# BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

**Review Petition No: 173 of 2025**
Date of Institution: 15.03.2025
Arguments Heard on: 06.03.2026
**Decided on: 10.04.2026**

**CORAM**

Yashwant Singh Chogal
**MEMBER (Law)-cum-CHAIRMAN**

Shashi Kant Joshi
**MEMBER**

**In the matter of:-**

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

**.........Petitioner**

Versus

1. M/s Bajoli Holi Hydropower Limited
   GMR Office, Village DEOL, PO HOLI,
   Sub-Tehsil-Holi, Tehsil Bharmour,
   District-Chamba, (HP)- 176326

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

3. M/s JSW Energy (Kutehr) Ltd.
   (JSWEKL) Kutehr HEP (240 MW),
   Village Machhettar, PO Chanhouta,
   Tehsil-Bharmour, Distt. Chamba,
   Himachal Pradesh- 176309

**..........Respondents**

**Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulations 7(5) and 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 seeking review of order dated 10.09.2024 in Petition No. 99 of 2024.**

**Present:**

Sh. Vikas Chauhan, Ld. Counsel for the Petitioner.
Sh. Yashaswi Kant, Ld. Counsel for the Respondent No. 1.
Sh. Kamlesh Saklani, Authorised Representative for the Respondent No.2.
The Respondent No. 3: Ex-parte.

## ORDER

This Petition has been filed by the Himachal Pradesh Power Transmission Corporation Limited (Petitioner/ HPPTCL for short) under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulations 7(5) & Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 seeking review of the Order dated 10.09.2024 passed by the Commission in Petition No. 99 of 2024 vide which the Commission in respect of approval and tariff was determined for 400/220kV System of 400/220/33kV GIS Sub-station at Lahal (Asset-1) along with 400kV D/C Lahal-Chamera Transmission Line (Asset-2) under the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of

Transmission Tariff) Regulations, 2011, as amended from time to time (HPERC Transmission Tariff Regulations, 2011 for short) and under Section 62, read with Section 86 of the Electricity Act, 2003 (the Act for short).

2. It is averred that though the Commission has approved the Capital Cost and determined the tariff for the Assets 1 and 2, yet the Commission has not allowed full claims in respect of ADB loan for Tranche-II(Asset-1 i.e. 400/220/33kV Lahal Sub-station) and ADB loan for Tranche-III (Asset-II i.e. 400kV D/C Lahal-Chamera line) as out of total 19 No. of Transmission Projects covered under ADB Tranche-III, 16 projects were spilled over beyond the loan closure date of 29 September 2021, due to various reasons beyond the control of HPPTCL. As per the Petitioner, at the time of closure of the ADB loan Tranche-III, for 400kV D/C Lahal-Chamera line, Rs. 65.06 Crores were utilized from ADB funding and financial implication of Rs. 1.59 Cr was pending for the balance works. The matter for arranging said funds was taken up with the Government of Himachal Pradesh (GoHP for short) but the Petitioner was advised by the GoHP vide letter dated 06.08.2021 to arrange the

funds from open market without any Government's guarantee (Annexure-2 of the Petition).

3. In addition to issues highlighted above, the Petitioner has submitted that during the proceedings of Petition No. 99 of 2024 while submitting reply dated 04.09.2023 in response to Query No. 19 of Deficiency letter dated 17.05.2023, the HPPTCL had made the following submissions:-

> *"It is humbly submitted that entire Additional Capitalisation expense with respect to 400kV Transmission line is not part of Original Contract. Only part of Addl. Capitalisation expense i.e. erection works correspond to Original Contract. Copy of bills/invoice corresponding to erection works are already enclosed as Annexure-17. Expense corresponding to Addl. Capitalization works for FY 2023- 24 shall be met through equity.*
>
> *Further, it is submitted that as ADB Tranche-III has been closed on 29.09.2021. HPPTCL is making payments towards expenses mentioned under reply to Query No. 18 through equity. However, HPPTCL is on process of tying up loan with funding agency and Agenda regarding same has been placed before BOD in its 52nd & 56th Meeting. Copy of BOD Agenda placed in said matter is enclosed as Annexure-21. "*

4. Further, in the reply dated 01.03.2024 in response to Query No.6 of Deficiency letter dated 15.12.2023, the HPPTCL had made the following submissions:-

> *"With regard to said query, it is humbly submitted that loan tie up with Himachal State Cooperative Bank has been firmed up and supporting*

*documents in this regard have been attached as Annexure-13."*

5. In view of above, the funding claimed in the Petition at the time of filing i.e. prior to approval/drawl of said loan, shall change. This is on account of expenses already incurred by the HPPTCL from its own resources towards the balance ADB Tranche-3 spill over works from the date of closure of ADB Tranche-3 i.e. 29.09.2021 to 29.10.2024, which have been now replenished from the Loan drawn w.e.f. 29.10.2024 from the HP State Co-operative Bank (HPSCB for short). Thus, the HPPTCL is liable for debt servicing as per terms and conditions of loan agreement executed between the HPPTCL and the HPSCB. The HPPTCL has prayed for consideration of the same during truing-up of expenses for the 4$^{th}$ MYT Control Period.

6. According to the Petition, the order dated 10.09.2024 suffers from errors apparent on the face of record and requires to be reviewed and has sought review of order dated 10.09.2024 in Petition No. 99 of 2024 on the following grounds:-

**1: Disallowance of Hard Cost and cost towards Land Acquisition & Preliminary Works amounting to Rs 13.69 Crores and Rs 0.32 Crores respectively for Asset-1.**

(i) The Commission while disallowing cost of Rs. 13.69 Crore incurred towards Hard Cost and Rs. 0.32 Crore incurred towards Land Acquisition & Preliminary expenses in case of Asset-1 has discussed the same in para 3.6.18 and 3.6.19 which have been reproduced in the Petition.

(ii) It is submitted that the hard cost has been disallowed by the Commission in the absence of bifurcated cost in Auditor's Certificate as on COD and in view of the inadequate allocation of cost and lack of proper reasoning with regard to the claimed cost. The Commission has restricted the Supply and Service Cost to final award cost of Rs. 176.15 Crore (portion of final award cost bifurcated among 400/220 kV & 220/33kV portion of Lahal Sub-station for Services and Supply) against claim of Rs 189.83 Crores as submitted by the Petitioner. As per the Petitioner, the single award was placed for complete 400/220/33kV Sub-station having 400/220kV & 220/33kV parts. However, the Petition of 220/33kV portion of Lahal Sub-station was filed initially since the same was put to use during 2020 whereas 400/220kV portion of Sub-station could not be commissioned due to non-availability of 400kV Lahal Chamera Transmission line. Thus, the bifurcation was done for 400/220kV & 220/33kV parts for the sake of claiming the Capital Cost &ARR.

(iii) Further, in case of 400/220kV part of Lahal Sub-station, the Commission has disallowed the Price Variation of Rs 11.63 Crores (Supply & Erection portion) out of total Price Variation amount paid for complete Sub-station amounting to Rs 12.51 Crores. Also, Rs 0.87 Crores as claimed in 220/33kV portion of Lahal Substation through a separate petition (Order dated 17.11.2023 in Petition No. 28/2023) have been disallowed.

(iv) The Price Variation has been paid in line with Appendix-2 of Contract Agreement signed with M/s L&T on 04.02.2015 for design, engineering, manufacture, fabrication, testing & commissioning of 400/220/33kV Lahal Sub-station (relevant extract of Contract Agreement enclosed as Annexure-3). The Commission is requested to allow Price Variation claimed in 400/220kV part and all Invoices/Bills for complete Price Variation paid towards complete 400/220/33 kV Lahal Sub-station as enclosed at Annexure-4 of the Petition for reference.

(v) In addition to above, expenditure towards widening/ improvement of Chamba-Bharmour Road at critical locations was also booked under 400/220kV portion of Lahal Sub-station (Annexure-5). Said work was required to be carried out by HPPTCL in order to ensure safe transportation of Power Transformer at site.

(vi) Further, payment towards "Other minor items" amounting to Rs 0.05 Crores was also incurred and was claimed in expenditure towards 400/220kV portion under Hard Cost (Annexure-6).

(vii) As per the HPPTCL, the disallowance of Rs 14.57 Crores in Hard Cost is majorly on account of following reasons:-

(a)Payment of Price Variation for Supplies & Erection part amounting to Rs 12.51 Crores.

(b) Payment towards widening/improvement of Chamba-Bharmour Road at critical locations amounting to Rs 2.00 Crores.

(c) Payment towards "Other minor items" amounting to Rs 0.05 Crores

(viii) With regard to disallowance of Rs. 0.32 Crore incurred towards land acquisition & preliminary works, which has been disallowed in the absence of supporting documents, it has been submitted that there is disallowance of Rs 0.30 Crores (claimed land acquisition cost amounting to Rs 3.19 Crores - approved land acquisition cost of Rs 2.89 Crores). The complete Land Cost alongwith compensation amounting to Rs 3.19 Crores as on 11.01.2023 was booked under 400/220kV portion of Lahal Sub-station. Supporting documents towards complete Land Cost of Lahal Sub-station have been annexed as Annexure-7. With regard to disallowance of Rs 0.02 Crores towards preliminary works, it is submitted that the cost approved was Rs 0.97 Crores against claimed cost of Rs 0.99 Crores. The total expenditure against preliminary works amounted to Rs 1.89 Crores which was apportioned among 400/220kV & 220/33kV portions of Lahal Sub-station amounting to Rs 0.99 Crores & Rs 0.90 Crores respectively. Copy of Auditor’s Certificate has been attached as Annexure-8 to the Petition.

**2: Review of O&M expenses for Asset-1 and Asset-2.**

(i) As per the Petitioner, the Commission has dealt with this aspect in the order dated 10.09.2024 in para 4.5.3 which has been reproduced in the Petition.

(ii) The Petitioner has submitted that there is an inadvertent error in the computation of the O&M expenses for Asset-1 as the O&M expenses for FY2022-23 and FY2023-24 have been incorrectly calculated as Rs. 63.38 lakhs and Rs. 303.52 lakhs instead of Rs. 80.67 Lakhs and Rs. 380.37 lakhs respectively.

(iii) Further, the Commission has incorrectly pro-rated the O&M expenses for 79 days instead of 80 number of operational days based on the COD of the assets i.e., 11.01.2023 and the date of COD is required to be considered for computation of O&M.

**3: Disallowance of actually infused Debt Equity Ratio as on COD for Asset-1 and Asset-2.**

(i) As per the Petitioner, the Commission has dealt this aspect in the order dated 10.09.2024 in para 3.8.7 which has been reproduced.

(ii) It is submitted that Regulation 18 of HPERC Transmission Tariff Regulations, 2011 provides for the debt-equity ratio for the purpose of tariff determination as follows:-

*"18. Debt-Equity Ratio For the purpose of determination of the tariff, the equity and outstanding debt as determined for the base year by the Commission shall be considered as given. However, for any fresh capitalization of assets, the Commission shall apply a debt-equity ratio*

*of 70:30 on the capitalised amount as approved by the Commission for each year of the control period:*

*Provided that where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. The interest rate applicable on the equity in excess of 3 0% treated as loan has been specified in regulation 20. Where actual equity employed is less than 30%, the actual equity shall be considered."*

(iii) The Regulation speaks about the consideration of actual debt or equity deployed during execution of the project and since, the Petitioner has infused equity lower than the normative ceiling of 30%, it had claimed transmission charges on the basis of actual debt equity ratio of 78.57 : 21.43 (after reducing amount of Consumer Contribution received) for Asset-1 and 70.95 : 29.05 for Asset-2 and had claimed RoE in accordance with the same but the Commission has not allowed the same.

(iv) With respect to the proof of Equity funding, the Petitioner has submitted that the Petitioner receives Equity as a whole from the GoHP and the equity for a particular scheme is allocated internally, on the basis of which tariff is claimed, duly certified by Auditor. Also the revised debt: equity has been approved by the BOD in its 59th meeting held on 17.08.2024 (Annexure-9).

(v) Also averred that in view of availing funding through the HPSCB towards 400kV Lahal-Chamera Transmission line, debt:equity ratio for Asset-2 upto FY 2023-24 will undergo change which may be considered during truing-up of expenses for 4th MYT Control Period.

**4: Review of the methodology adopted which erroneously considers 90% of total Debt as Grant**

(i) It is averred that the Commission has dealt with this aspect in order dated 10.09.2024 in paras 3.8.10, 3.8.11 and 3.8.12 which have been reproduced in the Petition.

(ii) As per the Petitioner, the observations in paras 3.8.10, 3.8.11 and 3.8.12 are in complete variance to the HPERC Transmission Tariff Regulations, 2011 (as amended upto date) for the reason that the Regulation 17-A as inserted vide Second Amendment in the year 2017 only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the GoHP as Loan amount in terms of the On-Lending Agreement(s) dated 21.04.2012, 03.12.2014 and 04.07.2024 executed between the GoHP and the HPPTCL shall not fall under the purview of

Regulation 17-A of the HPERC Transmission Tariff Regulations, 2011. As per the Petitioner, the Regulation 17 of the HPERC Transmission Tariff Regulations, 2011 states “the debt to equity ratio shall be considered in accordance with Regulation 18, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;” meaning thereby that in the given case the Loan amount received from the GoHP should not have been deducted by the Commission while considering the debt to equity ratio in accordance with the Regulation 18 for the purposes of determination of the tariff. Therefore, treating the Loan received by the HPPTCL from the GoHP as grant is in variation to the above Regulations which nowhere allow the HPERC to treat the Loan amount as grant and that too in the absence of any such Regulation.

(iii) Further, the Commission in the order under review has erred in not taking into account the terms of the initial On-Lending Agreement(s) executed on 20.04.2012 (for Tranche-I) and 03.12.2014 (for Tranche-II) by the GoHP and the HPPTCL and also the subsequent restructured On-lending Agreement dated 04.07.2024 signed between the HPPTCL with the GoHP.

The initial On-Lending Agreement(s) dated 20.04.2012 & 03.12.2014 specifically stipulate the following terms & conditions:-

"*3. The second party hereby agrees that: -*

*i) Rate of Interest shall be 10% per annum for all disbursements.*

*ii) Interest on 10% of the total disbursed amount will start immediately from the date of disbursement which will be payable by second party to the First Party annually.*

*iii) The Second Party will be given a grace period of 5 years in case of interest on the 90% of the total disbursed amount. Interest on this amount will start immediately at the end of 5th year which will be payable annually thereafter.*

*iv) Principal repayment will be made in 15 equal annual installments with a moratorium of 5 years."*

(iv) Further, the restructured On-Lending Agreement(s) for Tranche-III specifically stipulate as under:-

- "*The second party hereby agreed that: -*

*i. Rate of Interest shall be 10% per annum for 10% of all disbursements.*

*ii. Interest on 10% of total disbursed amount shall start immediately from the date of disbursement which will be payable by HPPTCL to the GoHP.*

*iii. 10% of all disbursement shall be infused as equity by GoHP.*

*iv. 80% of all disbursement shall be interest free loan.*

*v. Principal repayment for 90% of total disbursed amount will be made in 15 equal annual instalments with a moratorium period of 5 years.*

*vi. The interest will be repaid as due in January of each financial year. The amount of the interest will be calculated on the above rate and* *terms up to last day of the preceding month in which the payment is due i.e. 31st December.”*

(v) Moreover, the restructured On-Lending Agreement(s) for Tranche-II specifically stipulate as under:-

“*1. The second party hereby agrees to amend the Sr. No. 3 of existing agreement as under -*

*(i) Principal repayment due till Calendar Year (C.Y.) 2021 as per original onlending agreement is deferred till C.Y. 2023 and shall be repaid in 11 equal installments w.e.f. C.Y. 2024 (paid w.e.f. Jan., 2025 to Jan., 2035),*

*(ii) Interest on 90% portion of loan accrued up to Calendar Year 2021 as per original onlending agreement is deferred till calendar Year 2023. The interest shall be repaid w.e.f. C.Y. 2024 in 11 years i.e. (paid w.e.f. Jan., 2025 to 2035),*

*(iii) Interest on 10% portion of the total disbursed amount will continued to be paid by second party to the First Party Annually.*

*(iv) Restructuring of Loan w.e.f. Calendar year 2022 shall be as under: -*

*(a) 80% of disbursed loan will be converted in to interest free loan*

*(b)10% of disbursed amount will be kept as interest-bearing loan @10% rate of interest*

*(c) 10% of disbursed loan will be converted into equity by GoHP.*

*(v) Principal repayment on 90% portion of disbursed loan due w.e.f. C.Y. 2022 is deferred till calendar Year 2023. The Principal shall be repaid w.e.f. C.Y. 2024 in eleven equal instalments i.e. (paid w.e.f. Jan. 2025 to 2035).”*

(vi) Further, the Commission has also erred in not taking into consideration the terms and conditions of the Loan Agreement(s) executed between the GoI and the ADB more specifically Article III - Use of Proceeds of the Loan under Section 3.01 (b) which reads as under:-

> "*Subject to the provisions of the FFA, the Borrower shall cause the State to make the proceeds of the Loan available to HPPTCL under an Onlending Agreement on terms and conditions mutually acceptable to ADB. The Borrower shall submit, or cause the State to Submit, the Onlending Agreement to ADB within one month from the Effective Date.*"

(vii) Also, the Commission has also erred in not acknowledging the terms of the Project Agreement(s) executed between the ADB on the one Part and the State of H.P and the HPPTCL on the other part, which categorically state that the loan be made available to the State and the HPPTCL and the parties agreed to undertake certain obligations towards the ADB as mentioned in the said Project Agreement(s). Moreso, the Clause 2.13 & 2.14 categorically state:

> "*Section 2.13 Except as ADB may otherwise agree, the State and HPPTCL shall apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of the Loan Agreement and this Project Agreement, and shall ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the project.*
>
> *Section 2.14 Except as ADB and the Borrower may otherwise agree, the State and HPPTCL shall duly perform all their obligations under the Onlending Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Onlending Agreement.*"

The copy of Project Agreement(s) dated 15.12.2011, 29.09.2014 and 16.11.2018 have been annexed as Annexure

1/A (Colly).

(viii) As per the Petitioner, vide letter No. HPPTCL/C&M/HPERC Correspondence/207413/2023 dated 19.06.2023, it had apprised the Commission regarding the Restructuring of ADB loan under Himachal Pradesh Clean Energy Transmission Investment Programme and had provided the GoHP approval letter dated 04.03.2023. The Petitioner further apprised the Commission vide letter No. HPPTCL/C&M/HPERC Correspondence/5338-45 dated 08.08.2024 regarding restructuring of ADB loans along with its terms and conditions (Annexure-10)

(ix) Further, the Commission, taking cognizance of the revised terms of the on-lending agreement vide its Interim Order dated 19.07.2023 in Petition No. 41 of 2023 had directed the Petitioner to restructure the loan received from KfW in line with the restructured loan agreement with ADB. The Commission, however, while computing the annual transmission charges in Petition No. 28 of 2024 has not considered the terms of debt as per the restructuring of the ADB loan which it had directed to be emulated in case of KfW vide its interim order dated 19.07.2023 as mentioned above. Instead, the Commission has now directed the Petitioner to take up the matter with GoHP to restructure the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding.

(x) The Petitioner has submitted that it has to repay the debt as per the terms of revised on-lending and if such costs are not included in the transmission charges, the HPPTCL will not be able to discharge its liabilities which include debt repayment and upkeep of the transmission assets which has caused grave prejudice to the financial health of the HPPTCL. Further, if the transmission charges approved by the Commission do not include the liability to be discharged, the same shall weaken the Balance Sheet of the Petitioner and will attract adverse remarks from the statutory auditors and will also adversely impact upkeeping of O&M of existing projects as well as construction of future projects of the HPPTCL.

(xi) It is submitted that the Petitioner has already taken up the matter regarding conversion of grant with the GoHP vide letters dated 12.08.2024 and 20.11.2024 as per the direction of the Commission.

(xii) Further, it is evident from the on-lending agreement that out of the total loan disbursements, 80% of the loan has been transferred by the GoHP as interest free loan, however, the same needs to be paid back. 10% of the loan is to be converted to equity and the balance 10% of the debt is to be repaid along with 10% rate of interest. It is submitted that the HPPTCL has executed the Agreement with the GoHP and is bound by the terms and conditions of the said contract.

(xiii) It is further submitted that non-consideration of actual loan terms is not in accordance with Regulation 20(1) of the HPERC Transmission Tariff Regulations, 2011 which mandates consideration of actual terms of loans. Regulation 20(1) of the HPERC Transmission Tariff Regulations, 2011, as amended, specifies as follows:-

> *"20. Interest and Finance Charges*
>
> *(1) Interest and finance charges on loan capital shall be computed on the outstanding loans, duly taking into account the schedule of repayment in accordance with the terms and conditions of relevant agreements of loan, bond or non-convertible debentures. Exception can be made for the existing or past loans which may have different*

*terms as per the agreements already executed if the Commission is satisfied that the loan has been contracted for and applied to identifiable and approved projects.*

*……………………”*

(xiv) Hence, the cost of funding is required to be revised based on the restructured loan agreement dated 04.07.2024 as considering 90% of the loan as grant shall severely affect the finances of the Petitioner.

(xv) It is submitted that by considering grant at 90% of the Debt, the equity component has also been reduced leading to double impact on the Petitioner.

(xvi) It is also averred that the impugned order is in complete variance to the material on record as well as the HPERC Transmission Tariff Regulations, 2011, as amended upto date, the Onlending Agreement(s), Loan Agreement(s) and the Project Agreement(s).

**5: Disallowance of Carrying Cost on delayed recovery of Transmission Charges.**

(i) It is averred that the Commission has dealt this aspect in the order dated 10.09.2024 in para 4.8.3 which has been reproduced in the Petition.

(ii) It is submitted that the Commission has not approved the carrying cost for the period commencing from the submission of the Petition and upto the date of issuance of the Tariff Order. As per the Petitioner, the carrying cost represents the financial burden borne by the Petitioner due to the delay in recovery of tariff which is beyond the control of the Petitioner and the disallowance of the same has resulted in under recovery of the cost, affecting the Petitioner adversely.

(iii) It is averred that the Commission has recognized in the impugned order that there was considerable delay on account of public hindrance and landslides in the commissioning of the project, which was beyond the control of the Petitioner. Also the COVID-19 had severely affected the response time of any organization and hence, the carrying cost ought to have been allowed for such uncontrollable reasons.

(iv) It is submitted that the order suffers from errors apparent on the face of record and are required to be revised/ corrected.

**<u>REPLY OF THE RESPONDENTS</u>**

7. The Review Petition has been resisted by the Respondent

No. 1, GMR Bajoli Holi Hydro Power Private Limited (GMR/ Respondent No. 1) and the HPSEBL/ Respondent No. 2 by filing separate replies.

**REPLY OF RESPONDENT No. 1**

8. The Respondent No. 1, has not filed reply to the amended review Petition and rather submitted that the reply filed to the unamended Petition be read as reply to the amended Petition also.

9. It is averred that the Review Petition is not maintainable as it does not satisfy the basic requirements prescribed in law for seeking a review of the Impugned Order. As per it, the power of review commensurates with a civil court's power of review under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 under which the power of review may be exercised on the following limited grounds:

(a) Discovery of new and important matter or evidence which, after the exercise of due diligence, has not been within the knowledge or could not be produced by the Review Petitioner at the time when the Order has been made; or
(b) Some mistake or error apparent on the face of record; or
(c) Any other sufficient reason.

10. The Respondent No. 1 relying the law laid down by the

Hon'ble Supreme Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale (1960) 1 SCR 890, Parsion Devi v. Sumitri Devi: (1997) 8 SCC 715, Thungabhadra Industries Ltd. v. Government of Andhra Pradesh (1964) 5 SCR 174 and Lily Thomas v. Union of India: (2000) 6 SCC 224, it has submitted as under:-

(a) 'Error apparent' on the face of the record must be such as can be seen as an obvious and patent mistake and not something which is required to be established by a long drawn process of reasoning on points on which there may conceivably be two opinions;
(b) Power of review can be exercised for correction of a mistake but not to substitute a view;
(c) A review cannot be disguised as an appeal to re-hear unfavourable issues to a party; and
(d) Sufficient reason must mean a reason sufficient on grounds at least analogous to those specified in the rule, that is to say, that the sufficient reason pleaded must be analogous to an error that is apparent.

11. Further, the Hon'ble APTEL, in its Judgment dated 02.11.2019 in Review Petition No. 9 of 2018 in Appeal No. 268 of 2015 titled Surat Municipal Corporation v. GERC, has also, inter alia, held as under:-

(a) Repetition of old and overruled arguments are not sufficient grounds for review;

(b) Review proceedings can neither be equated with original hearings nor are they appeals in disguise; and

(c) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.

12. It is averred that the claims raised by the HPPTCL with respect to disallowance of cost of Supply and Services for the Transmission Assets, Land Cost, etc. have been considered by Commission in detail, and the Petitioner is attempting to reagitate the settled issues already considered by the Commission.

13. Similarly, with respect to claim for review of O&M expenses, no reasons/grounds have been raised by the HPPTCL as to why the revised O&M expenses quoted by the HPPTCL ought to be considered.

14. Similarly, with respect to the issues qua debt:equity ratio and consideration of loan as grant in the Impugned Order, the same are beyond the scope of this Commission's review jurisdiction since the HPPTCL is in the process of firming up the debt:equity ratio, as well as renegotiating the terms of the ADB funding with the GoHP. Further, the Commission has correctly considered the debt:equity ratio in consonance with applicable Regulations. Accordingly, the

findings of this Commission regarding consideration of loan as grant are merely provisional, and any further adjudication of the same would be premature at the present stage.

15. On disallowance of Hard Cost towards Supply and Services Cost of Asset 1, it is averred that the Commission has disallowed the claim of Rs. 13.69 Crore by discussing in detail in paras 3.6.16, 3.6.17, 3.6.18, 3.6.19 and 3.6.20 as the Auditor's Certificate placed on record was lacking the component wise cost break-up. Further, the variation between the awarded cost and actual cost was termed as minor by the HPPTCL, and no justification or supporting documentation had been provided by the HPPTCL with respect to the increased cost. As per it, due to the inadequate cost allocation and absence of proper reasoning, the Commission has determined the capital cost of Rs. 176.15 Crore (against the HPPTCL's claim of Rs. 189.83 Crore) as on COD for Asset 1 and there exists no infirmity, mistake and/or error apparent on the face of the record warranting review.

16. It is also averred that the Commission repeatedly sought details of the component-wise breakup of the costs incurred for the

Asset 1, as well as the 220/33 kV portion, as also justification for the difference between the actual cost of construction (Rs. 176.15 Crore) versus claimed cost of construction (Rs. 189.83 Crore) but the HPPTCL merely stated that a common award had been placed for construction of 400/220/33 kV systems of Lahal GIS and the breakup of Award Cost is notional and not actual. Further, the HPPTCL merely provided the provisional certificate (prepared internally by HPPTCL) as opposed to Statutory Auditor's certificate. Similarly, with respect to the justification for price variation between the actual cost of construction and the cost of construction claimed, HPPTCL has merely placed the single contract awarded to M/s L&T and relied upon the price variation provisions thereunder. However, no further elaboration or justification has been made with respect to the price variation. Thus, the HPPTCL is attempting to re-agitate settled issues which have already been considered by this Commission.

17. Further, the HPPTCL has neither provided the Auditors' Certificate setting out the asset-wise/component-wise breakup, nor has furnished any justification as to why price variation was

necessitated. Thus, the Commission has rightly disallowed HPPTCL's claims for the Supply and Services cost of Asset 1 as per the terms of the HPERC Transmission Tariff Regulations, 2011 which require the Commission to conduct prudence check and scrutiny while determining the capital cost.

18. As per the Respondent, presently, the GMR's 180 MW hydro-electric power project ("Project") is connected to the inter-state transmission system ("ISTS") via the 400/220 kV system of the Lahal GIS and the Project is not utilizing the 220kV/33kV system of the Lahal GIS and in the absence of a voltage wise breakup of the cost of components, GMR and other beneficiaries of the Lahal GIS will be required to make payment for transmission assets not being utilized by them. Such payment will essentially constitute unjust enrichment of the HPPTCL which is required to be allowed.

19. It is further averred that even if this Commission were to allow the present Review Petition, the apportionment of the extra cost amongst the beneficiaries will remain unknown including cost attributable to each beneficiary and their share of the transmission charges. Without prejudice, the transmission charges for the

Transmission Assets are yet to be determined for each beneficiary by the Appropriate Commission. Accordingly, it is prayed that the HPPTCL be directed to place on record the apportionment of costs (across voltages, as well as the amounts receivable from all beneficiaries).

20. It is averred that with respect to the amount of Rs. 13.69 Crores claimed by the HPPTCL towards the cost of Supply and Services for Asset 1, the following break-up has been set out in the present Review Petition (ref para 8.4 of the Review Petition):-

| **S. No.** | **Particulars** | **Amount (in Rs. Crores)** |
|---|---|---|
| 1. | Price variation (Supply & Erection portion) for 400/220 kV portion | 11.63 |
| 2. | Disallowed separately by this Commission in Order dated 17.11.2023 in Petition No. 28 of 2023 | 0.87 |
| | **Total** | **-12.51** |

21. From the break-up set out above, as provided by the HPPTCL itself, it is averred that the Price variation of Rs. 11.63 Crores has been claimed with respect to Asset 1 in terms of the Contract awarded to M/s L&T, which had been awarded for the entire 400/220/33 kV portion of Lahal GIS. However, the HPPTCL has failed to provide any justification or methodology followed necessitating such price variation and has merely placed the

Contract with M/s L&T on record. These aspects have already been considered and disallowed by this Commission vide the Impugned Order.

22. It is also averred that Rs. 0.87 Crore towards 220/33 kV portion of Lahal GIS was claimed by the HPPTCL separately in Petition No. 28 of 2023 which is beyond the scope of the present Review Petition.

23. It has been further averred that there exists a discrepancy in the amounts claimed by the HPPTCL with respect to the cost of Supply and Services for Asset 1. While the HPPTCL has claimed an initial amount of Rs. 13.69 Crore, the same has subsequently been modified as Rs. 12.51 Crore on account of Price Variation, of which Rs. 0.87 Crore does not pertain to the assets germane to the present Petition. The said amounts are exclusive of cost of land acquisition, preliminary works, etc. and the HPPTCL be put to strict proof with respect to the actual amounts claimed.

24. It is further averred that no grounds have been raised by the HPPTCL as to why the Commission ought to exercise its review

jurisdiction with respect to the disallowance qua widening of the Chamba-Bharmour Road as well as “other minor items”

25. It is further averred that the Commission has disallowed the Land Cost of approximately Rs. 0.30 Crores since the HPPTCL failed to provide any breakup or any supporting documents in lieu of the same.

26. On the review of O&M expenses for the Transmission Assets, it is averred that the O&M expenses had been submitted only for the partial year and actual audited expenses were not available for the entire year, as such, a realistic trend for upcoming years could not be ascertained. Accordingly, the Commission has relied upon the normative O&M expenses prescribed in the CERC Tariff Regulations, 2019. Further, in this regard, the HPPTCL has contended that there is an inadvertent error in the computation of O&M expenses, as follows:-

| **Asset** | **Amount ( in Rs Lakh) allowed vide Impugned Order** | **Amount ( in Rs Lakh) claimed by the HPPTCL** | **Difference ( in Rs Lakh)** |
|---|---|---|---|
| FY 2022-23 | | | |
| 1. | 63.38 | 80.67 | 17.29 |
| FY 2023-24 | | | |
| 2. | 303.52 | 380.37 | 76.85 |

Based on the above, the HPPTCL has submitted that the Commission has incorrectly pro-rated the O&M expenses for 79 days instead of 80 days based on the COD of the assets, i.e., 11.01.2023. It is submitted that the Commission, has rightly considered the O&M expenses as Rs. 63.38 Lakh and Rs. 303.52 Lakh for Asset 1 for FY 2022- 23 and FY 2023-24 respectively and in the absence of any new evidence or grounds qua the HPPTCL's claim for increase in O&M expenses in not required to be considered.

27. On the issue of disallowance of actual debt: equity ratio as on COD for Asset 1 and Asset 2, the HPPTCL relying upon the terms of Regulation 18 of the HPERC Transmission Tariff Regulations, has submitted that the Commission ought to have considered the actual debt:equity ratio of 78.57:21.43 for Asset I and 70.95:29.05 for Asset 2 as opposed to the debt: equity ratio of 70:30 approved by this Commission. Regulation 18 of the HPERC Transmission Tariff Regulations, 2011 reads as follows: -

*"18. Debt-equity ratio*
*For the purpose of determination of the tariff, the equity and outstanding debt as determined for the base year by the Commission shall be considered as given. However, for any fresh capitalization of assets, the*

*Commission shall apply a debt.·equity ratio of 70:30 on the capitalised amount as approved by the Commission for each year of the control period:*

*Provided that where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. The interest rate applicable on the equity in excess of 30% treated as loan has been specified in regulation 20. Where actual equity employed is less than 30%, the actual equity shall be considered."*

28. It is averred that from a bare reading of Regulation 18 of the HPERC Transmission Tariff Regulations, 2011, it is evident that with respect to any fresh capitalisation of assets, this Commission is required to apply a debt:equity ratio of 70:30 on the capitalised amount as approved and based on the same, the debt:equity ratio of 70:30 has been applied in consonance with the Regulations. It is averred that the HPPTCL's reliance on the proviso to Regulation 18 that the Commission ought to have considered the actual debt:equity ratio since equity employed was less than the threshold of 30%, is misplaced. It is submitted that the proviso to Regulation 18 cannot limit the applicability of the main Regulation, which specifically provides the debt:equity ratio for fresh capitalisation of assets as 70:30. If the HPPTCL's contention were to be accepted and if the provisions of the Proviso were to apply to the present case, it would render the debt:equity ratio set out in the principal

Regulation nugatory. It is averred that the debt:equity ratio of 70:30 as approved by this Commission for the Transmission Assets does not suffer from any error apparent on the face of record and the HPPTCL's contentions in this regard are baseless, incorrect and denied.

29. On the issue of disallowance of Carrying Cost from the date of filing of Petition till issuance of the Impugned Order, it is averred that the Commission, vide the Impugned Order, has observed that that though the HPPTCL had cited reasons such as complexity in bifurcation of cost, COVID- 19, etc., but despite taking significant time in filing the Petition, the HPPTCL had failed to provide bifurcation of the costs of Asset I and the balance 220/33 kV portion of the Lahal GIS.

30. Further, the Commission has rightly disallowed the HPPTCL's claims for carrying cost from the date of filing the Petition till the date of issuance of the Impugned Order as it is a settled law that a party cannot be permitted to profit from its own wrongs. In the present case, since the delay has been on the HPPTCL's end with respect to filing of Petition and responding to

the Commission's queries, the HPPTCL cannot be permitted to profit from its own delays.

**REPLY OF RESPONDENT NO. 2**

31. The Respondent No. 2, Himachal Pradesh State Electricity Board Limited ("HPSEBL" / "Respondent No. 2") in its reply has submitted that the Review Petition is not maintainable as the review petition is restricted to correcting the errors apparent on the face of the record, on discovery of new evidence which could not have been earlier produced, or any other sufficient reasons. As per the Respondent No. 2, the grounds raised by the HPPTCL do not meet the above criteria and that the Petitioner has attempted to reopen the issues already considered and decided upon. It is submitted that present review petition fails to establish any error apparent on the face of the record and that the Petitioner/HPPTCL is seeking to reargue the merits of the original case, which is impermissible in a review petition. Further, it is submitted that the review proceedings cannot be equated with the original hearing of the case and the court's jurisdiction of review is not the same as that of an appeal. A judgment can be open to review if there is a mistake or error

apparent on the face of the record but error which has to be detected by a process of reasoning cannot be described as an error apparent on the face of the record. It is submitted that the Commission has dealt each and every aspect of the matter with proper scrutiny and prudence check in terms of the applicable laws and thus, the review petition filed by the petitioner is not maintainable and liable to be dismissed.

32. It is averred that the lending agreement dated 04-07-2024 and the restructuring terms communicated on 04-03-2023 could have been presented during the original proceedings but the petitioner has failed to do so.

33. On the issue of disallowance of hard cost and land acquisition & preliminary works amounting to Rs. 13.69 Cr and Rs. 0.32 Cr for Asset-1, it is submitted that Commission has already conducted a detailed scrutiny of the various components of the capital cost and has dealt this aspect of hard cost and Land acquisition and preliminary works in the Order dated 10.09.2024 in Paras No. 3.6.25, 3.6.26 and 3.6.27 and has approved the costs on the basis of documentary proof submitted by the Petitioner. It is

also submitted that there are no errors apparent in the tariff order dated 10.09.2024.

34. On the issue of review of O&M expenses for Assets-1 and 2, it is submitted that the Commission has dealt this aspect in the Order dated 10.09.2024 at Para No.4.5.3, 4.5.4, 4.5.5 & 4.5.6, where the Commission has approved the O&M expenses for each year based on the CERC guidelines.

35. On the issue of disallowance of actual Debt Equity ratio as on CoD for Asset-1 and Asset-2, it is submitted that the Commission has dealt this aspect in the Order dated 10.09.2024 at Para No. 3.8.7, 3.8.8, 3.8.12 & 3.8.13 where the Commission has provisionally considered the debt amount availed under the ADB scheme as 90% grant and 10% debt and after reducing such amount of grant from the total approved capital cost. As per it, the Commission has considered Debt : Equity ratio as 70% debt and 30% equity for the balance amount in line with Regulation 10(C) of the HPERC Transmission Tariff regulation, 2011 and there is no error apparent in the order dated 10.09.2024.

36. On the issue of review of methodology of the funding, it is submitted that as per Para No. 8.21 of the review petition, the terms and conditions of the loan provided as per the "On Lending Agreement" between GoHP and HPPTCL dated 04.07.2024, the 90% grant has been converted to 80% interest free loan and 10% interest on 10% disbursements. It is averred that the 80% interest free loan and 10% interest on 10% disbursements should have been grant which needs to paid back by the Petitioner and this amount will be recovered from consumers of the state through ARR. Granting the review petition would undermine consumer’s interest, as higher capital costs would lead to increased transmission charges, directly impacting retail tariffs for the electricity Consumers in the State.

37. It is averred that the Regulatory decisions must prioritize efficiency and affordability for consumers, and the petitioner's request contradicts these principles. The Commission has already taken a consistent view on this issue in the similar petitions of the HPPCL and others and thus, the present review petition in an attempt to unsettle the settled regulatory position. Furthermore, the

Commission has categorically dealt this aspect by noting that multilateral agency i.e. ADB is funding the project in collaboration with the GoI and the GoHP, however, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. Further, it has been made clear in the order that the entire multilateral funds were received by the state in the ratio of 90% grant and 10% loan from the GoI and since the Commission has considered each and every issue meticulously, there is no further scope for reviewing the order passed by the Commission. It is further submitted that the Commission has appreciated each and every aspect of the matter in the original proceedings and after due consideration of the methodology adopted to derive funding of the project, a well-reasoned order has been passed by the Commission in favour of the Consumers of the State. As such, the review petition is liable to be dismissed.

38. On the issue of disallowance of Carrying Cost on delayed recovery of Transmission Charges, the HPSEBL has submitted that the Commission has already dealt this aspect in the Order dated 10.09.2024 at Para No. 4.8.3 in detail by observing that the

Petitioner had taken a significant time for filing of the Petition. Further, the Petitioner had been unable to provide adequate bifurcation of costs between the 400/220 kV and 220/33 kV of the Substation and the beneficiaries of the Transmission system were also not clearly identified. Therefore, the Commission has disallowed the carrying cost.

39. As per the HPSEBL, the review Petition is devoid of merit, legally untenable, and contrary to public interest and liable to be dismissed in the interest of justice, fairness, and regulatory certainty.

40. No reply has been filed by the Respondent No. 3.

## **SUBMISSIONS OF THE PARTIES**

41. We have heard Sh. Vikas Chauhan, Ld. Counsel for the Petitioner, Sh. Yashaswi Kant, Ld. Counsel for the Respondent No. 1 and Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 2 and have perused the record carefully.

42. Sh. Vikas Chauhan, Ld. Counsel for the Petitioner has submitted that the impugned order suffers from errors apparent on

the face of the record as the Commission has not considered the documents which were submitted along with the original Petition and thus, the order is required to be reviewed. He has also submitted that the Petitioner has apprised the Commission in respect of restructuring of the loan amount and signing the On-lending Agreement on 04.07.2024 but the Commission has not taken cognizance of the same and thus, the order under review is required to be revised.

43. Sh. Yashaswi Kant, Ld. Counsel for the Respondent No. 1 has submitted that the Review Petition is not maintainable as it does not satisfy the basic requirements prescribed in law for seeking a review of the Impugned Order. According to him, the HPPTCL has failed to raise any grounds in support as to why the Impugned Order ought to be reviewed and in the absence of any new evidence or grounds qua review, the Commission ought not to consider the HPPTCL's claim and the review Petition is liable to be dismissed.

44. Sh. Kamlesh Saklani, Authorised Representative for the Respondent No. 2 has submitted that the Commission has

considered each and every aspect of the matter as well as the events highlighted by the Petitioner in the Review Petition and that there are no errors apparent on the face of record and Petition is liable to be dismissed. He has also submitted that the Petitioner has travelled beyond the scope of the review and has laid challenge to the impugned order as an Appeal under guise of the review, which is not permissible.

## POINTS FOR DETERMINATION

45. We have carefully gone through the submissions of the parties and the record. The following points arise for determination in the present Petition:-

**Point No. 1**: Whether the Order dated 10.09.2024 in Petition No. 99 of 2024 regarding the disallowance of Hard Cost and cost towards Land Acquisition & Preliminary Works amounting to Rs 13.69 Crores and Rs 0.32 Crores respectively for Asset-1 suffers from an error apparent on record and is liable to reviewed?

**Point No. 2**: Whether the Order dated 10.09.2024 in Petition No. 99 of 2024 regarding the O&M expenses for

Asset-1 and Asset-2 suffers from an error apparent on record and is liable to reviewed?

**<u>Point No. 3</u>:** Whether the Order dated 10.09.2024 in Petition No. 99 of 2024 regarding the disallowance of actual infused Debt Equity Ratio as on COD for Asset-1 and Asset-2 suffers from an error apparent on record and is liable to reviewed?

**<u>Point No. 4</u>:** Whether the Order dated 10.09.2024 in Petition No. 99 of 2024 regarding methodology adopted to derive funding of the Project which considers 90% of total Debt as Grant and further considers funding of the project cost (excluding the Grant i.e. remaining 10%) to be funded through 70% debt and 30% equity constitutes an error apparent on record and is liable to reviewed?

**<u>Point No. 5</u>:** Whether the Order dated 10.09.2024 in Petition No. 99 of 2024 regarding the disallowance of Carrying Cost on delayed recovery of Transmission Charges suffers from an error apparent on record and is liable to reviewed?

**<u>Point No. 6</u>:** **Final Order**

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

**Point No. 1:** No.

**Point No. 2:** No.

**Point No. 3:** No.

**Point No. 4:** No.

**Point No. 5:** No.

**Point No. 6:** The Petition dismissed per operative part of the Order.

**REASONS FOR FINDINGS**

47. It is well settled law that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised on the ground that the decision was erroneous on merits which is the domain of a court of appeal. While exercising the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*,

(1997) 8 SCC 715 wherein it is held as under:-

> ***"9.** Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."*

48. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon'ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

> ***"8.** It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)*
>
> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new*

*and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."*

49. A similar view has been taken by the Hon'ble Supreme Court in Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1.

The main Petition had been filed for the approval of the capital cost and determination of the tariff for the period starting from COD to FY 2023-24 for 400/220 kV portion of 400/220/33 kV GIS Sub-station at Lahal (Asset-1) and 400 kV D/C Lahal-Chamera Transmission Line (Asset-2). In the present review Petition, the Petitioner has raised several grounds of challenge as that of Appeal by raising several new pleas highlighting discrepancies in the order under review which are not permissible in a Review Petition as the scope of Review Petition is quite limited to the extent of what is pleaded in the main Petition and for correcting the errors apparent on the face of record in order made on the basis of averments made in the main Petition. While considering an application for review, the Commission must confine its adjudication with reference to material which was available at the time of initial decision and the party cannot be permitted to re-agitate the issues which have already been addressed. The Review Petition can't be on the grounds that the decision is erroneous on merits and can't be allowed to be an appeal in disguise as held by the Hon'ble Apex Court in the case of Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715 and Ram Sahu v. Vinod Kumar Rawat (2021) 13 SCC 1. In the review Petition, the Review Petitioner has travelled beyond the scope and ambit of the review as mentioned under Order 47, Rule 1, CPC.

50. In view of the aforesaid, the Commission has considered and examined the Review Petition point-wise on the errors, as pointed out in the Petition, keeping in view the scope and ambit of review as mentioned under Order 47, Rule 1 of the Code of Civil Procedure, point-wise in the following paras:-

**<u>Point No. 1</u>**

**Disallowance of Hard Cost and cost towards Land Acquisition & Preliminary Works amounting to Rs 13.69 Crores and Rs 0.32 Crores respectively for Asset-1.**

51. The Commission has discussed the issue regarding Hard Cost at paras 3.6.13, 3.6.14, 3.6.15, 3.6.16, 3.6.17, 3.6.18, 3.6.19 and 3.6.20 of the impugned order as under:-

*"3.6.13 In relation to the current Petition, the Petitioner has claimed an amount of INR189.83 Cr. for Services and Supply as on 11th January 2023. Further, the Petitioner has also submitted that the final Award Cost after 7 Amendments for the 400/220 kV system was INR 276.04 Cr. Also, the Petitioner claimed that there was a dollar portion of the contract price amounting to $132,042. The Commission observes that while the final award cost after amendments of the combined substation has been INR 260.65 Cr., but the Petitioner has submitted the cost as on COD of the Substation as INR 276.04 Cr.*

*3.6.14 The Commission enquired through the query raised to the Petitioner regarding increase in cost from INR 176.15 Cr. to 189.83 Cr. The Petitioner submitted that the increase was due to settlement of Price Variation on erection and supplies part, and towards widening of road in critical locations.*

*3.6.15 It is observed that the Auditor's Certificate submitted for substantiating the claim of the Petitioner in respect of the capital cost has been for the complete system (400/200 kV and 220/33 kV) dated 20th March 2020.*

*3.6.16 Further, the claimed cost by the Petitioner has been compared with the awarded cost as summarized below:*

*Table 1: Comparison between Award Cost and Claimed Cost for the Services and Supplies of the Sub-station (INR Lakh)*

| ***Particulars*** | ***Awarded Cost**** | ***Claimed Cost*** |
|---|---|---|
| *Services* | *12,013.00* | *15,288.00* |
| *Supplies* | *5,602.00* | *3,695.00* |
| ***Total*** | *17,615.00* | *18,983.00* |

**Awarded cost inclusive of all seven (7) amendments as claimed by Petitioner*

*3.6.17 The Commission asked for the documentary proof of award cost and the subsequent amendments of the contract for the sub-stations (400/200 kV and 200/33 kV) separately for substantiating the awarded and actual cost for the 220/33 kV and 400/220 kV system as submitted in the Petition. The Petitioner has provided the break-up* *of the award cost and the amended cost of the 400/220 kV system (which is based on the bookings done in their internal accounts) in reply to deficiency letters of the Commission and the same was also not supported by the Auditor Certificate.*

*3.6.18 The Commission further enquired regarding appropriate rationale for bifurcation of cost as well as breakup of components of the Sub-station. In response, the Petitioner has submitted a component wise list installed in the Sub-station utilized across 400/220 kV system, 220/33 kV system and for the combined system. Since the cost breakup of each component was unavailable, it is difficult to bifurcate the entire cost amongst the two elements to arrive at a component wise cost. In the absence of bifurcated cost in Auditor's Certificate as on COD, the Commission is constrained to consider the amount of INR 176.15 Cr. submitted by Petitioner as the final award cost for 400/220 kV system for Services and Supply. In the current Petition, the total land cost of the substation has been considered under the 400/220 kV portion.*

*3.6.19 It is observed that the actual cost of the Sub-station as on COD for the 400/220 KV portion has been higher than the awarded cost. However, the Petitioner has termed the variation as minor and has not provided any justification or supporting documents with respect to the increased cost. Further, the variation on account of GST and other quantities is already reflected in the amendments issued by the Petitioner. In view of the inadequate allocation of cost and lack of proper reasoning with regards to the claimed cost, the Commission has approved the cost of INR 176.15 Cr in line with the Final Awarded Cost including the amendments towards the cost of Sub-station as on COD for the purpose of determination of capital cost.*

*3.6.20 As per the Auditor certificates, the cost towards the Sub-station reflects the cost as on COD for the complete system (400/220/33 kV). The Commission has taken due cognizance of the auditor's certificate dated 31.03.2020 (submitted with the Petition of 220/33 kV substation). Since it was the closest date to the completion date of the substation, the same has been considered by the Commission."*

52. As evident from above, the Petitioner could only provide the break-up of the award cost and the amended cost of the 400/220

kV system in reply to deficiency letters of the Commission which is based on the bookings done in its internal accounts. Further, the same was not supported by the Auditor Certificate.

53. It was also observed by the Commission that the actual cost of the Sub-station as on COD for the 400/220KV portion has been higher than the awarded cost. However, the Petitioner termed the variation as minor and did not provide any justification or supporting documents with respect to the increased cost.

54. Further, with respect to approval of land cost, the Commission has discussed the issue at para 3.6.26 as under:-

> *"3.6.26 In the above "Other expenses" for the 400/220 kV system, the Petitioner has not provided any breakup or any supporting documents. However, the Commission has considered the internal cost booking submitted as part of Petition of 400/220kV substation for cost division. The Commission has considered the Auditor's Certificate closest to the date of Commissioning of the Combined substation for bifurcation of Other Expenses. The Land cost has been considered as per the Auditor's Certificate submitted."*

55. The Commission observed that the Petitioner had filed a separate Petition (bearing Petition No. 28 of 2023) for the approval of Capital Cost and Determination of Tariff for 220/33 kV system of the 400/220/33 kV Lahal Sub-station. In the said Petition, the Petitioner had submitted the auditor's certificate dated 31.03.2020.

Since, the final auditor's certificate was not produced by the Petitioner during the proceedings of the impugned Order, the Commission had to take cognizance of the auditor's certificate dated 31.03.2020 which had been submitted by the Petitioner in Petition No. 28 of 2023.

56. Thus, in view of the inadequate allocation of cost and lack of proper reasoning with regard to the claimed cost, the Commission has approved the Hard Cost of INR 176.15 Crore in line with the Final Awarded Cost including the amendments towards the cost of Sub-station as on COD for the purpose of determination of Capital cost against total claimed cost of Rs. 189.83 Crore resulting in a disallowance of Rs 13.68 Crore in the Hard Cost.

57. Though, in the current Petition, the Petitioner has submitted details of expenses incurred on account of price variation, yet the reasons for incurring such expenses like time overrun or any other factors have not been provided. No reasonable justification has been submitted by the Petitioner.

58. Also, the Commission noted that the total land cost of the

Sub-station has been considered under the 400/220 kV portion i.e. in the current Petition (Para 3.6.18 of the impugned Order). Accordingly, the Commission has considered land cost of Rs. 288.67 Lakh against the cost of Rs 319.30 Lakh, which is as per Auditor's Certificate dated 31.03.2020 submitted by the Petitioner in Petition No. 28 of 2023 and an increase in the same subsequently does not seem reasonable and just.

59. The Petitioner was unable to provide any breakup in respect of Rs. 91.35 Lakh claimed under "Other Expenses" (Rs. 98.95 Lakh including Testing Charges). As discussed in para 3.6.26 of the impugned order, as reproduced above, the Commission, proceeded to consider the internal cost booking as had been submitted by the Petitioner as part of Petition of 400/220kV Sub-station for cost division and has accordingly, approved Rs. 97.18 Lakh against Rs. 98.95 Lakh claimed resulting in a reduction/disallowance of Rs. 1.77 Lakh.

60. The Commission is of the view that the Petitioner is seeking to re-open the issue under this review Petition without any proper justification travelling beyond the purview of review under Order 47

Rule 1, CPC. Thus, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding disallowance of Hard Cost and cost towards Land Acquisition & Preliminary Works amounting to Rs 13.69 Crores and Rs 0.32 Crores respectively for Asset-1. Hence, Point No. 1 is decided against the Petitioner and in favour of the Respondent.

61. However, the Petitioner may approach the Commission with detailed justification with supporting documents at the time of true-up exercise in this regard so as to consider allowing of the cost, which has been disallowed.

**<u>Point No. 2</u>**

**O&M expenses for Asset-1 and Asset-2.**

62. The Commission has approved the O&M expenses vide para 4.5.6 of Order dated 10.09.2024 in Petition No. 99 of 2024 as under:-

*"4.5.6 The following table provides the O&M expenses approved by the Commission for each year:*

***Table 2: O&M Expenses approved by Commission (INR Lakh)***

| *Item* | *FY23* | *FY24* |
|---|---|---|
| ***Sub-station*** | *63.38* | *303.52* |
| ***Transmission Line*** | *7.49* | *35.66* |
| ***Total O&M Expenses*** | ***70.87*** | ***339.18*** |

*O&M Expenses pro-rated for 79 days for FY 2022-23 based on COD (i.e.11.01.2023)*

*Sub-Station expenses multiplied by 0.7 as per CERC norms as this is a GIS Sub-station"*

63. Although no computation in support of its claim for O&M expenses of Rs. 80.67 lakh and Rs 380.37 Lakh for FY 2022-23 and FY 2023-24 for Asset-1 has been provided by the Petitioner, the Commission, on scrutiny of the calculations, does not find grounds for revisiting the same. In this regard, the Commission observes that in its submissions for the approval of O&M expenses, the Petitioner had requested to approve the O&M expenses on the basis of the norms as per CERC Tariff Regulations, 2019. The Commission concurring with the submissions observed that it was difficult to ascertain a realistic trend for O&M expenses for the upcoming years and accordingly, relied upon the normative O&M expenses prescribed in the CERC Tariff Regulations, 2019, and accordingly, the approved O&M expenses will be subject to true-up as per the actual expenses incurred on this account. As far as the contention with respect to number of days considered as 80 days of 79 instead is concerned, the Petitioner may approach the Commission with proper justification at the time of truing up exercise.

64. Thus, the Petitioner has not been able to substantiate any apparent error on record and the issue under consideration is answered against the Petitioner.

**<u>Point No. 3:</u>**

**Review of the disallowance of actually infused Debt Equity Ratio as on COD for Asset-1 and Asset-2.**

65. The Commission has discussed this issue in detail in paras 3.8.9, 3.8.10, 3.8.11 and 3.8.12 in the Order dated 10.09.2024 with respect to the project funding and Debt: Equity as under:-

> *"3.8.9 The Commission observes that ADB has sanctioned a multi tranche financing facility (MFF)of $350 million to the Government of India (GoI) under the Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP) which was further channelized to HPPTCL through Government of Himachal Pradesh (GoHP). The proposed Program was targeted for the construction of transmission infrastructure of 66 kV and above along with Sub-stations for evacuation of power of upcoming hydro power projects. However, the scheme itself implies that the financing support by the ADB is to promote the generation as well as evacuation of clean energy in the State. Further, the Commission is of the view that the Himachal Pradesh being a special category state receives these multi tranche financing from the GoI as 90% grant and 10% loan. The Commission has noted this aspect while finalising the tariff orders of the HPPCL hydro projects. However, no such information has been furnished by the Petitioner.*
>
> *3.8.10 In this specific instance, it is noted that the multilateral agency i.e., the ADB, is funding this project in collaboration with the GoI and the GoHP. However, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.*

*3.8.11 The Commission takes serious note against consideration of the amount as loan which otherwise was available as grant (90% of overall amount) to the State. This shall result in unnecessarily burdening the consumers of the State due to such treatment. It is also observed that the Petitioner is already facing financial challenges. The Commission feels that it would be prudent that the Petitioner takes up the matter with the Govt. of Himachal Pradesh regarding restructuring of the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding i.e., 90% of the amount to be converted to grant. This would be in interest of the consumers of the State who would have to bear the burden of the additional interest cost and repayment of such loan that is being provided as grant.*

*3.8.12 Accordingly, the Commission has provisionally considered the debt amount availed under the ADB scheme as 90% grant and 10% debt. Further, after reducing such amount of grant from the total approved capital cost, the commission has considered debt:equity ratio as 70% debt and 30% equity for the balance amount in line with Regulation 10(C) of the HPERC Transmission Tariff Regulations, 2011' which specify the following:*

*"(b) the debt-to-equity ratio shall be considered in accordance with regulation 16, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;"*

66. During the original proceedings, the Commission noted that the Project was being funded by the multilateral agency i.e. the ADB, in collaboration with the GoI and the GoHP under the Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP). As per the approach in other similarly situated cases, due to no production of sufficient documentary evidence, the Commission has observed that the Himachal

Pradesh being a special category State receives these multi tranche financing from the GoI as 90% grant and 10% loan. The Commission had noted this aspect while finalising the tariff orders of the HPPCL hydro projects as well as the tariff orders of various transmission assets of the HPPTCL. However, no such information was furnished by the Petitioner in the proceedings of the Petition. Thus, in the absence of adequate information, the Commission recorded the same at Para 3.8.10 that the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by the GoHP to the Petitioner initially as loan carrying interest rate of 10% per annum only to be revised subsequently. Thus, taking note of the same and to restrict loading of the Consumers of the State by the exorbitant tariff, the Commission, in Order dated 10.09.2024, has proceeded to consider the debt amount availed under the ADB scheme as 90% grant and 10% debt. Further, after reducing such amount of grant from the total approved capital cost, the Commission has considered debt:equity ratio as 70% debt and 30% equity for the balance amount in line with Regulation 17-A (4)(b) of the 'HPERC Transmission Tariff Regulations, 2011' which specify the following:-

> *"(b) the debt-to-equity ratio shall be considered in accordance with regulation 18, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;".*

67. Further, Regulation 18 of the 'HPERC Transmission Tariff Regulations, 2011' specifies the following:-

> *"18. Debt-equity ratio.- For the purpose of determination of the tariff, the equity and outstanding debt as determined for the base year by the Commission shall be considered as given. However, for any fresh capitalization of assets, the Commission shall apply a debt-equity ratio of 70:30 on the capitalised amount as approved by the Commission for each year of the control period:*
>
> *Provided that where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. The interest rate applicable on the equity in excess of 30% treated as loan has been specified in regulation 20. Where actual equity employed is less than 30%, the actual equity shall be considered."*

68. In the circumstances, taking note of the same and to restrict loading of the Consumers, the Commission has approved the funding pattern for both the Assets as 70:30 strictly as per the HPERC Transmission Tariff Regulations, 2011 as under:-

| Particulars | Percentage | Amount (INR Lakh) |
|---|---|---|
| **Substation** | | |
| Total Cost as approved by Commission | 100% | 22,329.11 |
| Debt as per DPR | 80% | 17,863.29 |

| Particulars | Percentage | Amount (INR Lakh) |
|---|---|---|
| Equity as per ratio in DPR | 20% | 4,465.82 |
| Total Funding Requirement | | 22,329.11 |
| Normative Debt as calculated by Commission | | 17,863.29 |
| Grant as per Normative Debt | 90% | 16,076.96 |
| Remaining Amount | | 6,252.15 |
| Approved Debt | 70% | 4,376.51 |
| Approved Equity | 30% | 1,875.65 |
| **Transmission Line** | | |
| Total Cost as approved by Commission | 100% | 14,915.80 |
| Debt as per ratio in DPR | 75% | 11,186.85 |
| Equity as per ratio in DPR | 25% | 3,728.95 |
| Total Funding Requirement | | 14,915.80 |
| Normative Debt as calculated by Commission | | 11,186.85 |
| Grant as per Normative Debt | 90% | 10,068.16 |
| Remaining Amount | | 4,847.63 |
| Approved Debt | 70% | 3,393.34 |
| Approved Equity | 30% | 1,454.29 |

69. Thus, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding Project funding (Debt: Equity) approved for Assets 1 & 2. Hence, Point No. 3 is decided against the Petitioner and in favour of the

Respondent.

70. However, with respect to variation in the funding pattern of the Project on account of loan availed from the Himachal Pradesh State Cooperative Bank, the Petitioner may approach the Commission with detailed justification at the time of true-up exercise. Similarly, the Petitioner may also submit the proper funding document i.e. the agreement between the Government of India and the Government of Himachal Pradesh at the time of true-up enabling the Commission to substitute its view.

**Point No. 4**

**Review of the methodology adopted to derive funding of the Project which considers 90% of total Debt as Grant and further considers funding of the project cost (excluding the Grant i.e. remaining 10%) to be funded through 70% debt and 30% equity.**

71. The Commission while deciding the main Petition No. 99 of 2024 has dealt the aspect of funding of the Project and the methodology adopted in detail in paras 3.8.9, 3.8.10, 3.8.11 and 3.8.12 in the Order dated 10.09.2024 in Petition No. 99 of 2024 as under:-

*“3.8.9 The Commission observes that ADB has sanctioned a multi tranche financing facility (MFF) of $350 million to the Government of India (GoI) under the Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP) which was further channelized to HPPTCL through Government of Himachal Pradesh (GoHP). The proposed Program was targeted for the construction of transmission infrastructure of 66 kV and above along with Sub-stations for evacuation of power of upcoming hydro power projects. However, the scheme itself implies that the financing support by the ADB is to promote the generation as well as evacuation of clean energy in the State. Further, the Commission is of the view that the Himachal Pradesh being a special category state receives these multi tranche financing from the GoI as 90% grant and 10% loan. The Commission has noted this aspect while finalising the tariff orders of the HPPCL hydro projects. However, no such information has been furnished by the Petitioner.*

*3.8.10 In this specific instance, it is noted that the multilateral agency i.e. the ADB, has funded this project in collaboration with the GoI and the GoHP. However, the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. While the entire multilateral funds were received by the State in the ratio of 90% grant and 10% loan from the Govt. of India, the entire loan proceeds were extended by GoHP to the Petitioner as loan carrying interest rate of 10% per annum.*

*3.8.11 The Commission takes serious note against consideration of the amount as loan which otherwise was available as grant (90% of overall amount) to the State. This shall result in unnecessarily burdening the consumers of the State due to such treatment. It is also observed that the Petitioner is already facing financial challenges. The Commission feels that it would be prudent that the Petitioner takes up the matter with the Govt. of Himachal Pradesh regarding restructuring of the loan amount availed against the project on same terms and conditions as envisaged under the original scheme of funding i.e., 90% of the amount to be converted to grant. This would be in interest of the consumers of the State who would have to bear the burden of the additional interest cost and repayment of such loan that is being provided as grant.*

*3.8.12 Accordingly, the Commission has provisionally considered the* *debt amount availed under the ADB scheme as 90% grant and 10% debt. Further, after reducing such amount of grant from the total approved capital cost, the Commission has considered debt:equity ratio as 70% debt and 30% equity for the balance amount in line with Regulation 10(C) of the 'HPERC Transmission Tariff Regulations, 2011' which specify the following:*

*"(b) the debt-to-equity ratio shall be considered in accordance with regulation 16, after deducting the amount of financial support provided through consumer contribution, deposit work, capital subsidy or grant;."*

72. Much reliance has been placed on the loan agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 signed between the GoI and the ADB, project agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 signed between the ADB and State of HP. The Petitioner has also relied upon the on-lending agreements dated 20.04.2012, 03.12.2014 and 04.07.2024 signed between the GoHP and the HPPTCL. In so far as the agreements dated 15.12.2011, 29.09.2014 and 16.11.2018 are concerned, the same were already within the knowledge and possession of the Petitioner. However, only the loan and Project agreements dated 29.09.2014 and 16.11.2018 pertain to the asset in question and have been duly considered by the Commission while passing the impugned order.

73. Similarly, the Onlending agreements dated 20.04.2012,

03.12.2014 were also well within the knowledge and possession of the Petitioner. The terms and conditions of the Onlending agreement dated 04.07.2024 do not in any manner ameliorate the sufferings of the Petitioner, as the Petitioner has not been able to furnish the agreement between the GoI and the GoHP as sought by the Commission vide order dated 22.04.2025 in Review Petitions No. 14 and 15 of 2025 whereby the Petitioner was directed to furnish the details regarding the loan advanced by the GoI to the GoHP as to whether the same was grant or loan. Even the Review Petition was amended but the explanation regarding the terms and conditions of the finance extended by the GoI to the GoHP was not furnished. In the absence thereof, the Onlending agreement dated 04.07.2024 is not sufficient to infer and conclude that the order under review suffers from errors apparent on the face of record in so far as the methodology of the funding as approved by the Commission is concerned.

74. Even, the daily order dated 19.07.2023 in Petition No. 41 of 2023, as relied upon by the Petitioner is of no help to the Review Petitioner as the Commission only had directed the Petitioner to file

the complete detail of restructuring failing which the Commission shall make the deductions accordingly.

75. It is relevant to refer here that as per Regulation 14 of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, the Commission is required to undertake a prudence check before approving the capital cost of the Project. Regulation 14 provides as under:-

> *"**14. Capital cost of project.-**(1)**…….***
>
> *(2) The capital cost admitted by the Commission, after prudence check, shall form the basis for determination of tariff:*
>
> *Provided that prudence check of capital cost may be carried out based on the benchmark norms to be laid down by the Commission from time to time; and*
>
> *Provided further that in case where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff:*
>
> *…………..…."*

76. Thus, the Commission is required to undertake due prudence check before approving the capital cost of the Project. The prudence check also includes scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such

other matters as may be considered appropriate by the Commission for the determination of tariff. Therefore, in exercise of the powers vested in the Commission, the Commission has made the observations regarding the funding of the Project which cannot be said to be beyond the jurisdiction. In fact, the Commission has based its decision on the pleadings and record made in Petition No. 99 of 2024 strictly in accordance with law by considering each and every aspect of the matter.

77. Thus, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding methodology adopted to derive funding of the Project. Point No. 4 is accordingly decided against the Petitioner.

78. Since, the true-up exercise of the Assets is yet to be done, the Petitioner may approach the Commission with proper documents at the time of true-up for revising the funding of the assets.

**<u>Point No. 5</u>**

**Disallowance of Carrying Cost on delayed recovery of Transmission Charges.**

79. Regarding disallowance of Carrying Cost on delayed recovery of Transmission Charges, the Commission has observed as under in para 4.8.3 in the impugned order:-

> *"4.8.3 The Petitioner has cited reasons such as complexity in bifurcation of cost, COVID and other aspects which are of transient nature and should not have resulted in a delay of two years. Further, the Petitioner has also taken considerable time in responding to the various queries of the Commission resulting in further delays. It is also observed that even after taking such significant time for filing of the petition, the Petitioner has been unable to provide adequate bifurcation of costs between the 400/220 kV and 220/33 kV of the Sub-station. Further, the beneficiaries of the Transmission system are also not clearly identified as discussed in previous sections. Therefore, the Commission feels inappropriate to allow any carrying cost as part of the Order."*

80. As evident from above, a significant time was taken by the Petitioner on account of providing replies to queries and bifurcation of the costs between the 400/220 kV and 220/33 kV of the Sub-station. It is observed that being a Transmission Licensee, the Petitioner was required to obtain prior approval from the Commission before taking up the works but the same was not obtained. Further, the beneficiaries of the Transmission system were also not clearly identified as discussed in impugned order. As such, loading the "un-identified" beneficiaries with carrying cost did not seem apt at the time of the Order and the Commission after

doing the required prudence check had decided not to allow any carrying cost in the matter.

81. Thus, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record regarding the disallowance of the carrying cost. Point No. 5 is accordingly decided against the Petitioner.

82. In the circumstances, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record in respect of disallowing the Hard Cost and cost towards Land Acquisition and Preliminary Works amounting to Rs. 13.69 Crore and Rs. 0.32 Crore respectively for Asset-1, disallowance of O&M expenses, debt-equity ratio as on COD, methodology adopted for consideration of funding pattern of the Project and disallowance of Carrying Cost on delayed recovery of Transmission charges as claimed by the Petitioner. In the entire Petition, the Petitioner has not been able to show that the order under review suffers from any errors apparent on the face of record or that the review is necessitated on the discovery of new and important matter of evidence which after exercise of due diligence was not within the

knowledge of the Petitioner or could not be produced when the order was made.

83. However, It is made clear that the Petitioner may approach the Commission with detailed justification and documents at the time of true-up exercise in respect of its claims regarding Hard Cost and cost towards Land Acquisition and Preliminary Works, computation of the O&M expenses, debt-equity ratio as on COD and methodology of funding as sought.

## FINAL ORDER

84. In view of the above discussions and findings, the Petition fails is accordingly dismissed.

85. The pending applications, if any, are also ordered to be disposed off.

The file after needful be consigned to records.

**Announced**
**10.04.2026**

| | |
|---|---|
| **-Sd-** | **-Sd-** |
| **(Shashi Kant Joshi)** | **(Yashwant Singh Chogal)** |
| **Member** | **Member (Law)-cum- Chairman** |