BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 206 of 2025
Date of Institution: 13.06.2025
Arguments Heard on: 07.04.2026
Decided on: 20.05.2026

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, Panjari, Shimla-171005. **….Petitioner**

Versus

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

Petition under Section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 7(5) and Regulations 70 of the HPERC (Conduct of Business) Regulations, 2024, seeking review of order dated 22.01.2025 in Petition No. 30 of 2024.

Present:-

Sh. Vikas Chauhan, Ld. Counsel alongwith Sh. Tapan Kumar, Tariff Consultant for the Petitioner.

Sh. Kamlesh Saklani, Authorized Representative for the Respondent.

ORDER

This Petition has been filed by the Himachal Pradesh Power Transmission Corporation Limited (the Petitioner/ HPPTCL for short) under Section 94 (1) (f) of the Electricity Act, 2003 (Act for short) seeking review of the Order dated 22.01.2025 passed by the Commission in Petition No. 30 of 2024.

2. As per the Petitioner, it filed Petition No. 30 of 2024 before the Commission for the approval of the Five-Year Business Plan and MYT Petition for the Fifth Control Period from FY 2024-25 to FY 2028-29. During the course of the proceedings, the Petitioner filed additional submissions and clarifications as sought by the Commission from time to time. The Commission vide Order dated 22.01.2025 disposed off the Petition No. 30 of 2024. as per the provisions of Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023 (HPERC Transmission Tariff Regulations, 2023 for short).

3. As per it, HPPTCL had proposed Capital Investment works for 38 number of transmission Assets in FY 2024-25 to FY 2028-29 which were part of the following schemes:

(1) Himachal Hydro Power and Renewable Power Development Programme (to be funded by World Bank)
(2) Green Energy Corridor Phase II (to be funded under loan from Domestic Funding and grant in the form of Central Financial Assistance from MNRE, GoI)
(3) Funding through Deposit Works
(4) Domestic Funding
(5) Asian Development Bank
(6) KfW Funded Projects

4. The Summary of the Capitalisation for FY 2024-25 to FY 2028-29 and funding as claimed by the HPPTCL vis-à-vis as approved by the Commission has been summarised in the following table:-

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	COD	Debt (%)	Equity (%)	Grant (%)	Cost	COD	Debt (%)	Equity (%)	Grant (%)	
I.	**400 kV Lines & Substations**												
1	Construction of S/C LILO of 400kV Lahal to Rajera (Chamera Pooling Station) Transmission line of HPPTCL at Kutehr HEP (240MW)	Domestic Funding	**8.03**	FY 2024-25	90%	10%	Nil	**0.00**	-	-	-	-	Not considered as nature of asset – Inter/Intra not decided.
TOTAL (II) (400kV)			**8.03**					**0.00**					
II.	**220 kV Lines & Substations**												
1	220/132 kV, 2x100 MVA GIS Substation at Paonta Sahib by D/C LILO of Khodri - Mazri line	World Bank^	**117.24**	FY 2026-27	70%	30%	Nil	**117.23**	FY 2028-29	19.60%	8.40%	72.00%	
2	220 kV D/C line from (Tower No. 61) at Jamta to Giri transmission line by dismantling of existing 132 kV S/C Jamta LILO Point (T.No.-61) to Giri Transmission line	World Bank^	**52.34**	FY 2025-26	70%	30%	Nil	**52.34**	FY 2027-28	19.60%	8.40%	72.00%	

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	COD	Debt (%)	Equity (%)	Grant (%)	Cost	COD	Debt (%)	Equity (%)	Grant (%)	
3	Construction of 220/132 kV, 2x80/100 MVA Sub-Station nearby Una alongwith LILO of 132 kV S/C Pekhubela Solar to Tahliwal line with panther equivalent HTLS (CCC) conductor at proposed 220/132 kV substation nearby Una	World Bank^	**88.22**	FY 2025-26	70%	30%	Nil	**88.21**	FY 2027-28	19.60%	8.40%	72.00%	
4	Construction of 220 kV D/C (Twin Zebra) line from 220/132 kV Nehrian Substation to proposed 220/132kV Substation nearby Una	CFA &REC/ PFC/ IREDA	**97.94**	FY 2025-26	47%	20%	33%	**97.95**	FY 2027-28	60.30%	6.70%	33.00%	
5	Construction of 220/132 kV,80/100 MVA Sub-Station Tahliwal by S/C LILO of 220 kV D/C Bhakra to Jamalpur line	Domestic Funding	**31.66**	FY 2024-25	90%	10%	Nil	**31.66**	FY 2026-27	45%	5%	50%*	
6	Construction of 220 kV Pooling Station Sujanpur by D/C LILO of 220 kV Dehan-Hamirpur Line	Domestic Funding	**53.87**	FY 2025-26	90%	10%	Nil	**0.00**	-	-	-	-	Not considered as nature of asset – Inter/Intra not decided.
7	LILO of 220kV D/C Bajoli Holi to Lahal Transmission line at 220/66kV Heiling Substation alongwith 220/66 kV, 2×80/100 MVA, Heiling Substation	KfW/ Domestic Funding	**90.60**	FY 2024-25	40%	40%	20%	**0.00**	-	-	-	-	In principle approval given – Cost not considered as associated network considered as Inter-State.
8	220/132 kV GIS Sub-station Mazra along with 132 kV LILO of Kurthala-Bathri at Mazra	ADB	**88.93**	FY 2023-24	80%	20%	Nil	**88.93**	FY 2024-25	22.75%	9.75%	67.50%	
9	220/132 kV, 2×80/100 MVA, Substation, Kala-Amb, Distt. Sirmaur along with 132/33 kV Substation, 2×25/31.5 MVA, Kala-Amb, Distt. Sirmaur	Domestic Funding	**66.47**	FY 2023-24	90%	10%	Nil	**0.00**	-	-	-	-	Inadvertent repetition. Not considered
10	220/33kV, 25/31.5 MVA Sub-Station Prini	Domestic Funding	**6.51**	FY 2023-24	90%	10%	Nil	**6.51**	FY 2023-24	90.00%	10.00%		

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	**COD**	**Debt (%)**	**Equity (%)**	**Grant (%)**	**Cost**	**COD**	**Debt (%)**	**Equity (%)**	**Grant (%)**	
11	220/132 kV, 80/100 MVA SS Charor alongwith Additional 80/100 MVA Trf. at Charor	Mixed#	**111.00**	FY 2023-24	70%	30%	Nil	**0.00**	-	-	-	-	Not considered as nature of asset – Inter/Intra not decided.
12	220/66 kV, 2*63 MVA Addn. Trf at Gumma Substation	ADB&	**45.53**	FY 2023-24	0%	20%		**0.00**	-	-	-	-	Not considered as nature of asset – Inter/Intra not decided.
13	220 kV D/C Transmission Line Mazra -Karian	ADB	**35.06**	FY 2023-24	80%	20%	Nil	**35.06**	FY 2024-25	22.75%	9.75%	67.50%	
14	Augmentation of existing 220/132kV Kangoo Substation and stringing of 2nd circuit of 220kV S/C line on D/C towers between Dehar (BBMB) and 132/220kV Kangoo Substation	ADB	**53.70**	FY 2024-25	80%	20%	Nil	**53.70**	FY 2025-26	22.75%	9.75%	67.50%	
15	220/132 kV Substation at Kala-Amb	Domestic Funding	**111.92**	FY 2023-24	90%	10%	Nil	**111.1**	FY 2026-27	90.00%	10.00%		
16	Construction of 220/33 kV, 2x50/63 MVA Majholi along with 220 kV Transmission line from Uperla Nangal to Majholi for Medical Devices Park (MDP) at Nalagarh$							**0.00**	-	-	-	-	Expected COD and the funding agencies for these works are still to be finalized.
TOTAL (II) (220 kV)			**1050.99**					**682.70**					
III.	**132 kV and below Lines & Substations**												
1	132/33kV, 2x20 MVA new sub-station in Rajgarh area at Charna by LILO of 132 kV Giri-Gaura S/C transmission line. FY 2027-28 84.09 To improve voltage profile of the area and to provide reliable power source for 24×7 continuous power supply.	World Bank^	**84.09**	FY 2027-28	70%	30%	Nil	**84.10**	FY 2029-30	19.60%	8.40%	72.00%	
2	Construction of 132 KV GIS Pooling Substation at Darkunda by LILO of 132 kV Kurthala to Bathri line	CFA &REC/ PFC/ IREDA	**70.95**	FY 2027-28	47%	20%	33%	**70.95**	FY 2029-30	60.30%	6.70%	33.00%	

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	COD	Debt (%)	Equity (%)	Grant (%)	Cost	COD	Debt (%)	Equity (%)	Grant (%)	
3	Construction of 132 D/C Transmission line from Darkunda Switching Station to 220/132 kV Mazra Substation	CFA &REC/ PFC/ IREDA	**41.49**	FY 2027-28	47%	20%	33 %	**41.50**	FY 2029-30	60.30%	6.70 %	33.00%	
4	Upgradation of existing 132kV S/C line from 132/33 kV Bathri Substation to 220/132 kV Jassore Substation to 132 kV D/C HTLS Transmission line and HTLS reconductoring of 132 kV D/C TL from Mazra to Bathri	CFA &REC/ PFC/ IREDA	**84.38**	FY 2026-27	47%	20%	33 %	**84.38**	FY 2029-30	60.30%	6.70 %	33.00%	
5	Construction of 132/33 kV, 2x31.5 MVA GIS Substation at Baijnath by LILO of 132 kV Dehan (Patti)-Bassi Transmission line	CFA &REC/ PFC/ IREDA	**87.42**	FY 2027-28	47%	20%	33 %	**87.42**	FY 2029-30	60.30%	6.70 %	33.00%	
6	Construction of 132/33 kV, 2x31.5 MVA GIS Substation near Dharamshala Substation alongwith 132 kV D/C line from Dehan (Patti) to Proposed substation near Dharamshala	CFA &REC/ PFC/ IREDA	**121.66**	FY 2027-28	47%	20%	33 %	**121.65**	FY 2029-30	60.30%	6.70 %	33.00%	
7	Construction of 132/33 kV,2x31.5 MVA Sub-station Ghumarwin alongwith S/C LILO of 132 kV D/C Hamirpur-Kangoo line	Domestic Funding	**64.84**	FY 2025-26	90%	10%	Nil	**64.83**	FY 2027-28	90.00%	10.00%		
8	Construction of 132/33kV, 3×50/63MVA & 132/11kV, 25/31.5MVA Substation at Bulk Drug Park at Poilanbeet, Distt. Una alongwith 220kV D/C Transmission Line from proposed sub-station at Una to Bulk Drug Park Substation at Poilanbeet (to be charged at 132kV)*	Deposit Works	**79.17**	FY 2025-26				**79.17**	FY 2026-27	-	-	100 %*	

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	COD	Debt (%)	Equity (%)	Grant (%)	Cost	COD	Debt (%)	Equity (%)	Grant (%)	
9	132/33kV,63MVA Substation at Barsaini	ADB	**71.00**	FY 2024-25	80%	20%	Nil	**0.00**	-	-	-	-	The APTEL has remanded back the matter to the Commission. Mode of recovery of the transmission charges is under adjudication with the Commission
10	132/33kV,63 MVA Dharampur Substation alongwith LILO of 132kV Bassi-Hamirpur Transmission line	Domestic Funding	**46.34**	FY 2024-25	90%	10%	Nil	**46.34**	FY 2025-26	90.00%	10.00%		
11	33kV Palchan-Prini Transmission line	KfW/ Domestic	**8.00**	FY 2023-24	40%	40%	20 %	**8.00**	FY 2023-24	16.80%	7.20 %	76.00%	
12	132kV Barsaini-Charor Transmission line	ADB	**53.57**	FY 2024-25	80%	20%	Nil	**0.00**	-	-	-	-	The APTEL has remanded back the matter to the Commission. Mode of recovery of the transmission charges is under adjudication with the Commission
13	33 kV Switching Station Palchan, Kullu	KfW/ Domestic	**14.11**	FY 2024-25	40%	40%	20 %	**14.11**	FY 2024-25	16.80%	7.20 %	76.00%	

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	**COD**	**Debt (%)**	**Equity (%)**	**Grant (%)**	**Cost**	**COD**	**Debt (%)**	**Equity (%)**	**Grant (%)**	
14	132kV Multi Circuit Transmission line on 220kV Multi Circuit Towers with Zebra Conductor from 220/132kV Substation at Andheri to Tower No. 19 of 132kV Jamta-Kala Amb (HPSEBL) Transmission line and stringing & sagging of Panther Conductor on 2nd circuit of 132kV Jamta Kala Amb (HPSEBL) Transmission line on 132kV D/C Towers from T-1(Devani) to T-14(Kala Amb)	Domestic Funding	**58.11**	FY 2024-25	90%	10%	Nil	**58.11**	FY 2024-25	90.00%	10.00%		
15	Construction of LILO of 132kV S/C Dehan-Bassi line at 220/132kV Dehan-Substation at Patti of HPPTCL	Domestic Funding	**5.94**	FY 2023-24	90%	10%	Nil	**5.94**	FY 2023-24	90.00%	10.00%		
16	132 kV D/C Tangnu Romai- Sunda	KfW/ Domestic	**26.81**	FY 2023-24	40%	40%	20 %	**0.00**	-	-	-	-	The beneficiary of the Scheme is not known. This work will undergo a separate review process.
TOTAL (III) (132kV)			**917.88**					**766.50**					
IV.	**MISC. WORKS**												
1	Providing 220/33 kV, 50/63 MVA Additional Transformer at 220/33kV 50/63 MVA GIS Karian Substation, Distt. Chamba	CFA &REC/ PFC/ IREDA	**20.55**	FY 2024-25	47%	20%	33 %	**0.00**	-	-	-	-	Not considered as nature of asset – Inter/Intra not decided.
2	Providing 220/132 kV, 80/100 MVA Additional Transformer at 220/132kV 80/100 MVA GIS Charor Substation, Distt. Kullu	CFA &REC/ PFC/ IREDA	**43.05**	FY 2024-25	47%	20%	33 %	**0.00**	-	-	-	-	Not considered as nature of asset – Inter/Intra not decided.
3	Providing 132/33 kV, 50/63 MVA Additional Transformer at 132/33kV AIS Kurthala Substation, Distt. Chamba	CFA &REC/ PFC/ IREDA	**14.81**	FY 2024-25	47%	20%	33 %	**14.81**	FY 2028-29	60.30%	6.70 %	33.00%	

S. No.	Name of the Transmission Line & Associated Substations	Funding Agency	Claimed					Approved					Remarks
			Cost	COD	Debt (%)	Equity (%)	Grant (%)	Cost	COD	Debt (%)	Equity (%)	Grant (%)	
4	Supply,Installation, Testing and Commissioning of Joint Control Center at Kunihar, District Solan	ADB	**29.67**	FY 2024-25	80%	20%	Nil	**29.67**	FY 2024-25	22.75%	9.75 %	67.50%	
5	Additional 220/132 kV, 200 MVA Transformer bank at Kala Amb Substation at Andheri $							**0.00**	-	-	-	-	Expected COD and the funding agencies for these works are still to be finalized.
TOTAL (III) MISC. WORKS			**108.08**					**44.48**					
GRAND TOTAL			**2084.98**					**1493.68**					

* Consumer Contribution

5. It is averred that against total capitalisation claim of Rs. 2084.98 Crore, the Commission has considered capitalisation of Rs. 1003.68 Crore (for the period from FY2023-24 to FY2028-29) while determining the tariff. Further, 6 Nos. of schemes amounting to Rs. 490 Crore have been approved but scheduled after the current Control period i.e. FY2024-25 to FY2028-29. 12 Nos. of Schemes amounting to 524 Crore (i.e. S/C LILO of 400kV Lahal to Rajera (Chamera Pooling Station) Transmission line of HPPTCL at Kuther HEP, 220 kV Pooling Station Sujanpur by D/C LILO of 220 kV Dehan-Hamirpur Line, LILO of 220kV D/C Bajoli Holi to Lahal Transmission line at 220/66kV Heiling Sub-station alongwith 220/66 kV, 2×80/100 MVA, Heiling Sub-station, 220/132 kV, 80/100 MVA

Sub-station Charor alongwith Additional 80/100 MVA Transformer at Charor, 220/66 kV, 2*63 MVA Additional Transformer at Gumma Sub-station, 132/33kV,63MVA Sub-station at Barsaini, 132kV Barsaini-Charor Transmission line, 132 kV D/C Tangnu Romai-Sunda, providing 220/33 kV, 50/63 MVA Additional Transformer at 220/33kV 50/63 MVA GIS Karian Sub-station& providing 220/132 kV, 80/100 MVA Additional Transformer at 220/132kV 80/100 MVA GIS Charor Sub-station, Distt. Kullu) have not been considered as the nature of the above said assets is assumed to be Inter-state or yet to be decided and 1 No. of Scheme amounting to about Rs. 67 Crore has not been considered as it is an inadvertent repetition.

6. It is averred that the Commission has considered the funding of 6 different schemes as discussed below:

- **Himachal Hydro Power and Renewable Power Development Programme (World Bank):** The Commission has considered the funding as 72% from Grant (90% of the 80% funded through World Bank), and the remaining amount to be funded through 70% debt (19.60%) and 30% through equity (8.40%) against the claim of 70% debt and 30% equity.

- **Green Energy Corridor Phase II (Domestic with Central Financial Assistance):** The Commission has considered the funding of 33.00% from Grant, and the remaining amount to be funded through 90% debt (60.70%) and 10% through equity (6.70%) against the claim of 33% Grant, 47% debt & 20% as equity.

- **Deposit Works:** The Commission has considered the funding pattern of 100% deposit works for Construction of 132/33kV, 3×50/63MVA & 132/11kV, 25/31.5MVA Sub-station at Bulk Drug Park at Poilanbeet alongwith 132kV D/C Transmission Line from proposed sub-station at Una to Bulk Drug Park Sub-station at Poilanbeet. Further, 50% deposit works, 45% debt and 5% equity have been considered for Construction of 220/132 kV,80/100 MVA Sub-Station Tahliwal by S/C LILO of 220 kV D/C Bhakra to Jamalpur line – as proposed by HPPTCL.

- **Domestic Funding:** The Commission has considered the funding pattern of 90% through debt and 10% through equity as proposed by HPPTCL.

- **Asian Development Bank:** The Commission has considered the funding of 67.50% from Grant (90% of the 75% funded through ADB), and the remaining amount to be funded through 70% debt (22.75%) & 30% through equity (9.75%) against the proposal of 80% debt and 20% equity.

- **KfW Funded Projects:** The Commission has considered the funding of 76% from Grant (40% from NCEF and 90% of the 40% funded through KfW), and the remaining amount to be funded through 70% debt (16.80%) and 30% through equity (7.20%) against the claim of 40% Grant, 40% debt and 20% equity.

7. It is averred that the Commission has arrived at the revised funding except for those proposed through domestic funding and Deposit works which is not in line with the actual loan documents and the approvals.

8. The breakup of GFA as claimed as on 1.4.2024 by the Petitioner vis-à-vis as approved by the Commission has been summarised in the table below:-

<table>
<tr><th>Asset</th><th>GFA Claimed</th><th>GFA Approved</th></tr>
<tr><td>220/66 kV Pooling Station at Bhoktoo</td><td>54.19</td><td>54.21</td></tr>
<tr><td>220 kV D/C Kashang-Bhabha Transmission Line</td><td>71.89</td><td>71.89</td></tr>
<tr><td>400/220/66 kV GIS Pooling Station at Wangtoo</td><td>451.94</td><td></td></tr>
<tr><td>33/132kV GIS substation at Pandoh</td><td rowspan="2">49.63</td><td>41.52</td></tr>
<tr><td>Additional 33/132 kV, 31.5 MVA Transformer with associated GIS at 33/132 kV at Pandoh</td><td>15.10</td></tr>
<tr><td>220 kV D/C Charor-Banala Transmission Line</td><td>76.43</td><td></td></tr>
<tr><td>33/132kV GIS Sub-Station at Chambi</td><td>54.56</td><td>54.56</td></tr>
<tr><td>132kV Dehra-Kangra Transmission line</td><td>26.17</td><td>26.17</td></tr>
<tr><td>33/220 kV Substationat Phojal</td><td rowspan="2">98.90</td><td rowspan="2">83.41</td></tr>
<tr><td>220kV Transmission Line from Patlikul -Phojal</td></tr>
<tr><td>33/220 kV GIS Substation at Karian</td><td rowspan="2">51.02</td><td></td></tr>
<tr><td>33/220 kV GIS Substation Karian alongwith 220 kV Karian- Rajera Transmission Line</td><td></td></tr>
<tr><td>220 kV S/C Transmission Line from Lahal to Budhil HEP</td><td>7.38</td><td></td></tr>
<tr><td>400/220/33kV pooling station at Lahal</td><td>101.92</td><td></td></tr>
<tr><td>220 kV D/C Bajoli Holi HEP- Lahal Transmission Line</td><td>92.20</td><td></td></tr>
<tr><td>220 kV Dehan Substation</td><td>54.03</td><td></td></tr>
<tr><td>66 kV Bagipul-Kotla Transmission Line</td><td>40.42</td><td>40.28</td></tr>
</table>

Asset	GFA Claimed	GFA Approved
66 kV GIS Substation Urni	35.79	33.36
220 kV Dehan Hamirpur Transmission Line	110.65	
400 kV D/C Lahal Chamera Transmission Line	396.13	
400/220 kV Substation Gumma	247.05	
66/22 kV Bagipul Substation	41.47	40.88
66 kV D/C Urni-Wangtoo Transmission Line	30.21	27.30
220 kV Hatkoti- Gumma D/C Transmission Line	146.72	
220 kV Snail- Hatkoti D/C Transmission Line	28.39	35.88
220 kV GIS Switching Station at Hatkoti	57.70	
220 kV D/C Sunda- Hatkoti TransmissionLine	129.77	
66/220 kV Addl. Transformer at Sunda	37.94	
220 kV LILO of Panchkula-Kunihar Transmission Line	5.24	4.79
220 kV Bays at Sunda Substation	45.90	
132 kV D/C Tangnu Romai- Sunda Transmission line	26.81	
132 kV D/C Transmission line Dehan Bassi-Kangra	5.94	5.94
220/132 kV Substation at Kala-Amb	111.92	
220/33kV, Sub-Station Prini	6.51	6.51
33kV Palchan-Prini Transmission line	8.00	8.00
220/132 kV GIS Sub-station Mazra & 132 kV LILO of Kurthala-Bathri at Mazra	88.93	
220/132 kV Substation at Charor	74.53	
Additional 80/100 MVA Transformer at Charor	36.47	

Asset	GFA Claimed	GFA Approved
220/132 kV, 2×80/100 MVA, Substation, Kala-Amb, Distt. Sirmaur along with 132/33 kV Substation, 2×25/31.5 MVA, Kala-Amb, Distt. Sirmaur	66.47	
220/66 kV, 2*63 MVA Additional Transformer at Gumma Substation	45.53	
220 kV D/C Transmission Line Mazra -Karian	35.06	
Total	**3049.81**	**549.78**

9. According to the Petitioner, the Commission has considered the GFA of Rs. 19.54 Crore against the Old Assets transferred from HPSEBL as claimed by HPPTCL. In addition to the assets inherited, the Commission with regard to 41 number of schemes amounting to Rs. 3049.81 Crore which were considered by HPPTCL as part of Opening GFA as on 01.04.2024, the Commission has allowed 11 schemes amounting to Rs. 549.78 Crore which include those assets for which tariff orders have been issued by the Commission and the nature of assets have been considered as Intra-state. With regard to balance schemes, the Commission has stated that the same shall be allowed post deciding the Petitions filed before the Commission.

10. It is claimed that the Commission has not considered the following two works for CAPEX and capitalization approval in this

Tariff Order as the expected Commercial Operation Date (COD) and the funding agencies for these works are still to be finalized:-

a) Construction of 220/33 kV, 2x50/63 MVA Majholi along with 220 kV Transmission line from Uperla Nangal to Majholi for Medical Devices Park (MDP) at Nalagarh.
b) Additional 220/132 kV, 200 MVA Transformer bank at Kala Amb Sub-station at Andheri.

11. Considering the above, the Commission has approved year-wise transmission ARR for the Control Period as follows:-

Financial Year	**ARR Claimed by HPPTCL**	**ARR Approved by the Commission**
2024-25	612.56	93.73
2025-26	679.11	112.17
2026-27	718.04	128.39
2027-28	753.23	154.50
2028-29	763.80	174.23

12. As regards the recovery of Transmission Charges, the Commission has held as under:-

"6.10.2 The ARR approved by the Commission shall be recovered by HPPTCL based on the norms as specified in Regulation 45 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023.
6.10.3 Further, the ARRs approved subsequently by the Commission in any of its future orders, for intra- state transmission asset(s) which has not been considered in this Order, shall also be recoverable along with

this ARR, in the form of monthly transmission charges as per the norms defined in the prevailing HPERC Transmission Tariff Regulations as mentioned above."

13. As regards the STOA Transmission Charges, the Commission has held as under:-

"6.11.1 For determining and approving the transmission charges for short-term open access customers, the Commission has considered the energy required for sales to the Consumers of the State as approved by the Commission in the MYT Order for Fifth Control Period (FY 25 – FY 29) of HPSEBL dated 15th March 2024.The transmission charges for the short-term open access customers based on the approved ARR of HPPTCL for Fifth Control Period is tabulated below:

……………………

6.11.2 Further, the Petitioner shall be entitled to recover additional STOA charges as worked out by the Commission in the future tariff order(s) for the intra- state transmission asset(s) which has not been considered in this Order."

14. Based on the above, the review has been sought on the following grounds:-

<u>1: Review of the Rate of RoE and Income Tax</u>

(i) The Commission has discussed this issue in the order dated 22.01.2025 in Paras 6.8.1 to 6.8.4 which have been reproduced.

(ii) As per it, the Commission has wrongly considered the base rate of RoE as 14% instead of 14.5% as per Regulation 34 of HPERC Tariff Regulations, 2023. Further, the Commission has not considered any income tax on the RoE approved. The relevant clauses of the HPERC Transmission Tariff Regulations, 2023 have been reproduced as under:-

> *"34. Return on Equity Capital.- (1) Return on equity shall be computed on 30% of the capital base or actual equity, whichever is lower:*
> *…*
> *(3) Transmission Licensee shall be allowed 14.5% post-tax return on equity:*
> *Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law, shall be computed at the weighted average rate of interest on actual loan portfolio of the transmission system.*
>
> *35. Tax on Return on Equity.- (1) Income tax for Transmission Licensee for the regulated business shall be allowed on Return on Equity, through the tariff charged to the Beneficiary/ies, subject to the conditions stipulated in Regulation 34 of these Regulations:*
> *Provided that no Income Tax shall be considered on the amount of efficiency gains and incentive approved by the Commission, irrespective of whether or not the amount of such efficiency gains and incentive are billed separately:*
> *Provided further that no Income Tax shall be considered on the income from any source that has not been considered for computing the Aggregate Revenue Requirement:*
> *Provided further that the deferred tax liability attributable to the regulated business, only before 31st March, 2024 shall be allowed by the Commission, whenever they get materialised, after prudence check.*
>
> *(2) <u>Income tax, if any, on the licensed business of the Transmission Licensee shall be treated as expense and shall be recoverable from consumers through tariff.</u> However, tax on any income other than that through its licensed business shall not be a pass through, and it shall be payable by the Transmission Licensee itself.*
>
> *(3) Any under-recoveries or over-recoveries of tax on income shall be adjusted every year on the basis of income-tax assessment, under the Income Tax Act, 1961, as certified by the statutory auditors:*

Provided that the benefits of tax-holiday, as applicable in accordance with the provisions of the Income Tax Act, 1961 shall be passed on to the consumers.

(4) The Income Tax actually payable or paid shall be included in the ARR. The actual assessment of Income Tax should take into account benefits of tax holiday, and the credit for carry forward losses applicable as per the provisions of the Income Tax Act, 1961 shall be passed on to the consumers.

(5) Tax on income, if any, liable to be paid shall be limited to tax on Return on Equity. However, any tax liability on incentives due to improved performance shall not be considered."

[Emphasis Added]

(iii) The Petitioner has submitted that it had claimed income tax at the rate of 23.83% in accordance with the above Regulations, however, the Commission has not allowed the same without assigning any reasons.

2: Review of the non-consideration of the Intra-state assets on account of the HPERC Judgement dated 23.01.2025 issued in Petition No. 46/2021 in pursuance to Hon'ble APTEL Judgment dated 12.04.2024.

(i) The Commission has discussed this issue at Sr. No. 5 of Table No. 51 of para 5.6.5.27 in the order dated 22.01.2025 which has been reproduced.

(ii) It is averred that the Commission has not considered the following assets while determining the year wise transmission tariff for the 5th control period:

1. 220kV D/C Charor-Banala Transmission line.

2. Construction of 33/132kV Pooling Substation at Barsaini.
3. 220/132kV Charor (ADB funded) along with Addl. 220/33kV Transformer at Charor(GEC-I funded).
4. 132kV D/C Barsaini-Charor Transmission line.

(iii) The Petition No. 46 of 2021 has been decided by the Commission vide its Order dated 23.01.2025 (**Annexure-3**) wherein it been held as under:-

> *"86. In view of the above, the Petitioner has not been able to establish on record that the Petitioner is not liable to pay the transmission charges for the entire capacity of the transmission line i.e. 289 MW or that the Petitioner is liable to pay the transmission charges for 86 MW upto 12.07.2024 and 80 MW from 13.07.2024 onwards from its project i.e. Malana-II HEP. Similarly, the Petitioner has not been able to establish on record that the provisional bills dated 14.08.2021, 01.10.2021 and 08.11.2021 demanding the transmission charges for the entire capacity of the transmission line i.e. 289 MW and subsequent bills and disconnection notice dated 11.08.2023 are also illegal and null and void. The Petitioner has also not been able to establish on record that the minutes of meeting held on 21.10.2021 are also wrong and illegal. Point No. 1 is accordingly decided against the Petitioner.*
>
> *We also direct the HPPTCL/ Respondent to sign the transmission service agreements with all those power producers to whom the system/ transmission line was conceived and their projects have been commissioned/ under construction as per the detail appended to the tariff order dated 12.08.2021 in Petition No. 97 of 2020 so that the transmission charges are shared accordingly. The file after needful be consigned to the records."*

(iv) Since in Petition No. 46 of 2021, the assets have been considered as Intra-State, the Petitioner has requested the Commission to revise the Transmission charges approved for the fifth control period after factoring in the transmission charges of these assets.

3: Review of the non-consideration of assets whose COD and Capital Cost had not firmed up at the time of the proceedings in the Petition.

(i) According to the Petitioner, the Commission has discussed this issue in para 5.6.5.33 of the order dated 22.01.2025 as under:-

> *"5.6.5.33 **Schemes proposed but not considered by the Petitioner in the ARR of Fifth Control Period:** Out of the 38 schemes proposed by the Petitioner for the Fifth Control Period, the Petitioner has not provided corresponding detailed estimates for CAPEX or capitalization for the below mentioned works. The Petitioner has indicated that the expected Commercial Operation Date (COD) and the funding agencies for these works are still to be finalized. As a result, the necessary financial details for inclusion of the same in the tariff computation are currently unavailable. Accordingly, the Commission has decided not to consider these two works for CAPEX and capitalization approval in this Tariff Order.*
>
> *a) Construction of 220/33 kV, 2x50/63 MVA Majholi along with 220 kV Transmission line from Uperla Nangal to Majholi for Medical Devices Park (MDP) at Nalagarh*
>
> *b) Additional 220/132 kV, 200 MVA Transformer bank at Kala Amb Sub-station at Andheri"*

(ii) The Petitioner has submitted the non-consideration of said 2 No. Schemes and Additional 220/132 kV, 200 MVA Transformer bank at Kala Amb Sub-station at Andheri has adversely affected it and has requested to consider the same.

4: Recovery of Transmission Charges of 400/220/66 kV GIS Pooling Sub-Station Wangtoo (Sherpa Colony) pursuant to CERC Order in Petition No. 38/MP/2023.

(i) The Commission has discussed this issue in the order dated 22.01.2025 as under:-

> *"6.4.2 For determining the Opening Gross Fixed Assets (GFA), the Commission has considered existing and proposed assets as part of Intra-state transmission network as detailed below:*
>
> *…………..….*
>
> ***C. Schemes commissioned but not approved:*** *The Commission notes that the schemes commissioned but not approved will undergo a separate review process. At this stage, the Commission has not included such projects in the projected ARR of the Fifth control period."*

(ii) The CERC vide Order dated 20.03.2025 in Petition No. 38/MP/2023(**Annexure-5**) has held as under:-

> "*41. We observe that the instant substation was planned to evacuate the power of intra-State generating stations and drawl/injection of HPSEBL. As recorded in minutes and submitted by CTUIL, it was Petitioner's proposal to construct the substation as an intra-State transmission system for which it had tied up ADB funding. We observe that Petitioner has developed 9 bays under 400 kV, and interconnecting 400 kV transmission lines provides an evacuation path to intra-State generating stations. Further, as per HPERC analysis, the maximum capacity that can be handled by Wantoo 400/220 kV substation is 315 MVA with n-1 contingency condition, and HSEBL has already utilized approx. 316 MW of peak power from Wangtoo substation. We note that Petitioner has developed the instant substation as an intra-State transmission system with intra-State generating stations as its beneficiaries and does not qualify as inter-State transmission system. We do not agree with Petitioner's contention that the substation should be recovered under POC since actual power flow from three HEPs-*

> *Karcham Wangtoo/ Baspa/ Naphtha Jhakri may flow on an inter-state basis through the Subject Asset. We observe that load flow varies in a transmission system on a continuous basis depending on the load-generation balance scenarios. A transmission system planned as an intra-State transmission system cannot be termed as inter-State for one month and then intra-State for another month. There are cases where intrastate power flows through inter-State lines where such inter-State lines cannot be declared as intra-State.* ***Since the network is meshed, it is not appropriate to identify an intra-State transmission system as inter-State and levy its transmission charges on beneficiaries of other States. We are of the considered opinion that the instant substation cannot be included for the sharing of transmission charges under the 2020 Sharing Regulations, and such charges cannot be levied on beneficiaries on an all India basis. In view of the above, discussions, the prayers of the Petitioner cannot be acceded to****.*" (Emphasis Provided)

(iii) The Petitioner has requested to consider the same as the part of the Intra-state Transmission Assets and allow the Petitioner to recover transmission charges approved by the Commission for FY 2023-24 till further orders.

5: Recovery of Transmission Charges of 33/220 kV GIS Sub-station at Karian and 220 kV Transmission Line from Karian Sub-station-Chamera II Pooling Station based on Order dated 28.04.2025 in Petition No. 11 of 2025.

(i) The Commission has discussed this issue in para 52 of the order dated 28.04.2025 (Annexure-6) issued in Petition No. 11/2025 as under:

> *"52. In view of the aforesaid discussions and findings, the Petition partly succeeded and partly allowed. The*

Respondent is directed to pay the transmission charges for both the Assets for the period from 01.04.2020 to 31.03.2024 and for the period from COD to 31.03.2020 in respect of 33/220 kV, 50/63 MVA GIS Karian Substation (Asset-1) in accordance with this Commission's Order dated 01.11.2021 in Petition No. 98/ 2020 to the Petitioner, as per the provisions of the HPERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time. However, in case the Petitioner has signed the Transmission Service Agreements with the other beneficiaries of the transmission system, such charges shall be recovered from the Respondent and the beneficiaries of the system as per Regulations.

53. However, the Petition for allowing recovery of transmission charges for the period prior to 01.04.2019 for Asset-1, recovery of balance half of transmission charges for Asset-2 for the period 01.04.2019 to 31.03.2020 and for allowing carrying cost is dismissed."

(ii) It has been prayed to consider the said Assets as a part of the Intra-state Transmission Assets and allow it to recover transmission charges as approved for FY 2023-24 till further Orders.

6: Review of the Funding of Assets.

(i) It is averred that the Commission has discussed this issue in para 5.6.5.4, 5.6.5.5, 5.6.5.9, 5.6.5.15, 5.6.5.19, 5.6.5.25, 5.6.5.26, 5.6.5.29 and 5.6.5.30 in the order dated 22.01.2025 which has ben reproduced.

(ii) It is averred that the Commission has not considered the funding of Assets claimed in the Capitalisation Plan in line with the Debt: Equity Ratio as per the Original Scheme documents/ loan agreements between HPPTCL and the GoHP. The

Summary of the Funding of different Schemes considered in the Capitalisation Plan as claimed by the HPPTCL and as approved by the Commission is as under:

Scheme Name	**Debt: Equity: Grant Claimed**	**Debt: Equity: Grant Approved**
World Bank	70%:30%:0%	19.6%:8.4%:72
GEC Phase II	47%:20%:33%	60.3%:6.7%:33%
Deposit Works	Project Specific	Approved as claimed in Technical Validation Session(TVS)
Domestic Funding	90%:10%:0%	90%:10%:0%
ADB	80%:20%:0%	22.75%:9.75%:67.5%
KfW	40%:20%:40%	16.8%:7.2%:76%

(iii) Further, as regards the loan amount of the existing projects as on 31.3.2024, the Commission has observed as under:-

"6.4 Opening Gross Fixed Assets

……………….

B. HPERC approved schemes: For schemes that have been approved, the Commission has considered the Closing GFA, Loan, Equity, and Grants as of March 31, 2024, in accordance with the capex orders of the respective transmission assets. The following assets have been considered as part of Intra-state transmission assets and details are presented in the table below:

………………..

The total closing debt for all HPERC-approved Intra-state transmission lines amounts to ₹200.14 crores. As of March 31, 2024, ₹119.75 crores of the total debt was funded through ADB. In line with the loan restructuring plan, the GoHP vide letter dated 04.03.2023 has conveyed approval for restructuring of the ADB loan as 80% of disbursed loan to be converted into interest free loan, 10% of disbursed loan to be kept as interest bearing loan @10%

and remaining 10% of disbursed loan to be converted to equity. It is observed that as per the GoHP letter, while partial relief has been provided to the consumers but relaxation of interest on 80% of the loan amount, the entire terms and conditions have not been adopted resulting in additional equity consideration towards the project. The Commission is of the considered view that the debt equity considered against each scheme during the funding stage should be retained and necessary conversion as per the special category status of the State should be continued.

Accordingly, the Commission has considered 90% of loans as grants and the remaining amount of multilateral funding has been considered for the purpose of calculating the opening loan balance as per the Regulations.

………………”

(a) <u>ADB Loan</u>

(iv) As per the Petitioner it has apprised the Commission vide its Letter No. HPPTCL/C&M/HPERC Correspondence/ 207413 dated 19.06.2023 regarding the Restructuring of ADB loan and provided the GoHP approval letter dated 04.03.2023. The Petitioner had further apprised the Commission about the revised "On-lending Agreement" signed by the Petitioner with GoHP on 04.07.2024 regarding the restructuring of ADB loans along with its terms & conditions in its Letter No. HPPTCL/C&M/HPERC Correspondence/5646-53 dated 08.08.2024 (Annexure-7).

(v) Further, the Commission, taking into cognisance of the revised terms of the on-lending agreement, vide its Interim Order dated 19.07.2023 in Petition No. 41 of 2023, had even directed the Petitioner to restructure the loan received from KfW in line with the restructured loan agreement with ADB. However, while computing the annual transmission charges in the Order in Petition No. 116 of 2024 (Petition for approval of Capital Cost and determination of tariff for 4th Control Period from CoD to FY2023-24 for 66/22 kV Substation Nirmand (Bagipul) (Asset-1) and 66 kV D/C Nirmand – Kotla Transmission Line (Asset-2)), the Commission has not considered the terms of debt as per the Restructuring of ADB loan which it had directed to be emulated in case of KfW vide its interim order dated 19.07.2023.

(vi) The Petitioner has submitted that in compliance to the directions of the Commission, it has already written to the GoHP for revision in the terms of the loan. Further, GoHP has issued a letter dated 12.12.2024 to the HPERC to review the Orders and consider the Terms of Financing of Transmission Projects being developed by HPPTCL through multilateral agencies in line with the "On Lending Agreement" executed between the GoHP and the HPPTCL while determining the transmission tariff of such Transmission Projects (Annexure-10).

(vii) It has been further submitted by the Petitioner that it has executed the Agreement with GoHP and therefore it is bound by the contract to repay its debt as per the terms of revised on-lending agreement and if such costs are not included in the transmission charges, HPPTCL will not be able to discharge its liabilities which includes debt repayment, financial charges and upkeep of its transmission assets.

(viii) It is averred that the approach adopted by the Commission is in contravention to the terms of loan as per the Agreement dated 04.07.2024 has caused grave prejudice to the financial health of HPPTCL. If the transmission charges approved by Commission do not include the liability to be discharged, it is apprehended that it will severely affect the credit rating of the company which will further increase the cost of future fundings.

(ix) The terms and conditions of the loan provided as per the "On-lending Agreement" between GoHP and HPPTCL dated 04.07.2024 have been reproduced as below:

> *"…………..*
>
> *Rate of interest shall be 10% per annum for 10% of all disbursements.*
>
> *Interest on 10% of the total disbursed amount shall start immediately from the date of disbursement which shall be payable by HPPTCL to GoHP.*
>
> *10% of all disbursement shall be infused as equity by GoHP.*
>
> *80% of all disbursement shall be interest free loan*
>
> *…………..…"*

(x) It is averred that as per the revised on-lending agreement, out of the total loan disbursements, 80% of the loan has been transferred by 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. Further, that HPPTCL has executed the Agreement with GoHP and therefore it is bound by the contract.

(xi) It is further averred that non consideration of actual loan terms is not in accordance with Regulations 31 and 36 (1) of the HPERC Transmission Tariff Regulations, 2023.

(xii) Hence, the approach adopted with regard to revise the cost of funding based on the restructured loan agreement dated 04.07.2024 as considering 90% of the loan as grant is required to be revised. Further, by considering grant at 90% of the Debt, the Commission has also reduced the equity component leading to double impact on the Petitioner.

(xiii) In addition to the above, the petitioner has submitted that some of the assets that were initially envisioned to be funded under ADB Tranche- III but had to be alternatively funded through HP State Co-operative Bank due to uncontrollable delay in execution of works beyond the Tranche closure date of 29.09.2021.

(xiv) Further, during the time of closure of ADB Tranche-III loan, as some of the projects were under construction stage and in order to complete balance works, DPR was prepared for total project cost of Rs 196.19 Crores for completion of Spill Over Works of Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP) for financing of 90% of DPR cost i.e. Rs 176.57 Crores against total fund requirement of Rs 158.61 Crores excluding DC, IDC, contingency, Labor cess & GST etc.

Further, the matter for arranging the funds was taken up by the Petitioner with GoHP and the GoHP, vide letter dated 06.08.2021, advised the Petitioner to arrange the funds from open market without Government guarantee. Spill Over Works of HPCETIP against collateral security was placed for approval in 56th BOD Meeting and same was approved. The loan amounting to Rs 176.57 Crores was tied up with HP State Co-operative Bank (HPSCB).

(xv) It has been prayed to consider the same while determining the transmission charges. Supporting documents in support of above are enclosed as **Annexure-11**.

(xvi) It is averred that the observations of the HPERC are in complete variance to the HPERC Tariff Regulations, 2023 for the reason that the Regulation 30 (1) and 30(2)(b) only refers to the “Consumer Contribution, Deposit Work, Grant and Capital Subsidy”. Therefore, the funds as received by the HPPTCL from the Government of HP as Loan amount in terms of the On-Lending Agreement(s) [dated 20.04.2012, 03.12.2014 & 04.07.2024 - Annexure-9] executed between the Govt. Of H.P & the HPPTCL shall not fall under the said Regulation 30(1) and 30(2)(b) [wrongly stated as Regulation 31(2)(b) in Para 5.6.5.25 of the impugned order dated 22.01.2025 as the aforesaid Regulations clearly state “the debt to equity ratio shall be considered in accordance with Regulation 31, after deducting the amount of financial support received;”. Therefore, there was no reason to deduct the Loan amount received from the GoHP should not have had been deducted by the Commission while considering the debt to equity ratio in accordance with the Regulation 31 for the purposes of determination of the tariff.

Hence, the order treating the Loan received by HPPTCL from the Govt. Of H.P as grant is in divergence to its own regulations which nowhere allows the HPERC to treat the Loan amount as a grant.

(xvii) The Commission has also erred in not taking into account the terms of the initial On-Lending Agreement(s) executed [dated 20.04.2012, 03.12.2014] between the GoHP & HPPTCL and also the amended On-Lending Agreement dated 04.07.2024.

(xviii) It is submitted that 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."*

(xix) Further, the restructured On-Lending Agreement(s) specifically stipulates 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."

(xx) It is further averred that the Commission 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 states 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."*

(xxi) Not only this, 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 & HPPTCL on the other part, wherein the terms categorically state that the loan be made available to the State and HPPTCL on fulfilling certain obligations towards the ADB as mentioned in the said Project Agreement(s). Moreso, the Clause 2.13 & 2.14 categorically stated:

"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."

(xxii) The copies of ADB Project Agreement(s) dated 15.12.2011, 29.09.2014 and 16.11.2018 have been annexed as Annexure-11/A (Colly). Thus, the order impugned is contrary to the Regulations on record.

(b) <u>World Bank Loan</u>

(i) It is averred that as per the Loan Agreement entered between Government of India and the World Bank(**Annexure-12**), the following has been agreed with regard to the Loan and Interest Rates:

"ARTICLE II — LOAN

2.01. The Bank agrees to lend to the Borrower the amount of two hundred million Dollars, ($200,000,000), as such amount may be converted from time to time through a Currency Conversion ("Loan"), to assist in financing the program described in Schedule 1 to this Agreement ("Program").

2.02. The Borrower may withdraw the proceeds of the Loan in accordance with Section IV of Schedule 2 to this Agreement. All withdrawals from the Loan Account shall be deposited by the Bank into an account specified by the Borrower and acceptable to the Bank.

*2.03. The **Front-end Fee is one quarter of one percent (0.25%) of the Loan amount**.*

*2.04. The **Commitment Charge is one quarter of one percent (0.25%) per annum on the Unwithdrawn Loan Balance**.*

*2.05. The **interest rate is the Reference Rate plus the Variable Spread; or such rate as may apply following a Conversion;***

subject to Section 3.02(e) of the General Conditions.

2.06. The Payment Dates June 15 and December 15 in each year.

2.07. The principal amount of the Loan shall be repaid in accordance with Schedule 3 to this Agreement."

(Emphasis Provided)

(ii) Further, as per the Program Agreement entered between World Bank and the State of HP, HPPCL, HPSEBL, HPPTCL, HimUrja and HPSLDC (**Annexure-13**), the following has been agreed: -

"*ARTICLE II-PROGRAM*

2.01 The Program Implementing Entity and the Implementing Agencies declare their commitment to the objectives of the Program. To this end, the Program Implementing Entity shall and shall cause the Implementing Agencies to carry out the Program in accordance with the provisions of Article V of the General Conditions and the Schedule to this Agreement, and shall provide and/or cause the Implementing Agencies to provide, promptly as needed, the funds, facilities, services and other resources required for the Program."

(iii) The HPPTCL being the one of the Implementing Agencies alongwith State of Himachal Pradesh being Program Implementing Entity, loan amount received by GoHP was further routed to Implementing Agencies in the State of H.P including HPPTCL. In the said matter, GoHP vide letter dated 20.06.2022(**Annexure-14**) based on the advice from Finance Department intimating as under:-

"1. The grants received from Government of India under the EAP may be passed on as Equity to the Utilities.

2. The Loan received from Government of India under this EAP and the State Share may be given as loan to the Utilities to be returned by them to State Government."

(iv) Hence, the Petitioner has to service this loan as per terms & conditions of Program Agreement executed between World Bank and the State of HP, HPPCL, HPSEBL, HPPTCL, HimUrja and HPSLDC in addition to GoHP.

(v) The review of the Order dated 22.01.2025 has been sought on account of the error apparent on the face of the record. It has been averred that observations of the Commission in paras 5.6.5.4 and 5.6.5.5 are in complete variance of transmission tariff Regulations are in complete variance to the HPERC Tariff Regulations, 2023 for the reason that the Regulation 30 (1) and 30(2)(b) only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the Government of H.P in terms of Loan Agreement (Annexure-12);Program Agreement (Annexure-13) and Letter dated 20.06.2022 (Annexure-14) shall not fall under the said Regulation 30 (1) and 30(2)(b) as Regulations clearly "the debt to equity ratio shall be considered in accordance with Regulation 31, after deducting the amount of financial support received;". The Loan amount received from the GoHP should not have had been deducted by the Commission while considering the debt to equity ratio in accordance.

(c) <u>KfW Loan</u>

(i) It is averred that unlike the arrangement of ADB loans, KfW loan is not interest free even for the State Government and therefore, the treatment done towards KfW loan is incorrect and needs to be reviewed.

(ii) It is averred that as per the Loan Agreement (**Annexure-15)** between KfW and the Government of India dated 05.10.2015, GoI shall channel the Loan in full in accordance with the back-to-back on lending guidelines of the Indian Ministry of Finance, Department of Economic Affairs (DEA), and at the same, terms and conditions of this Loan Agreement through the State of Himachal Pradesh to the Project-Executing Agency and the interest rate shall be at 1.72% per annum as per the above mentioned agreement. The relevant clauses of the Loan Agreement signed between KfW and the Government of India have been reproduced as below:

*"**Article 1***

Amount and Purpose of the Loan

1.1 KfW will extend to the Borrower a Loan not exceeding a total of…

1.2 The Borrower shall channel the Loan in full in accordance with the back-to-back on lending guidelines of the Indian Ministry of Finance, Department of Economic Affairs (DEA), and at the same terms and conditions of this Loan Agreement through the State of Himachal Pradesh to the Project-Executing Agency. The Borrower shall ensure that the Project-Executing Agency uses the Loan exclusively to finance transmission infrastructure for evacuation of additional renewable energy capacity, especially small hydropower for Intra State Transmission System in Himachal Pradesh under the Green Energy Corridors Project (the "Project"). The Project-Executing Agency and KfW shall determine the details of the Project as well as the goods and services to be financed from the Loan in a separate agreement.

…………….

Article 3

Fees and Interest

3.1 The Borrower will pay a non-refundable commitment fee of 0.25% p. a. on undisbursed Loan amounts which shall be calculated as follows.

………………..

3.5 The Borrower shall pay interest on the Loan at a rate of 1.72% p.a., ("Fixed Interest Rate"). The rate of interest thus fixed shall be binding for the entire term of the loan.”

(iii) Further, Project Agreement (**Annexure-16**) signed between KfW, State of Himachal Pradesh & HPPTCL state as under-

“*Article 1*

Purpose of the Loan

1.1 The Loan shall be channelled by the Borrower in full through the State of Himachal Pradesh to the Project-Executing Agency in accordance with the conditions set forth in Article 2. The Project-Executing Agency shall use the Loan exclusively to finance transmission infrastructure for evacuation of renewable energy capacity, especially small hydro power, for Intra State Transmission System in Himachal Pradesh under the Green Energy Corridors Project ("Project") and primarily to pay the foreign exchange costs. The Project Executing Agency and KfW shall determine the details of the Project and the goods and services to be financed from the Loan by a separate agreement.

Article 2

Channelling of the Loan to the Project-Executing Agency

2.1 According to Article 1.2 of the Loan Agreement the Borrower shall channel the Loan in full in accordance with the back-to-back on lending guidelines of the Indian Ministry of Finance, Department of Economic Affairs (DEA), and at the same terms and conditions of the Loan Agreement through the State of Himachal Pradesh to the Project-Executing Agency in accordance with the Borrower's standard arrangements for developmental assistance to the States of India. The State of Himachal Pradesh shall channel the Loan in full and at the same terms and conditions at which it receives the Loan to the Project-Executing Agency. The State of Himachal Pradesh will confirm Kfw the terms and conditions under which the funds are passed on to the Project-Executing Agency and of any subsequent change in these arrangements.”

(iv) In addition to the above, Separate Agreement & the On-lending agreement have been signed on 26.11.2016 (**Annexure-17**) where the On-lending agreement signed between the GoHP and HPPTCL dated 26.11.2016 with the following conditions:

“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 5 year which will be payable annually thereafter.

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

(v) In addition to above, the development of Intra-state Transmission System under Green Energy Corridor project, NCEF Grant is also routed to beneficiary States including State of Himachal Pradesh. MNRE Guidelines for release of Central Financial Grant(**Annexure-18**) provide as under: -

“a) *For under implementation project, 70% (Seventy Percent) of the eligible grant (i.e. 40% of Project DPR Cost or Award of Contract: whichever is less - computed separately for each package) will be released to the State Government designated agency after award of tender as advance of NCEF grant. MNRE will release the funds on receipt of report from CEA and recommendation of PAC, subject to availability of fund.*

b) Balance 30% will be released after successful commissioning of the project as per the DPR and performance testing of the project which would inter-alia imply operation of the project for three months. A certificate of performance testing to be given by concerned SEB or Transmission Company or independent designated agency such as PGCIL/NPTI or its Regional Office/CEA, etc. will have to be produced to this effect. Second release of 30% of grant amount will be based on following prerequisites:

i. Completion of Work.

ii. Utilization Certificate (UC)/Statement of Expenditure (SOE) with *respect to previous releases.*

iii. Report of Project Appraisal Committee.

iv. Certificate of synchronization of Grid from designated agency with date of synchronization.”

(vi) Said Guidelines were further revised vide MNRE Letter dated 14.12.2021(**Annexure-19**) and relevant extract regarding same has been reproduced in the Petition as under:-

> “*Review of Projects. After a project costing Rs. 100 crore or above is approved, the Administrative Ministry or Department will set up a Review Committee consisting of representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rs. 100 crore, it will be at the discretion of the Administrative Ministry/Department to set up a suitable mechanism for review and acceptance of variation within 10% of the approved estimates*”

(vii) It has been submitted that for the preparation of DPR of GEC-I Schemes, funding was considered on estimated basis i.e. 40:20:40 (Debt:Equity:Grant) wherein actual funding of the project depends upon the project execution and actual fund available from various sources which may not be necessarily always in line with DPR. Further it has been submitted that under GEC-I Scheme, as per MNRE guidelines, HPPTCL is eligible for grant for 11 Nos. transmission assets on the basis of criteria that eligible grant shall be 40% of minimum of DPR cost or Award cost (maximum ceiling up to 110% of original award cost) and not as envisaged in the DPR. The total grant to HPPTCL under GEC-I scheme, is on the basis of said criteria and thus leading to variation w.r.t. that had been envisaged in the DPR. Further, since the grant is not received as per requirement of project execution, there is variation of grant usage in each transmission asset against eligibility criteria. However, consolidated grant under GEC-1 Scheme is being utilized towards the above-mentioned 11 Nos. transmission assets only which form part of Intra-state transmission system of HPPTCL and Petitions for the same shall be filed have been filed before the Commission for tariff determination and approval. Thus, the grant is to be allowed on an actual utilization basis at the time of petition filing, rather than as per the approach adopted in earlier tariff orders, as said approach of Commission is resulting in loss of capitalization/ARR (Aggregate Revenue Requirement) due to reduction in the capital cost.

(viii) It is further submitted that the grant actually utilized by HPPTCL in respect of a particular GEC-I Scheme may differ from the eligible grant, as part of the grant has been deployed across other GEC-I funded assets in the larger public interest and thus, the actually utilized grant for each of the GEC-I Schemes was required to be considered.

(ix) It is averred that the review of the Order dated 22.01.2025 has also been sought on account of the error apparent on the face of the record as the HPERC vide order dated 22.01.2025 in Petition No. 30/2024 has held as under:-

> "*Para 5.6.5.30 The KfW funding is classified as an externally aided project, which is similar to the other multilateral funding agencies like*

ADB etc as discussed above in this Order. The funds are made available through GoI, which are first routed to the GoHP and thereafter to the Petitioner. HP being a special category State,90% of the funding is available as grant and the remaining 10% as loan to the State Government. However, the GoHP has extended the grant component also as loan to the Petitioner. The Commission is of the firm view that the GoHP cannot change the funding pattern as sourced from GoI. Accordingly, for computing the funding of schemes financed through KfW, the Commission has considered the grant component to be 76% of the total project cost, comprising of 40% grant from NCEF and the remaining 36 % (90%) of the 40%o) of KfW funds. The treatment of the remaining 24%) of the funding has been considered as per the regulatory guideline of a 70:30 debt-equity ratio, with 70% raised as debt and 30% contributed as equity."

It is averred that the observations are in complete variance to the HPERC Tariff Regulations, 2023 for the reason that the Regulation 30 (1) and 30(2)(b) only refers to the "Consumer Contribution, Deposit Work, Grant and Capital Subsidy". Therefore, the funds as received by the HPPTCL from the Government of HP in terms of Loan Agreement dated 05.10.2015 (Annexure-15); Project Agreement dated 05.10.2015 (Annexure-16); On-Lending Agreement dated 26.11.2016 (Annexure-17); Separate Agreement to the Project Agreement dated 05.10.2015 (Annexure-17) shall not fall under the said Regulation 30 (1) and 30(2)(b) /wrongly stated as Regulation 31(2)(b) in Para 5.6.5.25 of the impugned order dated 22.01.2025. It has been further humbly submitted that financial support received in the present case is grant from MNRE. Hence, the approval of debt:equity:grant in the ratio

16.8%:7.2%:76% is not in line with the above lending agreements and MNRE Guidelines.

7: Review of the Determination of Transmission Charges for Short Term Open Access Consumers.

(i) The Commission has discussed this issue of Transmission Charges of Assets for STOA consumers in the order dated 22.01.2025 as under:-

> *"6.11.1 For determining and approving the transmission charges for short-term open access customers, the Commission has considered the energy required for sales to the Consumers of the State as approved by the Commission in the MYT Order for Fifth Control Period (FY 25 – FY 29) of HPSEBL dated 15th March 2024.The transmission charges for the short-term open access customers based on the approved ARR of HPPTCL for Fifth Control Period is tabulated below:*
>
> *………..….*
>
> *6.11.2 Further, the Petitioner shall be entitled to recover additional STOA charges as worked out by the Commission in the future tariff order(s) for the intra- state transmission asset(s) which has not been considered in this Order"*

(ii) As per the Petitioner, the Commission has arrived at the Transmission Charges for Short Term Open Access Consumers considering the ARR approved for selected schemes and the total energy required for sales to the Consumers of the entire State as approved in the MYT Order for Fifth Control Period (FY 25 - FY 29) of HPSEBL dated 15.03.2024 which is erroneous.

(iii) Further, Regulation 16 of the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access)

Regulations, 2010 stipulate the following regarding the Transmission Charges applicable for STOA consumers:-

> *"16. Charges for open access in transmission.- The short term open access customers shall, for the use of the transmission system, **pay the transmission charges at par with the long term transmission charges** in accordance with the terms and conditions for determination of transmission tariff specified by the Commission from time to time."*

As per it, the above regulation clearly specifies that the short term open access consumers should pay the transmission charges at par with the long term open access consumers and specifying the short term open access charges in Rs./kWh violates the parity principle as the long term charges are recovered on Rs./MW basis irrespective of actual energy being transferred and the approach adopted discourages signing of Long Term Open Access agreements and would wrongly incentivise the short term Open Access consumers at the cost of Long term consumers which is principally against the regulations.

(iv) It is further averred that the energy flow considered for the determination of short term open access charges is equal to the energy sales approved within the State of Himachal Pradesh for each Financial Year but in order to arrive at the transmission charges for short term open access consumers, the Commission has considered only part of the assets approved in the instant Order, whereas, the energy considered is consistent with the total energy sales within the State of Himachal Pradesh, which is an error apparent on the face of record.

8: Consideration of 220 kV D/C Bajoli–Holi–Lahal Transmission Line and other assets in Intra-state pool of Transmission Charges for 5th MYT Control Period.

(i) The Petitioner has submitted that vide letter dated 02.07.2024, it had submitted the recommendation for certification of following assets as interstate based on Regulation 93 of CERC(Terms and Conditions of Tariff) Regulations, 2024:

(a) 220kV D/C Bajoli Holi-Lahal Transmission Line.

(b) 220/33kV portion of 33/220/400kV Lahal Sub-station alongwith 220kV Lahal-Budhil Transmission line.

(c) 400/220kV portion of 33/220/400kV Lahal Sub-station along with 400kV Lahal-Chamera Transmission line.

(ii) However, on account of non-finalisation of guidelines/methodology by CEA in said matter as on date, HPPTCL being Transmission Utility in the State of H.P. is facing difficulty to sustain its operations due to non-realization of approved assets. Therefore, the aforesaid asset may also be considered in Intra-state pool of Transmission Charges for 5th MYT Period.

9: 33/132/220 kV, 2×100 MVA GIS Sub-station at Dehan in District Kangra (Asset-1) and 220 kV D/C Dehan-Hamirpur Transmission Line (Asset-2)

(i) The Commission in the Order dated **22.01.2025** in **Petition No. 30 of 2024,** has, inter alia, observed as under

"C. Schemes commissioned but not approved: The Commission notes that the schemes commissioned but not approved will undergo a separate review process. At this stage, the Commission has not included such

projects in the projected ARR of the Fifth control period."

….

"6.10.2 The ARR approved by the Commission shall be recovered by HPPTCL based on the norms as specified in Regulation 45 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023.

6.10.3 Further, the ARR approved subsequently by the Commission in any of it future orders, for intra- state transmission asset(s) which has not been considered in this Order, shall also be recoverable along with this ARR, in the form of monthly transmission charges as per the norms defined in the prevailing HPERC Transmission Tariff Regulations as mentioned above."

(ii) The instant assets, being intra-State in nature, were commissioned on 04.08.2022. The Commission, vide its Order dated 17.07.2025 in Petition No. 146 of 2024, has already determined the transmission charges for the said assets for the period from COD up to FY 2023–24 and classified them as Intra-state assets. However, since these assets have not been included in the projected ARR of the Fifth Control Period as approved vide MYT Order dated 22.01.2025, no direction for recovery of transmission charges beyond FY 2023–24 has been issued, therefore, it has been prayed to allow continuation of the transmission charges approved for FY 2023–24 for the Fifth Control Period till further orders.

10. 400/220 kV, 315 MVA Pooling Sub-Station at Gumma (Asset-1), Additional 400/220 kV, 315 MVA Transformer Bank at Gumma (Asset-2), 220 kV Double Circuit Twin Moose Transmission Line from Hatkoti to Gumma along with LILO of 400 kV Double Circuit Jhakri to Abdullapur Transmission Line (Asset-3) and 220 kV Switching Station at Hatkoti (Asset-4).

(i) The Commission, vide Order dated **22.01.2025** in the original **Petition No. 30 of 2024**, has observed as follows:-

> *"C. Schemes commissioned but not approved: The Commission notes that the schemes commissioned but not approved will undergo a separate review process. At this stage, the Commission has not included such projects in the projected ARR of the Fifth control period."*
>
> *….*
>
> *"6.10.2 The ARR approved by the Commission shall be recovered by HPPTCL based on the norms as specified in Regulation 45 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023.*
>
> *6.10.3 Further, the ARR approved subsequently by the Commission in any of it future orders, for intra- state transmission asset(s) which has not been considered in this Order, shall also be recoverable along with this ARR, in the form of monthly transmission charges as per the norms defined in the prevailing HPERC Transmission Tariff Regulations as mentioned above."*

(ii) The instant assets, being intra-State were commissioned on 02.11.2020, 05.02.2021, 02.11.2020 and 01.02.2022 respectively. The Commission, vide Order dated 17.07.2025 in Petition No. 101 of 2024, has already determined the transmission charges for the said assets for the period from COD to FY 2023–24 and held these assets to be Intra-state in nature. However, since these assets were not included in the projected ARR of the Fifth Control Period nor any direction for recovery post FY 2023–24 has been issued, it is prayed to allow continuation of the transmission charges approved for FY 2023–24 till further orders.

(iii) The Petitioner has submitted that the Review Petition No. 206 of 2025 has been pending before the Commission since June 2025 and due to the absence of tariff approval for the above-mentioned assets, the HPPTCL is facing severe financial hardship, adversely affecting its capacity to operate and maintain the State Transmission Network as well as to discharge the liabilities on account of finance charges which may affect the financial rating of the petitioner and may affect its business adversely.

(iv) The continued non-recovery of Transmission Charges is impairing the Applicant's ability to discharge its statutory functions under:

a. **Section 39(2)(d)** of the Electricity Act, 2003 – requiring the State Transmission Utility to provide non-discriminatory open access to its transmission system on payment of transmission charges; and
b. **Section 40(a) & (c)** of the Electricity Act, 2003 – mandating the transmission licensee to build, maintain and operate an efficient, coordinated and economical transmission system and provide open access on payment of transmission charges.

(v) The financial viability of HPPTCL is, therefore, of paramount importance to ensure grid stability, uninterrupted operation, and reliability of the Intra-State Transmission System in Himachal Pradesh. Unless the applicable tariff is duly approved by this Commission and the corresponding transmission charges are recovered from the beneficiaries, the HPPTCL would be unable to effectively discharge its statutory functions and obligations entrusted under the provisions of the Electricity Act, 2003.

REPLY OF THE RESPONDENT

15. The Petition has been resisted by the Himachal Pradesh State Electricity Board Ltd (HPSEBL/ Respondent for short) that the review Petition is not maintainable. The review petition is restricted to correcting errors apparent on the face of the record, discovery of new evidence which could not have been earlier produced, or other sufficient reasons. The grounds raised by HPPTCL do not meet these criteria, as it has been attempted to reopen issues already considered and decided upon. Such an approach violates the principle of finality of judicial and quasi-judicial orders.

16. The HPSEBL has further submitted that the present Petition fails to establish an error apparent on the face of the record. The Petitioner/HPPTCL is seeking to reargue the merits of the original case, which is impermissible in review petition. The GoHP approval letter dated 04.03.2023 regarding restructuring of ADB loan and the "On-lending Agreement" signed on dated 04-07-2024 could have

been presented during the original proceedings, but the petitioner failed to do so.

17. The HPSEBL has further submitted that Issue Nos. 2,3, 4 & 5 are not part of MYT Order and, therefore, cannot be made part of the Review Petition. It has been prayed not to consider these issues in the Review Petition. It is further submitted that the reply on issue No. 4 is being separately filed in MA No. 487 of 2025 under adjudication before the Commission separately. However, the HPSEBL has pointed out that the ARR approved by the Commission for Wangtoo Substation is not in line with the ARR approved for other assets funded through ADB grant/loan by considering 80% normative grant, whereas in the ARR of Wangtoo, the same has not been considered which may also be looked into and it has been prayed to consider the same as 80% normative grant as approved for other assets in the interest of consumers of the State in order to avoid contradictory order by this Commission on same issue.

18. With regard to issue-6 (Review of Funding of Assets), the HPSEBL has submitted that 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. This 80% interest free loan and 10% interest on 10 disbursements which should have been grant, needs to be paid back by the Petitioner and this amount will be recovered from consumer's of the State through the ARR. This would undermine consumer interest, as higher capital costs would lead to increased transmission charges, directly impacting retail tariffs for electricity consumers in the state. The Regulatory decisions must prioritize efficiency and affordability for consumers, and the petitioner's request contradicts these principles.

19. It has been submitted that the Commission has dealt with this aspect and noted that the in case of multilateral funding agencies i.e. ADB and World bank etc., the GoHP has amended the terms and conditions of the financial assistance for extending it to the HPPTCL. It was 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. 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 also submitted that the Commission has appreciated each and every aspect of the

submissions of the parties in the original proceedings and after due consideration of the methodology adopted to derive funding of the project, well reasoned order has been passed by the Commission in favour of the consumers of the State.

20. Additional Submissions made by the HPSEBL

The HPSEBL has raised certain other issues while furnishing its reply to the submissions of the Petitioner as under:-

(i) Determination of Contracted capacity of HPSEBL as 1372 MW:-

The HPSEBL has submitted that the Petitioner has considered HPSEBL drawal as 1372 MW based on HPSLDC data for the period from FY2020-21 to FY2022-23. However, from HPSLDC data, it is found that the drawal is inclusive of drawal from HPSEBL own inter-state points. Thus, the Petitioner may be directed to calculate actual drawal of HPSEBL from HPPTCL stations. Further, the Commission, in its order dated 22.01.2025, has also directed the Petitioner to undertake a detailed review of the contracted/allocated capacities of the beneficiaries including HPSEBL and ensure recovery of the ARR in line with the HPERC Tariff Regulations, 2023. However, the Petitioner has not undertaken any detailed review of contracted/ allocated capacity of beneficiary including HPSEBL. It has been further submitted that HPSLDC, which is the custodian of all relevant Data regarding usage of Intra-State transmission elements, based on which the contracted capacity of HPSEBL has been arrived at 1372 MW, may be arrayed as party respondent to provide certified data in this regard to settle the issue.

(ii) Separate Billing for Kashang and Swara Kuddu HEPs resulting into duplicity of billing:

The HPSEBL has submitted that it has signed short term power purchase agreement with HPPTCL for purchase of power from Kashang and Swara Kuddu HEPs for the period from 01.05.2025 to 31.03.2025. Subsequently, long term PPAs were signed for purchase of power from 01.04.2023 onwards. In this regard, the HPPCL, vide letter dated 27.06.2023, informed HPPTCL that it has signed long term PPAs with HPSEBL for Kashang HEP, Swara Kuddu HEP and Sainj HEP.

In this regard, Sub-regulation (6) of Regulation 8 of the HPERC (Grant of connectivity, long term medium term intra state Open access and related matters) (second amendment) Regulations, 2021 provides as under:

> "…………………..
> *Provided that the applicant shall not be required to obtain open access in case it signs the Power Purchase Agreement within three months from the Grant of Connectivity with the Distribution Licensee of the state for the sale of entire power at interconnection point and in that case the distribution licensee shall enter into suitable Transmission Service Agreement within 3 months from the date of signing of PPA, after finalizing the evacuation arrangements through mutual discussions.………… ………"*

The HPSEBL has further submitted that it has already signed the TSA for 220kV Kashang Bhaba Transmission line on 14.07.2022 and TSA for Hatkoti Sub-station and Gumma Hatkoti line dated 17.01.2023, and shall be sharing/is sharing the Intra-State transmission charges in line with the HPERC, Transmission Regulations in force. However, the Petitioner is raising bills on the HPSEBL based on its net drawl as per HPSLDC data which is inclusive of Kashang and Sawra Kuddu energy. Further, the Petitioner is also raising separate bills on the HPPCL for these stations, which are ultimately forwarded to the

HPSEBL by the HPPCL. Therefore, HPSEBL is being billed twice for power of Swara Kuddu and Kashang HEP by the HPPTCL which are not in the interest of the HPSEBL and the consumers of the State.

(iii) <u>Outstanding Short Term Open Access (STOA) charges at HPPTLCL end.</u>

The HPSEBL has also pointed out that the proceeds of Short Term Open Access are currently not shared with long term beneficiaries. The Commission, vide order dated 05.06.2024, has issued True up order for the period from FY2019-20 to FY2021- 22, wherein HPPTCL has revenue surplus of 111.74 Cr inclusive of STOA charges sharing of 63.6 Cr (90% of total STOA). These charges are not reimbursed to long term beneficiaries of above mentioned period till date. The Petitioner is required to be directed to reimburse the revenue surplus of period from FY2019-20 to FY2021-22 & the transmission charges collected from Short Term Open Access consumers and embedded Intra-state entity during a month shall be reimbursed in the following billing month, to the long term beneficiaries.

REJOINDER

21. In rejoinder, the contents of the reply have been denied and those of the Petition have been re-affirmed.

SUBMISSIONS OF THE PARTIES

22. We have heard Sh. Vikas Chauhan, Ld. Counsel alongwith Sh. Tapan Kumar, Tariff Consultant for the Petitioner and Sh. Kamlesh Saklani, Authorised Representative for the Respondent and have perused the record carefully.

23. 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 as prayed. He has emphasised that the financial viability of HPPTCL is, of paramount importance to ensure grid stability, uninterrupted operation, and reliability of the Intra-State Transmission System in Himachal Pradesh. Unless the applicable tariff is duly approved by this Commission and the corresponding transmission charges are recovered from the beneficiaries, the HPPTCL would be unable to effectively discharge its statutory functions and obligations entrusted

under the provisions of the Electricity Act, 2003. He has also submitted that the Petitioner has apprised the Commission in respect of restructuring of the loan amount and on signing the On-lending Agreement on 04.07.2024, the Commission was also apprised.

24. Sh. Kamlesh Saklani, Authorised Representative for the Respondent on the other hand 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 impugned order and that there are no errors apparent on the face of record and Petition is liable to be dismissed being an appeal in disguise and beyond the purview of Order 47 of the CPC.

25. Alongwith the Amended Review Petition, the Petitioner has filed an application, inter-alia, claiming continuation and recovery of transmission charges already approved for FY 2023-24 during the 5th control period, till further orders of the Commission, in respect of those transmission assets whose tariff had been approved upto FY 2023-24 but were inadvertently not considered while determining the ARR for the 5th Control Period vide order dated 22.01.2025.

However, no reply to said application has been filed by the Respondent.

POINTS FOR CONSIDERATION

26. We have heard the Petitioner and have perused the entire record carefully. The following points arise for determination in the Petition:-

Point No. 1: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of Rate of RoE and Income Tax?

Point No. 2: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of non-consideration of the intra-state assets on account of the HPERC Judgement dated 23.01.2025 passed in Petition No. 46/2021 in pursuance to APTEL Judgment dated 12.04.2024.

Point No. 3: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of non-consideration of assets whose COD and Capital Cost had not been firmed up at the time of the proceedings in the Petition?

Point No. 4: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of Recovery of charges for 440/220/66 kV GIS Pooling Sub-Station Wangtoo

(Sherpa Colony) based on the Ld. CERC Order in Petition No. 38/MP/2023?

Point No. 5: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of Recovery of charges for 33/220 GIS Sub-station at Karian and 220 kV Transmission Line from Karian Sub-station to Chamera II Pooling Station based on the basis of Order dated 28.04.2025 in Petition No. 11 of 2025?

Point No. 6: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of review of the Funding of Assets?

Point No. 7: Whether there are sufficient reasons for reviewing the Order dated 22.01.2025 in Petition No. 30 of 2024 in respect of Review of the Determination of Transmission Charges for Short Term Open Access (STOA) Consumers?

Point No. 8: Whether there are sufficient reasons for consideration of 220 kV D/C Bajoli–Holi–Lahal Transmission Line and other assets in Intra-state pool of Transmission Charges for 5th MYT Control Period on account of non-finalisation of guidelines/methodology by CEA in the matter of certification of Assets as Inter-state till date?

Point No. 9: Whether there are sufficient reasons for Continuation of the transmission charges approved for FY 2023-24 for the Fifth Control Period till further orders in respect of 33/132/220 kV, 2x100 MVA, GIS Sub-station at Dehan in District Kangra (Asset-1) and 220 kV D/C Dehan-Hamirpur Transmission Line (Asset-2) ?

Point No. 10: Whether there are sufficient reasons for Continuation of the transmission charges approved for FY 2023-24 for the Fifth Control Period till further orders in respect of 400/220 kV, 315 MVA Pooling Sub-Station at Gumma (Asset-1), Additional 400/220 kV, 315 MVA Transformer Bank at Gumma (Asset-2), 220 kV Double Circuit Twin Moose Transmission Line from Hatkoti to Gumma along with LILO of 400 kV Double Circuit Jhakri to Abdullapur Transmission Line (Asset-3) and 220 kV Switching Station at Hatkoti (Asset-4)?

Point No.11: **Final Order.**

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

Point No. 1: Yes.
Point No. 2: No.
Point No. 3: No.
Point No. 4: Yes.
Point No. 5: Yes.
Point No. 6: No.
Point No. 7: No.

Point No. 8: No.

Point No. 9: Yes.

Point No. 10: Yes.

Point No. 11: The Petition partly allowed per operative part of the Order.

REASONS FOR FINDINGS

28. It is well settled 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".*

29. 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."

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

31. The main Petition had been filed for the approval of the Business Plan and MYT Petition for the 5th Control Period from FY 2024-25 to FY 2028-29. 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.

32. In view of the above settled position of law, we now proceed to discuss each of the above points, separately on which the review has been sought.

<u>Point No. 1 - Rate of Return on Equity (RoE) and Income Tax.</u>

33. Regulation 34 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2023 provides as under:

> "***34 Return on Equity Capital.-*** *(1) Return on equity shall be computed on 30% of the capital base or actual equity, whichever is lower:*

Provided that assets funded by consumer contribution, capital subsidies/ grants and corresponding depreciation shall not form part of the capital base. Actual equity infused in the Transmission Licensee as per book value shall be considered as perpetual and shall be used for computation in this Regulation:

Provided that accumulated depreciation, over and above debt repayment, shall be used to reduce the equity base for return on equity after debt repayment is over.

(2) The return on the equity invested in working capital shall be allowed from the date of start of commercial operation.

(3) Transmission Licensee shall be allowed 14.5% post-tax return on equity:

Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law, shall be computed at the weighted average rate of interest on actual loan portfolio of the transmission system."

34. The Commission observes that the post tax rate of return of equity has been inadvertently considered as 14% instead of 14.5% as provided in the Regulations. Thus, the Petitioner has substantiated that there are errors apparent on the face of record regarding the rate of RoE. The Commission also finds merit in the submissions of the Petitioner with regard to the calculation of the RoE, however, the same can only be considered during final true up exercise on submission of the complete documents.

35. With regard to the claim of income tax, the Commission clarifies that the same can be considered on the basis of the actual

tax liability paid or payable by the Petitioner. Accordingly, the income tax shall be considered at the time of truing up on actual basis, in line with the applicable regulatory framework. Point No. 1 is accordingly decided in favour of the Petitioner.

Point No. 2 - Review of Non-Consideration of Intra-State Assets as per HPERC Order dated 23.01.2025.

36. Vide Order dated 23.01.2025 in Petition No. 46/2021, the Commission has held that M/s Everest Power Private Limited is the beneficiary of the 220 kV Double Circuit (D/C) Charor – Banala Transmission Line and is liable to bear the cost of the entire approved ARR till other Projects in the area begin evacuation of power from their respective projects. The Commission is of the considered opinion that the ARR of those transmission assets of the Petitioner which are not utilised by the Distribution licensee/Consumers of the State, the recovery of the charges from the same need to be made from the direct beneficiaries/users as per the provisions of the Agreements/Regulations. The ARR of such assets cannot be recovered by the way of Pooled mechanism.

37. However, with respect to non-consideration of the other Assets listed out by the Petitioner in the present Review Petition, the

Petitioner had undertaken the construction of said assets without obtaining prior approval for investment from the Commission. Further, the Commission has dealt the issue raised by the Petitioner in detail in order dated 22.01.2025. Therefore, the Commission shall only be in a position to consider these assets on filing of appropriate Petition(s) before the Commission. Point No. 2 is accordingly decided against the Petitioner.

Point No. 3 - Review of Non-Consideration of Assets with Unfinalized COD and Capital Cost during the pendency of Petition.

38. In the MYT Tariff Order dated 22.01.2025, the Commission has already observed on the matter as under:-

> "*5.6.5.33 Schemes proposed but not considered by the Petitioner in the ARR of Fifth Control Period: Out of the 38 schemes proposed by the Petitioner for the Fifth Control Period, the Petitioner has not provided corresponding detailed estimates for CAPEX or capitalization for the below mentioned works. The Petitioner has indicated that the expected Commercial Operation Date (COD) and the funding agencies for these works are still to be finalized. As a result, the necessary financial details for inclusion of the same in the tariff computation are currently unavailable. Accordingly, the Commission has decided not to consider these two works for CAPEX and capitalization approval in this Tariff Order.*
> *a) Construction of 220/33 kV, 2x50/63 MVA Majholi along with 220 kV Transmission line from Uperla Nangal to Majholi for Medical Devices Park (MDP) at Nalagarh*
> *b) Additional 220/132 kV, 200 MVA Transformer bank at Kala Amb Sub-station at Andheri.*"

39. The Commission is of the clear opinion that the prayer of the Petitioner with respect to approval of the aforementioned two schemes does not fall under the purview of the present Review Petition. Therefore, the Petitioner has not been able to substantiate any error apparent on the face of the record to this extent. The Petitioner may seek investment approvals separately as per the provisions of the Regulations. Hence, Point No. 3 is decided against the Petitioner.

Point No. 4 - Review of Recovery of Wangtoo GIS Pooling Sub-Station Charges based on Hon'ble CERC Order.

40. The Commission notes that vide Order dated 28.09.2022 in Petition No. 29/2022, the Commission has determined the tariff for the period starting from CoD (29.09.2019) to FY 2023-24 in respect of 400/220/66 kV GIS Pooling Sub-station at Wangtoo (Sherpa Colony) (GIS Pooling Sub-station at Wangtoo for short) under the HPERC Transmission Tariff Regulations, 2011. Subsequently, the Petitioner filed Petition No. 38/MP/2023 before the Ld. CERC for inclusion of the said asset developed by it as Inter-State (ISTS) Transmission System and recovery of transmission charges under PoC Mechanism.

41. However, the Ld. CERC vide order dated 20.03.2025 in Petition No. 38/MP/2023 disposed off the Petition No. 38/MP/2023 observing that the GIS Pooling Station at Wangtoo cannot be included for sharing of transmission charges under the CERC Regulations, 2020 and such charges cannot be levied on beneficiaries on all India basis. Hence, the asset in question is Intra-state.

42. Subsequently, the Commission, vide Order dated 13.05.2026 in Petition bearing MA No. 487/2025, has directed the recovery of transmission charges for the GIS Pooling Sub-station at Wangtoo from COD to FY 2023-24, recognizing the same as Intra-state Asset and has allowed the recovery of its ARR in a pooled manner from COD to FY 2023-24.

43. It is observed that at the time of the proceedings in the original Petition No. 30 of 2024 before this Commission the matter regarding the asset in question was already under consideration before the Ld. CERC and was disposed off vide order dated 20.03.2025 by the Ld. CERC after the Order dated 22.01.2025 in Petition No. 30 of 2024 by this Commission. Accordingly, the tariff for the 5th Control period i.e. for the period w.e.f. FY 2024-25 to FY 2028-29 of the subject

asset could not be determined by the Commission and the said asset was not included in the projected ARR of the Fifth Control Period as approved vide MYT Order dated 22.01.2025 in Petition No. 30 of 2024.

44. The Petitioner has requested to allow it to recover the transmission charges of GIS Wangtoo Sub-station as approved for FY2023-24 till further Orders.

45. In this regard, the Commission is of the view that the Asset is already in use, the Petitioner is duty bound to recover its cost in respect of the same so as to run and operate the system smoothly ensuring continuous and regular electricity.

46. In the circumstances, the Commission allows the recovery of transmission charges for the 5th MYT Control Period (FY25- FY29) of the subject asset in a pooled manner at the tariff determined for FY 2023-24 vide Order dated 28.09.2022 in Petition No. 29/2022 till the ARR of the asset in question is determined by the Commission for the current MYT Control period (FY25- FY29). The Petitioner is directed to file an appropriate Petition for the same before the Commission. Point No. 4 is accordingly decided in favour of the Petitioner.

<u>Point No. 5 - Review of Recovery of 33/220 GIS Sub-station at Karian and 220 kV Transmission Line from Karian Sub-station to Chamera II Pooling Station based on the Order in Petition No. 11 of 2025.</u>

47. The Commission notes that vide Order dated 01.11.2021 in Petition No. 98/2020, it has determined the tariff for the period starting from CoD (12.05.2018) to FY 2023-24 in respect of 33/220 kV, 50/63 MVA GIS Substation at Karian (Asset-1) and 220 kV Transmission line from Karian GIS Substation to PGCIL Pooling Sub-station at Chamera-II (Rajera) (Asset-2) under the HPERC Transmission Tariff Regulations, 2011. Subsequently, the Petitioner filed Petition No. 05/MP/2022 before the Ld. CERC for inclusion of the said assets developed by it as Inter-State (ISTS) Transmission System and recovery of transmission charges under PoC Mechanism.

48. However, the Ld. CERC vide order dated 18.05.2024 in Petition No. 05/MP/2022 rejected the prayer of the Petitioner (HPPTCL) holding that said assets shall continue to be a part of Intra-state system.

49. Accordingly, the Petitioner filed Petition No. 11/2025 before this Commission seeking direction to HPSEBL to pay transmission

charges in accordance with the charges determined by this Commission vide its Order dated 01.11.2021 under Petition No. 98 of 2020 read with Ld. CERC order dated 18.05.2024 under Petition No. 05/MP/2022. The Commission disposed off the said Petition vide Order dated 28.04.2025 in Petition No. 11/2025 allowing the recovery of the transmission charges of the transmission system from the Respondent/ HPSEBL and the beneficiaries for the period 01.04.2020 to 31.03.2024.

50. It is observed that at the time of the proceedings in the original Petition No. 30 of 2024, the Petition No. 11 of 2025 was already under consideration of this Commission and was disposed off after the Order dated 22.01.2025. Accordingly, the order for the recovery of the tariff for the 5th Control period i.e. for the period w.e.f. FY 2024-25 to FY 2028-29 could not be included in the projected ARR of the Fifth Control Period as approved vide MYT Order dated 22.01.2025.

51. The Petitioner, in the instant Petition, has requested to allow it to recover the transmission charges as approved for FY2023-24 till further Orders.

52. In this regard, the Commission is of the view that the Asset is already in use, the Petitioner is duty bound to recover its cost in respect of the same so as to run and operate the system smoothly and to ensure continuous and regular electricity to the consumers.

53. Further, the Commission has already recognised these assets as Intra-state, therefore, the Commission allows the recovery of transmission charges in a pooled manner at the tariff determined for FY2023-24 vide Order dated 01.11.2021 in Petition No. 98/2020 for the period till the ARR is determined by the Commission for the current MYT Control period (FY25- FY29).

54. The Petitioner is also directed to file an appropriate Petition for the same before the Commission. This Point is accordingly decided in favour of the Petitioner.

Point No. 6 - Review of Funding of Assets.

55. The Petitioner has requested to review the funding of the assets by the Commission as the same has not been approved as per the proposal of the Petitioner in the main Petition. The main issue of contention is the funds coming from multilateral agencies like ADB, KfW etc. These funds are being routed through GoHP to the Petitioner. The GoHP is forwarding these funds as loans to the

Petitioner with interest @ 10%. The GoHP has subsequently revised the terms and conditions of the loan and has agreed to charge no interest on 80% of the loan amounts. However, the Commission has considered this aspect in detail in the impugned tariff order dated 22.01.2025 in Petition No. 30 of 2024. The financial institution wise loan details are discussed as under:-

(a) <u>ADB Bank:</u>

56. 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 and the HPPTCL, as produced with the additional submissions dated 25.04.2025 in the present review Petition. The Petitioner has also relied upon the Onlending agreements dated 20.04.2012, 03.12.2014 and 04.07.2024 signed between the GoHP and the HPPTCL. In so far as the aforesaid 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. Similarly, the onlending agreements dated 20.04.2012, 03.12.2014 and 04.07.2024 were also well within the knowledge and possession of

the Petitioner during the pendency of Petition No. 30 of 2024 decided on 22.01.2025. The terms and conditions of the onlending agreement dated 04.07.2024 do not in any manner ameliorate the sufferings of the Petitioner. Significantly, the Commission vide interim/ daily order dated 22.04.2025 in Review Petitions No. 14 and 15 of 2025 had directed the Petitioner to furnish the details regarding the loan advanced by the by the GoI to the Government of Himachal Pradesh (GoHP) or the HPPTCL for carrying out transmission works in the State of H.P as to whether the same was grant or loan. The HPPTCL was directed to furnish such detail/explanation on 25.04.2025 in Petition No. 14 and 15 of 2025 as the present Petition and Review Petitions No. 14 of 2024 and 15 of 2024 had similar issue regarding the funding of the Project. Even the Review Petition was amended but the explanation regarding the terms and conditions of the finance extended by the GoI to the GoHP or the HPPTCL was not furnished. In the absence of any satisfactory explanation and production of actual loan or grant extended/ advanced to the GoHP, the Commission has rightly considered the same as grant in the interest of the consumers. 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.

57. With regard to the loan amounting to Rs 176.57 Crores tied up with HP State Co-operative Bank (HPSCB) for completion of Spill Over Works of Himachal Pradesh Clean Energy Transmission Investment Programme (HPCETIP), it is observed that the HPPTCL, vide letter dated 18.09.2024 submitted the requisite documents alongwith mortgage deed and insurance copy for availing said loan and finally, vide letter dated 29.10.2024, requested the HPSCB for release of Rs 106.57 Crores in HPPTCL account against term loan of Rs 176.57 Crores.

58. The said documents were already within the knowledge and possession of the Petitioner but have not been furnished during the proceedings in the main Petition.

59. As such, the Petitioner has not been able to establish any error apparent on the face of the record to this context. However, the Commission may consider the funding pattern at the time of true-up

in case sufficient documents are placed on record based upon the required prudence check.

(b) <u>World Bank:</u>

60. Much reliance has been placed by the Petitioner on the loan agreement dated 06.11.2023 signed between the GoI and the International Bank for reconstruction and development and the project agreement dated 04.11.2023 signed between the International Bank for reconstruction and development and the State of HP and the HPPTCL. The Petitioner has also relied upon the GoHP letter dated 20.06.2022 wherein the following has been intimated:-

> *"1. The grants received from Government of India under the EAP may be passed on as Equity to the Utilities.*
> *2. The Loan received from Government of India under this EAP and the State Share may be given as loan to the Utilities to be returned by them to State Government."*

61. As per the said letter, the GoI had infact provided Grants to the GoHP under EAP (externally Aided Projects). The Petitioner has not given any detail or explanation about the terms and conditions of the finance provided by the GoI to the GoHP or the HPPTCL as to whether the same was grant or loan. In the absence thereof, the GoHP letter dated 20.06.2022 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.

(c) <u>KfW loan:</u>

62. Much reliance has been placed by the Petitioner on the loan agreement dated 05.10.2015 signed between the GoI and the KfW and the project agreement dated 05.10.2015 signed between the KfW and the State of HP and the HPPTCL as produced in the present review Petition. In addition to the above, Separate Agreement dated 05.10.2015 has been signed between the KfW and the HPPTCL & an On-lending agreement have been signed between the GoHP and HPPTCL on 26.11.2016

63. As per the said agreement, the GoI was to channelize the Loan in full in accordance with the back-to-back on lending guidelines of the Ministry of Finance, Department of Economic Affairs (DEA), Government of India and at the same terms and conditions of the Loan Agreement dated 05.10.2015, the amount was further channelized in favour to the Project Executing Agency by the GoHP with interest @ 10%. However, the interest rate was

decided to be at 1.72% per annum as per the loan agreement dated 05.10.2015.

64. The Petitioner has not given any detail or explanation about the terms and conditions of the finance provided by the GoI to the GoHP or the HPPTCL or the back-to-back on-lending guidelines of the Ministry of Finance, Department of Economic Affairs (DEA), GoI as to whether the funds allocated by the GoI were grant or loan. The Commission is of the firm view that Himachal Pradesh, being a special category State, any multilateral funding to the State by the GoI is at 90% grant. In the absence of the detail of the agreement between the GoI and the GoHP, the loan agreement dated 05.10.2015, the project agreement dated 05.10.2015 and the On-lending agreement dated 26.11.2016 are 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.

65. It is also relevant to refer here that as per Regulation 22 of the HPERC Transmission Tariff Regulations, 2023, the Commission is required to undertake a prudence check before approving the capital cost of the Project. Regulation 22 provides as under:-

"*22.* ***Prudence Check of Capital Cost.-*** *The following principles shall be adopted for prudence check of capital cost of the existing or new transmission projects:*

(a) *Scrutiny of the capital expenditure, in the light of capital cost of similar projects based on past historical data, wherever available, reasonableness of financing plan, interest during construction, incidental expenditure during construction, use of efficient technology, cost over-run and time over-run, procurement of equipment and materials through competitive bidding and such other matters as may be considered appropriate by the Commission: Provided that, while carrying out the prudence check, the Commission shall also examine whether the Transmission Licensee has been careful in its judgments and decisions in execution of the project.*

(d) *The Transmission Licensee shall furnish the capital cost for execution of the existing and new projects, as per formats specified by the Commission, along with tariff petition for the purpose of creating a database of benchmark capital cost of various components.*

(e) *(c) The Commission may get the capital cost of any project vetted by an independent agency or an external expert. However, the same shall be considered as one of the guiding factors only and shall not be binding on the Commission."*

66. Thus, the Commission is required to undertake a 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. Suffice to say, the Commission has based its decision on the pleadings and record strictly in accordance with law and regulations by considering each and every aspect of the matter.

67. The Petitioner has not given any new evidence/documents which were not in the knowledge of the Petitioner during the proceedings in the main Petition. Therefore, the funding pattern approved by the Commission cannot be reviewed. However, the Commission may consider any deviation from the funding pattern as approved at the time of true-up in case sufficient documentary evidence is placed on record based upon the required prudence check. Point No. 6 is accordingly decided against the Petitioner.

Point No. 7 - Review of Transmission Charges for Short Term Open Access (STOA) Consumers.

68. The transmission charges to be paid by the STOA customers are always in Rs/unit basis. The STOA charges are worked out based on the ARR approved which is also the basis of recovery of the Long term Access (LTA) charges as well.

69. A careful perusal of the record shows that the same methodology has been adopted by the Commission to determine the charges for STOA in the past years as well. Further, it is implied that the transmission assets are being built for the LTA/Medium Term Open Access (MTOA) customers only. STOA is made available only in case of any margin available in the system. Therefore, the Commission does not agree that such methodology of determination of charges creates a disparity between long term and short term contracts. Moreover, Long Term contracts are always higher in priority to the Short term contracts.

70. Further, the Commission does not find merits in the averments made by the Petitioner that using full State energy sales for calculating STOA charges is an error as it uses part of the transmission assets. It is deemed that the STU transmission system is used for meeting the energy demand of the State. Moreover, the Petitioner is not at any loss as the ARR of the Petitioner is being recovered from the LTA/MTOA customers only. Hence, Point No. 7 is decided against the Petitioner.

Point No. 8 - Consideration of 220 kV D/C Bajoli–Holi–Lahal Transmission Line and other assets in Intra-state pool of

<u>Transmission Charges for 5th MYT Control Period on account of non-finalization of guidelines/methodology by CEA in the matter of certification of Assets as Inter-state till date.</u>

71. The Petitioner has submitted that vide letter dated 02.07.2024, it has requested for recommendation for certification of following assets as Inter-state based in view of Regulation 93 of CERC (Terms and Conditions of Tariff) Regulations,2024:

i. 220kV D/C Bajoli Holi-Lahal Transmission Line
ii. 220/33kV portion of 33/220/400kV Lahal Substation along with 220kV Lahal-Budhil Transmission line
iii. 400/220kV portion of 33/220/400kV Lahal Substation along with 400kV Lahal-Chamera Transmission line.

72. However, due to non-finalisation of guidelines/methodology by CEA in the matter, the Assets are yet to be declared as Inter-state or Intra-state, the HPPTCL, being Transmission Utility in the State of HP, is facing difficulty to sustain its operations due to non-realization of approved tariff of these assets.

73. The Commission observes that the capital cost and ARR of the above mentioned assets namely 220kV D/C Bajoli Holi-Lahal Transmission Line, 220/33kV portion of 33/220/400kV Lahal Substation along with 220kV Lahal-Budhil Transmission line and 400/220kV portion of 33/220/400kV Lahal Substation along with

400kV Lahal-Chamera Transmission line was determined by the Commission vide order dated 17.11.2023 in Petition No. 27/2023, order dated 17.11.2023 in Petition No. 28/2023 and order dated 10.09.2024 in Petition No. 99/2024 respectively from COD to FY 2023-24 for all these assets. The Commission in these Orders has, inter-alia, observed that the Petitioner should approach the appropriate authority/ Ld. CERC for recovery of the tariff under PoC mechanism as these assets have been utilised primarily for evacuation of the power outside the State.

74. The Commission is also of the view that this situation of non recovery of the ARR/ tariff has arisen due to the fact that the Petitioner has not entered into any Transmission Service Agreement (TSA)/ Long Term Transmission Access Agreements (LTA) with the beneficiary(ies) in most of the assets for the entire transmission capacity. The Commission has further observed that these transmission assets have been built by the Petitioner without taking any prior investment approval from the Commission as per the provisions of the HPERC Regulations. Since, the Commission has already made the observations in the respective tariff orders for recovery of the ARR as mentioned above, the matter does not fall in

the purview of this Review Petition. The Petitioner thus has failed to substantiate any error apparent on the face of the record in the matter.

75. However, the Petitioner may file a separate Petition, if so advised, and approach the appropriate Commission for effecting the recovery of transmission charges. Point No. 8 is accordingly decided against the Petitioner.

Points No. 9 and 10 - Continuation of the transmission charges approved for FY 2023-24 for the Fifth Control Period till further orders.

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

77. The Commission observes that the tariff has been determined for the following Assets vide Order dated 17.07.2025 in Petition No. 146 of 2024 and order dated 17.07.2025 in Petition No. 101 of 2024:-

(a) 33/132/220 kV, 2x100 MV A GIS Sub-station at Dehan in District Kangra (Asset-1) and 220 kV D/C Dehan-Hamirpur Transmission Line (Asset-2), commissioned on 04.08.2022.

(b) 400/220 kV, 315 MV A Pooling Sub-Station at Gumma (Asset-1), Additional400/220 kV, 315 MVA Transformer

Bank at Gumma (Asset-2), 220 kV Double Circuit Twin Moose Transmission Line from Hatkoti to Gumma along with LILO of 400 kV Double Circuit Jhakri to Abdullapur Transmission Line (Asset-3) and 220 kV Switching Station at Hatkoti (Asset-4), commissioned on 02.11.2020, 05.02.2021, 02.11.2020 and 01.02.2022 respectively.

78. It is observed that at the time of the proceedings of the original Petition No. 30 of 2024, the separate Petitions i.e. Petition Nos. 146 of 2024 and 101 of 2024 filed in respect of the above assets for the period from COD to FY 2023-24 (i.e. the 4th Control period) were already under consideration of this Commission and were disposed off after the Order dated 22.01.2025. Accordingly, the tariff for the 5th Control period i.e. for the period w.e.f. FY 2024-25 to FY 2028-29 of the above assets has not been determined by the Commission and, thus, the above Assets were not included in the projected ARR of the Fifth Control Period as approved vide MYT Order dated 22.01.2025.

79. The Commission observes that it has already given approval for recovery of the ARR/ tariff of these assets vide orders dated 17.07.2025 in Petition No. 146 of 2024 and Petition No. 101 of 2024, inter-alia, as per the terms and conditions of the TSA/LTA and the

Clause 33 of the HPERC Transmission Tariff Regulations, 2011 which reads as under:

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

80. The Commission observes that the Petitioner is yet to file the detailed tariff Petition for the above assets for the 5th control period from 1.4.2024 to 31.03.2029. Since the ARR for the above assets have already been approved by the Commission for the 4th control period from the COD to 31.03.2024 vide Orders dated 17.07.2025, the Commission allows the Petitioner to recover the ARR/ Tariff for the 5th Control Period as approved by the Commission from COD till 31.03.2024 vide order dated 17.07.2025 till determination of the ARR of the assets for the 5th Control period by filing appropriate Petition by the Petitioner.

81. Further, since the status regarding the drawal, if any, by the Distribution Licensee directly from these assets also needs to be ascertained and verified, the Petitioner is directed to file a separate Petition in respect of these assets for the decision by the Commission as to whether the recovery of the ARR of these assets

is to be carried out in a pooled manner or exclusively from the beneficiaries of these assets after hearing all the beneficiaries/ stakeholders. Points No. 9 and 10 are accordingly decided in favour of the Petitioner.

82. The Petitioner has not been able to substantiate that there is any error apparent on the face of record, in so far as non-consideration of the intra-state assets on account of the HPERC Judgement dated 23.01.2025 passed in Petition No. 46/2021 in pursuance to APTEL Judgment dated 12.04.2024, assets whose COD and Capital Cost had not firmed up at the time of the proceedings in the Petition, regarding funding of Assets, the Determination of Transmission Charges for Short Term Open Access Consumers and non-consideration of 220 kV D/C Bajoli–Holi–Lahal Transmission Line and other assets in Intra-state pool of Transmission Charges for 5th MYT Control Period on account of non-finalization of guidelines/ methodology by CEA in the matter of certification of Assets as Inter-state till date.

<u>FINAL ORDER</u>

83. In view of the above discussions and findings, the Review Petition partly succeeds and allowed partly.

84. The Petitioner is allowed to recover the transmission charges in respect of the following assets:-

(i) 400/220/66 kV GIS Pooling Sub-Station Wangtoo (Sherpa Colony).

(ii) 33/220 kV GIS Sub-station at Karian and 220 kV Transmission Line from Karian Sub-station-Chamera II Pooling Station.

(iii) 33/132/220 kV, 2×100 MVA GIS Sub-station at Dehan in District Kangra (Asset-1) and 220 kV D/C Dehan-Hamirpur Transmission Line (Asset-2).

(iv) 400/220 kV, 315 MVA Pooling Sub-Station at Gumma (Asset-1), Additional 400/220 kV, 315 MVA Transformer Bank at Gumma (Asset-2), 220 kV Double Circuit Twin Moose Transmission Line from Hatkoti to Gumma along with LILO of 400 kV Double Circuit Jhakri to Abdullapur Transmission Line (Asset-3) and 220 kV Switching Station at Hatkoti (Asset-4).

85. However, the Petitioner is allowed to recover the transmission charges in respect of 400/220/66 kV GIS Pooling Sub-Station Wangtoo (Sherpa Colony) and 33/220 kV GIS Sub-station at Karian and 220 kV Transmission Line from Karian Sub-station-Chamera II Pooling Station for the 5th MYT Control Period (FY25- FY29) in pooled manner at the tariff determined for FY 2023-24 vide orders

dated 28.09.2022 in Petition No. 29 of 2022 and 01.11.2021 in Petition No. 98 of 2020 respectively till the ARR for the 5th MYT Control Period of the above assets is determined by the Commission. The Petitioner is also directed to file appropriate Petitions in respect of the above assets separately at the earliest.

86. The Petitioner is allowed to recover the transmission charges in respect of 33/132/220 kV, 2×100 MVA GIS Sub-station at Dehan in District Kangra (Asset-1) and 220 kV D/C Dehan-Hamirpur Transmission Line (Asset-2) and 400/220 kV, 315 MVA Pooling Sub-Station at Gumma (Asset-1), Additional 400/220 kV, 315 MVA Transformer Bank at Gumma (Asset-2), 220 kV Double Circuit Twin Moose Transmission Line from Hatkoti to Gumma along with LILO of 400 kV Double Circuit Jhakri to Abdullapur Transmission Line (Asset-3) and 220 kV Switching Station at Hatkoti (Asset-4) for the 5th MYT Control Period (FY25- FY29) at the tariff determined for FY 2023-24 vide orders dated 17.07.2025 in Petition No. 146 of 2024 and 17.07.2025 in Petition No. 101 of 2024 respectively till the ARR for the 5th MYT Control Period of the above assets is determined by the Commission. Further, since the status regarding the drawal, if any, by the Distribution Licensee directly from these assets also

needs to be ascertained and verified, the Petitioner is directed to file a separate Petition in respect of these assets for the decision by the Commission as to whether the recovery of the ARR of these assets is to be carried out in a pooled manner or exclusively from the beneficiaries of these assets after hearing all the beneficiaries/ stakeholders.

87. The base rate of RoE of 14% instead of 14.5% shall be considered at the time of true up exercise as and when the Petition is filed.

88. However, the Petitioner has not been able to substantiate that there is any error apparent on the face of record, in so far as non-consideration of the intra-state assets on account of the HPERC Judgement dated 23.01.2025 passed in Petition No. 46/2021 in pursuance to APTEL Judgment dated 12.04.2024, assets whose COD and Capital Cost had not firmed up at the time of the proceedings in the Petition, regarding funding of Assets, the Determination of Transmission Charges for Short Term Open Access Consumers and non-consideration of 220 kV D/C Bajoli–Holi–Lahal Transmission Line and other assets in Intra-state pool of Transmission Charges for 5th MYT Control Period on account of

non-finalization of guidelines/ methodology by CEA in the matter of certification of Assets as Inter-state till date.

89. The Review Petition is accordingly disposed off.

90. Let a copy of this order be supplied to the parties forthwith.

91. The pending applications, if any, are also dismissed.

The file after needful be consigned to records.

Announced
20.05.2026

-Sd-
(Shashi Kant Joshi)
Member

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