

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

Petition No: 34 of 2023
Instituted on: 15.02.2023
Heard on: 01.02.2024
Decided on: 28.03.2024

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

Petitioner No. 1

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

Petitioner No. 2

Versus

1. The HPPTCL through its
Managing Director,
Himfed Bhawan, Panjari,
Tutikandi, Shimla, HP-171004.
2. The HP State Electricity Board Ltd. through its
Chief Engineer (Commercial),
Vidyut Bhawan, Shimla, HP-171004.
3. Govt. of Himachal Pradesh through its
Additional Chief Secretary (MPP & Power)
to the Govt. of Himachal Pradesh,
Shimla, HP-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 setting aside the decision taken by Respondent No. 1 (HPPTCL) on 19.01.2023 in minutes of meetings qua working out O&M/ Supervision charges in

pursuance of order dated 19.12.2022 in Petition No. 53 of 2022 passed by the Commission for 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.

Ms. Vandana, Advocate, Vice Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1.

Sh. Dhanajay Sharma, Ld. Counsel for the Respondent No. 2 with Sh. Mandeep Singh, Chief Engineer (System Operation).

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 setting aside the decision taken by the Respondent No. 1 (HPPTCL) on 19.01.2023, in a meetings by the Himachal Pradesh Power Transmission Corporation Ltd (HPPTCL/ the Respondent No. 1 for short), qua working out Supervision/O&M charges of maintenance of Bays (supervision or O&M charges for short) in pursuance of order dated 19.12.2022 in Petition No. 53 of 2022 passed by the Commission 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) situated on Chirchind Khadd, a tributary of river Ravi in District Chamba, H.P.

2. The Petitioner had filed a Petition bearing Petition No. 53 of 2022 before the Commission against the demand notices dated 18.05.2021, 26.05.2021, 01.07.2022, 02.07.2022 and 01.08.2022 for Rs. 16,38,857/- in respect of O&M charges. The said Petition was disposed off vide Order dated 19.12.2022. The operative part of Order dated 19.12.2022 is reproduced as under:-

"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,"

3. The Petitioner has filed the present Petition giving all the details in paras numbers 7.1 to 7.4, 8.1 to 8.36 and in some other paras, which had also been supplied in the previous Petition. Since the earlier Petition No. 53 of 2022 was decided on the basis of said detail; therefore, going

of such detail has been avoided in this Petition, being repetitive and having been considered in the previous Petition No. 53 of 2022.

4. It is averred that pursuant to order dated 19.12.2022 in Petition No. 53 of 2022, a meeting was held on 19.01.2023 under the Chairmanship of Director (P), HPPTCL between Respondent No. 1 and Petitioners for finalization of Supervision charges payable by Petitioners for the supervision of interconnection facilities.

5. In the meeting dated 19.01.2023, the Respondent No. 1 proposed to charge the supervision/ O&M charges per Bay as Rs. 15,89,935/- lac per annum for the period w.e.f. February, 2022 to 12th January, 2023 which would be Rs. 36,77,316/- per annum from the date of commissioning of 400 kV system and that the Respondent No. 1 has calculated the same irrespective of voltage level of Bays / feeders and tried to justify their earlier original calculation. However, the stand of the Petitioners was that their liability to pay the O&M/ Supervision charges was required to be restricted to the extent of the use of facility by the Petitioner. Therefore, a dispute has arisen, inter-se, the parties which is required to be adjudicated.

6. The Petitioner has raised three pertinent questions of law :-

1. Whether the liability of the Petitioners to pay the cost of Supervision/ O&M of Interconnection Facilities at Lahal Substation is required to be restricted to the extent in proportion

of its share of requirement and usage out of total 23 number of Bays respective of the voltage level of Bays / feeders?

2. *Whether to treat a 33kV Bay equivalent to a 220kV and 400kV Bay (both of which Bays capital costs are approx. 10 times and 20 times more than 33 kV Bay respectively) by Respondent No.1 for working out/ calculation of annual O&M charges is rational and justified?*
3. *Whether the methodology and policy adopted by the Respondent No.1 while calculating/working out the cost of Supervision/ O&M for the Interconnection Facilities at Lahal Sub-station by considering the apportionment of Bay cost irrespective of voltage level of Bays / feeders is illegal, arbitrary, discriminatory, irrational and unjustified?*

7. As per the grounds raised by the Petitioner, the Respondent No. 1 had been directed to revisit the calculation of supervision/ O&M charges but the Respondent No. 1 has proposed O&M cost as Rs. 15.90 lacs per year for the period w.e.f. February, 2022 to 12th January, 2023 irrespective of voltage level of Bays / feeder despite the stand of the Petitioner that their liability to pay the O&M charges is required to be restricted to the extent of use of facility. Further, the Respondent No. 1 commissioned the 400 kV Bay w.e.f. 12.01.2023 immediately after Order of the Commission dated 19.12.2022 in Petition No. 53/2022 and re-calculated the O&M charges of Bays as Rs. 36,77,316/- per annum irrespective of the voltage level of Bays . The Astha Guidelines are not applicable on GIS Sub-stations and the O&M/ Supervision charges

cannot be apportioned merely on the basis of number of Bays as the capital cost of 220 kV and 400 kV Bays is substantially higher than the cost of 33 kV Bay system and the O&M charges ideally cannot be more than 3-5 % p.a. of the Bay cost which has resulted in miscarriage of justice. Further, the Respondent No. 2 has insisted to follow Astha Guidelines laid down by the Commission but the calculation cannot be on the basis of the Astha Guidelines as the Lahal GIS Sub-station is having 33 kV Bays as the lowest rating whereas the Astha Guidelines never envisioned such a situation because as per these guidelines there was no Bay higher than 33 kV rating in the Sub-station. Also that the inter-connection facility at Lahal Sub-station has been created for the Projects connecting to the Sub-station through 23 No. of Bays so as to cater to the present and future projects coming in the area and keeping in view the economy of scale, the O&M charges of Bays payable by the IPPs should be according to the extent of use of common facilities and the liability of the Petitioner was required to be restricted to the extent of use of the facility. Further, the Respondent No. 1 has failed to consider that the calculation of Rs. 36,77,316/- i.e. 38% of the Bay cost as annual O&M charges is exorbitantly high and beyond any reasonable estimation and if this practice is continued, the Petitioner will be compelled to pay more than the amount of the Bay cost for every 3 years and, therefore, the Respondent No. 1 has asked the Petitioner to pay

more than 10 times of what the Petitioners are supposed to pay. Thus, the charges are irrational and unjustified as the Respondent has considered 33kV Bays equivalent to 220 kV & 400 kV Bays . Not only this, out of 23 Bays in the Lahal Sub-station, 9 No. of Bays are 220 kV, 6 No. of Bays are 400 kV and 8 No. of Bays are 33 kV and, therefore, the demand is arbitrary, illegal, discriminatory, irrational and in violation of the Electricity Act, 2003.

8. As per the Petitioner, the Respondent No. 1 has failed to take note of Clause 2.5 of the Connection Agreements dated 01.03.2021 and 23.06.2022 respectively, which specifically provide that the O&M charges will be borne by the Company for the Bay equipment being operated and maintained by the State Transmission Utility. The agreement for supervision charges of the interconnection facility i.e. 1 No. 33 kV Bay at 33/220/400 kV GIS Sub-station Lahal was executed on 09.11.2021 (Annexure P-26) but said agreement nowhere provides that the Petitioner shall be responsible to bear the supervision charges on behalf of all the 6 other projects to which said Bay has been allotted or that all the Bays will be considered for supervision/ O&M charges irrespective of voltage levels. Thus, the liability of the Petitioner is required to be restricted to the extent of its share proportionately.

9. Also averred that the Petitioners, *inter-se*, have signed an agreement dated 11.06.2021 for evacuation of power from both the

project to the 400/220/33 kV Lahal Sub-station and as per the Clause 7 of said agreement, the cost of operation & maintenance of the interconnection facilities at the HPSEB grid shall be borne by the IPPs injecting power therein in proportion to the respective installed capacities of the projects and that the Petitioners are not responsible to bear Supervision/ O&M charges on behalf of 6 other projects to whom Bay No. 305 has been allotted and the O&M cost of this Bay needs to be apportioned between 37 MW and thus, raising the demand of entire 100% O&M cost of the maintenance of Bay from the Petitioners is illegal.

10. As per the Petitioner, the cost of 220 kV and 400 kV Bays is 10 times and 20 times higher than the cost of 33kV Bay and, therefore, the O&M charges for maintenance of all the Bays cannot be apportioned proportionately, and treating all the Bays equal for working out the supervision charges based on numbers of Bays irrespective of voltage level of Bays /feeders at the Sub-station is also illegal, arbitrary, discriminatory and not sustainable in the eyes of law.

11. Also averred that while revisiting the calculation in pursuance to the directions issued by the Commission, the Respondent No.1 has failed to consider that the O&M charges ordered for the Bay maintenance by other Hon'ble Commissions are not more than 1.50% of the capital cost with an annual escalation of 5.72% for the base year and the Ld. Tamil Nadu Electricity Regulatory Commission in the year 2021 also proposed

to authorize TANTRANSCO to collect O&M charges at 1% of the capital cost of infrastructure with an escalation of 5.72% every year.

12. It is also averred that the Supervision and O&M charges for the interconnection facility at GIS Lahal Sub-station have already been added while calculating the Tariff and there was no basis or rationale to fasten the entire cost of 23 Bays / Interconnection Facilities by the Respondent No.1 upon the Petitioners and other SHPs who have signed the agreements.

13. Further that the Respondent has failed to comply with the State Electricity Regulatory (Grant of Connectivity, Long-term Access and Medium Term Open Access in inter-state transmission and related matters) Regulations 2010 in respect of procedure of grant of connectivity and other Matters and Central Electricity Authority (Technical Standards for connectivity to the Grid) Regulations, 2007 and Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electrical Lines) Regulations, Central Electricity Authority/Grid Standards, Regulations, Indian Electricity, Grid Code (IEGC) and other statutory provisions while calculating the O&M charges.

14. It is also averred that the Respondent No.1 while taking the impugned decision in meeting on 19.01.2023 has failed to consider that some IPPs in the area who are to be connected to the Sub-station have

not even started the construction of their Hydro Projects despite lapse of considerable time after the execution of IA's and, therefore, there is no chance of their getting commissioned in the near future and the Respondent No. 1 being the monolithic transmission licensee in the State, cannot abuse its monopoly by compelling the Small Hydro Power Developers to pay for the unreasonable and inequitable O&M charges and cannot be permitted to take advantage of its own wrong of creating a much larger infrastructure than what is required for the Petitioners which has not only resulted in the generator being penalized for no fault, but has also set a wrong precedent resulting in economic loss to the Petitioners.

REPLIES

15. The Petition has been resisted by the Respondents No. 1 and 2 by filling separate replies.

REPLY OF RESPONDENT NO. 1

16. The Respondent No 1 in its reply has raised preliminary objections that the Petition is not maintainable as the issue in hand has already been adjudicated and decided by the Commission vide Order dated 19.12.2022 in Petition No. 53/2022 between the same parties whereby the Petition was partly allowed. Further, in furtherance of the Order/directions of the Commission, the replying respondent reconciled/revisited the calculation of supervision/O&M charges for the

period w.e.f. February, 2022 to 12.01.2023 to the tune of Rs. 15,89,935.90/- excluding, the cost of 400 kV system O&M charges for the period February, 2022 to 12.01.2023, as 400 kV system of the Lahal Sub-station was Commissioned only on 12.01.2023. However, the overhead charges such as staff quarters in respect of 33/220 kV portion on pro-rata basis by dividing total overhead charges among 33/220 kV portion and remaining 400 kV portion in proportion to the respect of capital cost have been considered. As per the Respondent No. 1, the supervision/O&M charges to be borne by the Petitioner in respect of maintenance of 33 kV Bays for the aforementioned period have been computed by equally apportioning the charges amongst 8 number of incoming/outgoing Bays (which includes 2 number of spare Bays) of the 33/220 kV commissioned system in line with Astha Guidelines and the directions passed by the Commission in Petition No. 53/2022 which shall be trued up at the end of the Financial Year.

17. It is averred that the Petition has been filed on the same set of facts and grounds as raised in the Petition No. 53/2022 and by way of clever drafting, the Petitioners are seeking Review of the Order of the Commission dated 19.12.2022 in Petition No. 53 of 2022 and which is not permissible in the eyes of law. As per the replying Respondent, the Petitioner has no cause of action to maintain the Petition which has been filed to avoid the liability, accrued in favour of the replying respondent.

Also that the Petitioner No. 1 signed the agreement for supervision of interconnection facility (Annexure P-26) agreeing to pay monthly supervision charges regularly as per invoice raised and have also signed the connection agreements. The replying Respondent has also reproduced a few Clauses of agreement for Supervision of Interconnection Facilities (Annexure P-26) in the reply.

18. Further, the Petitioners vide connection agreements dated 01.03.2021 and 21.06.2021, Annexure P-20 and P-19, were connected to the 33 kV line to the STU station at the Connection paid i.e. 33/220/400 kV Sub-station. Further the Petitioners, inter-se, have also signed an agreement dated 11.06.2021 (Annexure P-21) to share the cost of Bay annually on proportionate basis. Hence, both the Petitioners are under an obligation to pay the same. The replying Respondent has reproduced Regulations 2 (32), 2(33), 2(34), 5,16 of HPERC (General Conditions of Transmission Licensee) Regulations, 2004 and Sections 39 and 40 of the Electricity Act, 2003 to substantiate that the Petitioners are liable to pay the O&M charges for maintenance of Bay.

19. Also averred that as per the Astha Guidelines, issued by the Commission vide order dated 23.11.2010 in Petition No. 81 of 2010, provide that the O&M charges for maintenance of Bay are to be apportioned among total number of incoming and outgoing Bays irrespective of voltage levels and the replying Respondent has raised the

demand based on the sanctioned estimate framed for FY 2021-22 in line with Astha guidelines as also the directions issued by the Commission in Petition No. 53 of 2022.

20. On merits, the contents of the Petition have been denied reiterating the averments made by way of preliminary submissions. It is denied that exorbitant demand has been made towards the supervision charges or that the demand is illegal, unilateral, arbitrary, discriminatory and without adopting fair and transparent procedure. It is averred that the 33/220/400 kV GIS Sub-station at Lahal consists of 23 Bays , out of which only 10 No. of Bays are being used as incoming and outgoing feeder and the rest are being used as internal Bays within the Sub-station as per the requirement and during February, 2022 to 12.01.2023, only 8 No. of incoming and outgoing feeders (including 2 No. of spare Bays) of the 33/220 kV commissioned system have been apportioned towards the O&M charges from the Petitioners in the ratio of the No. of feeders in terms of the Astha Guidelines and directions of the Commission issued vide Order dated 19.12.2022 in Petition No. 53 of 2022. Also averred that 1 No. of 33 kV Bay i.e. Bay No. 305 at Lahal Sub-station has been allotted to the Petitioners but it is denied that said Bay has been allotted to 6 more IPPs for their respective projects and rather, only a proposal has been admitted in this regard that in case any Project is commissioned in the vicinity of the Sub-station, the same may be

accommodated in the Bay allotted to the Petitioner in joint/ common mode to make use of the transmission system to the maximum. It is averred that the proposed supervision charges, as calculated by the Petitioners under different scenarios are without any basis. Further, the situation in the State of Tamil Nadu is different than the State of H.P.

21. It is denied that in the meeting held on 19.01.2023, the replying Respondent has tried to justify the earlier calculation. Rather, as per the directions of the Commission issued vide Order dated 19.12.2022 in Petition No. 53/2022, the cost of 400 kV system has been excluded for the period from February 2022 to 12.01.2023 in the total amount of Rs. 15,89,935/- the overhead charges of staff quarters etc. in case of 33/220 kV commissioned portion only on pro-rata basis by dividing the total overhead charges among 33/220 kV part in proportion to respective capital cost and the remaining 400 kV part in proportion to the respective capital cost has been excluded.

REPLY OF RESPONDENT NO. 2

22. The Respondent No. 2/HPSEBL in its reply has averred, *inter-alia*, that the Petition is neither maintainable nor competent and that the Petitioners have no legal and enforceable cause of action to file and maintain the Petition against the Replying Respondent and that the Petitioner are estopped from filling the Petition on account of their acts,

conduct acquiescence and also that the Petitioners have no locus standi to file and maintain the Petition.

23. On merits, it is averred that the office of Chief Engineer (SP) has never given any directive/instructions to the Petitioner No. 2 to back down generation to only 15% rated capacity of power from the project. Further, a meeting was held on 18.04.2017 in the office of Director (Tech.) of Respondent No. 2 regarding evacuation arrangement in Bharmour Valley (Annexure R-2A) but the Petitioner No. 2 had stated that they would not prefer joint evacuation of power with Kiunr (5 MW) by constructing 33 kV line upto Dunali Common Pooling Station and for further evacuation of power upto 220/33 kV Sub Station, Karian. Not only this, Petitioner No. 2 also apprised that they had deposited the amount for FCA of 33 kV line upto 33/220 kV Sub-station, Lahal and in case they opt for evacuation through Common Pooling Station Dunali, they shall have to incur energy losses on 33 kV line from their Power House to 220/33 kV Sub-station, Karian as compared to 33/220 kV Sub-station, Lahal which is nearer to their power house. It is denied that the Respondent No. 2 in the year 2018 had instructed the Petitioner No. 2 for construction of joint transmission line or also built common pooling station for M/s Snowdew Hydro-electric Power Projects Private Limited in respect of Kiunr (5 MW) SHP at Lahal Sub-station. The said evacuation arrangement as per TEC was also denied by the Petitioner No. 2

(Annexure R-2B). Also averred that the Petitioner No. 2 and Kiunr (5 MW) SHP have failed to enter into an arrangement for joint evacuation in spite of several meeting held with HPPTCL to facilitate the resolution of irritants regarding sharing of cost. Further, the Petitioner No. 2 has constructed the joint transmission line upto 33/220/400 kV Lahal Sub-station without executing the joint evacuation agreement and finalisation of modalities of sharing the dedicated transmission line and interconnection facilities as per TEC with Kiunr (5 MW) SHP. It is averred that the charges being levied are legal and denied that the same are exorbitant. As per the replying Respondent, there is no provision in the PPA dated 30.06.2008 signed for **Chirchind-I, Chirchind-II**, Hydro Power Projects with respect to the deduction of O&M/supervision charges payable to the HPPTCL, hence, the HPSEBL cannot make any deductions from the energy bills on this account.

REPLY OF RESPONDENT NO. 3

24. The Respondent No. 3 has adopted the reply filed by Respondent No. 2.

SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

25. We have heard Sh. L.S. Mehta, Ld. Counsel for the Petitioner and Ms. Vandana vice Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1, Dhanajay Sharma, Ld. Counsel for the Respondent No. 2 and Sh. Shanti Swaroop, Ld. Legal Consultant for the Respondent No. 3.

26. Sh. L.S. Mehta, Ld. Counsel for the Petitioner has submitted that despite the directions of the Commission passed vide order dated 19.12.2022 in Petition No. 53 of 2022, the Respondent No. 1 has proposed to charge the Supervision/ O&M cost per Bay as Rs. 15,89,935.90 for the period w.e.f. February, 2022 to 12.01.2023 and Rs. 36,77,316/- per annum from 12.01.2023 onwards irrespective of voltage levels of Bay/feeders and have tried to justify their earlier calculation which was set aside by the Commission in Petition No. 53 of 2022. He also submits that the charges being claimed are irrational and unjustified as the Respondent has treated 33 kV Bay equivalent to 220 kV or 400 kV Bay for the calculation of annual O&M cost under the premise of Astha Guidelines where the word used is 'irrespective of voltage level' which tantamount to subsidizing the O&M charges of Bays for large hydro projects evacuating power through 220/400 kV Lahal Sub-station, at the expense of small hydro projects evacuating power through 33 kV Bays in the same Sub-station. It is also submitted that the Astha Guidelines do not apply to the Petitioners as said guidelines were applicable to the Sub-stations upto voltage level 33 kV and were never meant where the 33 kV level Bay is the lowest in the Sub-station or for higher voltage rating which is the case of 400/220/33 kV Lahal Sub-station. He has also submitted that in Suo Moto Petition No. 29/2023, the Commission has been pleased to fix the normative O&M charges for the

maintenance of Bay of the Sub-station not exceeding 33 kV but such charges have not been made applicable to the Sub-stations owned and operated by the transmission licensee/ STU or for the Sub-station having GIS. Sh. L.S. Mehta, Ld. Counsel for the Petitioner also submits that the Petitioners are to be connected to the 33 kV Bay at Lahal Sub-station and as per Clause 2.1 of the agreement for supervision of interconnection facilities, they have to pay only in respect of 33 kV Bay and not for 220 and 400 kV but the Respondent has not considered this aspect and has tried to raise the bill irrespective of the voltage level by apportioning the cost amongst 33/220 kV Bay and proposes to apportion the same amongst 33/220/400 kV once 400 kV system is commissioned which is illegal arbitrary and contrary to the Electricity Act, 2003.

27. Ms. Vandana Ld. Vice Counsel for Sh. Vikas Chauhan, Ld. Counsel for the Respondent No. 1 has submitted that as per the directions of the Commission in Petition No. 53 of 2022, the Respondent No. 1 conducted a meeting with the Petitioners for re-calculation of the O&M charges and has come to a conclusion that the O&M charges for interconnection facility would be Rs.15,89,935/- w.e.f. April 2021 to February 2022 and the Petitioners are required to pay Rs. 15,89,935/-. She has also submitted that the Petitioners have agreed to pay the O&M charges for maintenance of Bays vide agreement dated 09.11.2021 and the charges have been raised strictly as per said **agreement dated and**

directions of the Commission in Petition No. 53 of 2022 and the Petitioner has approached the Commission without any valid cause of action. He has also submitted that the Commission has considered each and every aspect in Petition No. 53 of 2022 but the Petitioners have raised the same issues in the present Petition, as such, the Petition is liable to be dismissed.

28. Sh. Dhananjay Sharma Ld. Counsel for the Respondent No. 2 and Sh. Shanti Swaroop Ld. Legal Consultant for Respondent No. 3 have submitted that the Petitioners have no cause of action against the Respondents No. 2 and 3 as such the Petition is liable to be dismissed.

POINTS FOR DETERMINATION

29. 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 Respondent No. 1 has raised demand of Supervision/ O&M charges for interconnection facilities i.e. one no. 33 kV Bay 305 at 33/220/400 kV GIS Sub-station at Lahal contrary to the order passed by the Commission in Petition No. 53 of 2022?

Point No. 2. Whether the Respondent No. 1 is required to raise the demand of supervision/O&M charges for the

interconnection facilities at Lahal Sub-station to the extent of the use of facility proportionally in respect of the voltage level of Bays /feeders?

30. **Final Order**

For the reasons to be recorded hereinafter in writing, our points are as under:-

Point No. 1 : No

Point No. 2 : No

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

REASONS FOR FINDINGS

Points No. 1 and 2

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

32. Before, we advert to the prayers made in the Petition, it is necessary to refer to the earlier Petition No. 53 of 2022, filed by the Petitioners in which they had raised the plea that the liability of the Petitioners is required to be restricted to the extent to the proportion of their share and requirement and usages out of total 23 number of Bays in the Sub-station as all the Bays cannot be treated equal for the calculation of O&M charges of maintenance of Bays because the cost of 33 kV Bays , 220 kV Bays and 400 kV Bays are different and since the Petitioners are to be connected in the Sub-station only through 33 kV Bays , which are only 8 in number, the demand was arbitrary and illegal.

After considering each and every aspect of the matter, the said Petition No 53 of 2022 was disposed off vide Order dated 19.12.2022 by observing the following in para 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.

33. It is, therefore, apparent that after considering each and every aspect of the matter, the Commission has passed a detailed order. It was observed by the Commission that in case some dispute remains, while re-conciling/re-calculating the amount, as directed, the parties shall be at liberty to approach the Commission. However, the Petitioners in the present Petition have reproduced almost the same averments and grounds in various paragraph which are not material for the disposal of the present Petition as in the present Petition, the only grievance of the Petitioners is that though a joint meeting was held on 19.01.2023,

pursuant to Order dated 19.12.2022 in Petition No. 53 of 2022, but the Respondent No. 1 tried to justify the earlier original calculation ignoring the stand of the Petitioners that their liability to pay the O&M/Supervision charges is required to be restricted to the extent of use of the facility proportionally.

34. The Petitioners in the present Petition have prayed for setting aside the decisions taken in the Minutes of Meeting (MoM) on 19.01.2023 (Annexure P-46) in pursuance of final order dated 19.12.2022 passed in Petition No. 53 of 2022 and to raise the demand for the interconnection facilities at Lahal Sub-station to the extent of use of facility proportionately as per the voltage level of Bays/ feeder which should not be more than 3% of the Capital Cost of Infrastructure/ Bay with an annual escalation of 5.72 % for the base year and for direction to the Respondent to evolve/ adopt a fair and transparent methodology for working out such charges. Further the Petitioners have prayed to restrain the Respondent No. 2 from recovering the charges from the monthly generation bills.

35. Thus, the grievance of the Petitioner is that the Respondent No. 1 has taken a decision in the MoM dated 19.01.2023 (Annexure P-46) pursuant to order dated 19.12.2022 in Petition No. 53 of 2022 and as per the Petitioner, the Respondent No. 1 has calculated an amount of Rs. 15,89,935/- for 33/220 kV system and Rs. 36,77,321/- for the entire

system of 33/220/400 kV on commissioning of 400 kV portion. It is, therefore, relevant to reproduce the MoM dated 19.01.2023 as under:-

“Minutes of Meeting Held on 19-01-2023 under the chairmanship of Director (P), HPPTCL between HPPTCL & M/s Shivalik Energy Pvt. Ltd. for finalization of supervision charges payable by M/s Shivalik Energy Pvt. Ltd. in pursuance of final order issued by Hon’ble HPERC on dated 19-12-2022 in the matter of Petition no. 53 of 2022.

The list of participants is attached as Annexure-I.

Agenda Item No. 1:-

Regarding finalization of supervision charges payable by M/s Shivalik Energy Pvt. Ltd. in pursuance of final order issued by Hon’ble HPERC on dated 19-12-2022 in the matter of Petition no. 53 of 2022.

Hon’ble HPERC vide order dated 19-12-2022 in the matter of Petition no. 53 of 2022 had directed HPPTCL to revise the calculation of supervision and O&M charges as per the agreements and mutually agreed terms and conditions. In the said order, Hon’ble HPERC also laid out certain guidelines to be followed by HPPTCL while recalculating the Supervision charges to be borne by M/s Shivalik. In pursuance of the same, while calculating the Supervision charges, HPPTCL has specifically excluded the cost relating to 400 kV system. Further, the overhead charges such as cost of staff quarters etc. (in respect of 33/220 kV portion (commissioned till date) of 33/220/400 kV Lahal Substation) that shall form part of these Supervision Charges, have been computed on pro rata basis, by dividing the total overhead charges among 33/220 kV portion and the remaining 400 kV portion in proportion to the respective capital costs. Finally, the Supervision charges to be borne by M/s Shivalik in respect of 1 No. 33 kV Bay has been computed by equally apportioning the said supervision charges among 8 no. Incoming/outgoing bays (including 2 No. Spare bays) in line with the Astha Guidelines. Therefore, the annual Supervision charges payable by M/s Shivalik in respect of 1 No. 33 kV bay come out to be Rs. 15,89,935.00/- (Annexure-A).

At the outset, HPPTCL furnished a copy of the detailed working of annual supervision charges amounting to Rs. 15,89,935.00/- up to the commissioning of 400 kV system. HPPTCL also conveyed that it is in process of revision of Supervision charges bills accordingly, however, supervision charges after the commissioning 400kV system during Jan 2023 shall be as per actual O&M estimate.

It was further pointed out by M/s Shivalik that the Hon’ble Commission as directed the HPPTCL to revisit the calculation of supervision and O & M charges. However, consequent upon the order of Hon’ble Commission, HPPTCL has proposed to charge the O & M cost as Rs. 15.90 lac per year per year for the period February 2022 to 12th January 2023 from us irrespective of voltage level of bays/feeders whereas our liability to pay the O & M cost is required to be restricted to the extent of use of facility proportionally. M/s Shivalik further added that immediately after the order passed by the Hon’ble Commission, HPPTCL has commissioned the 400-kV bay w.e.f. 12.01.2023 and recalculated the O&M cost as Rs. 36,77,316/- per annum irrespective of voltage level of bays for us from the said date onwards and tried to justify their earlier original calculation. Therefore, M/s Shivalik is

of the view that the methodology adopted by the HPPTCL for the calculation of O&M cost is still unfair, arbitrary and discriminatory.

M/s Shivalik pointed out that the Aastha guidelines are not applicable on GIS Substation. Therefore, the said guidelines may not be given effect to M/s Shivalik. M/s Shivalik further suggested that the O&M/ supervision charges for the interconnection facilities at Lahal GIS substation cannot be apportioned merely on the basis of number of bays as the capital cost of 220 kV and 400 kV bays are substantially higher than 33 kV bay but O&M cost is required to be apportioned proportionally out of total bays/feeders respective of voltage level of the bays/feeders. M/s Shivalik pointed out the HPPTCL is now again claiming 38% of the bay cost amounting to Rs. 36,77,316/- as annual O&M Charges from them, which is exorbitantly high and beyond any reasonable estimation. M/s Shivalik also suggested that the annual O&M bay cost ideally cannot be more than 3 to 5 % per-annum of bay cost, which means that HPPTCL is again demanding from us to pay more than 10 times of what we are supposed to pay which is highly unreasonable, irrational and unjustified.

However, HPPTCL did not agree to M/s Shivalik's view point as the O&M/Supervision charges have been worked based on Aastha Guidelines, as per supervision Agreement signed between both parties by parties by considering incoming and outgoing feeders."

36. A careful perusal of MoM dated 19.01.2023 shows that the meeting was held under the chairmanship of Director (P) of the Respondent No. 1 and following the mandate of the Commission, in Petition No. 53 of 2022, while calculating the Supervision charges, the HPPTCL has specifically excluded the cost relating to 400 kV system. Further, the overhead charges such as cost of staff quarters etc. (in respect of 33/220 kV portion (commissioned till date) of 33/220/400 kV Lahal Substation) shall form part of these Supervision Charges which have been computed on pro rata basis, by dividing the total overhead charges among 33/220 kV portion and the remaining 400 kV portion in proportion to the respective capital costs. Finally, the Supervision charges to be borne by M/s Shivalik Energy Pvt. Ltd. in respect of 1 No. 33 kV Bay have been

computed by equally apportioning the said supervision charges among 8 no. Incoming/outgoing bays (including 2 No. Spare bays) in line with the Astha Guidelines. Therefore, the annual Supervision charges payable by M/s Shivalik in respect of 1 No. 33 kV bay come out to be Rs. 15,89,935/- (Annexure-A).

37. It is also relevant to refer to the MoM that the HPPTCL is in the process of revision of Supervision charges upon commissioning of 400 kV system and such charges during January, 2023 which shall be as per actual O&M estimate. Strangely, without waiting for the final decision of HPPTCL on the basis of MoM dated 19.01.2023, the Petitioners have approached the Commission for the reasons best known to them.

38. It is clear from the MoM that the HPPTCL/ Respondent No. 1 has specifically excluded the cost relating to 400 kV system as directed by the Commission vide Order dated 19.1.2022 in Petition No. 53 of 2022. There is no mention in the MoM that the charges upon commissioning of 400 kV Bay w.e.f. 12.01.2023 were also calculated as Rs. 36,77,316/-, as projected by the Petitioners, and rather, said figure was propounded only by the Petitioners on the basis of their estimation. Certain other figures that the HPPTCL shall be claiming 38% of the Bay cost amounting to Rs. 36,77,316/- as annual O&M charges were also propounded by M/s Shivalik Energy Pvt. Ltd. However, the HPPTCL did

not agree to the view point/ suggestions of the Petitioners regarding O&M/ Supervision charges worked out on the basis of Astha Guidelines.

39. Significantly, no bills/ invoices have been issued to the Petitioners in respect of aforesaid amount of Rs. 15,89,935/- or for an amount of Rs. 36,77,316/- as projected. The projected figure of Rs. 36,77,316/- by the Petitioners is based on their estimation. It is also not clear as to whether any final decision has been taken by the Respondent No. 1 on the basis of MoM dated 19.01.2023 in respect of the calculation of Rs. 15,89,935/- or for an amount of Rs. 36,77,316/- as projected by the Petitioners. It appears that upon refusal of the Petitioners to consider the suggestions/ view point of the Petitioners regarding applicability of Astha Guidelines, the Petitioners have approached the Commission by raising a dispute that exorbitant demand has been made. Thus, the Petitioners have approached the Commission without any valid cause of action and since no decision has been taken by the HPPTCL on the MoM and no bills/ invoices have been issued to the Petitioners, as projected, the Petition is premature, and not maintainable. Points No. 1 and 2 are accordingly decided against the Petitioners.

Final Order

40. In view of our aforesaid discussion and finding, the Petition fails and accordingly dismissed. However, in case any final bill is raised in respect of the Supervision/ O&M charges and the amount is not

calculated as per the order dated 19.12.2022 in Petition No. 53 of 2022, the Petitioners shall be at liberty to approach the Commission. The pending CMAs if any, are also disposed off.

41. The file after doing the needful be consigned to the records.

Announced
28.03.2024

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