

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

Petition No: 53 of 2022
Instituted on: 18.08.2022
Heard on: 17.11.2022
Decided on: 19.12.2022

1. M/s Shivalik Energy Private Limited
Flat No. 602, Basilius Building, Roadas Enclave,
Hiranandani Estate, Thane, Maharashtra-400607

Petitioner No. 1

2. Chirchind Hydro Pvt. Ltd.
Flat No. 602, Basilius Building, Roadas Enclave,
Hiranandani Estate, Thane, Maharashtra-400607

Petitioner No. 2

Versus

1. The HPPTCL through its
Managing Director,
Himfed Bhawan, Panjari,
Tutikandi, Shimla 171004.

2. The HP State Electricity Board Ltd. through its
Chief Engineer (Sys. Op.),
Vidyut Bhawan, Shimla-171004.

3. Govt. of Himachal Pradesh through its
Additional Chief Secretary (MPP & Power)
to the Govt. of Himachal Pradesh, Shimla 171002.

Respondents

CORAM

**DEVENDRA KUMAR SHARMA
CHAIRMAN**

**YASHWANT SINGH CHOGAL
MEMBER (Law)**

**SHASHI KANT JOSHI
MEMBER**

Petition under Section 86 (1) (f) of the Electricity Act 2003 read with Regulations 53, 68 and 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for adjudication of dispute qua exorbitant demand of Supervision/O&M charges raised by the Respondent No. 1 in terms of Agreement dated 09.11.2021 for the supervision of Interconnection Facilities i.e. 1 No. 33 kV Bay at 33/220/400 kV GIS Sub-station Lahal in respect of Chirchind-II SHP (12.90 MW) and Chirchind (5 MW SHP).

Present:-

Sh. L.S Mehta, Ld. Counsel for the Petitioners.

Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1.
Ms. Vandana Thakur, Adv. Vice Sh. Surinder Saklani, Adv. for
Respondent No. 2.
Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 3.

ORDER

This Petition under Section 86 (1) (f) of the Electricity Act 2003 read with Regulations 53, 68 and 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 has been filed by the Petitioners for adjudication of a dispute qua exorbitant demand of Supervision/Operation and Maintenance (O&M for short) charges raised by the Respondent No. 1 in terms of Agreement dated 09.11.2021 for the supervision of Interconnection Facilities i.e. one No. 33 kV Bay at 33/220/400 kV GIS Substation, Lahal in respect of Chirchind Small Hydro Project (5.00 MW) (hereinafter to be referred as Chirchind-I) and Chirchind-II (12.90 MW) Small Hydro Project (hereinafter to be referred as Chirchind-II for short) on Chirchind Khadd, a tributary of river Ravi in District Chamba, H.P. The Chirchind-II (12.90 MW) Small Hydro Project (SHP for short) of Petitioner No. 1 is scheduled to be Commissioned w.e.f. 25.11.2025 and Chirchind-I (5.00 MW) SHP of Petitioner No. 2 has been declared Commercially Operational w.e.f. 07.04.2011. The Power of Chirchind-I is being sold to the Respondent No. 2, Himachal Pradesh State Electricity Board Ltd. (HPSEBL for short) under long term PPA signed on 30.06.2008. The Respondent No. 1 Himachal Pradesh Power Transmission Corporation Ltd (HPPTCL for short), a State Transmission

Utility (STU for short) is obligated to ensure the development of an efficient, co-ordinated and economical system of Intra-state Transmission Lines for smooth flow of electricity and to provide non-discriminatory open excess to its transmission system.

2. An Implementation Agreement (IA for short) dated 29.12.2008 was signed by the Petitioner No. 1 with the Respondent No. 3 for implementation and establishment of Chirchind-I. The Respondent No. 3, vide Order dated 27.03.2010 (Annexure P-4) has accorded Techno Economic Clearance (TEC for short) to Chirchind-II. As per the Petition, a Supplementary Implementation Agreement (SIA for short) was also signed by the Petitioner No. 2 with the Government of Himachal Pradesh (GoHP for short) for installing and setting up Chirchind-I on 25.07.2006 and Clause 1.2.32 of said Implementation Agreements dated 29.12.2008 and 25.07.2006 provide that the “Interconnection Point(s)” shall mean the physical touch point at Sub-station(s) of the Board/State Transmission Utility/Central Transmission Utility where the Project’s transmission line for evacuating the power is connected to the grid. Similarly, the Respondent No. 2 has accorded Techno Economic Clearance in respect of Chirchind-I vide order dated 10.12.2003 (Annexure P-6) and the Petitioner No. 2 has signed Power Purchase Agreement on 30.06.2008 (Annexure P-7) in respect of Chirchind-I for sale of the entire Power at Interconnection point.

3. A Supplementary Power Purchase Agreement (SPPA for short) was also signed on 12.10.2010 (Annexure P-8) in respect of Chirchind-I. It is averred that

the Chief Engineer (SP) of Respondent No. 2 vide letter dated 05.11.2008 (Annexure P-9) intimated the Chief Engineer (OP) North HPSEBL that the final interconnection point in respect of Chirchind-I has been specified at proposed 33/132 kV Sub-station at Lahal near 33/11 kV (Gharola) but this Sub-station shall further be connected to 33/132/220 kV D/C proposed Sub-station at Karian (near Chamba) through 220 kV D/C line initially to be operated at 132 kV level and that the execution of works will take considerable time and the Respondent No. 2 may not be able to provide interconnection to the Petitioner as per schedule given by the Petitioner i.e. March 2010 at the proposed 33/132 kV Sub-station at Lahal and in order to avoid generation loss, the possibility of providing alternate interim interconnection point to the Petitioner be explored either at existing 33/11 kV Sub-station at Gharola or through LILO of existing 33 kV, Chamba-Gharola/ Bharmaur line. The Respondent No. 2 vide letter dated 15.12.2008 (Annexure P-10) intimated the Petitioner No. 2 that no suitable land was available at Gharola and hence, the location was shifted to Lahal which is about 2 kms away from the earlier proposed Sub-station at Gharola and that the final Interconnection point for evacuation of power from Chirchind-I will be at 132/33 kV Sub-station Lahal and, if needed, the interim interconnection will be at existing 33 kV Chamba-Gharola line till the Commissioning of 132/33 kV Lahal Sub-station. Units-I and II (2.5 MW each) of Chirchind-I were declared ready for Commercial Operation w.e.f. 18.03.2011 and 07.04.2011 respectively and the evacuation of Power from Chirchind-I started evacuating through an

interim arrangement to the interconnection point at Sub-station Gharola. The Chief Engineer (SO&P) vide letter dated 11.12.2015 (Annexure P-13) informed the Chief Engineer (OP) of Respondent No. 2 that various Projects in Chamba-Gharola zone have been given Interconnection on 33 kV Chamba-Gharola line and due to delay in Commissioning of 220/33 kV Sub-station at Karian and 400/220/66 kV Sub-station at Lahal, the Power evacuation of the Projects is being done through 33 kV line on interim basis and during peak generation period, the Projects have to back down generation as 33 kV Chamba-Gharola line can carry only 12 MW Power approximately and such Power evacuation through the existing arrangement be regulated for curtailment (if any) on proportionate basis.

4. The Respondent No. 2, vide letter dated 18.05.2016 (Annexure P-14) intimated Petitioner No. 2 that the interim evacuation arrangement has been allowed for Chirchind-I on Chamba-Gharola 33 kV line and present 33 kV line from Gharola to Chamba can evacuate only 12 MW and Petitioner No. 2 was directed to limit the generation upto 750 kW proportionally on curtailed basis for smooth evacuation of power.

5. The Petitioner No. 2 made a detailed representation vide letter dated 20.05.2016 (Annexure P-15) to the Respondent No. 2 with regard to the irrational and biased back down instructions given by the said Respondent No. 2 vide letter dated 18.05.2016 with a request to defer such a crucial decision against Petitioner No. 2. The Chief Engineer (SP) of Respondent No. 2

informed the Petitioner No. 2 vide letter dated 12.01.2018 (Annexure P-16) that DoE, Government of HP through different TECs has approved Joint evacuation of power on 33 kV Chamba-Gharola line from power house of Chirchind-I to 220/33 kV Sub-station Lahal in respect of Ghotor top 4.98 MW, Channi 3 MW, Samwara 2.50 MW, Ghatore-I 2.20 MW, Siunr 1.5 MW, Chirchind-II 9.90 MW, Kiunr 5 MW and Respondent No. 2 also requested the Petitioner No. 2 to submit the latest status of 33 kV line from the power house to Lahal Sub-station.

6. It is averred that the GoHP in the year 2018, amending Hydro Power Policy, 2006 and has made it mandatory for the HPSEBL to purchase entire power from the Hydro Electric Power Projects having capacity upto 25 MW. Further, the Government of HP, vide notification dated 07.11.2020 (Annexure P-17) has allowed One Time Amnesty Scheme by redefining zero date for the Projects under investigation and clearance stage where IAs have already been signed and by redefining the SCOD for the Projects under construction stage and a Supplementary Implementation Agreement was signed by Petitioner No. 1 with the Government of HP on 27.01.2021 and the zero date in respect of the Project of Petitioner No. 1 i.e. Chirchind-II has been redefined. A 2nd Supplementary Implementation Agreement and 3rd Supplementary Implementation Agreement dated 16.08.2021 and 02.11.2021 (Annexure P-18 Colly) respectively were also signed by the Petitioner No. 1 with the Government of HP.

7. It is averred that the Connection Agreements with Respondent No. 1 have been signed on 21.06.2021 (Annexure P-19) and 01.03.2021 (Annexure P-20) in respect of Chirchind-II and Chirchind-I respectively. Further averred that Petitioners No. 1 and 2 have also signed an Agreement dated 11.06.2021 (Annexure P-21) in between them vide which they have also prepared/executed Joint evacuation plan for transmission of power from both the Projects to 400/220/33 kV Lahal Sub-Station. Further the Petitioner No. 1 and Respondent No. 2 had also filed a Joint Petition for approval of Power Purchase Agreement in respect of Chirchind-II, which was disposed off by the Commission on 10.11.2021 (Annexure P-22) with liberty to approach the Commission within 6 months before Commission of Chirchind-II as the SCOD of the Project was beyond the Current Tariff Control Period. Further the Respondent No. 1 vide letter dated 22.10.2021 (Annexure P-23) requested the Petitioner No. 1 to deposit the Bay cost estimate amounting to Rs. 99,30,113/- towards one number 33 kV Bay at 33/220/400 kV Lahal Sub-Station. The Petitioner No. 1 vide letter dated 27.10.2021 requested the Respondent No. 1 to revise the estimate of said Bay cost and pursuant thereto, Respondent No. 1 vide letter dated 30.10.2021 (Annexure P-25) requested the Petitioner No. 1 to deposit revised estimated Bay cost amounting to Rs. 96,56,111/- towards aforesaid one number Bay. Also averred that the Petitioners have signed the Agreement for Supervision of Interconnection Facilities with the Respondent No. 1 on 09.11.2021 (Annexure P-26) in respect of Chirchind-II and Chirchind-I SHPs. Meanwhile, a committee

was constituted by the Govt. of HP for deciding the Bay and maintenance charges to be paid by the Independent Power Producers (IPPs) in HP, which has made the recommendations (Annexure P27) as under:-

“IPPs may take up the matter through Petition with Hon’ble HPERC w.r.t. their concerns of higher O&M charges being charged as per Aastha Guidelines. Parties will act as per the decision of the Hon’ble HPERC and till then present methodology of O&M charges from IPPs will continue.”

8. As per the Petition, this Commission vide Order dated 23.11.2010 (Annexure P-28) in Petition No. 81 of 2010 titled as M/s Aastha Project (India) Ltd. Vs HPSEBL and another has laid down the guidelines to work out the cost of O&M for Interconnection Facilities for the SHPs upto 25 MW. As per Petitioner, 33/220/400 kV GIS Sub-station at Lahal of Respondent No. 1 was Commissioned during September, 2021 and Energy of Chirchind-I is being evacuated through permanent Interconnection point at 33 kV Bay at 33/220/400 kV GIS Sub-station at Lahal w.e.f. 21.02.2022. Further, the Respondent No. 1 vide Order dated 21.02.2022 (Annexure P-29) has accorded Technical Sanction for detailed estimate for R&M works approval amounting to Rs. 3,67,73,218/-. The Directorate of Energy (DoE) vide letter dated 26.03.2022 (Annexure P-30) has informed Respondent No. 1 about the letter dated 11.02.2022 whereby Petitioner No. 1 has requested the DoE to issue revised SCOD certificate to enable the Petitioner No. 1 to sign PPA with HPSEBL and the DoE has issued a

certificate regarding SCOD of Chirchind-II, which is 25.11.2025. According to the Petitioners, GIS 33/220/400 kV Sub-station at Lahal has 23 Bays, out of which 9 numbers of Bays are 220 kV, 6 numbers of Bays are 400 kV and only 8 Bays are of 33 kV. It is further submitted that the Petitioners have been allotted 1 Nos. 33 kV Bay i.e. Bay No. 305, at 33/220/400 kV GIS Sub-station at Lahal for evacuation of power in respect of their Chirchind-II and Chirchind-I SHP alongwith six other projects namely Kiunr (5 MW), Ghator Top (4.98 MW) Samwara (2.50 MW), Ghator-I (2.20 MW), Channi (3 MW) and Siunr (1.50 MW) for a total 37.08 MW capacity. The copy of names of total number of 23 Bays at Lahal Sub-station as well as names of 8 SHPs who have been allotted Bay No.305 at the Sub-station Lahal with the Petitioners is annexed as Annexure P-31 (Colly).

9. It is averred that the Petitioners have worked out/calculated Supervision/O&M charges, on annual basis for the Interconnection Facilities under 8 different Scenarios (Annexure P-32). However, the Respondent No. 1 has raised a demand of the Supervisions/O&M charges from the Petitioners amounting to Rs. 36,77,321/- for the year by considering 10 number Bays, irrespective of voltage level, without considering Proportionate usage of Bay No. 305 as shown at Serial No. 1 of the table (Annexure P-32). According to Petitioners, the Respondent No. 1 is entitled to raise demand of Supervision/O&M charges for the Interconnection Facilities as shown at Serial No. 10 (Sr. No. 10 is wrongly mentioned as it is Sr. No. 8 in the Calculation list

(table) (Annexure P-32) of the calculation sheet for an amount of Rs. 22,796/- only from the Petitioner No. 2 as annual, as the said charges are not applicable on the Petitioner No. 1 being prior to Commissioning to its Project.

10. According to the Petitioner, the Respondent No. 1 vide letter dated 18.05.2022 (Annexure P-33) requested the Petitioner No. 1 to deposit the total payable amount of Rs. 7,00,441.00/- for the period w.e.f 21.02.2022 to 30.04.2022 against O&M of Interconnection Facilities i.e. one No. 33 kV Bay at 33/220/400 kV GIS Sub-station of Lahal for evacuation of the power of the projects. The Petitioner vide letter dated 19.05.2022 (Annexure P-34) requested the Respondent No. 1 to provide information as to how the cost of Supervision charges of one No. 33 kV Bay at Lahal amounting to Rs. 3,06,443/- was calculated. On reply, it was mentioned that the amount mentioned in the invoice is as per sanctioned estimate for Financial Year 2021-22 but Annexure-A of letter lacks detail (Annexure-A is not annexed with the letter). Meanwhile, the Respondent No. 1 vide letter dated 26.05.2022 (Annexure P-35) clarified that the Commission vide Order dated 23.11.2010 in Petition No. 81 of 2010 titled as M/s Aastha Projects (India) Ltd. Vs HPSEBL & another had laid down guidelines in respect of calculation of O&M charges and calculations have been made accordingly and that the Supervision charges are in line with Clause no. 2.2 of Supervision Agreement dated 09.11.2021 and the invoices raised are provisional subject to adjustment upon sanctioning of O&M estimate for 2022-23. The Petitioner No. 1 vide letter dated 30.05.2022 (Annexure P-36) asked the

Respondent No. 1 regarding deposit of Supervision charges against Interconnection Facilities i.e. one No. 33 kV Bay at 33/220/400 kV GIS Sub-station at Lahal for the evacuation of power from Chirchind-II and Chirchind-I and that Respondent No. 1 has claimed 38% of the Bay cost amounting to Rs. 36,77,316/- as annual O&M charges which cannot be more than 3 to 5% per annum of the Bay cost and thus, the demand being more than 10 times, is irrational and unjustified to treat 33 kV Bay equivalent to 220 kV or 400 kV Bay for calculation of O&M charges. Further mentioned that the calculation of total of 10 number of Bays is not correct as the Lahal Sub-station has 23 Bays, out of which 9 number of Bays are 220 kV, 6 number of Bays are of 400 kV and only 8 out of 23 number Bays are of 33 kV. Thus, the Petitioner No. 1 has requested the Respondent No. 2 to convey its consent for accepting the proposal of the Petitioner No. 1 of depositing 3% of the Bay costs of Rs. 96,65,111/- as stipulated in Para-14 of the letter so that the it can immediately pay the same.

11. It is averred that the Petitioner No. 2 has constructed a Joint Transmission line and also built common pooling station at the instructions of Respondent No. 2 for M/s Snowdew Hydro-electric Power Projects Private Limited in respect of its Kiunr (5 MW) SHP at Lahal Sub-station but the said Project has not paid its share to the Petitioner No. 2. A letter dated 03.06.2022 (Annexure P-37) has also been written by Petitioner No. 2 to said Company. It is averred that the Petitioner No. 2 also made a detailed representation dated 16.07.2022 and 01.08.2022 (Annexure P-38 Colly) to Respondent No. 2 about the completion of

Joint Transmission line in February 2022 and its inability to complete Chirchind-I common pooling station for want of funds and that Kiunr 5 MW has been flouting the guidelines and enjoying interim evacuation as mentioned above, without paying the share of construction cost and has no intention to evacuate its power to the allotted permanent evacuation point at 33/220/400 kV Lahal Sub-station. In response, a letter dated 01.07.2022 (Annexure P-39) was written by the Petitioner No. 1 informing that the Order dated 23.11.2010 in Petition 81 of 2010 has laid down guidelines for working out cost of O&M of Interconnection Facilities for SHPs (upto 25 MW) and in the said guidelines, there is no reference whether the said guidelines will be applicable only for AIS Sub-station and based on said guidelines, the Respondent No. 1 has been raising O&M/Supervision charges and O&M charges are calculated by apportioning the total O&M cost of the Sub-station among the total number of incoming and outgoing feeders irrespective of voltage level of such feeders as provided under Clause 2.1 of the Agreement dated 09.11.2021 and accordingly, O&M cost has been worked out in respect of Chirchind I and II considering 10 number functional incoming and outgoing feeder/Bays as clarified vide letter dated 26.05.2022.

12. Further Respondent No. 1 vide letter dated 01.08.2022 (Annexure P-42) has intimated the Petitioner No. 1 for depositing outstanding amount of Rs. 16,38,857/- upto July, 2022 with surcharge on late payment which at the end of

May, 2022 was Rs. 10,06,884/-. Therefore, a dispute has arisen between the parties and requires adjudication.

13. It is averred that the Interconnection facility at Lahal Sub-station has been provided by the HPPTCL for all the Projects/SHPs of the area connecting to the Lahal Sub-station through 23 number of Bays but considering only 10 Bays out of 23 Bays for apportioning O&M charges from the SHPs connecting to Sub-station through 10 number of Bays against the Petitioner and some others Projects which have signed the Agreement for supervision of Interconnection facility is not justified and the liability of the Petitioner No. 2 is required to be restricted to the execution in proportion to its share of requirement and usage of total 23 number of Bays irrespective of voltage level of the Bays/feeders. Further, the Petitioner No. 1 cannot be held liable for Bay supervision charges as Chirchind-II 12.90 MW is scheduled to be Commissioned w.e.f. 25.11.2025. Also that there is no basis or rational to fasten the entire cost upon the Petitioners and the action of HPPTCL is illegal, arbitrary, discriminatory and without adopting fair and transparent method as not only such demand has been raised from the Commissioned Project but also from the non Commissioned Projects. Also averred that Aastha guidelines are not applicable to the case in hand and that the O&M cost of the Sub-station cannot be apportioned merely on the basis of number of Bays as the capital cost of 220 kV and 400 kV Bays are substantially different. Also that the Respondent No. 1 has violated HPERC (Grant of Connectively, Long-term Access and Medium Term Open Access in

Inter-state transmission and Related Matters) Regulations, 2010 and CEA (Technical Standards for connectively to the Grid) Regulations, 2007 and CEA (Technical Standards for Construction of Electrical Plants Standards and Electrical Lines) Regulations, CEA (Grid Standards), Regulations, Indian Electricity, Grid Code (IEGC) and other statutory provisions.

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

15. HPPTCL/Respondent No. 1 in its reply has averred that no cause of action to maintain the Petition has accrued to the Petitioners which has been filed to avoid the liability and that pursuant to Agreement Annexure P-26, the Petitioner No. 1 has agreed to pay monthly supervision charges for Interconnection Facilities at 33/220/400 kV at Lahal Sub-station. Further that Petitioner No. 1 had agreed to be solely responsible for the payment of entire monthly supervision charges as per invoice raised by the HPPTCL and vide connection agreements, wherein the HPPTCL has agreed to receive the electric Energy Generated from Chirchind-II and Chirchind-I HEP. Not only this, vide Connection Agreement dated 01.03.2021 Annexure P-20 and 21.06.2021 Annexure P-19, the Petitioners were granted connectivity to 33 kV line to the STU system and communication system (Via applicant's site- related Connection equipments) at the connection point i.e. 33/220/400 kV Sub-station using the (Wave length) transmission and the communication system of the STU or Intra-state Transmission licensee other than the STU to transmit Energy

from Chirchind-I (5.00 MW) and Chirchind-II (12.90 MW) as well as real time data to and or from the facility through the STUs transmission and communication system and had agreed to pay the O&M charges to the STU for the Bay equipment. Further the Petitioners inter-se have also executed agreement dated 11.06.2021 Annexure P-21 agreeing upon to share the proportionate cost of maintenance of transmission system annually thus, the Petitioners are under obligation to pay the due supervision charges through Petitioner No. 1 in line with supervision agreement dated 09.11.2021 (Annexure P-26). Also averred that the provisions of HPERC (General Condition of transmission licensee Regulation, 2004) and Section 39 and 40 of the Electricity Act 2003 are also relevant to decide the controversy in the matter. Also averred that Aastha Guidelines (order dated 23.11.2010 in Petition No. 81 of 2010) provide for apportionment of O&M charges wherein the total O&M charges are to be apportioned among the total number of incoming/outgoing Bays irrespective of voltage level. Further at 33/220/400 kV GIS Sub-station Lahal, there are 10 numbers incoming/outgoing Bays and the HPPTCL has apportioned total O&M charges amongst the 10 Bays which Comes out to Rs. 3,06,443/- per month which are charged/raised upon the Petitioner No. 1 as per Agreement dated 09.11.2021 (Annexure P-26) and that the charges are based on sanctioned estimate framed for the year 2021-22 in line with the Aastha Guidelines. Also averred that the Petition is not maintainable and the HPPTCL is entitled for the charges as mentioned above. Further that the Petition has not been filed by a

duly authorized person and resolutions (Annexure P-1 and P-2) authorise the Petitioner to file the Petitions only before the Hon'ble High Court with respect to the order of this Commission and not otherwise. Hence, there is no authority.

16. It is denied that exorbitant demand has been made or that the demand is illegal, unilateral, arbitrary, discriminatory and without adopting fair and transparent procedure. Further that the Petitioners were duly apprised of the charges alongwith the basis to arrive at such charges regularly but the Petitioners have chosen to withhold the due payment despite availing the transmission facilities. It is averred that the 33/220/400 kV GIS Sub-station at Lahal though consist of 23 Bays, however, incoming and outgoing Bays are only 10 in numbers, which are being apportioned in the ratio of numbers of feeders in terms of the Aastha Guidelines laid down by the Commission. Further averred that the one (1) number of 33 kV Bay i.e. 305 number Bay at the Lahal Sub-station has been allotted to the Petitioners in terms of respective Connection Agreements executed by the Petitioners with the HPPTCL. It has been denied that Bay number 305 has been allotted to six (6) number more Projects for their respective projects and that only a proposal/option stands admitted in this regard by HPPTCL that in case the said six Projects stand commissioned in the vicinity of Sub-station, in that event, the same can be adjusted/accommodated in the Bay already allotted to the Petitioners in Joint/common mode to make use of the Transmission system to its maximum and that no Connection Agreement have been signed with the said 6 Projects. Further that the proposed supervision

charges as calculated by the Petitioners under different Scenarios are without any basis and in violation to Aastha Guidelines and as per the Supervision Agreement. In nutshell, the case has been denied.

17. The Respondent No. 2 in its reply has raised preliminary objections that the Petition is neither maintainable nor competent and that no legally enforceable cause of action has accrued to the Petitioners and that the Petitioners are estopped from filing the Petition on account of their acts, conduct and acquiescence and that the Petitioners have no locus standi to file and maintain the Petition.

18. It is averred that the Petitioner No. 2 has been accommodated by the HPSEBL by providing interim arrangement qua the evacuation of power from generating station by LILO on existing 33 kV Chamba-Gharola line of HPSEBL till Commissioning of 400/220/33 kV Sub-station at Lahal of HPPTCL after which the interim arrangement will be withdrawn. Further that during the interim evacuation arrangement, the Petitioner No. 2 was not entitled for deemed generation benefit and that Petitioner No. 2 was granted permanent connectivity at 33/220 kV Sub-station at Lahal. Further that the evacuation of the power from Chirchind-I 5MW and Kiunr was on interim basis upto the safe system limits/parameters including voltage and in view of the interim evacuation arrangement of Chirchind-I, the Petitioner No. 2 was bound to back down the generation.

19. The contents of Para 8.32 pertaining to the instructions of the replying Respondent for construction and Commissioning of 33 kV line from Chirchind Pooling Station to 400/200/33 kV Sub-station of HPPTCL at Lahal are denied. Further that the Joint evacuation mode was approved by the department of Energy through different Techno Economic Clearances including revised Techno Economic Clearance dated 21.05.2014, Clause 1(XV) whereof reads as under:-

“ XV. For evacuation of power the IPP shall interface this project in joint mode with Ghator Top SHP (4.98 MW), Channi SHP (3 MW) Samwara SHP (2.50 MW) and Ghator-I SHP (1.50 MW) upto switchyard of Chirchind SHP and further in joint mode with Kinur SHP (1.50 MW) and Chierchind-II SHP (9.90 MW) up to 33/220 kV Sub-station of HPPTCL at Lahal. The expenditure on account of this joint evacuation arrangement shall be shared with other IPPs on proportionate basis.”

20. Thus, the Joint evacuation line was constructed and commissioned at the instance of HPPSEBL. It is denied that the demand of charges made by HPPTCL is exorbitant. No reply has been filed by the Respondent No. 3 and it is the stand of Respondent No. 3 that dispute is between Petitioners and Respondents No. 1 and 2, the Respondent No. 3 has no comments.

21. In separate rejoinders, the contents of the replies of Respondent No. 1 and 2 have been denied and those of the Petition are reiterated.

22. We have heard Sh. L.S Mehta, Ld. Counsel for the Petitioner, Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1, Ms. Vandana Thakur, Adv. Vice Sh. Surinder Saklani, Adv. for Respondent No. 2 and Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 3.

23. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted that the interconnection facility at Lahal Sub-station has been created by the Respondent No. 1 for all the IPPs/ SHPs of the area connecting through 23 number Bays but out of said 23 Bays, only 10 number of Bays have been considered arbitrarily for apportioning of O&M Charges on the basis of the agreements signed by the Petitioners and some other IPPs for supervision of interconnection facility by ignoring the vital fact that the project of the Petitioner No. 1 i.e. Chirchind-II HEP (12.90 MW) is scheduled to be commissioned on 25.11.2025. As per him, the action of the Respondent No. 1 apportioning the Supervision/ O&M charges of only 10 number Bays by excluding 13 number of Bays irrespective of voltage level of the Bays/ feeder is not legally tenable and justified. He has also contended that the Respondent No. 1 has claimed Rs. 26,37,316/- as annual O&M charges from the Petitioners i.e. about 38% of the Bay cost, which is approximately 10 times more than what the Petitioners are supposed to pay which is exorbitantly high and beyond any reasonable estimation, which can't be more than 3 to 5% per annum of the Bay cost.

24. He has also contended that the Respondent No. 1 has also treated 33 kV Bay equivalent to 220 kV or 400 kV Bay while calculating the O&M costs as 9

number of Bays are of 220 kV and 6 number of Bays are of 400 kV and only 8 number of Bays out of 23 number of Bays are of 33 kV, thus the demand is highly exorbitant and unreasonable. Also contended that the demand has not been worked out in proportion to the usage out of total Bays based on voltage level of Bays/ feeder, which lacks transparent methodology and that as per Supervision Agreement dated 09.11.2021, the Petitioners are not liable to bear Supervision/ O&M charges on behalf of 6 other projects to which Bay No. 305 has also been allotted. Further submitted that the agreement dated 09.11.2021 is silent that only operational Bays will be considered for calculation of supervision/ O&M charges which also renders the demand unreasonable and inequitable. As per him, the Aastha guidelines are not applicable to the case. Further submitted that the capital cost of 220 kV and 400 kV Bay is 10 and 20 times more respectively than the capital cost of 33kV Bay, thus treating all Bays equivalent is illegal, which would amount to shield Large Hydro Projects at the cost of Small Hydro Projects. He has also submitted that the liability of the Projects is required to be restricted in proportion of their usage of the system based upon the voltage level of Bays/ feeders and the demand of Supervision charges without apportionment is illegal, arbitrary, discriminatory and not sustainable in the eyes of law. He has relied upon the law laid down in Oil and Natural Gas Commission V/s Gujrat Electricity Regulatory Commission and others 2011 ELR (APTEL) 969, NHPC Ltd. V/s Power Grid Corporation of India Ltd. and others Appeal No. 281 of 2016 decided on 16.07.2018 and

Jamshed Hormusji Wadia V/s Board of Trustees, Port of Mumbai and another (2004) 3 Supreme Court Cases 214 and Mahabir Auto Stores and others V/s Indian Oil Corporation and others (1990) 3 SCC 752.

25. Sh. Vikas Chauhan Ld. Counsel appearing for Respondent No. 1, on the other hand has submitted that both the Petitioners by entering into a connection agreement with Respondent No. 1 have agreed to pay cost of interconnection facilities and monthly supervision charges for such facilities and O&M charges for the Bays utilized by the them on proportionate basis mutually in proportion to their project capacity. Therefore, the Petitioners are under an obligation to pay the supervision charges in accordance with supervision agreement dated 09.11.2021. As per him, the Respondent No. 1 has not discriminated in any manner in providing Open Access but the charges have to be borne by the Petitioners as agreed. Sh. Chauhan has further submitted that the Aastha Guidelines issued by the Commission in Petition No. 81 of 2010, provide for apportionment of the O&M charges among total No. of incoming and outgoing Bays irrespective of voltage levels and accordingly, the O&M charges have been apportioned amongst the 10 Bays which comes to Rs. 3,06,443/- per month which is being recovered from the Petitioner No. 1 as per agreement dated 09.11.2021, which is neither arbitrary nor discriminating nor illegal.

26. The Ld. Counsel for the Respondent No. 2 has also submitted that the Petitioners are liable to pay Supervision/O&M charges as per the agreements.

27. We have carefully considered the submissions of the Ld. Counsel of the Petitioners and Respondents including the written submissions of the Ld. Counsel of the Petitioners and have perused the record carefully. The following points arise for determination in the present Petition:

Point No. 1:

Whether the demand of Supervision/ O&M charges for an amount of Rs. 16,38,857/- as made by Respondent No. 1 is illegal, arbitrary, discriminatory and without any basis?

Point No. 2:

Whether the Petitioner No. 1 is not liable to pay the supervision/ O&M charges for want of commissioning of Chirchind-II HEP (12.90 MW)?

Point No. 3 : (Final Order)

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

Point No. 1: Yes.

Point No. 2 : No.

Point No. 3 : (Final Order) The Petition partly allowed per operative part of the Order.

Reasons for findings

Points No. 1 and 2

29. Both of these points being interlinked and interconnected are being taken up together for adjudication.

30. The simple case of the Petitioners is that the Respondent No. 1 has created interconnection facilities at Lahal Sub-station for all the Projects of the area connecting to the said Sub-station by creating 23 number of Bays but the Respondent No. 1 has considered only 10 number of Bays for apportioning Supervision/O&M charges from the Petitioners connecting to the Sub-station on the basis of agreement for supervision of interconnection facilities and that the supervision/O&M charges are required to be apportioned amongst all 23 number of Bays. It is also the case of the Petitioner that the liability of the Petitioner No. 1 will arise only on commissioning of the project i.e. Chirchind-II as SCOD of the said project is 25.11.2025 and thus, the liability of the Petitioner No. 2 qua said charges is required to be restricted to the extent in proportion to its share of requirement and usage out of total 23 number of Bays. It is also the case of the Petitioners that all the Bays cannot be treated equal for calculation of O&M charges as the cost of 33 kV Bays, 220 kV Bays and 400 kV Bays are different and both the Petitioners are to be connected only through 33 kV Bays which are only 8 in number. It is further their case that Bay number 305 as allotted to the Petitioners has also been allotted to Six other Projects but the Supervision Agreement dated 09.11.2021 (Annexure P-26) between the Petitioners and Respondent No. 1 does not provide that the Petitioners shall be responsible to bear the supervision/O&M charges on behalf of 6 No. other Projects, to which said Bay number 305 has also been allotted. As such, the demand as raised is arbitrary, unreasonable, discriminatory and illegal.

31. At the outset, it may be stated that the Petitioners have placed on record the entire correspondence exchanged between the Petitioners and the Respondent No. 1 and 2 but as observed above, the entire controversy revolves around the payment of supervision/O&M charges at 33/220/400 kV GIS Substation at Lahal and whether or not the demand of such charges made by the Respondent No. 1 is as per the Regulations and mutually agreed terms and conditions.

32. Sh. Vikas Chauhan, Ld. Counsel has submitted that there is no proper authorization for filing the Petition as authorizations Annexure P-1 and Annexure P-2 are for filing Petitions before Hon'ble High Court and, therefore, the Petition is not maintainable. The said submissions of the Ld. Counsel are without substance as orders of the Commission are not appealable before the Hon'ble High Court. Therefore, it can be safely construed that the said authorizations were issued only for the purpose of present controversy.

33. In order to adjudicate the controversy, it is relevant to refer to the Connection Agreements dated 21.06.2021 and 01.03.2021 executed by the Petitioners with Respondent No. 1, Agreement dated 11.06.2021 executed inter se Petitioner No. 1 and Petitioner No. 2 and copy of Agreement dated 09.11.2021 regarding O&M/ Supervision charges of Interconnection facilities executed by the Petitioner No. 1 with the Respondent No. 1.

34. As per Clause 2.5 of the Connection Agreements dated 21.06.2021 and 01.03.2021 (Annexure P-19 and P-20), the Petitioners have agreed to pay O&M

charges to the STU i.e. Respondent No. 1 on mutually agreed terms for the Bay equipment of the applicant (Petitioners) or Intra-state Transmission Licensee being operated and maintained by the STU/HPPTCL in their Sub-station. Clause 2.5 of said Agreement reads as under:-

“The applicant or Intra-state transmission licensee shall pay O&M charges to the STU on mutually agreed terms for the Bay equipment of applicant or Intra-state transmission licensee being operated & maintained by the STU in their sub-station. These O&M charges will be governed time to time as per the mutually agreed terms.”

35. After signing the aforesaid connection agreements, the Petitioners inter-se signed agreement on 11.06.2021 (Annexure P-21) whereby both have mutually agreed to bear the cost of operation and maintenance of interconnection facilities at the HPSEBL grid injecting power therein in proportion to the respective installed capacities of the Projects and all such charges would be borne by them in proportion to their respective installed capacities.

36. On the strength of the said agreement dated 11.06.2021 and aforesaid connection agreements, the Petitioner No. 1 for self and on behalf of Petitioner No. 2 executed the aforesaid agreement for supervision of the interconnection facilities on 09.11.2021 with Respondent No. 1 wherein a reference was also made to Clause 2.5 of the Connection Agreements dated 01.03.2021 and 21.06.2021. As per this Agreement, all charges were agreed to be borne by the Petitioners for the Bay equipment of the company being operated and

maintained by the State Transmission Utility/HPPTCL which will be based on annual O&M sanctioned estimate framed by the Transmission Corporation and the Petitioners mutually agreed to pay O&M charges for the Bays utilized by them. The Petitioners have not disputed the agreements. Therefore, they are bound to comply and obey the terms and conditions of the Connection Agreements dated 21.06.2021, 01.03.2021 Annexure P-19 and Annexure P-20 and Supervision Agreement dated 09.11.2021 (Annexure P-26).

37. The Petitioners are aggrieved that the Respondent No. 1 has treated all the Bays equally i.e. 33 kV, 220 kV and 400 kV, for the calculation of O&M charges of Bay equipment but the Petitioners are connected only through 33 kV Bays which are only 8 in number whereas the interconnection facility has been created for the total 23 numbers of Bays of different level but only 10 number of Bays, out of said 23 number of Bays have been considered for apportioning of O&M charges of Bay equipment from the Petitioners on the strength of the aforesaid agreements in exclusion of other Projects which have been allotted remaining 13 Bays, which is illegal and discriminatory. Not only this, Bay number 305, which has also been allotted to six other Projects developers but said six other Project developers have been excluded and an exorbitant demand has been made against the Petitioners for an amount of Rs. 16,38,857/- vide Annexure-P-42.

38. In so far as apportionment of the O&M charges for use of Bay equipment is concerned, the stand of Respondent No. 1 is that at 33/220/400 kV GIS Sub-

station Lahal, there are 10 number incoming/outgoing Bays and the Respondent HPPTCL has apportioned O&M charges amongst the said 10 number Bays, as per the agreement for supervision of interconnection facilities. The Respondent No. 1 has also categorically mentioned in the reply that the Petitioner has been apprised of the due charges alongwith the basis to arrive at such charges but the payment has been withheld without any reason despite using these facilities.

39. Regarding the total numbers of Bays, it is evident from the reply of Respondent No. 1 that though 33/220/400 kV GIS Sub-station at Lahal consist of 23 number Bays but incoming/outgoing Bays are only 10 in number at present and as far as one number Bay of 33 kV i.e. Bay number 305 is concerned, the same has been allotted only to the Petitioners, as per the connection agreements executed by them. It is also evident from the reply of the Respondent No. 1 that though, it is proposed to allot said Bay (Bay No. 305) to six other IPPs for their respective Projects but said Projects are yet to be commissioned and in case said Projects are commissioned, the same can be adjusted/accommodated in the aforesaid Bay to make use of the transmission system to its maximum. It is also evident from the reply of Respondent No. 1 that so far, no connection agreements have been signed with such six Projects. Therefore, it is apparent that for the present, there is only a proposal to connect said six Projects to Bay number 305 and if the proposal is materialized, the transmission capacity system will be put to its optimum use and in that event, the charges shall be apportioned, which would not only be in the interest of the

Petitioners but necessary to make optimum use of the facility. Hence, there is no substance in the stand of the Petitioner regarding said six Projects as alleged. Similarly, there is no substance in the stand of the Petitioners that the charges are required to be apportioned amongst 23 Bays as at this stage only the Petitioners have signed the connection agreements and said remaining 13 Projects are not yet commissioned. Hence, there is no question of apportionment of charges amongst 23 number of Bays as Projected.

40. Once the Petitioners have signed the connection agreements and agreements for payment of O&M/Supervision charges, they are bound to pay such charges to the extent of use of the Bay equipment for using the facility. Undisputedly, the SCOD of Chirchind-II of Petitioner No. 1 is 25.11.2025. The Petitioner No. 1 for self and on behalf of the Petitioner No. 2 has signed the Agreement for paying Supervision and O&M charges. The facility has been created by the Respondent No. 1 for the use of Petitioners No. 1 and 2. Therefore, merely because SCOD of Chirchind-II is 25.11.2025, the claim of the Petitioner No. 1 that its liability would arise only after 25.11.2025 is without any substance and both are liable to pay the same to the extent of use of facility proportionately.

41. As regards the law relied upon by the Ld. Counsel for the Petitioner and laid down by Hon'ble APTEL in the Oil and Natural Gas Commission V/s Gujrat Electricity Regulatory Commission and others 2011 ELR (APTEL) 969, NHPC Ltd. V/s Power Grid Corporation of India Ltd. and others, Appeal No.

281 of 2016 decided on 16.07.2018 and Jamshed Hormusji Wadia V/s Board of Trustees, Port of Mumbai and another (2004) 3 Supreme Court Cases 214 and Mahabir Auto Stores and others V/s Indian Oil Corporation and others (1990) 3 SCC 752 is not applicable to the facts and circumstances of the case.

42. Though, the HPPTCL has come out with a stand that it has apportioned the cost amongst 10 number of Bays but the reply of the HPPTCL suppresses more and discloses less. It is not clear from the reply as to how many Bays out of the aforesaid 10 number Bays are functional and how many bays are spare. Certainly, the O&M charges of the Bay equipment can be claimed in respect of Bays which are operational and commenced. Similarly, it is also not clear from the reply of HPPTCL that out of aforesaid 10 number of Bays, all the Bays considered for payment of Bay charges are not meant for 400 kV System which has so far not been operational. In the absence of such specific reply, the demand as raised may not be reasonable. In the fairness of things, the spare Bays, transformer Bays, CVT Bays and the Bays associated with system which is yet to be commissioned have to be excluded while apportioning the cost and it was expected from the HPPTCL to clearly specify the detail of each and every aspect in their reply so as to justify that the demand, as raised, is as per the agreements discussed above and on the basis of mutually agreed terms and conditions. Since, such detail is lacking, this Commission has no reason to believe that the demand as raised by the Respondent No. 1 is as per the agreements as discussed above and on the mutually agreed terms and conditions.

Hence, the Petitioners have established that the demand raised by the Respondent No. 1 vide letter dated 18.05.2022, 01.07.2022, 02.07.2022 and 01.08.2022 is illegal, unreasonable and arbitrary and not as per the agreed terms and conditions. However, the Petitioners have not been also to establish that Petitioner No. 1 is not liable to pay the Supervision/O&M charges till the commissioning of Chirchind-II 12.90 MW which is 25.11.2025. Point No. 1 is accordingly answered in favour of the Petitioners. Point No.2 on the other hand is answered against the Petitioners.

Final Order

43. In view of the above discussion and findings, the Petition succeeds in part and accordingly partly allowed. The demand as raised by demand notices dated 18.05.2022, 01.07.2022, 02.07.2022 and 01.08.2022 is set aside. The Respondent No. 1 is directed to revisit the calculation of Supervision and O&M charges, as per the agreements and mutually agreed terms and conditions. While recalculating the charges, the HPPTCL shall consider only the O&M charges for the system which has actually been commissioned and shall not include the cost relating to 400 kV system, if the same has not so far been commissioned and that the O&M charges should not be calculated for the spare Bays, CVT Bays and the Bays associated with system yet to be commissioned need to be capitalized and added/recovered as part of the capital cost. The overhead charges such as costs of staff quarters etc. should also be computed on pro-rata basis only for the system which have already been commissioned. The Commission

directs the Petitioner and the Respondent No. 1 to reconcile the amount on the above lines within a period of one month from today. However, if some disputes still persists thereafter, the parties shall be at liberty to approach the Commission for redressal of the same. The claim of the Petitioners that the liability of Petitioner No. 1 i.e. Chirchind-II SHP will arise only after SCOD i.e. 25.11.2025 on the other hand is dismissed. The CMAs if any are also ordered to be disposed off. The file after needful be consigned to the records.

Announced
19.12.2022

-Sd-
(Shashi Kant Joshi)
Member

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

-Sd-
(Devendra Kumar Sharma)
Chairman