

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 104/MP/2018**

**Coram:**

**Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member**

**Date of Order: 30<sup>th</sup> June 2023**

**In the matter of**

Petition under Section 79 (1) (c) and (f) and other applicable provisions of the Electricity Act, 2003 seeking directions against the direct bilateral billing of transmission charges by the Respondent No.1, NRSS XXXI (A) Transmission Limited on the Petitioner for the transmission system established in the State of Himachal Pradesh (Received by way of remand).

**And**

**In the matter of**

Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,  
Building No. 11, Shimla, Himachal Pradesh

**.....Petitioner**

**Vs.**

1. NRSS XXXI (A) Transmission Limited,  
Core-4, SCOPE Complex,  
7, Lodhi Road, New Delhi-110003

2. AD Hydro Power Limited,  
Bhilwara Towers, A-12, Sector-1,  
Noida-201301, Uttar Pradesh

3. Haryana Power Purchase Centre,  
Shakti Bhawan, Energy Exchange,  
Room No. 446, Top Floor,  
Sector-6, Panchkula-134109,  
Haryana

4. Punjab State Power Corporation Limited,  
Shed No. T-1-1, Thermal Design,  
Near 22 No. Phatak,  
Patiala, Punjab-14700.

5. Himachal Sorang Power Private Limited,  
D-7, Sector-1, Land-1, 2<sup>nd</sup> Floor,  
New Shimla, Shimla-171 009,  
Himachal Pradesh

6. Adani Power Limited,  
3<sup>rd</sup> Floor, Achalraj, Opposite  
Mayors Bunglow,  
Law Garden,  
Ahmedabad-380006

7. Jaipur Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur-302005, Rajasthan

8. Ajmer Vidyut Vitran Nigam Limited,  
Old Power House, Hathi Bhata, Jaipur  
Road, Ajmer, Rajasthan

9. Jodhpur Vidyut Vitran Nigam Limited,  
400 k V GSS Building,  
Ajmer Road, Heerapura,  
Jodhpur, Rajasthan

10. Lanco Anpara Power Limited  
Plot No. 397, Udyog Vihar, Phase 3,  
Gurgaon 122016

11. Lanco Green Power Private Limited  
Plot No. 397, Udyog Vihar,  
Phase-3, Gurgaon 122016

12. Power Development Department,  
Government of Jammu and Kashmir  
SLDC Building, 1<sup>st</sup> Floor, Gladani Power  
House, Narwal, Jammu and Kashmir-180006

13. North Central Railway, Divisional  
Railway Manager, DRM Office,  
Nawab Yusuf Road, Allahabad,  
Uttar Pradesh-211011

14. Jaiprakash Power Ventures Limited  
A Block, Sector-128, Noida-201304,  
Uttar Pradesh

15. BSES Yamuna Power Limited,  
2<sup>nd</sup> Floor, B-Block,  
Shakti Kiran Building (Near Karkadooma Court)  
New Delhi-110092

16. BSES Rajdhani Power Limited,  
BSES Bhawan, 2<sup>nd</sup> Floor,  
B-Block, Behind Nehru Place Bus Terminal,  
Nehru Place,  
New Delhi-110019

17. Tata Power Delhi Distribution Limited,  
33 k V sub-station Building,  
Hudson Lane,  
Kingsway Camp,  
New Delhi-110009

18. New Delhi Municipal Corporation,  
Palika Kendra, Sansad Marg,  
New Delhi-110001

19. Union Territory of Chandigarh,  
Div-11, Opposite Transport Nagar,  
Industrial Phase-I,  
Chandigarh-160011

20. Power Grid Corporation India Limited,  
B-9, Qutub Institutional Area,  
Katwaria Sarai,  
New Delhi-110016

21. Uttar Pradesh Power Corporation Limited,  
14<sup>th</sup> Floor, Shakti Bhawan,  
Extn Building, 14 Ashok  
Marg, Lucknow,  
Uttar Pradesh-226001

22. PTC India Limited, 2<sup>nd</sup> Floor, NBC  
Tower, 15, Bhikaji Cama Place,  
New Delhi-110006

23. Himachal Pradesh Power Transmission Corp. Limited,  
Himfed Building, Pinjari,  
Shimla-171006

24. Member Secretary,  
Northern Region Power Committee,  
18-A, Katwaria Sarai, Shaheed Jeet Singh Marg,  
New Delhi-110016

.....Respondents

**Parties Present:**

Shri Anand K. Ganesan, Advocate, HPSEBL  
Shri Shubham Arya, Advocate, PAKTL (NRSS)  
Ms. Poorva Saiga, Advocate, PAKTL (NRSS)  
Shri Ravi Nair, Advocate, PAKTL (NRSS)  
Shri Nipun Dave, Advocate, PAKTL (NRSS)  
Ms. Reeha Singh, Advocate, PAKTL (NRSS)  
Shri Swapna Seshadri Advocate, HPPTCL  
Shri Mansoor Ali Shoket, Advocate, TPDDL  
Shri Nitin Kala Advocate, TPDDL  
Shri Kunal Singh Advocate, TPDDL  
Ms. Adya Verma, PAKTL (NRSS/PKA)  
Ms. Supriya Singh, PAKTL (NRSS)  
Shri V.C. Sekhar, PAKTL (NRSS)  
Shri Prashant Kumar, PAKTL (NRSS)  
Shri Arjun Malhotra, PAKTL (NRSS)  
Ms. Shefali Sobti, TPDDL

**ORDER**

The present order is being passed by the Commission for compliance of the directions contained in the judgement of the Appellate Tribunal for Electricity (APTEL) dated 9.5.2022 passed in Appeal No.343 of 2018 preferred by the Petitioner assailing the order of the Commission dated 18.9.2018 in Petition No.104/MP/2018.

**Fact of the case**

2. Power Grid Corporation of India Limited (PGCIL) was selected as the Transmission Service Provider based on the international tariff based competitive bidding to execute transmission System for "Northern Region System Strengthening Scheme, NRSS-XXXI (Part-A)" on Build, Own, Operate and Maintain (BOOM) basis and to provide transmission service to

the Long-Term Transmission Customers of the Project comprising of the following elements:

S.N.	Scheme/ Transmission Works
1.	Establishment of a 7 x 105 MVA (1- ph.), 400/220 kV GIS sub-station at Kala Amb  400 kV - Line Bays: 4 No. - 400/220 kV ICT: 7 x 105 (1-ph) - ICT bays: 2 no. - Bus Reactor (80 MVAR): 2 no. - Bus Reactor Bay: 2 no. - Space for line/ICT bays: 4 no. - Space for ICT: 1 no.  220 kV - Line Bays: 6 no. - ICT bays: 2 no. - Space for line/ICT bays: 4 no.
2.	LILO of both circuits of Karcham Wangtoo-Abdullapur 400 kV D/C (Quad Moose) line at Kala Amb (on multi Ckt towers)
3.	40% Series Compensation on 400 kV Karcham Wangtoo – Kala Amb quad D/C line at Kala Amb ends

3. PGCIL accomplished all the milestones required in terms of the Request for Proposal (RfP) and Letter of Intent (LOI) and acquired the NRSS XXXI (A) Transmission Limited (NRSSTL) as its fully owned subsidiary. NRSSTL entered into the Transmission Service Agreement with Long Term Transmission Customers (LTTCS) on 2.1.2014. NRSSTL approached the Commission for grant of transmission licence in Petition No. 94/TL/2014 and adoption of tariff of the transmission system in Petition No. 93/TT/2014. The Commission in its order dated 22.8.2014 in Petition No. 93/TT/2014 adopted the tariff of the transmission system and in order dated 8.7.2014 in Petition No. 94/TL/2014 granted licence to NRSSTL for inter-State transmission of electricity.

4. NRSSTL declared commercial operation of its transmission system on 12.7.2017 in

terms of the provisions of 6.1.2 of the TSA. The issue regarding inclusion of the transmission charges of the subject transmission line in PoC was raised by NRSSTL in the third Validation Committee meeting held on 29.8.2017, wherein it was decided that the subject transmission line would not be considered under PoC due to non-availability of the downstream network and till the downstream network was made available, the transmission charges would be borne by Himachal Pradesh State Electricity Board (HPSEB) which was responsible for the execution of the downstream transmission systems. The decision was taken in terms of the principle laid down in Commission's order dated 4.1.2017 in Petition No. 155/MP/2016. Accordingly, NRSSTL started raising the invoices for the entire transmission system on the Petitioner.

5. Aggrieved by the said decision of NRSSTL, the Petitioner approached this Commission under Section 79 (1) (c) and (f) of the Electricity Act, 2003 seeking a declaration that NRSSTL is not entitled to recovery of the entire yearly transmission charges (YTC) from the scheduled date of commissioning of its transmission system which should be recovered through the PoC mechanism under the Sharing Regulations in terms of the Transmission Service Agreement.

6. The Commission in its order dated 18.9.2018 referring to the minutes of meeting of the 31<sup>st</sup> Standing Committee on the Power System Planning of the Northern Region, particularly, with reference to the transmission system being executed by NRSSTL, observed that the first element, namely, LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation, was meant solely for purpose of additional load requirement of HPPTCL and could be put to its intended use only with availability of the transmission system to be executed by HPPTCL whereas the second element namely, 40% FSC (series compensation) on Karcham-Wangtoo --Abdullapur line was a series compensation

intended to reduce impedance and increase loadability of a line. Relying on the Commission's decision in order dated 21.9.2016 in Petition No.43/MP/2017 which was upheld by the APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (Punjab State Power Corporation Limited Vs Patran Transmission Company Limited & Others), the Commission took the view that "the entity who is responsible for the asset not being put to use shall be liable to pay the transmission charges from the date of deemed CoD till the asset is put to use" and accordingly, decided that since the LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation could not be put to use till the establishment of downstream system by Himachal Pradesh, the transmission charges for the said element are payable by HPSEB. As regards the 40% FSC (series compensation) on Karcham-Wangtoo-Abdullapur line, it was held that since the system was planned as a system strengthening scheme and was in use since its commercial operation, the transmission charges for the said element would be included in PoC. The Commission disposed of the petition vide its order dated 18.9.2018 with the following directions:

*"22. In the light of the foregoing discussion, NRSSTL is entitled to recover the Monthly Transmission Charges from HPSEB for the following elements from the date of commercial operation:*

- (a) Establishment of a 7 x 105 MVA (1-ph.), 400/220 kV GIS substation at Kala Amb*
- (b) LILO of both circuits of Karcham Wangtoo Abdullapur 400 kV D/C\*\* (Quad Moose) line at Kala Amb (on multi Ckt towers)*

*23. NRSSTL shall recover Monthly Transmission Charges for FSC (40% Series Compensation—on 400 kV Karcham - Kala Amb quad D/C line at Kala Amb ends) from the date of commercial operation under the PoC mechanism. The amounts already paid by the Petitioner to NRSSTL on bilateral basis on account of FSC shall be refunded simultaneously with the billing of the charges by NRSSTL under the PoC mechanism."*

7. The Petitioner, HPSEB, assailed the order dated 18.9.2018 before the APTEL in Appeal No.343 of 2018. The APTEL vide its judgment dated 9.5.2022 set aside the said order and remanded the matter to the Commission to pass a fresh and reasonable order. The pertinent

observations of the APTEL in the judgement dated 9.5.2022 are enumerated as under:

(a) The APTEL framed the following issue for consideration in the appeal:

*“17. The only issue which emerges out of the Appeal is whether the Central Commission has rightly levied the transmission charges to the tune of 84.5% of the total transmission charges to be recovered by the Transmission Service Provider (TSA) for the said Kala Amb Transmission System (Element 1, Element 2 and Element 3) from the Appellant.”*

(b) Referring to Section 63 of the Electricity Act, 2003 (the Act) and Bidding Guidelines, The APTEL observed that after the Transmission Service Agreement (TSA) was signed by NRSSTL with the beneficiaries including HPSEB, the rights and obligations are frozen in the TSA in entirety and any deviation from the TSA is bad in law. Once the transmission tariff was adopted by the Commission, the levying of the transmission charges would be as per the statutory guidelines issued by Government of India under Section 63 of the Act and the TSA.

(c) Relying upon Article 10 of the TSA which enjoins the liability on the LTTCs to pay to the TSP the monthly charges from the COD of the transmission system till the expiry or termination of the TSA, The APTEL has observed that all the LTTCs shall pay the monthly transmission charges as per the methodology specified under PoC mechanism and there is no provision under the TSA to levy only single entity with 100% transmission charges for certain elements.

(d) The APTEL referred to the following under Schedule 1 of the TSA with regard to sharing and recovery of transmission charges:

*“While the bidding is being done on the basis of existing Standard Bidding Documents (SBDs), and the list of LTTC is being provided as per the format of the existing SBDFs. It is clarified that the transmission charges will be shared and recovered as per the applicable CERC regulation which is at present the Point of Connection mechanism of sharing. As per the present CERC regulation the*



*charges will be recovered by the Central Transmission Utility from the DICs and disbursed to the TSPs as per the Revenue Share Agreement.”*

(e) Referring to the minutes of the 37th meeting of the Technical Coordination Sub-Committee (TCC) & 40th meeting of the Northern Regional Power Committee (NRPC), the APTEL observed that the beneficiaries including PGCIL agreed to the request of HPSEBL for sharing of the transmission charges under PoC mechanism for the complete Kala Amb Transmission system.

(f) The APTEL further observed that in the Sharing Regulations, there is no mention of downstream or upstream network matching condition under which specific LTTC can be penalized.

(g) The decision of the Commission in order dated 21.9.2016 in Petition No.43/MP/2016 as upheld by the APTEL vide judgement dated 27.3.2018 in Appeal No.390 of 2017 was based on the condition that the Central Commission under its regulatory power has laid down a principle as the relevant regulation does not have any provision for recovery of transmission charges once the ISTS system is put to use. The said judgement is not relevant in this case as there is no difficulty in implementing the Sharing Regulations to the extent of recovery of charges as also agreed by the beneficiaries including NRSSTL.

(h) The APTEL has observed that vide judgement dated 27.3.2018 in Appeal No.390 of 2017, the APTEL has held that these types of major issues ought to have been covered under Regulations to plug the gaps. However, till date no such modifications have been carried out in the Regulations. The APTEL also directed the Commission to approach the

Central Government if it decides in favour of an approach for amending the Bidding Guidelines issued under Section 63 of the Act.

(i) The APTEL observed that the transmission charges for the subject ISTS system should be recovered under the express provisions of the TSA read with the CERC Sharing Regulations.

8. Subsequent to the remand, the petition was listed for hearing. Learned counsel for the Petitioner submitted that in terms of the judgement dated 9.5.2022 in Appeal No. 343 of 2018, 84.5% of the transmission charges paid by the Petitioner in terms of the bilateral bills issued by the Respondent No.1 be refunded along with the interest amount. Learned counsel appearing for NRSSTL submitted that it is concerned only with the recovery of transmission charges irrespective of mode of recovery, whether bilaterally or through PoC mechanism. Learned counsel further submitted that apart from transmission charges, NRSSTL is also entitled to receive Late Payment Surcharge (LPS). The learned counsel appearing on behalf of Himachal Pradesh Power Transmission Corporation Limited (Respondent No. 23) submitted the transmission charges are to be recovered through PoC mechanism instead of charging the same from a single utility. Learned counsel for Tata Power Delhi Distribution Limited (Respondent No. 17) adopted the same line of argument. As regards the status of execution of the transmission assets within its scope of the Petitioner, learned counsel submitted that due to severe RoW issues, the downstream assets are still not ready.

### **Analysis and Decision**

9. The Commission in the order dated 18.9.2018 had directed that transmission charges of (a) 7 X 105 MVA(1.ph.0, 400/220 kV GIS sub-station at Kala Amb; and (b) LILO of both

circuits of Karcham Wangtoo Abdullapur 400 kV D/C (Quad Moose) line at Kala Amb (on multi Ckt towers) constituting 84.5% of the transmission charges of NRSS-XXXI (Part-A) would be recovered from the Petitioner from the date of commercial operation of the assets till the said assets are put to use which is linked to the COD of the downstream transmission systems executed by the Petitioner. The reasoning behind the decision of the Commission was as under:

(a) Hon'ble Supreme Court in its judgement dated 3.3.2016 in Civil Appeal No. 9193 and Civil Appeal No. 9302 of 2012 decided that the beneficiaries of a transmission system are not liable to bear the transmission charges before the transmission asset is being put to use for the benefit of the beneficiaries. The relevant portion of Hon'ble Supreme Court judgment dated 3.3.2016 is as follows:

*"11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition "transmission lines" given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.*

*12. We are apprised at the bar that meanwhile during the pendency of these appeals, in compliance of the interim order, after hearing all the concerned parties, C.E.R.C. has decided the matter on 30-06-2015, and transmission line has been now declared successfully charged w.e.f. 01-09-2011 and the commercial operation has started on said date. However, the order dated 30-06-2015 passed by CERC is stated to be operative subject to decision of this Court in the present appeals, due to the interim order passed by this court.*

*13. Since we are in agreement with the Tribunal that in the present case, respondent No. 1 and the beneficiaries could not have been made liable to pay the tariff before transmission line was operational, we find no infirmity in the impugned order. Therefore, the appeals are liable to be dismissed. Accordingly, both the appeals are dismissed without prejudice to the right of the appellant, if any, available to it under law, against NTPC. There shall be no order as to costs".*

Therefore, as per the *ratio* of the above judgement by the Hon'ble Supreme Court, where the transmission licensee has completed implementation of its transmission system within its scope of work but it cannot put it to use on account of delay on part of the other transmission licensee or generating company (defaulting party), in that case the transmission licensee shall have a right only against the defaulting party as available under law.

(b) Sharing of transmission charges, whether implemented through Tariff Based Competitive Bidding (TBCB) route or under Regulated Tariff Mechanism (RTM), was governed by the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (in short, "the Sharing Regulations, 2010") which remained in force till 31.10.2020. However, the Sharing Regulations, 2010 did not contain any specific provision with regard to sharing of transmission charges in case of mismatch in COD of transmission system of a transmission licensee with COD of a generating station or upstream/ downstream transmission asset of another transmission licensee.

(c) In Petition No. 43/MP/2016 (RAPP Transmission Company Limited Vs Power Grid Corporation of India Limited & Others), the RAPP-Shujalpur transmission line being developed by RAPP Transmission Company Limited under TBCB route was ready for commercial operation but the associated bays within the scope of Nuclear Power Corporation of India Limited (NPCIL) were not ready. In the light of the provisions of Article 6.2.1 of the TSA, the Commission vide order dated 21.9.2016 decided COD of

the RAAP-Shujalpur transmission line as 1.3.2016. As regards the sharing of transmission charges from 1.3.2016 till COD of bays under the scope of NPCIL, the Commission held as under:

*“23. The next question is who shall bear the transmission charges of RAPP-Shujalpur Transmission Line from the date of SCOD till the associated bays at NPCIL end is commissioned. In the present case, it was decided in the 31st meeting of Standing Committee held on 2.1.2013 that commissioning of RAPP 7 & 8 generation would be delinked from the commissioning of the bays at RAPP end and the bays would be commissioned matching with the SCOD of RAPP-Shujalpur transmission line. Development of the bays at RAPP end was entrusted to NPCIL. Therefore, it was the responsibility of NPCIL to develop the bays by February, 2016. Non-commissioning of the bays by NPCIL has rendered the RAPP-Shujalpur transmission line unutilized which was developed as the interconnection line between Northern and Western Regions. Therefore, the petitioner is entitled for the transmission charges from SCOD of the transmission line i.e. 1.3.2016 till bays to be developed by NPCIL are ready and the asset covered under the present petition is put into actual use. NPCIL would be liable to pay the transmission charges from 1.3.2016 till the bays are commissioned. After the commission of the bays being implemented by NPCIL, the transmission line will be used for North-West interconnection and would be included in PoC calculation and the transmission charges shall be payable as per the provisions of the Sharing Regulations. As per Regulation 11 of the Sharing Regulations, CTU is responsible for raising the bills, collection and disbursement of transmission charges to ISTS transmission licensee. Accordingly, CTU is directed to raise the bills on NPCIL from 1.3.2016. However, NPCIL shall directly pay to the petitioner under intimation to CTU in order to avoid double deduction of TDS. If NPCIL fails to pay the charges within a period of one month from the date of issue of this order, it shall be liable to pay the late payment surcharge in terms of Article 10.8.1 of the TSA.”*

(d) The Commission vide order dated 21.9.2016 in Petition No. 43/MP/2016 also laid down the following principle to deal with future cases involving transmission systems developed under TBCB route as under:

*“24. A related issue arises as to how recovery of transmission charges of transmission licensee shall be made when the transmission system under TBCB is ready as on its scheduled COD as per the provisions of the TSA but cannot be made operational or put to use due to non-availability/ delay in upstream/ downstream system. In our view, ISTS licensee executing the project under TBCB should enter into Implementation Agreement with CTU, STU, inter-State transmission licensee,*

*or the concerned LTTC, as the case may be, who are responsible for executing the upstream/ downstream transmission system and clearly provide the liability for payment of transmission charges in case of the transmission line or upstream/downstream transmission assets. In the absence of Implementation Agreement, the payment liability should fall on the entity on whose account an element is not put to use. For example, if the transmission line is ready but terminal bays belonging to other licensees are not ready, the owners of upstream and downstream terminal bays shall be liable to pay the charges to the owner of transmission line in the ratio of 50:50 till the bays are commissioned. In case one end bays are commissioned, the owner of other end bays shall be liable to pay the entire transmission charges of the transmission line till its bays are commissioned. The above principle shall be followed by CTU in all cases of similar nature in future.”*

(e) The principle decided vide order dated 21.9.2016 in Petition No. 43/MP/2016 was followed in the Patran Case in Petition No. 155/MP/2016 (Patran Transmission Company Limited Vs. Haryana Power Purchase Centre and Others) while dealing with the mismatch of the transmission lines executed by Patran Transmission Company Limited and the sub-station being implemented by Punjab State Transmission Company Limited. The Commission in its order dated 4.1.2017 in Petition No. 155/MP/2016 decided that the transmission charges of the transmission system of Patran Transmission Company Limited from the date of its SCOD or actual COD, whichever is later, till COD of the downstream system shall be payable by PSPCL. The order dated 4.1.2017 in Petition No.155/MP/2016 was challenged by PSPCL before the APTEL in Appeal No.390 of 2007 (the Patran Case). During the course of the hearing, the APTEL desired to know the basis of the principle laid down in the RAPP Case. It was apprised to the APTEL that the Commission had laid down the said principle in exercise of its regulatory power under Section 79 of the Act in the light of the judgement of the Hon'ble Supreme Court in the PTC matter i.e. PTC India Limited Vs CERC [(2010) 4 SCC 603] which states that specifying regulation under Section 178 is not a pre-requisite to take any measure by the

Commission in exercise of powers under Section 79(1) of the Act. The relevant extract of the said judgement is as under:

*“55. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a precondition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject-matter of challenge before the appellate authority under Section 111 as the levy is imposed by an order/decision-making process. Making of a regulation under Section 178 is not a precondition to passing of an order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the order levying fees under Section 79(1)(g) has to be in consonance with such regulation.*

*56. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulations under Section 178.”*

(f) The APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran Case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) has upheld the principles enunciated by the Commission. In these appeals, the APTEL also proceeded to establish the contractual linkage between the transmission licensees executing the upstream and downstream transmission system by referring to the provisions of TSA in case of Patran Transmission Company Limited and the minutes of the meeting of the Standing Committee in case of RAPP Transmission Company Limited.

(g) In the light of the established principle for sharing of transmission charges involving mismatch in the commercial operation of the connected transmission assets, the Commission considered the case of NRSSTL in the present petition. The findings of the Commission in the order dated 18.9.2018 are extracted as under:

*“18. It is observed that the transmission system as identified at Para 14 (a)(i) i.e LILO of Karcham–Wangtoo- Abdullapur Line at Kala Amb sub-station along with establishment of Kala-Amb substation appears to be similar to the transmission system established by Patran Transmission Limited in Petition No. 155/MP/2016. The scope of PTCL as recorded in Petition No. 155/MP/2016 is (i) Creation of 2x500 MVA, 400/220 kV substation at Patran (ii) LILO of both circuits of Patiala-Kaithal 400 kV D/C at Patran (Triple Snow Bird Conductor), (iii) 400 kV bays (iv) 220 k V bays and (v) Space for spare bays. However, only difference in the two cases is that the assets in Petition No. 155/MP/2016 could not be put to use due to non-commissioning of downstream system; whereas in the instant case transmission system identified at Para 14(a)(i) i.e LILO of Karcham–Wangtoo-Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation was planned with twin purpose of system strengthening and to meet additional load of HPSEB and part of it i.e FSC has been put to use w.e.f. 12.7.2017. But the transmission system identified at Para 14(a)(i) i.e LILO of Karcham–Wangtoo- Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation was intended for meeting additional load of HPSEB and this purpose cannot be served till the downstream system is ready. Hence, keeping in view earlier orders of this Commission and the judgment of the Appellate Tribunal we are of the view that transmission system identified at Para 14(a)(i) i.e LILO of Karcham–Wangtoo- Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation cannot be said to put to use till establishment of downstream system by HP. Hence, the transmission charges for the same are payable by HPSEB in light of our order in Petition No. 155/MP/2016.”*

10. The APTEL has set aside the order of the Commission dated 18.9.2018 in Petition No.104/MP/2018 and remanded the matter to pass a fresh and reasonable order in the light of the findings and observations of the APTEL. In the remand order, the APTEL has observed that its judgement dated 27.3.2018 in Appeal No.390 of 2017 upholding the order of Commission dated 21.9.2016 in Petition No.43/MP/2016 was based on the condition that the Central Commission exercised its regulatory power to lay down a principle as the relevant regulation did not have any provision for recovery of transmission charges, if the ISTS system



is not put to use. The APTEL has further observed that the said judgement is not relevant since there is no difficulty in implementing the Sharing Regulations as also agreed by the beneficiaries including NRSSTL. The APTEL has also observed that the transmission charges for the subject ISTS system should be recovered under the express provisions of the TSA read with the Sharing Regulations.

11. As regards the provisions of TSA making it permissible to pay the transmission charges to NRSSTL from the PoC pool, the APTEL has referred to the following:

(a) Article 10 of the TSA provides that LTTCs shall pay to the TSP, the monthly transmission charges from the COD of the transmission system till the expiry of the Agreement or termination of the TSA as under:

*“10.1 Subject to provisions of this Article 10, the Long Term Transmission Customers shall pay to the TSP, in Indian Rupees, on monthly basis, the Monthly Transmission Charges from the date on which an Element(s) has achieved COD until the Expiry Date of this Agreement, unless terminated earlier, in line with the provisions of Schedule 5 of this Agreement.”*

(b) The condition under the table in Schedule 1 of the TSA qualifying the column on “allocated project capacity” reads as under:

*“While the bidding is being done on the basis of existing Standard Bidding Documents (SBDs), and the list of LTTC is being provided as per the format of the existing SBDFs. It is clarified that the transmission charges will be shared and recovered as per the applicable CERC regulation which is at present the Point of Connection mechanism of sharing. As per the present CERC regulation, the charges will be recovered by the Central Transmission Utility from the DICs and disbursed to the TSPs as per the Revenue Share Agreement.”*

12. As regards the provisions of Sharing Regulations, the APTEL has observed as under:

*“24. There is no dispute regarding methodology of determining and sharing the transmission charges for an ISTS Transmission System. Undoubtedly, it is the Point of Charge (PoC) mechanism as specified in the CERC Regulations on*

*Sharing of Inter-State Transmission Charges. There cannot be any other mechanism except the one specified in the relevant Regulations and the TSA.”*

*“29. The CERC Regulations on Sharing of Transmission Charges clearly spelt out the mechanism to be followed for determination of share of each beneficiary i.e. LTTC, presently under PoC mechanism. There is no mention of downstream or upstream network matching condition under which specific LTTC can be penalized.”*

13. Further, the APTEL also relied on the deliberations amongst the beneficiaries made during 37<sup>th</sup> Meeting of the Technical Evaluation Committee (TCC) and 40<sup>th</sup> meeting of the Northern Regional Power Committee as under:

*“27. The matter was also deliberated amongst the beneficiaries including PGCIL during the 37th meeting of the Technical Coordination Sub-Committee (TCC) & 40th meeting of the Northern Regional Power Committee (NRPC), wherein it was agreed and resolved that:*

*“C.16 Review on exemption on levy of Transmission Charges for PGCIL assets when downstream system due to legitimate constraints could not be developed on or before COD*

*TCC Deliberation*

*C.16.1 Representative of HPSEBL requested the Committee to consider exemption on levy of transmission charges on DISCOM and include the same in PoC till the commissioning of downstream system for following systems:*

➤ *2 No. 220kV bays at 400/220 kV Sub -Station Hamirpur:*

*2 No. bays out of 4 No. bays of the said substation are still not being used by*

*HPSEBL.*

➤ *6 No. bays of 400/220 kV Sub Station Kala Amb.*

*Due to forest clearance and land acquisition related issues HPSEBL could not develop downstream system for usage of 6 No. bays of said substation of PGCIL.*

*C.16.2 He further stated that on account of several constraints it was not possible to commission the downstream network exactly matching with the commissioning of ISTS system. It was also highlighted that the commissioning of ISTS system benefit*

*the regional power system in form of improved reliability. He suggested that the tariff of the ISTS system should be included in PoC charges instead of charging the same from a single utility.*

*C.16.3 The views of HPSEBL were supported by other members including POWERGRID.*

*C.16.4 In view of consensus in the matter, TCC agreed that the opinion of the members may be forwarded by Member Secretary, NRPC to CERC for consideration NRPC Deliberation*

*C.16.5 Committee concurred with the TCC deliberations.”*

*28. From the above, the beneficiaries including PGCIL agreed to the request of the Appellant for sharing of the transmission charges under PoC mechanism for the complete Kala Amb Transmission system.”*

14. Based on the above provisions of the Sharing Regulations, TSA and minutes of the 37<sup>th</sup> Meeting of the Technical Evaluation Committee (TCC) and 40<sup>th</sup> meeting of the Northern Regional Power Committee, the APTEL has concluded that the transmission charges of (a) 7 X 105 MVA(1.ph.0, 400/220 kV GIS sub-station at Kala Amb; and (b) LILO of both circuits of Karcham Wangtoo Abdullapur 400 kV D/C (Quad Moose) line at Kala Amb (on multi Ckt towers) constituting 84.5% of the transmission charges of NRSS-XXXI (Part-A) shall not be borne by the Petitioner (HPSEB) but by all DICs through the PoC mechanism.

15. The Commission observes that LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation was intended for meeting additional load of HPSEB and in the absence of identified transmission system at the intra-State level, the transmission asset built under the ISTS does not achieve its intended purpose. Nevertheless, as per the APTEL’s judgement, the transmission charges for the subject transmission system should be recovered under the express provisions of the TSA read with the Sharing Regulations. We also note from the minutes of the 37<sup>th</sup> Meeting of the Technical

Evaluation Committee (TCC) and 40<sup>th</sup> meeting of the Northern Regional Power Committee that the constituents have reached a consensus that the subject transmission systems will benefit the regional power system in the form of improved reliability and transmission charges should be recovered through POC mechanism. Since the scope of the remand is to consider and pass appropriate order in terms of the remand, the Commission directs that the transmission charges of (i) LILO of both circuits of Karcham Wangtoo Abdullapur 400 kV D/C (Quad Moose) line at Kala Amb (on multi Ckt towers); (ii) Establishment of a 7 x 105 MVA (1-ph.), 400/220 kV GIS substation at Kala Amb and (iii) FSC (40% Series Compensation-n 400 kV Karcham- Kala Amb quad D/C line at Kala Amb ends) shall be serviced with effect from the date of their commercial operation through the PoC mechanism of the Sharing Regulations, 2010 and in terms of Regulations 5 to 8 of the Sharing Regulations, 2020 with effect from 1.11.2020. CTUIL is directed to implement the order accordingly within one month from the date of issue.

16. It is clarified that the decision in this order has been passed in the peculiar facts and circumstances of the case and in compliance with the directions of the APTEL. Hence, the decision shall not be treated as a precedent.

17. With the issue of this order, the directions of APTEL in judgement dated 9.5.2022 in Appeal No.343 of 2018 stands implemented.

18. Petition No.104/MP/2018 is disposed of in terms of the above.

Sd/-  
**(P. K. Singh)**  
Member

Sd/-  
**(Arun Goyal)**  
Member

Sd/-  
**(I. S. Jha)**  
Member