

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

**Petition No:** 73 of 2023  
**Date of Institution:** 26.07.2023  
**Arguments Heard on:** 22.03.2024  
**Decided on:** 22.05.2024

**CORAM**

Devendra Kumar Sharma

**CHAIRMAN**

Yashwant Singh Chogal

**MEMBER (Law)**

Shashi Kant Joshi

**MEMBER**

**In the matter of:-**

The Himachal Pradesh Power  
Transmission Corporation Limited (HPPTCL)  
Himfed Bhawan, Below Old MLA's Quarters,  
Tutikandi (Panjiri), Shimla, HP-171005.

.....**Petitioner**

Versus

The Himachal Pradesh State  
Electricity Board Limited (HPSEBL)  
Vidyut Bhawan, Shimla, HP-171004.

.....**Respondent**

**Petition under Section 86 (1) (f) of the Electricity Act, 2003 seeking adjudication of dispute Between Himachal Pradesh Power Transmission Corporation Ltd. and Himachal Pradesh State Electricity Board Limited regarding the unpaid ARR bills for the period from COD onwards in respect of the use of 33/132 kV, GIS Sub-station at Pandoh along with LILO of one circuit of 132 kV D/C Kangoo-Bajaura Transmission Line (Asset-1) & additional 33/132 kV, 25/31.5 MVA transformer with associated GIS at 33/132 kV at Pandoh (Asset-2).**

**Present:**

Sh. Prakhar Kulshreshtha, Tariff Consultant alongwith Sh. Virender Kumar, DGM for the Petitioner.

Sh. Mandeep Singh, Chief Engineer (System Operation) for the Respondent.

## **ORDER**

This Petition has been filed by the Himachal Pradesh Power Transmission Corporation Limited (the Petitioner/ HPPTCL for short) under Section 86 (1)(f) of the Electricity Act, 2003 read with Regulation 55 of Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, as amended from time to time, in respect of unpaid transmission charges bills for the period from COD to April, 2023 for the use of 33/132 kV, GIS Sub-Station at Pandoh along with LILO of one circuit of 132 kV D/C Kangoo-Bajaura Transmission line (Asset-1) & Additional 33/132 kV, 31.5 MVA Transformer with associated GIS at 33/132 kV at Pandoh (Asset-2) (jointly referred to as Transmission System at Pandoh).

### **FACTS OF CASE**

2. The Petitioner owns and operates 33/132 kV GIS Sub-station at Pandoh along with LILO of one circuit of 132 kV Double Circuit Kangoo-Bajaura transmission line and additional 33/132kV, 31.5 MVA transformer with associated GIS at 33/132 kV at Pandoh (Transmission System at Pandoh for short). The Detailed Project Reports (DPRs for short) of 33/132kV Sub-station at Pandoh as well as installation of additional 33/132kV Transformer at Pandoh were prepared considering 54 MW of generation capacity as under: -

<b>Name of Generating Station</b>	<b>Installed Capacity (MW)</b>
Bakhali	4.50
Uhl Khad	14.00
Surah	1.50
Swad	5.00
Pandoh Stage-II	3.00
Patikari Stage-II	16.00
Gohar-I	2.50
Gohar-II	3.00
Chachiot	3.50
Tuna Dari	1.00
<b>TOTAL</b>	<b>54.00</b>

3. Out of the above envisaged Projects, only one Project i.e. Patikari HEP (16MW) has come up and achieved COD in February, 2008. Though the other Projects have not come up, yet the evacuation from these Projects had been planned through 132/33kV Sub-station at Pandoh, partially through GEC-I Scheme. The Patikari HEP (16 MW) has been interconnected at the Transmission System at Pandoh and has long term Power Purchase Agreement (PPA for short) with the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ the Respondent for short). Therefore, the power generated from Patikri HEP belongs to the HPSEBL being procured by the Respondent as per PPA executed between the HPSEBL & Patikri HEP and, thus, the HPSEBL is the sole beneficiary of the aforesaid Transmission System at Pandoh.

4. As per the Petitioner, a Petition (Petition No. 30 of 2022) for the approval of Capital Cost and determination of tariff for the 4th Control Period from COD to FY 2023-24 in respect of the transmission system at Pandoh i.e. 33/132 kV, GIS Sub-Station at Pandoh along with LILO of one circuit of 132 kV D/C Kangoo-Bajaura Transmission line (Asset-1) and Additional 33/132 kV, 25/31.5 MVA Transformer with associated GIS at 33/132 kV at Pandoh (Asset-2) was filed on 04.09.2021 before the Commission and the Commission vide Order dated 28.09.2022 allowed said Petition approving the Capital Cost as on COD and also determined Annual Transmission Charges for the Control Period with a direction to the Petitioner to identify all the current and future beneficiaries of the system and execute TSA and recover the charges from the identified beneficiaries in accordance with Regulation 33 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011 (HPERC Transmission Tariff Regulations, 2011 for short), as amended from time to time.

5. It is averred that a Transmission Service Agreement (TSA for short) has been signed by the HPSEBL with the HPPTCL on 10.02.2012 and that in accordance with Clause 5.2 of the TSA dated 10.02.2012, a Supplementary Transmission Service Agreement (STSA) was also signed by the HPPTCL with the HPSEBL on

14.07.2022 (Annexure-1), much prior to the issuance of Order dated 28.09.2022 for the use of newly commissioned transmission system at Pandoh and intimation thereof was also sent to the Commission vide letters dated 15.07.2022 and 13.10.2022, which appear to have been inadvertently overlooked while passing order dated 28.09.2022.

6. It is averred that the HPSEBL has been utilizing the Transmission System at Pandoh since the COD, as such, the Petitioner raised first bill on 18.11.2022 for an amount of Rs. 27.73 Crore in respect of transmission charges pertaining to the period from COD to October, 2022. However, the HPSEBL vide letter dated 30.11.2022 returned the bill and asked the Petitioner to identify all current and future beneficiaries of the Transmission System at Pandoh quoting Paras 4.8.7 and 4.8.9 of the Order dated 28.09.2022 requesting the Petitioner to enter into long-term/ medium-term agreements with the respective beneficiaries as per the Order dated 28.09.2022 passed by the Commission in approving the ARR and to raise the bills accordingly.

7. The Petitioner, vide letter dated 30.12.2022 (Annexure-7), conveyed the HPSEBL that the Scheme has been planned by the HPSEBL, being part of the Master Transmission Plan originally prepared by the HPSEBL and that the bill pertains to the past period i.e., from COD to October 2022, wherein, the only beneficiary of the

Transmission system at Pandoh is the HPSEBL for which the TSA and STSA were already executed.

8. It is averred that in order to resolve the issue, a meeting was convened on 17.01.2023 but in the meeting the Respondent reiterated the directions given by the Commission in Paras 4.8.7 and 4.8.8 of the Tariff Order dated 28.09.2022 and in view of said directions, the HPSEBL asked the HPPTCL to revise the bill on pro-rata basis considering the HPSEBL's contracted capacity as 16 MW only against the total capacity of the system as 54 MW. In response, the HPPTCL clarified that as per the DPR, the system was planned considering upcoming capacity of approximately 54 MW yet the transformation capacity was 29.925 MW (25/31.5MVA considering N-1 compliant system at 0.95 power factor) and it was also clarified that currently, the only identified beneficiary of the system is the HPSEBL and the TSA has also been executed between the HPPTCL and the HPSEBL in respect of the same. It was further clarified that power injection at the transmission system at Pandoh is 21MW (as per data recorded at Sub-station upto November 2022) which is around 70% of the capacity of N-1 compliant) which may be due to the interconnection of some IPPs with the HPSEBL system other than the Patikari HEP(16MW) as 33kV Sub-station at Pandoh is

interconnected with 33kV Sub-station at Thalout, which has substantial injection from small HEPs.

9. As per the Petitioner, it has been raising monthly transmission charges bills along with arrears of the previous period as per the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, against which as on date, no payment has been made by the HPSEBL causing financial hardship to the HPPTCL. The summary of invoices raised by the HPPTCL for monthly transmission charges bills/ invoices has been given below:

Table 1: Invoices raised to the HPSEBL up to June, 2023 ( in Rs. Crores)

Month	Transmission Charges	Arrear	Surcharge	Payments	Rebate	Total
COD to Oct, 2022	0.767	26.9589	0	0	0	27.7258
Nov & Dec, 2022	1.5093	27.7258	0.1502	0	0	29.3852
Jan, 2023	0.767	29.235	0.5083	0	0	30.5103
Feb, 2023	0.6928	30.002	0.8456	0	0	31.5404
Mar, 2023	0.767	30.6948	1.2312	0	0	32.693
April, 2023	0.725	31.4618	1.6140	0	0	33.8010
May 2023	0.747	32.1851	2.0172	0	0	34.9477
June 2023	0.723	32.9324	2.4147	0	0	36.0703

*\*All values are in Rs. Crore and up to four decimal places*

10. As per the Petitioner, the HPSEBL has already claimed the transmission charges of Rs 39.67 Crore upto FY 2022-23 and transmission charges of Rs 8.65 Crore for FY 2023-24 for the said assets in its ARRs before the Commission and the Commission has allowed the transmission charges of Rs. 8.70 Crore for FY 2022-23

and Rs 8.65 Crore for FY 2023-24 vide Tariff Orders dated 29.03.2022 and 31.03.2023 respectively. It is also averred that though the HPSEBL at the one hand has claimed the charges in its ARR yet on the other hand refused to make the payment of transmission charges to the HPPTCL. It is also averred that the HPSEBL has returned the bills in original to the Petitioner vide letter dated 13.04.2023 stating that as per Paras 4.8.7 and 4.8.9 of Order dated 28.09.2022 and Regulation 33 of the HPERC Transmission Tariff Regulations, 2011, the transmission charges shall be based on the allotted capacity or the contracted capacity only and the HPSEBL should be billed up to its capacity utilization and the HPPTCL needs to revise the bills for the period from COD to May, 2023, accordingly.

11. As per the Petitioner, the rationale provided by HPSEBL for allocation of transmission charges is wrong due to the following reasons:

- i) The System was conceptualised and planned by HPSEBL;
- ii) The System has been installed for 31.5 MVA and not for 54 MW;
- iii) No New System can be planned such that its utilisation is 100% since COD;
- iv) The HPSEBL is utilising the System to the extent of around 70% and, therefore, cannot claim that the system is under utilised and it shall only pay charges for 16 MW; and
- v) The HPSEBL has already been allowed these expenses by the Commission vide Orders dated 29.03.2022 and 31.03.2023.

12. According to the Petitioner, the stand of the HPSEBL is unjustified to deny the legitimate payments of the transmission



charges as raised vide various invoices. In addition, it has also been averred that on account of considerable delay in recovery of transmission charges from COD till date, the HPPTCL may be allowed to recover all pending transmission charges along with carrying costs as per the rate specified in Regulation 10-A of HPERC Transmission Tariff Regulations, 2011, as amended from time to time. Further, considering that the HPSEBL has denied all payments despite utilizing the system, it is also liable to pay Late Payment Surcharge as specified in Regulation 27 of HPERC Transmission Tariff Regulations, 2011, as amended from time to time. Hence, the Petition.

### **REPLY OF THE RESPONDENT**

13. The Petition has been resisted by the HPSEBL by filing the reply raising preliminary submissions, inter-alia, that the HPSEBL has been using only 16 MW capacity out of the total capacity of 54 MW of the Transmission System at Pandoh, but the Petitioner has raised the ARR bills for the total Capacity of the system claiming that the HPSEBL is the only beneficiary of the system. Also that the HPSEBL had returned the bills with a request to raise the revised ARR bills on pro-rata basis considering the total capacity of the system as 54 MW and capacity utilized by the HPSEBL as 16 MW, in line with the directions of the Commission in its Order dated 28.09.2022. It is

claimed that the HPSEBL is a beneficiary to the extent of utilization of these assets and the tariff on account of these transmission assets shall be borne by HPSEBL to the extent of utilization.

14. Further, as per the STSA dated 14.07.2022, for the asset in question i.e. 33/132 kV Pandoh Sub-station, the following has been agreed:

*“HPPTCL has commissioned 33/132 kV substation at Pandoh on dated 24-08-2019 by LILO of 132 kV Larji-Bijni Line and second 33/132 kV transformer at Pandoh substation was energised on dated 08-10-2020 to pool in and evacuate power from SHPs in Pandoh Valley. Presently HPSEBL is using this system for evacuation of power of Patikari HEP (16 MW). This system is ensuring reliable and quality power supply to the consumer of Thunag and Siraj area. The filing of Tariff petition of this asset before the Hon’ble HPERC is in process and upon determination of the tariff, ARR (Aggregate Revenue Requirement) approved for the instant asset will be recovered from the beneficiaries of the asset in line with the Tariff order approved by the Commission.”*

15. It is averred that the directions contained in Paras 4.8.6, 4.8.7 and 4.8.8 of the Commission’s Order dated 28.09.2022 are very relevant, which have been reproduced as under:

*“4.8.6 It can be established from above that the DPR does not clearly specifies the beneficiaries of the system. The project was originally envisaged for power evacuation for multiple small HEPs from whom the recovery of transmission charges was to be done.*

*4.8.7 It is observed that the petitioner has not signed and TSA with beneficiaries and has been claiming that with other beneficiaries starts utilizing the transmission asset, the transmission charges will be shared between beneficiaries. The Petitioner should identify all the current and future beneficiaries rather than considering HPSEBL as the de-facto beneficiary of the system and sign Transmission Services Agreements (TSA) with them.*

*4.8.8. Further, the Commission observes that the petitioner has been unable to sign relevant TSA with the beneficiary of the transmission asset even after its commissioning. This reflects poorly on the internal*

*systems and planning of the Petitioner. The Petitioner is directed to identify all beneficiaries of the transmission asset and enter in TSA with them in a time bound manner and provide an update within six months of issuance of this order.”*

16. As per the Respondent, from the careful analysis of Paras 4.8.6, 4.8.7 and 4.8.8 of the Order dated 28.09.2022, as mentioned above, the contention of the Petitioner that the Respondent is the only beneficiary of the Transmission System at Pandoh is completely wrong and incorrect. Further, the Order of the Commission dated 28.09.2022 has not been assailed by the Petitioner before the Appellate Tribunal qua the finding of the Commission that the HPSEBL shall not be considered as sole beneficiary of the system and being beneficiary up to extent of the utilization of the asset i.e. 16 MW, shifting of the burden entirely upon the respondent/HPSEBL in respect of the entire Transmission System at Pandoh is contrary to the Order of the Commission dated 28.09.2022 which would burden the Consumers of the State of Himachal Pradesh.

17. It is also submitted by way of preliminary submissions that the mandate of the Regulation 33 of the HPERC Transmission Tariff Regulations, 2011 is very much clear that annual transmission service charges 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. The contracted

capacity of the Respondent is only 16 MW, hence, the respondent is liable to pay the annual transmission service charges up to the extent of utilization of 16MW only. Therefore, the invoices/bills raised by the Petitioner qua the total capacity of the system are arbitrary, irrational and against the mandate of the Regulations, as such, the Petition is liable to be dismissed.

18. On merits, the contents of the Petition have been denied by the Respondent reiterating the averments made by way of preliminary submissions. It is averred that the Transmission System at Pandoh was constructed for the purpose of the quantum of the energy to be generated from the Renewable Energy projects in the entire Pandoh valley, which undisputedly was 54MW. However, no projects were commissioned except the Patikari HEP (16MW), which was commissioned in the year 2008. It is denied that the HPSEBL is only beneficiary to the system and that the Petitioner has misconstrued and twisted the facts that the asset was covered under the master transmission plan, originally planned by the Respondent. Further, the Petitioner has incorrectly and baselessly claimed that the Respondent is utilizing the asset to the extent of 21MW whereas from the bare perusal of the documents submitted by the petitioner, it can be made out that the Respondent is utilizing the system to the extent of 16 MW only. It is further averred that in so far as the issue of the transmission

charges demanded by the respondent in its ARR Petition is concerned, though the Commission has approved the current year charges to the tune of Rs 8.65 crore, yet in the Order dated 28.09.2022, the Commission has categorically held that the Respondent cannot be considered as the sole beneficiary of the asset which was built to evacuate 54 MW power of the entire Pandoh Valley and reiterated that the Order dated 28.09.2022 has attained finality qua the issue of the transmission charges, as such, the Petition is not maintainable. It is submitted that the Petitioner is trying to substantiate a case that since the asset was conceptualised and planned by the Respondent/HPSEBL, thus, the HPSEBL is liable to pay the entire charges. Also that the contention of the HPPTCL that the asset has been installed for 31.5 MVA capacity is totally wrong and absurd. It is submitted that there are two transformers of the capacity of 31.5 MVA.

### **REJOINDER**

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

### **SUBMISSIONS OF THE REPRESENTATIVES FOR THE PARTIES**

20. Sh. Prakhar Kulshreshtha, Tariff Consultant of the HPPTCL has submitted that the Petitioner despite availing the system to its

exclusive use ever since the commissioning of the system has deferred the payment of Transmission Charges on one pretext or the other. According to him, the Respondent is liable to pay the transmission charges for the entire capacity of the system i.e. 54 MW being the sole and exclusive user of the same and cannot avoid the liability merely on the ground that the Petitioner has not signed the TSA with other Projects/beneficiaries which were to be connected to the system. He has also submitted that the Regulation 33 of HPERC Transmission Tariff Regulations, 2011 would be attracted only when the transmission system is shared between the long and medium term customers and since the system so far has not been shared by any other customers, the Petitioner being the sole beneficiary is liable for the payment of the entire capacity i.e. 54 MW and the demand notices/invoices dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and 05.07.2023 are legal and valid. He has also submitted that the Petitioner is entitled for the carrying cost and late payment surcharge for withholding the amount without any reasonable excuse.

21. Sh. Mandeep Singh, Chief Engineer (System Operation) on the other hand has submitted that the system had been envisaged for evacuation of 54 MW and different Projects were to be connected to

the system but except the Patikri HEP 16 MW, other Projects have not come up and till date only Patikri HEP 16 MW is connected to the system and evacuating the power and that the Respondent has also signed TSA and supplementary TSA to this effect with the Petitioner for transmitting 16 MW power, therefore, the Petitioner was required to levy the transmission charges in respect of aforesaid allotted/contracted capacity as per Regulation 33 of the HPERC Transmission Tariff Regulations, 2011 but had issued invoices dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and 05.07.2023 for the entire capacity of the system which were arbitrary and illegal. According to him, the bills/invoices were returned requesting the Petitioner to issue the bills/invoices to the extent of allotted/contracted capacity i.e. 16 MW. He has further submitted that a meeting was also held in this regard on 17.01.2023, wherein the Petitioner was apprised of the factual position that the Respondent is liable to pay the transmission charges bills in respect of the allotted/contracted capacity i.e. 16 MW only but ignoring the settled position as per Regulation 33 of HPERC Transmission Tariff Regulations, 2011 and Para 4.8.7, 4.8.8 and 4.8.9 of the Order dated 28.09.2022, the bills for the entire capacity of the system have been issued which are not tenable being contrary to Regulation 33 of the HPERC Transmission Regulations, 2011.

**POINTS FOR DETERMINATION**

22. We have gone through the submissions of the parties and have perused the entire case file with minute care. On the basis of pleadings and submissions, the following points arise for determination in the present Petition:

1. Whether the Respondent is the sole beneficiary of the Transmission system at Pandoh and is liable to pay the transmission charges for the entire capacity of system and the invoices dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and 05.07.2023, demanding the transmission charges from the Respondent have been validly issued?
2. Whether the Respondent has withheld the transmission charges without any reasonable excuse and is liable to pay the Late Payment Surcharge on the delayed payment as per HPERC Transmission Tariff Regulations, 2011?
3. Final Order (Relief).

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

Point No. 1: Yes

Point No. 2: Yes



Final Order: Petition allowed per operative part of the order.

### **REASONS FOR FINDINGS**

#### **Points No. 1 & 2**

24. Both these point being inter-linked and inter-connected are being taken up together for avoiding repetition.

25. Before, we advert to the merits of the matter, it is relevant to refer that it is a classic case where two instrumentalities of the State Government are pitched against each other over the payment of the Transmission Charges. This Commission vide Order dated 17.10.2023, in order to resolve the matter amicably, directed the Managing Directors of both the instrumentalities to hold a joint meeting within a fortnight to resolve the dispute amicably and place the outcome of the meeting before the Commission on or before 16.11.2023. No progress, however, was made. The Commission thereafter repeatedly adjourned the matter till 22.03.2024 but to no avail. Thus, the matter was heard on 22.03.2024.

26. The Transmission System at Pandoh has been constructed by the HPPTCL for the evacuation of the Power from the Pandoh area. Though there are rival claims in respect of the capacity of the Transmission System at Pandoh but fact remains that the system has been envisaged for evacuation of 54 MW Power, as per the DPR and

the table mentioned in the Petition. The Petitioner has not produced any document on record that the capacity of the Transmission System is more than 54 MW. The dispute in question pertains to a limited question whether the Respondent is liable to pay for the Transmission charges for the entire capacity of the system or its liability may be restricted for the 16 MW, which may be decided on the basis of available record. The parties if they so decide, may file a separate Petition in this regard.

27. Adverting to the merits to the Petition, the core issue which arise for the determination in the present matter is whether the Respondent is liable to pay the transmission charges for the entire capacity of the system or is liable to pay the charges to the extent of 16 MW.

28. Undisputedly, till date, only one HEP i.e. Patikri HEP (16 MW) has come into being and the power of said HEP is being evacuated through the system. The Respondent has signed the PPA with Patikri HEP (16 MW) meaning thereby that the said Power belongs to the Respondent. Ever since this commissioning of the Transmission System at Pandoh, no transmission charges have been paid by the Respondent. The bills in this regard were issued by the Petitioner to the Respondent which have been returned twice by the Respondent that its liability is limited only to the extent of 16 MW, as TSA and

STSA to this effect have been signed and that the Commission in Order dated 28.09.2022 has also held that the HPSEBL is not the sole beneficiary of the system and the charges have to be paid on pro-rata basis on the allotted or the contracted capacity, which is 16 MW and the demand over and above the same is arbitrary and not tenable.

29. According to the Respondent, the Commission has adequately dealt with the aspect of sharing recovery of transmission charges of the Asset in Paras 4.8.6, 4.8.7 and 4.8.8 in the order dated 28.09.2022 in Petition No. 30 of 2022 which reads as under:-

*4.8.6 It can be established from above that the DPR does not clearly specifies the beneficiaries of the system. The project was originally envisaged for power evacuation for multiple small HEPs from whom the recovery of transmission charges was to be done.*

*4.8.7 It is observed that the Petitioner has not signed any TSA with the beneficiaries and has been claiming that with other beneficiaries start utilizing the transmission asset, the Transmission Charges will be shared between HPPTCL Capital Cost and Tariff determination for 33/132 kV, GIS S/S at Pandoh along with 132 kV D/C Kangoo-Bajaura Transmission line (Asset-1) and Additional 33/132 kV, 31.5 MVA Transformer (Asset-2) Himachal Pradesh Electricity Regulatory Commission Page 60 beneficiaries. The Petitioner should identify all the current and future beneficiaries rather than considering HPSEBL as the de-facto beneficiary of the system and sign Transmission Service Agreements (TSA) with them.*

*4.8.8 Further, the Commission observes that the Petitioner has been unable to sign relevant TSA with the beneficiary of the transmission asset even after its commissioning. This reflects poorly on the*

*internal systems and planning of the Petitioner. The Petitioner is directed to identify all beneficiaries of the transmission asset and enter in TSA with them in a time bound manner and provide an update within six months of issuance of this Order.*

*4.8.9 Further, the Petitioner is directed to recover the transmission charges from the identified long-term /medium-term beneficiaries of the Transmission Asset as per the Regulation 33 of HPERC Transmission Tariff Regulations, 2011:*

*“33. Allocation of Transmission Service Charge and Losses (1) 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.”*

30. On the strength of the above observations of the Commission, the Respondent has claimed that it has signed TSA with the Petitioner on 10.12.2012 and STSA on 14.07.2022 agreeing to pay only the applicable transmission charges for evacuation of Power in respect of Patikri HEP (16 MW) and, thus, it is liable to pay the transmission charges for the above allotted or contracted capacity as per Regulation 33 of the HPERC Transmission Tariff Regulations, 2011 and the demand over and above the contracted/ allotted capacity is wrong.

31. As observed above, the Transmission System has been constructed for evacuating 54 MW of power of various hydro electric Projects in the area but till date, only the Patikri HEP, having capacity of 16 MW, has been connected to the system and transmitting the

power through the HPSEBL. Thus, the HPSEBL has been utilizing the entire Transmission System at Pandoh.

32. The Petitioner has placed on record copy of Minutes of Meeting held on 17.01.2023 with the HPSEBL, wherein, the issue of the payment of transmission charges qua which the bills were issued was discussed. The minutes dated 17.01.2023 show that the Petitioner in the meeting pointed out that the question of payments of transmission charges in respect of allotted capacity would be applicable only in case where the multiple beneficiaries are connected to the system but currently the HPSEBL being the sole beneficiary, the entire transmission charges for the utilization of the system have to be paid by the HPSEBL. No doubt, the Respondent has referred to the directions of the Commission in Para 4.8.7 and Para 4.8.8 of the Tariff Order dated 28.09.2022, as reproduced here in the above that the Petitioner had been directed to identify all the current and future beneficiaries, rather considering the HPSEBL as the de-facto beneficiary of the system and sign TSA with such beneficiaries and issue the bills accordingly as per the allotted/contracted capacity. It is clear that except the Patikri HEP, no other Projects, as envisaged, have come up. Such Projects may be commissioned in due course of time. The Respondent has already signed the TSA and STSA with the Petitioner and entire system is being utilized by the Respondent.

As such, being the sole beneficiary, cannot absolve itself from the liability and, thus, the observations made in Paras 4.8.7 and 4.8.8 of the Order dated 28.09.2022 are of no help to the Respondent.

33. Coming to the regulatory framework, the Commission has framed the HPERC Transmission Tariff Regulations, 2011, for regulating the transmission and allocation of transmission service charges and losses. Regulation 33 (1) of the above Regulations provides for the allocation of transmission service charges and losses which reads as under:

***“ Allocation of Transmission Service Charge and Losses***

*(1) 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. On the strength of the Regulation 33 of the HPERC (Transmission Tariff) Regulations, 2011, the Respondent has claimed that it cannot be asked to pay anything more than the allotted or contracted capacity which is only 16 MW, as per TSA dated 14.07.2022 and bills/ invoices dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and 05.07.2023 for the entire capacity of the Transmission System at Pandoh are contrary to Regulation 33 (ibid).

35. 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. Undisputedly, the Transmission System is exclusively being used by the respondent to evacuate the power from Patikri HEP and since the Transmission Service Agreement dated 10.02.2012 and the Supplementary Transmission Service Agreement dated 14.07.2022 have been executed by the Respondent with the Petitioner, in accordance with the HPERC Transmission Tariff Regulations, 2011, the Respondent is liable to bear the Transmission charges of the entire transmission system at Pandoh till the other Projects in the area begin evacuation of power from their respective projects. Therefore, till the time other generators come up and connected to the Transmission system at Pandoh, it is the petitioner who has to bear the charges as per Regulation 33 (1) of the HPERC MYT Regulations, 2011. Hence, the entire Transmission charges of the Transmission System at Pandoh, as being claimed by the Petitioner from the Respondent, are recoverable from the Respondent only as per Regulation 33 (ibid) failing which it would not be possible for the respondent to maintain and operate the system. Thus, the transmission charges raised per bills/ invoices dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and

05.07.2023, as raised are not in violation of Regulation 33 of the HPERC Transmission Tariff Regulations, 2011. The Regulation 33 of the HPERC Transmission Tariff Regulations, 2011 would come in aid of the Respondent only in case when the transmission system is shared by other generators.

36. Significantly, both the parties have relied upon Paras 4.8.8 and 4.8.9 of the Order dated 28.09.2022 in case no. 30 of 2022 passed by the Commission approving the ARR of the system which has been reproduced as under:-

*4.8.8 Further, the Commission observes that the Petitioner has been unable to sign relevant TSA with the beneficiary of the transmission asset even after its commissioning. This reflects poorly on the internal systems and planning of the Petitioner. The Petitioner is directed to identify all beneficiaries of the transmission asset and enter in TSA with them in a time bound manner and provide an update within six months of issuance of this Order.*

*4.8.9 Further, the Petitioner is directed to recover the transmission charges from the identified long-term /medium-term beneficiaries of the Transmission Asset as per the Regulation 33 of HPERC Transmission Tariff Regulations, 2011: "33. Allocation of Transmission Service Charge and Losses (1) 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."*

37. Apparently, no other Project in the area has come up and commissioned. Therefore, it was not possible for the Petitioner to sign



the TSA with other Project(s)/ beneficiaries and as and when such other Projects will be commissioned, the TSA can be signed with such Projects/ beneficiaries. Therefore, the observations made by the Commission in Paras 4.8.8 and 4.8.9 of the Tariff Order dated 28.09.2022 in Petition No. 30 of 2022 are of no help to the Respondent. Since, the entire system is being used by the Respondent for its exclusive use and being the sole beneficiary of the system, the Respondent cannot absolve itself from the liability to pay the charges for the same.

38. It is none of the case of the Respondent that there is any deficiency on the part of the Petitioner for maintaining the system. The Power of Patikri HEP is being evacuated without any interruption. The Petitioner requires significant amount for the maintenance of the system failing which the system will collapse. Having utilized the system, the Respondent was liable to pay the transmission charges in lieu of the same but instead of making payment of transmission charges, the bills have been returned repeatedly. Therefore, the transmission charges have been withheld without any reasonable cause and, thus, the Respondent is also liable to pay the late payment surcharge as per Regulation 27 of the HPERC Transmission Tariff Regulations, 2011, on the withheld amount. Though, the Petitioner has also claimed the carrying cost but has not been able to

substantiate the same. Otherwise also, as per Regulation 10-A of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, the Commission shall consider any such claim for awarding the carrying cost at the time of true up.

39. In view of the above, the Petitioner has established on record that the Respondent is liable to pay the transmission charges for the entire capacity of the transmission system at Pandoh and the liability of the Respondent cannot be restricted to pay the transmission charges for 16 MW as claimed. The Petitioner has also established on record that the bills dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and 05.07.2023 demanding the transmission charges for the entire capacity of the Transmission System at Pandoh are legal and valid. The Petitioner has also established on record that the Respondent has withheld the charges without any reason or cause, and therefore, the Respondent is liable to pay the Late Payment Surcharge, as per Regulations 27 of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, on the withheld amount from the date of issuance of the bills. Points No. 1 and 2 are accordingly decided in favour of the Petitioner and against the Respondent.

**Final Order**

40. In view of the aforesaid discussions and findings, the petition succeeds and is accordingly allowed. The bills dated 18.11.2022, 04.02.2023, 04.03.2023, 10.04.2023, 17.05.2023, 03.06.2023 and 05.07.2023 are held to be legal and valid. The Respondent is directed to make payment of the withheld amount in three equal monthly instalments commencing w.e.f. 15.06.2023. The Respondent is also directed to make the regular monthly payments of the Transmission System at Pandoh, being the sole beneficiary of the Transmission System, as and when the bills/invoices are raised. The Respondent is further directed to pay the Late Payment Surcharge on the withheld amount in case the withheld/delayed amount is not paid in three equal monthly instalments, as directed hereinabove.

41. The Petition is disposed off, accordingly. The pending applications, if any, are also deemed to have been disposed off.

The file after needful be consigned to the records.

**Announced**  
**22.05.2024**

<b>Sd/-</b> <b>(Shashi Kant Joshi)</b> <b>Member</b>	<b>sd/-</b> <b>(Yashwant Singh Chogal)</b> <b>Member (Law)</b>	<b>sd/-</b> <b>(Devendra Kumar Sharma)</b> <b>Chairman</b>
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