

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

Petition No: 46 of 2021
Date of Institution: 12.11.2021
Arguments Heard on: 22.11.2024
Decided on: 23.01.2025

CORAM

Devendra Kumar Sharma

CHAIRMAN

Yashwant Singh Chogal

MEMBER (Law)

Shashi Kant Joshi

MEMBER

In the matter of:-

M/s Everest Power Private Limited
Hall A, First Floor, Plot No. 143-144,
Udyog Vihar, Phase-IV, Gurugram-122015.

.....**Petitioner**

Versus

The Himachal Pradesh Power
Transmission Corporation Limited (HPPTCL)
Himfed Bhawan, Below Old MLA's Quarters,
Tutikandi (Panjiri), Shimla-05.

.....**Respondent**

Petition under Sections 86(1)(a), (f), (k) and 62(6) of the Electricity Act, 2003, for quashing the invoices dated 14.09.2021, 01.10.2021 and 08.11.2021 raised by the Respondent towards the transmission charges on account of wheeling of 100 MW power through the 220 kV D/C Charor – Banala Transmission Line.

Present:

Sh. Rajnish Manikatala, Ld. Sr. Advocate alongwith Sh. Hemant Singh and Sh. Vipul Sharda Ld. Advocates for the Petitioner.

Sh. Vikas Chauhan, Ld. Advocate for the Respondent.

ORDER

This Petition has been filed by M/s Everest Power Private Limited (hereinafter to be referred as Petitioner) for quashing invoices dated 14.09.2021, 01.10.2021 and 08.11.2021 raised by the Himachal Pradesh Power Transmission Corporation Limited (HPPTCL/ Respondent for short) on account of the transmission charges for wheeling of power from its Malana Stage-II, Hydro Electric Project through 220 kV Double Circuit (D/C) Charor – Banala Transmission Line (Transmission Line for short).

2. The Commission vide order dated 12.04.2024 dismissed the Petition as under:-

“54 In view of the above, the petitioner has miserably failed to establish on record that the petitioner is not liable to pay the transmission charges for the entire capacity of the transmission line i.e. 289 MW or that the petitioner is liable to pay the transmission charges for 86 MW upto 12.07.2024 and 80 MW from 13.07.2024 onwards from its project i.e. Malana-II HEP. Similarly, the petitioner has failed to establish on record that the provisional bills dated 14.08.2021, 01.10.2021 and 08.11.2021 demanding the transmission charges for the entire capacity of the transmission line i.e. 289 MW and subsequent bills and disconnection notice dated 11.08.2023 are also illegal and null and void. The petitioner has also failed to establish on record that the minutes of meeting held on 21.10.2021 are also wrong and illegal. Point No. 1 is accordingly decided against the petitioner.”

3. The Order dated 12.04.2024 was assailed by the Petitioner before the Hon'ble APTEL in Appeal No. 196 of 2024. The Hon'ble APTEL has been pleased to remand the matter as under:-

“The impugned order passed by the Commission relies heavily on the observations of this Tribunal in its order in DFR No. 473 of 2023 dated 14.08.2023. As the law declared in a judgment must be understood in the context in which it was made, it is useful to refer to the context in which the said order came to be passed by this Tribunal. Regulation 33(1) of the MYT Transmission Regulation 2003, on which reliance was placed by this Tribunal in its order in DFR No. 473 of 2023 dated 14.08.2023, reads as under:

“33. (1) Allocation of Transmission Service Charges and Losses The Annual Transmission Service Charge (ATSC) shall be shared between the long and medium-term customers of the transmission system on monthly basis based on the allotted transmission capacity or contracted capacity, as the case may.”

In its order, in DFR No. 473 of 2023 dated 14.08.2023, this Tribunal considered only the first limb of Regulation 33(1), and held that the said provision would be attracted only when the transmission system is shared between long and medium-term customers; and, since it was alone using the system evacuating 100 MW of power, the Appellant was rightly directed by the Commission to pay 35% of the entire capacity of the transmission line. The effect of dismissal of the Appeal, in DFR No. 473 of 2023 dated 14.08.2023, was only that the Appellant was required to continue to pay 35% of the transmission charges during the pendency of proceedings before the Commission.

The scope of the second limb of Regulation 33(1), i.e. “based on the allotted transmission capacity or contracted capacity, as the case may” was not considered in the order of this Tribunal in DFR No. 473 of 2023 dated 14.08.2023. Even otherwise, the question which arose for consideration in the said Appeal was whether the Commission was justified in directing the Appellant to pay 35% of the entire capacity of the transmission line i.e. 35% of the 289 MW, and not whether the Appellant should be required to pay 100% of the entire capacity of the transmission line i.e. for 289 MW of power, even though they were capable of evacuating only 100 MW of power through the said transmission line.

The observations of this Tribunal, in its order in DFR No. 473 of 2023 dated 14.08.2023, were made in the context of a direction issued by the Commission to the Appellant to pay 35% of the transmission charges. Such observations could not have been extrapolated by the Commission to uphold the action of the Respondents in directing the appellant to pay transmission charges, for the entire capacity of the transmission line of

289 MW of power, on the ground that they alone are using the transmission line as at present, and on the Commission's understanding of the order passed by this Tribunal in DFR No. 473 of 2023 dated 14.08.2023. Yet another aspect, which ought to have been borne in mind, is that the Appeal preferred before this Tribunal, in DFR No. 473 of 2023 dated 14.08.2023, is against an Interlocutory Order passed by the Commission. The observations made in such an order would, like the interim order against which the appeal was filed, only reflect the prima-facie view of this Tribunal. The observations of this Tribunal, in the said order, cannot be read out of context or be held to automatically apply even at the stage of hearing of the main petition.

As the order, impugned in the present Appeal, relies mainly on the order passed by this Tribunal in DFR No. 473 of 2023 dated 14.08.2023, we are satisfied, in the light of the afore-said observations, that the Order under Appeal must be set aside, and the matter remanded to the Commission for its consideration afresh and in accordance with law.

Suffice it to make it clear that we have not examined the Appeal on its merits. It is open to the parties, to the proceedings before the Commission, to raise all such contentions as are available to them in law, including on the interpretation to be placed on Regulation 33(1) and other applicable Regulations. The Commission shall consider the submissions urged on behalf of the parties un-influenced by either the observations made in this order, or those in DFR No. 473 of 2023 dated 14.08.2023, and pass an order afresh, consequent on remand, in accordance with law.

The Appellant shall continue to pay 35% transmission charges, as directed by the Commission in its order dated 04.08.2023, till the main Petition is finally heard and decided by the Commission. The Commission is requested to hear and decide the Petition with utmost expedition, and we expect parties to the said proceedings to assist the Commission in early adjudication of the lis. The Appeal and the I.As' therein stand disposed of."

4. After receipt of the case by remand, the Petition was ordered to be registered in its original number. On appearance, the Petitioner and the Respondent have submitted additional submissions in the matter.

FACTS OF CASE

5. The facts necessary for the determination of the present Petition are that the Petitioner owns and operates 100 MW Malana

Stage-II Hydro Electric Plant situated at Village Chowki, Near Jarri, District Kullu, Himachal Pradesh (Malana II HEP for short), which has been commissioned on 12.07.2012 and wheeling the power through the 220 kV D/C Transmission Line w.e.f. December, 2019. The Transmission Line was commissioned on 01.10.2019 for evacuating 289 MW power from Small HEPs in Parvati Valley and the Malana-II HEP.

6. Prior to the energisation of the Transmission Line, the power from the Project was being evacuated through the Allain Duhangan Transmission Line (AD Hydro Line). Detail regarding the arrangement prior to evacuation of power through the Transmission Line, Power Purchase Agreements with PTC India Ltd. and Punjab State Power Corporation Ltd., is in respect of determination of Tariff of Malana-II HEP by Ld. PSERC and meetings of NRPC has been given in paras 12 to 19 qua which there is no dispute.

7. The Commission has approved the Capital Cost and determined the charges of the Transmission Line vide Order dated 12.08.2021 in Petition No. 97 of 2020. The recovery of the Transmission charges of the Transmission Line has been dealt in Paras 4.7.2, 4.8.4 and 4.8.5 of the Order observing that the recovery

of transmission charges be not made till the nature of the Transmission Line is certified by the Northern Region Power Committee (NRPC) and in case it is certified that the Transmission Line is not part of Inter-state Transmission System (ISTS), the recovery would be carried out as per Regulation 33 of the Himachal Pradesh Electricity Regulatory Commission, MYT Regulations, 2011 (HPERC MYT Regulations, 2011 for short).

8. According to the Petitioner, as per Section 62 (6) of the Electricity Act, 2003 (Act for short), a licensee is entitled to charge tariff as approved by the Appropriate Commission and cannot charge anything in excess of the approved amount and since the transmission tariff has not been approved for recovery by the Appropriate Commission, the charges sought to be recovered by the Respondent would be in excess as mandated by the Commission in Order dated 12.08.2021.

9. The HPPTCL issued NOC to the Petitioner vide letter dated 09.07.2019 (Annexure P-7), for availing open access in Inter-State Transmission System. According to the Petitioner, in the two meetings of Northern Region Power Committee held on 23.09.2019 and 24.09.2019 (Annexure P-8), the HPPTCL placed agenda for

declaration of the Transmission Line as deemed ISTS without the data of four/two quarters and requested for certification from NRPC so as to file a Petition before Ld. CERC for determination of tariff. The HPPTCL was informed by the NRPC that a study is required for such certification but the study was not completed even after commissioning of the Transmission Line on 01.10.2019. The Respondent on the other hand filed Petition No. 97 of 2020 on 28.05.2020 before the Commission for approval of the capital cost and determination of tariff of the Transmission Line for the period from the date of Commissioning (COD) i.e. 01.10.2019 to FY 2023-24 under Sections, 62, 64 and 86 of the Act which has been decided on 12.08.2021 (Annexure P-9).

10. In said Petition, the contention of the Petitioner was that it does not agree to the entire recovery of the transmission charges from the Malana-II HEP and even if the Commission has jurisdiction to determine the tariff, including its recovery, the same can only be shared amongst all the beneficiaries of Intra-state Transmission System as observed by the Commission in Paras 4.8.4 and 4.8.5 of the Tariff Order dated 12.08.2021. The HPPTCL was also directed to follow up with the NRPC in an expeditious manner for establishing

the nature of asset. As per the Petitioner, in view of the Order dated 12.08.2021, the transmission tariff can only be recovered in terms of mechanism of the Appropriate Commission, having the jurisdiction and, thus, the tariff for Transmission Line has not been approved for recovery from the Transmission system users including the Petitioner. Further, pursuant to Order dated 12.08.2021, NRPC vide letter dated 24.08.2021 (Annexure P-10) directed the HPPTCL to approach the Ld. CERC for getting the certification of the Transmission Line.

11. According to the Petitioner, the Respondent/HPPTCL in complete violation of the aforesaid order dated 12.08.2021, issued demand notices dated 14.09.2021, 01.10.2021 and 08.11.2021 demanding provisional transmission charges for entire capacity of the Transmission Line to the tune of Rs. 23,12,67,333/-, Rs. 24,10,89,999/- and Rs. 25,09,12,665/- for the period w.e.f. COD i.e. 01.10.2019 to August, 2021 and also for the months of September and October, 2021 (Annexure P-11).

12. In a meeting convened by the Respondent on 21.10.2021 to discuss various agendas in respect of the Transmission Line, the Respondent informed that NRPC has asked the Respondent to approach Ld. CERC for certification of the line and the HPPTCL will

approach Ld. CERC by 15th November and till certification, the Transmission Line is to be treated as Intra-state asset and tariff is to be paid failing which the Respondent will regulate the transmission of power of Malana-II HEP. However, it was wrongly recorded in the minutes of meeting (Annexure P-12) that the Petitioner has agreed to pay the bills by 15th November, 2021. As per the Petitioner, the submissions made by the Petitioner in the meeting were not incorporated in the minutes of meeting and thus, vide letter dated 27.10.2021 (Annexure P-13), the Petitioner pointed out that in case of high-capacity transmission lines, transmission charges are to be levied based upon the allotted capacity. Further, it has been recorded in Para 4.8.5 of the Order dated 12.08.2021 (Annexure P-9) that in case the Transmission Line is declared as Inter-state, the recovery will be under PoC mechanism and if not, the same will be as per Regulation 33 of HPERC MYT Regulations, 2011 which provides for sharing of transmission charges and losses amongst the Long Term and Medium-Term customers of Intra-state Transmission System (InSTS).

13. Thus, the issuance of the above invoices (Annexure P-11, Colly) constrained the Petitioner to approach the Commission by way

of the present Petition for quashing of the same being without any authority of law, non-est and illegal and for the interim relief for stay of the invoices and taking any coercive action against the Petitioner including invocation of Regulation of power supply, till the pendency of the Petition. Upon such request, the Commission vide interim Order dated 17.11.2021 restrained the Respondent from stopping the flow of power from the Malana-II HEP till the adjudication of dispute with certain additional observations. Pursuant to the observations made in the interim Order 17.11.2021, the parties convened the meetings on 23.11.2021 (Annexure P-14) and 15.12.2021. Further, the Commission vide Order dated on 27.11.2021 directed the Petitioner to pay 35% of the transmission charges in 3 installments of 10 days each, as an interim measure, till the adjudication of the dispute against which the Petitioner filed a Writ Petition before the Hon'ble High Court of Himachal Pradesh being CWP No. 7763 of 2021, alongwith an application (CMP No. 14648 of 2021) and the Hon'ble High Court was pleased to stay the Order dated 27.11.2021 passed by the Commission.

14. Meanwhile, the Respondent filed Petition No. 57/MP/2022 before the Ld. CERC, for declaring the Transmission Line as part of

Inter-State Transmission System (ISTS), and consequently, seeking inclusion of the same under the PoC/ sharing mechanism under the CERC Sharing Regulations, 2020. However, the Ld. CERC vide Order dated 04.05.2023 has held that the Transmission Line cannot be considered as Inter-state Transmission Line and continues to be an Intra-state Transmission Line under the jurisdiction of the Commission. It is averred that the Order of the Ld. CERC dated 04.05.2023 was primarily based upon the load flow data submitted by NRLDC.

15. The Petitioner was granted Long Term Open Access (LTA) by the Respondent on 30.12.2022 (Annexure P-15) for the quantum of 86 MW till 12.07.2024 and 80 MW from 13.07.2024 to 05.12.2044 and connection agreements dated 28.06.2019 and 30.05.2022 (Annexure P-16) were executed between the parties.

16. Aggrieved by the Order of Ld. CERC dated 04.05.2023, the Petitioner has preferred an appeal before the Hon'ble APTEL, being Appeal No. 628 of 2023 that the subject line is part of ISTS, being used for transmission of power directly outside the territory of the State of H.P which is said to be pending adjudication before the Hon'ble APTEL.

17. In the meanwhile, the Hon'ble High Court vide Order dated 31.05.2023 in CWP. No. 7763 of 2021 directed the Petitioner to approach the Hon'ble APTEL against the interim Order dated 27.11.2021, extending the interim protection granted by the Commission vide order dated 10.12.2021 till 31.07.2023.

18. The HPPTCL sought to invoke the Bank Guarantee vide letter dated 03.08.2023, as such, the Petitioner approached the Commission for urgent listing of the Petition and the Commission vide Order dated 04.08.2023 directed the Petitioner to deposit 35% of the transmission charges as accrued upto 31.07.2023 in respect of Transmission Line within a week and to submit the compliance. Meanwhile, the Respondent issued a disconnection notice dated 11.08.2023 (Annexure P-18) to the Petitioner.

19. The Petitioner, as directed by the Hon'ble Himachal Pradesh High Court vide Order dated 31.05.2023 and aggrieved of the Order dated 04.08.2023 filed an appeal against Order dated 27.11.2021, being DFR No. 473 of 2023, before the Hon'ble APTEL which has been disposed of vide Order dated 14.08.2023 (Annexure P-17).

20. It is averred that the Malana-II HEP sustained heavy loss during monsoon resulting in forced shut down on 09.07.2023 and resultantly,

the transmission system from Malana-II HEP to the Respondent's 200 kV Charor system through which the energy generated from Malana-II was evacuated into the grid also got impacted with breakdown of 2 number of towers. It is averred that the Malana-II HEP has not been restored on the date of filing of Petition and may take considerable time and even if the Plant is restored, the Power cannot be evacuated. However, the Respondent has been raising the bills/invoices till date.

21. As per the Petitioner, the Respondent is attempting to recover the entire ARR of its transmission asset (Transmission Line) from the Petitioner despite that the transmission charges for the Transmission Line have not been approved for recovery by the Appropriate Commission in terms of the Act, as the nature of the Transmission Line whether it is ISTS or InSTS is yet not ascertained. In case the Transmission Line is ISTS, the Ld. CERC will have the jurisdiction in the terms of the CERC Tariff Regulations, 2019 read with CERC sharing Regulations 2010 and 2020 and the issue in this regard is pending adjudication before the Hon'ble APTEL. Further, as per the Petitioner in case the Transmission Line is declared InSTS, the tariff of the Transmission Line is to be recovered in accordance with

Regulation 33 (1) of the HPERC MYT Regulations, 2011, which mandates that transmission charges are to be shared between all the Long term and Medium term customers of the InSTS on monthly basis based on the allotted transmission capacity or contracted capacity, as the case may be, which is 86 MW till 12.07.2024, and 80 MW from 13.07.2024 to 05.12.2044. Therefore, the invoices dated 14.09.2021, 01.10.2021 and 08.11.2021 are illegal, without any authority of law and non-est. Also averred that since the issue is pending adjudication before the Hon'ble APTEL in Appeal No. 628 of 2023 (filed against order dated 04.05.2023 passed by the Ld. CERC in Petition No. 57/MP/2022), any amount charged by the Respondent will be treated as in excess of what has been determined/ approved by the Appropriate Commission. The Respondent has, therefore, violated the provisions of the Act which render the demand illegal and arbitrary. Not only this, the impugned invoices had been raised well before the Order of the Hon'ble CERC dated 04.05.2023, in Petition No. 57/MP/2022, as such, the invoices were without any authority of law.

22. As per the Petitioner, the Commission in Order dated 12.08.2021 in Petition No. 97 of 2021 has rejected the specific prayer

for levy of the entire transmission charges of the Transmission Line in Para 4.8.5 of the order, thus, there was no occasion for the Respondent to have raised the impugned invoices which are based on the entire 289 MW capacity of the Transmission Line and being contrary to the tariff Order dated 12.08.2021, the same are liable to be quashed and similarly, the narration recorded in the interim Orders dated 27.11.2021 and 04.08.2023, qua evacuation of 100 MW power through the Transmission Line also need to be corrected.

REPLY OF THE RESPONDENT

23. The Petition has been resisted by filing the reply raising preliminary submissions, inter alia, that the Petitioner has no cause of action to maintain the Petition which has been filed to avoid the liability accrued in favour of the Respondent and that the Commission vide order dated 12.08.2021 in Petition No. 97 of 2020 has approved the transmission charges for the Transmission Line owned and operated by the Respondent and that the Commission vide the above Order dated 12.08.2021 has neither stayed the recovery of transmission charges from the Petitioner nor has put the prior certification of Transmission Line by the NRPC, as a condition precedent, to raise the monthly transmission charges as being

alleged by the Petitioner and that no objection to this effect was raised by the Petitioner during the pendency of Petition No. 97 of 2020 and also that the Petitioner has come out with the false and frivolous grounds at this belated stage to avoid the liability.

24. Replying with regard to Para 4.8.5 of order dated 12.08.2021 in Petition No. 97/2020, it is averred that appropriate Petition before the Ld. CERC being Petition No. 57/MP/2022 was filed by the Respondent and the Hon'ble CERC vide order dated 04.05.2023 (Annexure R/1) has held that the Transmission Line cannot be considered as Inter-state line and continues to be an Intra-state line under the jurisdiction of the Commission. Further, the Petitioner has challenged the aforesaid order dated 04.05.2023 before the Hon'ble APTEL in Appeal No. 628 of 2023 which is pending adjudication and that the Hon'ble APTEL has not stayed the Order dated 04.05.2023 of the Ld. CERC in respect of the transmission line which renders the present Petition non-maintainable.

25. As per the Respondent, the Transmission Line is exclusively being used by the Petitioner to evacuate the power from Malana-II HEP and in accordance with the agreement entered into between the Petitioner and the Respondent and the prevailing Regulations, the

Petitioner is liable to bear the cost of the entire line till other Projects in the area begin evacuation of power from their respective projects through the Transmission Line.

26. According to the Respondent, the Petitioner is liable to pay the entire charges of the subject transmission line being the sole user of the system for the period from COD to FY 2023-2024. Also that the Regulation 31 of the HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 (HPERC MYT Regulations 2011) provides as under:-

“31. Transmission Tariff / Charges

(1) The transmission charges payable by the transmission customers of the transmission system shall be designed to recover the aggregate revenue requirement computed as annual transmission charges by the Commission for each year of the control period.

(2) In addition to transmission charges, charges for reactive energy, as may be determined by the Commission in the MYT order, shall also be payable by all the transmission customers of the system.”

It is averred that the Petitioner being the only transmission customer of the transmission line is liable to pay the entire transmission charges as computed by the Commission in Petition No. 97/2020.

27. Further, in terms of agreement for long term access dated 30.12.2022 (effective from 05.12.2019) (Annexure R/3) between the

Respondent and the Petitioner, it has been provided under Clause (L)

(2) (b) as under :-

“(L)(2)(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in annexure A-3 in accordance with the sharing mechanism detailed in Annexure-4. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at Annexure-3 (subject to technical feasibility), he/they would also share the applicable transmission charges.”

28. Therefore, the Petitioner being the only beneficiary of the transmission system has to pay the entire transmission charges till other long term transmission customer(s) enter the transmission system. Not only this, Clause 6 of agreement dated 28.06.2019 (Annexure R/4), executed by the parties provides as under:-

“that Everest Power hereby agrees to pay the applicable transmission charges and bear losses to HPPTCL System which is put to use for transmitting its Power generated at Malana-II Project”.

According to the Respondent, the words “HPPTCL system which is put to use for transmitting its Power generated at Malana-II Project” as stipulated in agreement dated 28.06.2019 make it amply clear that the Petitioner has agreed to bear the applicable transmission charges and can't be allowed at this stage to dispute the payment.

29. Further, as per sub-regulation (2) of Regulation 4, the HPERC MYT Regulations, 2011, the Respondent is within its right to claim the transmission charges from the Petitioner which has been reproduced as under:-

“4. (2) Tariff determined by the Commission and the directions given in the tariff order made by the Commission shall be quid pro quo and mutually inclusive. The tariff determined shall, within the period specified by it, be subject to the compliance of the directions to the satisfaction of the Commission and their non-compliance shall lead to such amendment, revocation, variation and alteration of the tariff, as may be ordered by the Commission.”

30. It is averred that the word ‘quid pro quo’ literally means one for another or ‘you charge the fee for service’ and the term mutually inclusive refers to the “events which allow to different events to occur simultaneously”. Hence, the contention of the Petitioner that the Respondent was required to abide by the directions of the Commission contained in Para 4.8.5 of the Order dated 12.08.2021 prior to levying of the charges is uncalled for.

31. Reference to 30th and 31st standing committee meeting of the NRPC held on 19.12.2011 and 02.01.2013, respectively has also been made in the reply that though in the 30th meeting held on 19.12.2011 a 220 kV D/C from Charor to Parvati Pooling Station was decided to be constructed by the Petitioner but in the 31st meeting

held on 02.01.2013 the Respondent informed that only one 220 kV D/C is possible due to ROW constraints as about 170 MW power from SHEPs is also to be evacuated through the Parvati Pooling Station.

32. As per the Respondent, the representatives of the Petitioner had agreed to pay the outstanding transmission charges amounting to Rs. 23,12,67,333/- in a meeting held on 21.10.2021 by 15.11.2021 and to execute the connectivity agreement and the LTA, as per the Minutes of Meeting (MoM) dated 21.10.2021 (Annexure P-12) and the payment has been disputed due to some ulterior motive. The Transmission Line is operational since December, 2019 and the power of the Petitioner's plant is getting evacuated and thus, the Respondent is within its right to recover the transmission charges from the Petitioner and the unnecessary withholding of transmission charges for the usage of the Transmission Line would result in severe shortage of funds to ensure smooth operation and maintenance of the transmission line.

33. On merits, the contents of the Petition have been denied reiterating the averments made by way of preliminary submissions. It is denied that the transmission charges bills can only be raised after

declaration of the nature of the asset as ISTS or InSTS. Also averred that the Petitioner has wrongly interpreted the Order dated 12.08.2021 in Petition No. 97 of 2020 as the Commission has nowhere restrained the Respondent to charge the transmission charges and as on date, the nature of the Transmission system/Line has been declared by the Hon'ble CERC as InSTS. It is also averred that the invoices/ bills are in line with the tariff order dated 12.08.2021 and LTA dated 30.12.2022. It is denied that the charges are to be as per the allotted capacity and that the Regulation 33 (1) of the HPERC MYT Regulations, 2011 provides as as under:

(i) The Annual Transmission Service Charge (ATSC) shall be shared between the long- and medium-term customers of the transmission system on monthly basis based on the allotted transmission capacity or contracted capacity, as the case may be”.

34. It is averred that the Respondent had planned and constructed the Transmission Line with an aggregate capacity of 289 MW to multiple beneficiaries of 41 Nos. Projects, as elaborated and described under Clause 3.4.1 to 3.4.8 of the Tariff order dated 12.08.2021 and till date, the Petitioner is the only beneficiary and connected to the Transmission Line and, therefore, the approved ARR is to be borne by the Petitioner till such time other beneficiaries

are connected and consequent sharing takes place as per Regulation 33 (1), as above. Similarly, the transmission charges as raised are not in violation of Section 62 (6) Electricity Act, 2003. It is averred that the averments regarding agreement dated 25.07.2005, LTOA dated 14.07.2008 and Order dated 27.11.2023 passed by Ld. PSERC in Petition No. 54/2012 have no relevance qua the issue in the present Petition.

35. As per the Respondent, it had planned and constructed the Transmission Line with an anticipated capacity of 289 MW. However, the maximum Transmission capacity Surge Impedance Loading (SIL) of similar Transmission Line as declared by the Ld. CERC is 132 MW and under N-1 contingency condition, in accordance with the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2020 (Annexure R/6) and that the utilization of Petitioner to that extent shall be 75.76% (with 10 % overloading the utilization shall be 83.33%) and therefore, the Respondent is well within its right to recover transmission charges from the Petitioner. It is denied that the minutes dated 21.10.2021 are arbitrary. Rather, the same were agreed upon and recorded in the presence of the parties and the Petitioner cannot deny its obligation and commitments.

REJOINDER

36. In rejoinder, the contents of the reply have been denied and those of the Petition have been reaffirmed.

ADDITIONAL SUBMISSIONS FILED AFTER THE REMAND OF

THE MATTER

37. On receipt of the matter by remand, the Commission directed the parties to submit additional submissions, if any, in the matter.

ADDITIONAL SUBMISSIONS BY THE RESPONDENT

38. The Respondent has filed additional submissions in the shape of supplementary affidavit that as per the agenda item No. 17 for the 30th Meeting of the Standing Committee on Power System Planning of Northern Region, to be held on 19.12.2011, it was proposed as under:-

“The evacuation of power from Malana-II HEP was planned by LILO of one ckt of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at Chhaur 220/132 kV substation of M/s Everest Power Pvt. Ltd. and power from generation project is to be injected at Chhaur by a 132 kV D/c line. There are certain issues for reliable evacuation of power from both the projects as well as for cost sharing & apportionment of losses etc. in regard to utilisation of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro by M/s Everest Power Pvt. Ltd.

Keeping above in view, it is proposed that a 220 kV D/c line from Chhaur to Parvati Pooling station may be implemented by M/s Everest Power Pvt. Ltd.

so that the power from the Malana-II HEP could be injected at Parvati Pooling Station (ISTS). From Parvati Pooling Station, power can be evacuated over ISTS system. Further, as no 220 kV level has been planned at Parvati Pooling Station, there would be a need to provide 400/220 kV ICT alongwith required 400 & 220 kV bays. In this case, the cost of providing ICT, additional bays, 220 kV line etc shall have to be borne by M/s Everest Power Pvt. Ltd. The above proposal would provide long term solution for reliable evacuation of power from AD HEP & Malana-II HEP.”

Agenda is already annexed to the Petition as Annexure P-4.

39. Further, in the 30th Standing Committee Meeting on Power System Planning of Northern Region held on 19.12.2011, it was agreed that the evacuation of power from Malana II HEP was evacuated by LILO of one ckt of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at 220/132 kV, Chhaur substation of M/s Everest Power Pvt. Ltd. and power from generation project was injected at Chhaur by a 132 kV D/c line. **It was also agreed that for reliable evacuation of power from both the projects (300 MW), it was proposed to construct a 220 kV D/C line from Chhaur to Parvati Pooling station enabling injection of power from the Malana-II HEP at Parvati Pooling Station (ISTS)** and from there power can be evacuated over the ISTS system. It was also decided to provide 2 nos. of 400/220 kV, 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 nos. of 220 kV line bays (2 bays for M/s EPPL and 2 bays

for HPPTCL). Copy of the Minutes of Meeting is already annexed as Annexure 5 to the Petition.

40. Further, in the 31st Standing Committee Meeting on Power System Planning of Northern Region held on 02.01.2013, it was decided as under: -

“6. Evacuation of Power from Malana-II:- Director (SP&PA), CEA stated that the evacuation of power from Malana-II HEP was planned by LILO of one circuit of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at 220/132kV Chhaur substation of M/s Everest Power Pvt. Ltd.(EPPL) and power from generation project was to be injected at Chhaur S/s through a 132 kV D/c line. Further, AD HEP – Nalagarh 220 kV D/c line is not adequate for reliable evacuation of power from both the projects especially under contingency condition. In the 30th Standing Committee Meeting of Northern Region, it was agreed to construct a 220 kV D/c line from 220/132kV Chhaur to Parvati Pooling Station enabling injection of power from Malana-II HEP at Parvati Pooling Station (ISTS). From Parvati Pooling Station, power can be evacuated over ISTS system. It was also decided to provide 2 nos. of 400/220 kV, 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 nos. of 220 kV line bays (2 bays for M/s EPPL and 2 bays for HPPTCL).

He further mentioned that HPPTCL had informed that only one 220 kV line could be constructed from Chhaur to Parvati Pooling Station due to ROW constraints and HPPTCL also intends to inject about 170 MW power from Small HEPs at Chhaur substation for its further transfer to Parvati Pooling station. As such, HPPTCL proposed that they would construct the 220kV D/c line from Chhaur substation to Parvati Pooling station for which funds are also being tied up with ADB. Further, HPPTCL would also take up the ownership of 132/220 kV Chhaur S/s from M/s EPPL to make it a part of their STU system.

Member (PS), CEA enquired HPPTCL about the expected commissioning schedule of the above 220kV line. HPPTCL informed that the same would be ready by 2015.

POWERGRID stated that Malana-II generation is directly connected to ISTS grid, for which Long Term Open Access has been processed and granted by CTU. In case this line is constructed by HPPTCL (STU), the

direct connectivity of Malana-II with ISTS would be lost and M/s EPPL would have to bear STU charges in addition to PoC charges.

Member (PS) stated that under proposed proposal Malana-II would be treated as State-embedded generator and would have to pay applicable charges accordingly. He enquired M/s EPPL for their consent to the above proposal. M/s EPPL informed that they are agreeable to the proposal and they would sort out all commercial issues with HP.

While finalizing the proposal it was also decided that 400/220 kV, 2x315 MVA ICTs (7x105 MVA single- phase units) along with the associated bays and 2 nos. of 220 kV line bays would be provided at Parvati pooling station (PG) under ISTS scheme and since it is augmentation work in existing switchyard of POWERGRID S/s, the same would be carried out by POWERGRID.

Members agreed to the above proposal.”

Copy of the Minutes of Meeting already annexed as Annexure P-6 to the Petition.

41. It is also submitted by way of additional submissions in the supplementary affidavit that pursuant to the consensus arrived at the 31st Standing Committee Meeting on power system planning of Northern Region held on 02.01.2013, the Petitioner signed an agreement dated 28.06.2019 with the Petitioner and Clause 6 of said agreement dated 28.06.2019 provides that the Petitioner agreed to pay applicable transmission charges and bear losses to the system which was put to use for transmitting power generated at Malana-II HEP. Not only this, the Petitioner entered into Connection Agreement dated 30.05.2022 and LTA dated 30.12.2022 with the Respondent for

220/132 kV, 100 MVA Sub-station at Charor and 220 kV D/C Charor-Banala transmission line.

42. Also averred that the transmission line in the concerned terrain have to be built based on the guidelines laid down by the Central Electricity Authority (CEA) and cannot be duplicated on account of terrain and by right of way issues and for this reason the lines have to be of a particular voltage level and category irrespective of the Project using the line may not use the entire capacity of the line.

43. The relevant extract of the CEA Guidelines, 2013 and 2023 have been reproduced in the additional submissions.

44. According to the Respondent, even if the Respondent had not constructed the 220 kV D/C Charor-Banala Line, the configuration of the dedicated line to be constructed by the Petitioner could not have been changed as it was required to handle the entire power generation of the valley and in addition to the cost of the dedicated line, the Petitioner would have to bear charges for creating 400/220 kV transformation at Banala Pooling Station which in the present case has been created under ISTS by the Power Grid.

45. Reliance has also been placed in Regulations 3 (4) and 3 (39) of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 (Transmission Tariff Regulations, 2011 for short) as under:-

“(4) allotted transmission capacity means and includes the power transfer in MW between the specified point(s) of injection and point(s) of drawal allowed to a long-term customer on the intra-State transmission system under the normal circumstances and allotted transmission capacity to a long-term transmission customer shall be sum of the generating capacities allocated to the long-term transmission customer from the State generating stations and inter-State generating stations and the expression "allotment of capacity" shall be construed accordingly;

(39) transmission system means the system consisting mainly of extra high voltage electric lines having design voltage of above 33 kV, owned or controlled by the transmission licensee, and used for the purposes of the conveyance of electricity between the switchyards of two generating sets or from the switchyard of a generating set to a sub-station, or between substations, or to or from any external interconnection and includes all bays/equipment upto the interconnection with the distribution system, and any plant, apparatus and meters owned or used in connection with the transmission of electricity, but shall not include any part of a distribution system;”

46. It is also averred by way of additional submissions that Clause (1) and (2) of Regulation 33 of the Transmission Tariff Regulations, 2011 are contrary to each other and compliance of both Regulations is not possible together. The Regulation 33 (2) has been reproduced as under:-

“(2) No distinction in charges shall exist in terms of long term, medium term or short term access to the intra-State transmission system: Provided that the transactions for long term and medium term shall be denominated in Rs/kW/month or any suitable denomination as may be stipulated by the Commission.”

47. It is averred that the regulation 33 (1) of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 uses the term transmission system for sharing of transmission charges whereas regulation 33 (2) calls for equal long term, medium term or short term access to the intra-State transmission system. With transmission system based billing providing for equal/ non-distinctive long term, medium term or short term access charges was not possible in fourth control period i.e. FY 2019-20 to 2023-24. Due to this ambiguity the replying respondent has filed the petition for approval of Multi Year Tariff petition for control period 2024-25 to 2028-29 with Commission, wherein respondent has submitted for creation of intra-state transmission charges pool to ensure that no distinction in charges shall exist in terms of long term, medium term or short term access to the Intra-state transmission system and beneficiaries are billed on monthly basis based on the allotted

transmission capacity or contracted capacity in the intrastate transmission system.

48. The Commission vide Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023 **clause 12 (2)** has also provided for determination of tariff for the whole of the transmission system as follows:-

“Tariff in respect of the transmission system may be determined for the whole of the transmission system or for the individual transmission line / Sub-station: Provided that:

(i) In case of commercial operation of all elements of a transmission system prior to 1st April, 2024, the Transmission Licensee shall file consolidated petition in respect of the entire transmission system for the purpose of determination of tariff for the period 1 st April, 2024 to 31st March, 2029:

(ii) In case of commercial operation of elements of the transmission system on or after 1 st April, 2024, the Transmission Licensee shall file a consolidated Petition, combining all elements of the transmission system which are anticipated to achieve commercial operation during the next two months from the date of application.”

49. He also submitted that in the 30th Standing Committee meeting on North Region held on 02.01.2013, it was agreed that a 220 kV D/C transmission line from Charor to Parvati Pooling Station may be implemented by the Petitioner so that power from Malana-II HEP could be injected at Parvati Pooling Station. However, said proposal

was not viable and the matter was again taken up in the 31st Standing Committee meeting held on 02.01.2013 wherein the issue arose that only one 220 kV line could be constructed to Parvati Pooling Station due to right of way (RO Constraint).

REPLY TO THE ADDITIONAL SUBMISSIONS BY THE PETITIONER

50. In reply to the additional submissions of the Respondent, the Petitioner has also filed the additional submissions that the additional submissions made by way of the supplementary affidavit are incorrect.

51. Though, the Petitioner has highlighted the events which had taken place after filing the Petition but most of the detail is in the notice of the Commission. In so far as the force majeure events occurred in the year, 2023 and 2024 are concerned, the Petitioner has filed separate Petitions before the Commission which are pending adjudication.

52. It is averred that the Petitioner is utilizing only 86/ 80 MW of total 289 MW of the transmission line and, therefore, cannot be saddled with transmission charges for the entire capacity. The recovery has to be only as per LTA dated 30.12.2022 and only

proportionate charges as per allotted/ contracted capacity are required to be charged.

53. It is averred that the Hon'ble APTEL in Appeal No. 196 of 2024 was of the view that the reliance placed by the Commission upon the order dated 14.08.2023 passed by the Hon'ble APTEL in DFR No. 473 of 2023 was erroneous as in said order, the Hon'ble APTEL had considered only the first limb of Regulation 33 (1) of the HPERC MYT Regulations, 2011 but the 2nd limb of the Regulation 33 (1), viz, *"based on the allotted transmission capacity or contracted capacity, as the case may"* was not at all considered while passing the order dated 14.08.2023 in DFR No. 473 of 2023, as such, the order dated 12.04.2024 passed by the Commission was erroneous. Also that the observations in order dated 14.08.2023 were limited to the payment of 35% of the charges.

54. While referring to the minutes of the 30th and 31st Standing Committee Meeting on Power System Planning of Northern Region held on 19.12.2011 and 02.01.2013 respectively, it is averred that the Respondent has referred to Clause 6 of the Connection Agreement dated 28.06.2019 that the applicable transmission charges for the

transmission system would be borne by the Petitioner. Further, the assertion of the Respondent that even if the Respondent had not constructed the transmission line, the configuration of the dedicated line to be constructed by the Petitioner as per the 31st Standing Committee Meeting held on 19.12.2011 could not be changed as it was required to handle the entire power generation of the valley and in addition to the cost of dedicated transmission line as proposed, the Petitioner would have had to bear charges for creating 400/220 kV transformation at Banala Pooling Station which was created under Inter State Transmission System by Power Grid Corporation of India Limited (PGCIL).

55. It is mentioned in the reply to additional submissions that the allegations made in the supplementary affidavit are absurd and irrational as according to the HPPTCL, Regulation 33 (1) of the HPERC MYT Regulations, 2011 would apply only when there are multiple users of the transmission line but said clause is contrary to the order dated 12.08.2021 in Petition No. 97 of 2020 which clearly states that if the line is not declared as Inter-state by Ld. CERC, the recovery of tariff would be made as per Regulation 31 (1) of the HPERC MYT Regulations, 2011. Further, the HPPTCL has failed to

deal with the provisions of the LTA dated 30.12.2022 which specifically restricts the liability of the Petitioner qua the transmission charges proportionate to the extent of contracted/ allotted capacity under the said agreement.

56. It is averred that in case Regulation 33 (1) does not apply, as alleged by the Respondent, than under what provisions of the Regulations/ documents the Respondent has based its claim of levy of entire transmission charges upon the Petitioner. Further, the Respondent has merely extracted various clauses of the HPERC MYT Regulations, 2011 without any justification.

57. Further, the contention of the Respondent that the Regulations 33 (1) and 33 (2) of the HPERC MYT Regulations, 2011 are contradictory to each other and compliance of both is not possible together and that the Respondent has also filed a Petition for approval of MYT for the control period for FY 2024-25 to FY 2028-29 before the Commission wherein it has requested the Commission for creation of Intra-state transmission charges pool so as to ensure that no distinction in charges between long term, medium term and short term access to the intra-state transmission system exist and the

beneficiaries are billed on monthly basis based on transmitted capacity or contracted capacity but said assertion is an attempt to read down the Regulations and dissuade the Commission from adjudicating the Petition.

58. It is averred that the Commission needs to consider that the HPERC MYT Regulations, 2011 govern the protocol for payment of transmission charges for availing the service of open access and were enacted by the Commission for the purpose of implementing the extant provisions of the Electricity Act, 2003, specifically, amongst others:

- (i) Section 2 (47), which contemplates that a generating station for the purpose of evacuation of power has to avail access or open access through the transmission system; and
- (ii) Section 39 which contemplates that for availing the service of open access a user generator has to make payment of transmission charges for usage of the transmission system in terms of Section 2 (47).

59. Also averred that the usage of the term 'non-discriminatory' would mean that the charges for open access have to be in proportion to the extent of usage of the transmission system by a user/ generator.

60. Further the only conclusion which can be derived from the combined reading of Section 2 (47) and Section 39 of the Electricity Act, 2003 apropos Regulation 31 (1) of the HPERC MYT Regulations, 2011 is that the transmission charges for availing the service of open access are levied in proportion to the allotted/ contracted transmission capacity of a generator and said Regulation nowhere and in no sense can be interpreted to mean that in case of a single user (where other generator have failed to come up) of a particular line, the entire charges of the said line will be fastened upon a single user. Thus, the transmission charges to be paid for use of any line on the monthly basis based on the allotted/ contracted capacity as evident from LTA dated 30.12.2022.

61. It is also averred that the interpretation of Regulation 33 (1) of the HPERC MYT Regulations, 2011 as being adopted by the Respondent is nothing but an addition to the language of the Regulation as also the LTA dated 30.12.2022 which is impermissible under the law, as according to the Respondent, the Petitioner will have to wait until the entire capacity of the line is allotted to other users which may be in perpetuity. It is further averred that the transmission line was neither made exclusively for the Petitioner nor

is being used exclusively by the Petitioner, as alleged by the Respondent, as the Petitioner has been using only a part of the line.

62. With regard to the Standing Committee Meetings, it is mentioned that the transmission line was agreed to be constructed by the Petitioner as dedicated line in the 30th Standing Committee Meeting but in the 31st Standing Committee Meeting held on 02.01.2013, it was decided that the line would be constructed by the Respondent as it wanted to evacuate additional 170 MW power from Small Hydro Electric Projects from Charor Sub-station for its further transfer to Parvati Pooling Station. Therefore, it was never an objective of the Respondent to construct transmission line for the sole usage of the Petitioner. Further, the details qua installed capacity of the various projects located in the Parvati Valley is recorded in order dated 12.08.2021 in Petition No. 97 of 2020 as also order dated 12.04.2024.

SUBMISSIONS OF THE LD. COUNSEL FOR THE PARTIES

63. Sh. Rajnish Maniktala, Ld. Sr. Advocate has submitted that the Petitioner has signed LTA agreement with the Respondent on 30.12.2022 for transmitting 86 MW energy till 12.07.2024 and 80 MW

energy w.e.f.13.07.2024 to 05.12.2044 through the Transmission Line and, therefore, the Respondent was required to levy the transmission charges in respect of aforesaid allotted/contracted capacity as per Regulation 33 (1) of the HPERC MYT Regulations, 2011 but has issued invoices for the entire capacity of the Line i.e. 289 MW which are arbitrary and illegal. He has further submitted that as per Section 62 (6) of the Electricity Act, 2003, the HPPTCL is entitled to charge amount/ tariff, as approved by the Appropriate Commission, and cannot charge anything in excess of the amount approved by the Appropriate Commission and the Commission in Petition No. 97 of 2020 decided on 12.08.2021 has restricted the liability of the Petitioner to the extent of allotted/contracted capacity and, thus, any charges in excess of the same are illegal and the demand is barred by the principles of Res-judicata as the Commission's findings in Petition No. 97 of 2020 have attained finality. The Ld. Sr. Counsel has further submitted that the Hon'ble APTEL while remanding the matter has observed that the scope of second limb of Regulation 33 (1) of the HPERC MYT Regulations, 2011 had not been considered by the APTEL while deciding the DFR No. 473 of 2023 vide order dated 14.08.2023 and thus, the Regulation 33 (1) is required to be

interpreted in its literal meaning and the charges are required to be recovered as per the allotted/ contracted capacity as per para 4.8.5 of the order dated 12.08.2021 in Petition No. 97 of 2020. Sh. Rajnish Maniktala, Ld. Sr. Counsel inviting the attention of the Commission to National Electricity Policy and Tariff Policy has also submitted that said policies acknowledge the participation of private sector in generation by providing competitive returns and, therefore, the financial turnaround and commercial viability of the Electricity sector needs to be considered. The tariff policy also focuses on availability of power to the consumers at reasonable and competitive rates by ensuring financial viability of the sector and attracting investment. The Return on Investment (RoI) is also one of the objectives of the tariff policy. According to him, Regulation 33 (1) of the HPERC MYT Regulations, 2011 is required to be considered and interpreted in line with Section 39 (2) (d) (i) of the Electricity Act, 2003, National Electricity Policy, National Tariff Policy, etc. and in case the interpretation of Regulation 33 (1), as being put forth by the Respondent is accepted, the same would amount to violation of the non-discriminatory open access of the transmission system. He has relied upon the judgements laid by the Hon'ble Supreme Court in

(1988) 4 Supreme Court Cases 274 U.P. Bhoodan Yagna Samiti, U.P. v. Braj Kishore and others, (1969) 3 Supreme Court Cases 562 V.O. TRACTOROEXPORT, MOSCOW v. Tarapore & Company and Another, (1986) 2 Supreme Court Cases 237 M/s Girdhari Lal and Sons v. Balbir Nath Mathur and Others, (1988) 4 Supreme Court Cases 284 Atma Ram Mittal v. Ishawr Singh Punia, (1976) 4 Supreme Court Cases Santa Singh v. The State of Punjab and Order dated 17.10.2023 in Petition No. 30 of 2023 passed by the Uttarakhand Electricity Regulatory Commission.

64. Sh. Vikas Chauhan Ld. Counsel for the Respondent has submitted that the Petitioner despite utilizing the system to its exclusive use ever since the commissioning of the Transmission Line has deferred the liability on one pretext or the other and has raised new and fresh pleas every now and then to deny the due charges. According to him, the status of the Transmission Line has been declared by the Ld. CERC as Intra-state Transmission Line and the Petitioner is liable to pay the transmission charges for the entire capacity of the Transmission Line being the sole and exclusive user of the same and cannot avoid the liability merely on the ground that other Projects which were to be connected to the Transmission Line

have not come up. He has also submitted that the Regulation 33 (1) of HPERC MYT Regulations, 2011 would be attracted only when the transmission system is shared between the long and medium term customers and since the system has so far not been shared by any other customers, the Petitioner being the sole beneficiary is liable for the entire capacity i.e. 289 MW of the Line and the demand notices/invoices dated 14.09.2021, 01.10.2021 and 08.11.2021 are legal and valid. Sh. Chauhan has further submitted that due to right of way constraints, there was no possibility of constructing two lines i.e. one by the Petitioner and another by the Respondent for evacuation of the entire power of the Parvati Valley, as such, the decision was taken in the 31st Standing Committee Meeting in this regard to construct the subject line. He has further submitted that had the Petitioner constructed the dedicated line as proposed in the 30th Standing Committee Meeting, the configuration of the same could not have been changed as the line was required to be constructed capable of handling the entire power generated in the Parvati valley and in addition to the cost of the transmission line, the Petitioner also would have to bear cost of 220 kV transformation at Banala Pooling Station which in the present case was constructed by the Power Grid.

POINTS FOR DETERMINATION

65. We have gone through the submissions of the Ld. Counsel for the parties including the written submissions/ additional submissions made by the parties and have perused the entire case file with minute care.

66. On the basis of pleadings and submissions, following points arise for determination in the present Petition:

1. Whether the Petitioner is not liable to pay the transmission charges for the entire capacity of 289 MW of the Transmission Line and the provisional invoices dated 14.09.2021, 01.10.2021, 08.11.2021 demanding the charges for the entire capacity of 289 MW of the Transmission Line from the Petitioner and subsequent bills qua transmission charges, minutes of meeting held on 21.10.2021 and disconnection notice dated 11.08.2023 are illegal and null and void?

2. Final Order (Relief)

67. For the reasons to be recorded hereinafter in writing, our point wise findings are as under:-

Point No. 1: No

Final Order: Petition dismissed as per operative part of the order

REASONS FOR FINDINGS

Point No. 1

68. The contention of the Petitioner is that the Petitioner is not liable to pay the entire ARR of the transmission and the recovery of the same can only be shared amongst all the beneficiaries of Intra-state Transmission System as observed by the Commission in Paras 4.8.4 and 4.8.5 of the Tariff Order dated 12.08.2021. The Petitioner has also claimed that the Respondent/HPPTCL in complete violation of the aforesaid order dated 12.08.2021 has issued demand notices dated 14.09.2021, 01.10.2021 and 08.11.2021 demanding transmission charges for entire capacity of the Transmission Line to the tune of Rs. 23,12,67,333/-, Rs. 24,10,89,999/- and Rs. 25,09,12,665/- for the period w.e.f. COD i.e. 01.10.2019 to August, 2021 and also for the months of September and October, 2021 (Annexure P-11) which are illegal and the entire charges are not liable to be paid by the Petitioner.

69. Further, as per the Petitioner, the Appeal regarding declaration of the status of line is pending before the Hon'ble APTEL in Appeal

No. 628 of 2023 (filed against order dated 04.05.2023 passed by the Ld. CERC in Petition No. 57/MP/2022) and in case the Transmission Line is declared InSTS, the tariff of the Transmission Line is to be recovered in accordance with Regulation 33 (1) of the HPERC MYT Regulations, 2011, which mandates that transmission charges are to be shared between all the Long term and Medium term customers of the InSTS on monthly basis based on the allotted transmission capacity or contracted capacity, as the case may be, which is 86 MW till 12.07.2024, and 80 MW from 13.07.2024 to 05.12.2044.

70. It is also the contention of the Petitioner that the Commission in Order dated 12.08.2021 in Petition No. 97 of 2021 has rejected the specific prayer for levy of the entire transmission charges of the Transmission Line in Para 4.8.5 of the order, thus, there was no occasion for the Respondent to have raised the impugned invoices which are based on the entire 289 MW capacity of the Transmission Line and being contrary to the tariff Order dated 12.08.2021, the same are liable to be quashed and similarly, the narration recorded in the interim Orders dated 27.11.2021 and 04.08.2023, qua evacuation of 100 MW power through the Transmission Line also need to be corrected.

71. In so far as the contention of the Petitioner regarding pendency of Appeal before the Hon'ble APTEL against the order of the Ld. CERC in Petition No. 57/MP/2022 is concerned, the Hon'ble APTEL has neither restrained the Respondent nor has stayed the operation of the order of the Ld. CERC in respect of the status of line as InSTS, therefore, the line continues to be InSTS and the recovery is to be effected as per order dated 12.08.2021 in Petition No. 97 of 2020.

72. Coming to the other contention of the Petitioner regarding the legality of demand notices dated 14.09.2021, 01.10.2021 and 08.11.2021 demanding the transmission charges for entire capacity of the line, it is relevant to mention that the Project of the Petitioner is located at village Chowki near Jarri, Distt. Kullu. Before, construction of the subject transmission line, the evacuation of power from the Project was being made through the line of AD Hydro. Initially, the line was proposed to be constructed by the Petitioner as proposed in the agenda Item No. 17 for the 30th Standing Committee Meeting of NRPC to be held on 19.12.2011 which is reproduced as under:-

“The evacuation of power from Malana-II HEP was planned by LILO of one ckt of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at Chhaur 220/132 kV substation of M/s Everest Power Pvt. Ltd. and power from generation project is to be injected at Chhaur by a 132 kV D/c line. There are certain issues for reliable evacuation of power from both the projects

as well as for cost sharing & apportionment of losses etc. in regard to utilisation of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro by M/s Everest Power Pvt. Ltd.

Keeping above in view, it is proposed that a 220 kV D/c line from Chhaur to Parvati Pooling station may be implemented by M/s Everest Power Pvt. Ltd. so that the power from the Malana-II HEP could be injected at Parvati Pooling Station (ISTS). From Parvati Pooling Station, power can be evacuated over ISTS system. Further, as no 220 kV level has been planned at Parvati Pooling Station, there would be a need to provide 400/220 kV ICT alongwith required 400 & 220 kV bays. In this case, the cost of providing ICT, additional bays, 220 kV line etc shall have to be borne by M/s Everest Power Pvt. Ltd. The above proposal would provide long term solution for reliable evacuation of power from AD HEP & Malana-II HEP.”

73. The aforesaid agenda was discussed in the 30th Standing Committee Meeting on Power System Planning of Northern Region held on 19.12.2011 and it was agreed that the evacuation of power from Malana II HEP was evacuated by LILO of one ckt of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at 220/132 kV, Chhaur substation of M/s Everest Power Pvt. Ltd. and power from generation project was injected at Charor by a 132 kV D/c line. It was also agreed that for reliable evacuation of power from both the projects (300 MW), it was proposed to construct a 220 kV D/C line from Charor to Parvati Pooling station enabling injection of power from the Malana-II HEP at Parvati Pooling Station (ISTS) and from there

power can be evacuated over the ISTS system. It was also decided to provide 2 nos. of 400/220 kV, 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 nos. of 220 kV line bays (2 bays for M/s EPPL and 2 bays for HPPTCL). The Agenda and Minutes of Meeting have been annexed as Annexure 4 and 5 with the Petition.

74. However, during the 31st meeting of the NRPC held on 02.01.2013, the HPPTCL/ Respondent came out with the proposal that only one 220 kV line could be constructed from Charor to Parvati Pooling Station due to Right Of Way (ROW) constraints, as such, it was proposed by the HPPTCL that it would construct the line from Charror to Parvati Pooling Station. The MoM are reproduced as under:-

“6. Evacuation of Power from Malana-II:- Director (SP&PA), CEA stated that the evacuation of power from Malana-II HEP was planned by LILO of one circuit of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at 220/132kV Chhaur substation of M/s Everest Power Pvt. Ltd.(EPPL) and power from generation project was to be injected at Chhaur S/s through a 132 kV D/c line. Further, AD HEP – Nalagarh 220 kV D/c line is not adequate for reliable evacuation of power from both the projects especially under contingency condition. In the 30th Standing Committee Meeting of Northern Region, it was agreed to construct a 220 kV D/c line from 220/132kV Chhaur to Parvati Pooling Station enabling injection of power from Malana-II HEP at Parvati Pooling Station (ISTS). From Parvati Pooling Station, power can be evacuated over ISTS system. It was also decided to provide 2 nos. of 400/220 kV, 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 nos. of 220 kV line bays (2 bays for M/s EPPL and 2 bays for HPPTCL).

He further mentioned that HPPTCL had informed that only one 220 kV line could be constructed from Chhaur to Parvati Pooling Station due to ROW constraints and HPPTCL also intends to inject about 170 MW power from Small HEPs at Chhaur substation for its further transfer to Parvati Pooling station. As such, HPPTCL proposed that they would construct the 220kV D/c line from Chhaur substation to Parvati Pooling station for which funds are also being tied up with ADB. Further, HPPTCL would also take up the ownership of 132/220 kV Chhaur S/s from M/s EPPL to make it a part of their STU system.

Member (PS), CEA enquired HPPTCL about the expected commissioning schedule of the above 220kV line. HPPTCL informed that the same would be ready by 2015.

POWERGRID stated that Malana-II generation is directly connected to ISTS grid, for which Long Term Open Access has been processed and granted by CTU. In case this line is constructed by HPPTCL (STU), the direct connectivity of Malana-II with ISTS would be lost and M/s EPPL would have to bear STU charges in addition to PoC charges.

Member (PS) stated that under proposed proposal Malana-II would be treated as State-embedded generator and would have to pay applicable charges accordingly. He enquired M/s EPPL for their consent to the above proposal. M/s EPPL informed that they are agreeable to the proposal and they would sort out all commercial issues with HP.

While finalizing the proposal it was also decided that 400/220 kV, 2x315 MVA ICTs (7x105 MVA single- phase units) along with the associated bays and 2 nos. of 220 kV line bays would be provided at Parvati pooling station (PG) under ISTS scheme and since it is augmentation work in existing switchyard of POWERGRID S/s, the same would be carried out by POWERGRID.

Members agreed to the above proposal.”

The copy of the Minutes of Meeting has been annexed as Annexure P-6 to the Petition.

75. It is apparent from the minutes of meeting of the 31st Standing committee dated 02.01.2013 that the need for construction of 220 kV D/C line from Charor Sub-station to Parvati Pooling Station had arisen in view of the fact that only one line was possible at the site/

area due to ROW/ corridor constraints and the remaining power of the Parvati valley of about 170 MW could not have been evacuated had the line been constructed by the Petitioner as per the proposal discussed in the 30th Standing Committee Meeting dated 19.12.2011 and agreed upon by the Petitioner.

76. The core issue which arises for the determination in the present matter is whether the Petitioner is liable to pay the transmission charges for the entire capacity of the Transmission Line i.e. 289 MW or is liable to pay the charges to the extent of 86 MW upto 12.07.2024 and 80 MW from 13.07.2024 to 05.12.2044, as claimed by the Petitioner.

77. The line has been envisaged for evacuation of 289 MW power. The injection of 170 MW power, which was proposed to be evacuated through the line would have relieved the Malana-II HEP of the cost of the transmission system. However, fact remains that said Projects are yet to be connected to the subject transmission line meaning thereby that the Petitioner is the sole beneficiary of the line. As observed above, the need for construction of transmission line had arisen due to evacuation constraints due to limited corridor. Therefore, till the other Projects for which the line was conceived are

not connected to the line, it is the Project of the Petitioner which is evacuating the power by utilizing the entire capacity of the line.

78. The Petitioner and Respondent have signed an agreement dated 28.06.2019 agreeing to pay the applicable transmission charges. Further, on the request of the Petitioner to provide Long Term Access, Long Term Access Agreement (LTA for short) has been signed by the Petitioner and the Respondent on 30.12.2022 for the long term open access w.e.f. 05.12.2019. It is the case of the Petitioner that the Malana-II HEP (100 MW) shall transmit 86 MW upto 12.07.2024 and 80 MW w.e.f. 13.07.2024 to 05.12.2044 through the Transmission Line, as mentioned in Annexure-I of the LTA dated 30.12.2022. Clause (L) (2) (b) of the LTA dated 30.12.2022 reads as under:-

“(L)(2)(b) Long term transmission customer shall share and pay the transmission charges of the transmission system detailed in Annexure A-3 in accordance with the sharing mechanism detailed in Annexure-4. In case, in future, any other long-term transmission customer(s) is/are granted open access through the transmission system detailed at Annexure-3 (subject to technical feasibility), he/they would also share the applicable transmission charges.”

79. The Petitioner is the sole beneficiary of the transmission system as no other projects have been connected to the system. The

Petitioner in Clause 6 of agreement dated 28.06.2019 (Annexure R/4), has agreed as under:-

“That Everest Power hereby agrees to pay the applicable transmission charges and bear losses to HPPTCL System which is put to use for transmitting its Power generated at Malana-II Project”.

80. The 41 Nos. Projects, as elaborated and described under para 3.4.1 to 3.4.8 of the Tariff order dated 12.08.2021 in Petition No. 97 of 2020 are not yet connected and till date the Petitioner is the only beneficiary and connected to the Transmission Line. Thus, the approved ARR is to be borne by the Petitioner till such time other beneficiaries are connected and consequent sharing takes place as per Regulation 33 (1) of the HPERC MYT Regulations, 2011.

81. The Petitioner has placed on record copy of Minutes of Meeting held on 21.10.2021 with the HPPTCL in which the issue of the bills/invoices was raised wherein the Respondent pointed that the allotted capacity is applicable only in case of multiple beneficiaries and since Malana-II is the only beneficiary as on date, entire approved ARR has to be paid by the beneficiary i.e. Malana-II HEP. The Petitioner responded to the minutes of meeting dated 21.10.2021 vide letter dated 27.10.2021 as under :

“The Capacity of Charor-Banala 220kV D/c was envisaged to evacuate 289 MW of power from different hydro projects which were to be developed in the vicinity of Malana-II, otherwise the connectivity would have been retained on the lower voltage and at lower cost of dedicated Transmission Line for power evacuation of Malana-II (100 MW HEP) and that development of other Hydro projects in the vicinity for using the high capacity Transmission Line is not in the control of Malana-II developer, neither the implementation of high capacity Transmission Line was in control of Malana-II developer as it was a decision made by HPPTCL/CEA and when the development of such high capacity links are constructed, it is not justified to put all burden on the single entity. This approach will discourage the developer and the overall development of the vicinity due to higher tariff of transmission lines which will make the project(s) unviable.”

82. It was clarified to the officers of the Petitioner attending the meeting that allotted capacity is applicable only in case of multiple beneficiaries and since, Malana-II HEP is the only beneficiary as on date, entire ARR has to be paid by the beneficiary concerned. It was further clarified that as and when additional projects will come, charges will be apportioned as per their allotted capacity. Since, the officers attending the meeting on 21.10.2021 categorically agreed that the bills raised by the HPPTCL will be paid by 15.11.2021, nothing adverse can be attributed to the minutes of meeting.

83. Further, keeping in view the right of way/ limited corridor constraints the subject line had to be constructed by the HPPTCL. The other Projects which were likely to come up have not yet been connected to the subject line. The Transmission Line was

commissioned on 01.10.2019. The power of the Petitioner's plant only is getting evacuated w.e.f. December, 2019. Thus, the Respondent is within its right to recover the transmission charges from the Petitioner and the unnecessary withholding of transmission charges for the usage of the Transmission Line would result in severe shortage of funds to ensure smooth operation and maintenance of the transmission line. Therefore, nothing adverse was conveyed to the petitioner in the minutes of meeting dated 21.10.2021.

84. The careful perusal of Regulation 33 (1) of the HPERC, MYT Regulations, 2011, shows that the Annual Transmission Services Charges shall be shared between the long term and medium term customers of the transmission system on monthly basis on the allotted transmission capacity or contracted capacity, as the case may be. There is constraint of right of way due to which the construction of only subject transmission line was possible. The Transmission Line is exclusively being used by the Petitioner to evacuate the power from Malana-II HEP since December, 2019. The Petitioner has signed long term open access agreement dated 30.12.2022 and agreement dated 28.06.2019 with the Respondent in accordance with the HPERC MYT Regulations, 2011. Thus, by

interpreting the Regulation 33 (1) of the HPERC MYT Regulations, 2011 in line with the National Electricity Policy and Tariff Policy, LTA dated 30.12.2022 and agreement dated 28.06.2019, the Petitioner is liable to bear the cost of the entire approved ARR of the transmission line till other Projects in the area begin evacuation of power from their respective projects. Thus, the allotted capacity of 86 MW upto 12.07.2024 and 80 MW w.e.f. 13.07.2024 upto 05.12.2044, as mentioned in the LTA agreement dated 30.12.2022 shall come into being only when the other generators are connected to the system. Therefore, the transmission charges as raised are not in violation of Section 62 (6) Electricity Act, 2003. In the circumstances, the submissions of the Ld. Sr. Advocate do not ameliorate the hardship of the Petitioner.

85. The Respondent has not offered any explanation for not signing the transmission service agreements with all those power producers whom the system was conceived. Some of the Projects as per the detail appended to the tariff order dated 12.08.2021 in Petition No. 97 of 2020 have been commissioned. Such Projects, atleast, were required to be connected immediately by signing the agreements but no steps have been taken by the Respondent in this regard. We,

therefore, direct the HPPTCL to connect all such IPPs to the transmission line so that the charges are shared accordingly.

86. In view of the above, the Petitioner has not been able to establish on record that the Petitioner is not liable to pay the transmission charges for the entire capacity of the transmission line i.e. 289 MW or that the Petitioner is liable to pay the transmission charges for 86 MW upto 12.07.2024 and 80 MW from 13.07.2024 onwards from its project i.e. Malana-II HEP. Similarly, the Petitioner has not been able to establish on record that the provisional bills dated 14.08.2021, 01.10.2021 and 08.11.2021 demanding the transmission charges for the entire capacity of the transmission line i.e. 289 MW and subsequent bills and disconnection notice dated 11.08.2023 are also illegal and null and void. The Petitioner has also not been able to establish on record that the minutes of meeting held on 21.10.2021 are also wrong and illegal. Point No. 1 is accordingly decided against the Petitioner.

Final Order

87. In view of the aforesaid discussions and findings, the petition fails and is accordingly dismissed. The pending applications, if any, are also deemed to have been disposed off.

88. We also direct the HPPTCL/ Respondent to sign the transmission service agreements with all those power producers to whom the system/ transmission line was conceived and their projects have been commissioned/ under construction as per the detail appended to the tariff order dated 12.08.2021 in Petition No. 97 of 2020 so that the transmission charges are shared accordingly.

The file after needful be consigned to the records.

Announced
23.01.2025

-Sd- (Shashi Kant Joshi) Member	-Sd- (Yashwant Singh Chogal) Member (Law)	-Sd- (Devendra Kumar Sharma) Chairman
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