Urni Switching Station on commissioning of regular

interconnection facility and during interim arrangement at Bhaba Power House as agreed vide IPTA dated 05.02.2018. The Petitioner is bound to supply the power at a fixed point i.e. Urni Switching Station. It is relevant to reiterate here that the HPSEBL/ Respondent No. 2 has never agreed or consented to receive the power at Tower No. 61 on 220 kV Kashang-Bhaba line which arrangement was made only to facilitate the Petitioner as regular connectivity was not in place. Importantly, the connectivity provided to the Petitioner vide letter dated 26.10.2015 was from the commissioning of regular evacuation arrangement. Had HPSEBL/ Respondent No. 2 been party to the interim evacuation arrangement, the HPSEBL/ Respondent No. 2 would have signed the IPTA dated 05.02.2018. There is no document on record that the HPSEBL/ Respondent No. 2 had agreed to receive the power from the premises of the Power House of the Project of the Petitioner. Thus, the Petitioner is bound to pay the transmission charges as agreed vide agreement dated 05.02.2018.

77. The Petitioner has also raised a plea that the charges of 220 kV Kashang-Bhaba line have been determined by the Commission in Petition No. 76 of 2020 vide Order dated 26.08.2020 and, therefore, the bill/charges are required to be modified. This plea is also not tenable for the reason that the Respondent No. 1 had made it clear that the charges so recovered or liable to be recovered shall be subject to adjustment. Therefore, no prejudice, whatsoever, will occur to the Petitioner with determination of the charges of 220 kV Kashang-Bhaba line as the same are liable for adjustment.

78. Significantly, the Petitioner has paid the charges as agreed under IPTA dated 05.02.2018 without any objection upto May, 2020 but abruptly refused to pay the charges w.e.f. June, 2020 without any reasons. Once the Petitioner has used the system of the Respondent No. 1 and has specifically agreed to pay the transmission charges @ paisa 14 per unit, the charges are required to be paid by the Petitioner only and none else to the Respondent No.1. In the circumstances, the submissions of the Ld. Counsel for the Petitioner do not in any manner ameliorate the sufferings of the Petitioner in any manner.

79. In view of the above, the Petitioner has not been able to substantiate that the permanent interconnection point of the Project at Urni Switching Station has been changed and fixed at Tower No. 61 at 220 kV Kashang-Bhaba transmission line by Respondent No. 1 on providing the interim connectivity. The Petitioner has also failed to establish that the liability of the Petitioner comes to an end by supplying power at interim connection point at Tower No. 61 at 220 kV Kashang-Bhaba transmission line. Similarly, the Petitioner has miserably failed to establish that the Petitioner is not liable to pay transmission charges @ 14 paise per unit to the Respondent No. 1, as agreed, vide agreement dated 05.02.2018 and the charges beyond interim interconnection point at Tower No. 61 are required to be borne by the HPSEBL. The Petitioner has also not been able to substantiate that no transmission charges are required to be paid by the Petitioner on supplying of the energy to the HPSEBL at APPC rate as alleged.

Points No. 1 to 4 are accordingly decided against the Petitioner and in favour of the Respondents.

Point No. 5 (Final order)

80. In view of our aforesaid discussion and findings, there are no merits in the Petition which is accordingly dismissed. The pending applications, if any, are also disposed off.

The file after needful be consigned to record.

Announced
13.02.2023

-Sd-
(Yashwant Singh Chogal)
Member(Law)

-Sd-
(Devendra Kumar Sharma)
Chairman