

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 451/MP/2019 along with 59/IA/2022

Coram:

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

Date of Order: 20th January, 2024

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 in compliance of directions issued by the Commission's order dated 10.5.2019 passed in Petition No.65/RP/2016, Petition No.66/RP/2016, Petition No.18/RP/2017 and Petition No.19/RP/2017 for payment of transmission charges for the period from 1.11.2011 to 24.5.2012 for power evacuation from the Budhil Hydro Electric Project in Himachal Pradesh.

And in the matter of:

Power Grid Corporation of India Limited,
Through its Senior General Manager (Commercial),
B-9, Qutab Industrial Area,
Katwaria Sarai, New Delhi-110016

.....Petitioner

Versus

1. NHPC Ltd.,
N.H.P.C Office Complex,
Sector-33, Faridabad-121003 (Haryana)
2. Greenko Budhil Hydro Power Pvt. Limited (GBHPPL),
(Formerly known as Lanco Budhil Hydro Power Private Limited),
P. No.1367, Road No.45, Jubilee Hills, Hyderabad-500033
3. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur-302 005, Rajasthan
4. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer-305004, Rajasthan
5. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur -302 005, Rajasthan

6. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area, Jodhpur-342003, Rajasthan
7. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Shimla, Himachal Pradesh-171004
8. Punjab State Electricity Board,
1st Floor, Opposite Kali Mata Mandir, Shakti Sadan, Patiala-147001, Punjab
9. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6, Panchkula-134109, Haryana
10. Power Development Department,
Exhibition Ground, PDD Building, Jahangir Chowk, Srinagar-190001,
Jammu & Kashmir
11. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg, Lucknow -226001, Uttar Pradesh
12. Delhi Transco Limited,
Shakti Sadan, Kotla Marg, New Delhi-110002
13. BSES Yamuna Power Limited,
C-7, Yamuna Vihar, New Delhi-110053
14. BSES Rajdhani Power Limited,
33 kV Grid, BSES Bhawan, Adchini, New Delhi-110017
15. North Delhi Power Limited,
Shakti Deep Building, District Office Building,
Sector-3, Rohini, New Delhi-110085
16. Chandigarh Administration,
Union Territory, 5th Floor, Secretariat Deluxe Building,
Sector-9D, Chandigarh-160017
17. Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeyta Gabar Singh Bhawan, Kanwali Road, Balliwala Chowk,
Dehradun-248001, Uttarakhand
18. North Central Railway,
Subedarganj, Doomanganj, Allahabad-211011, Uttar Pradesh
19. New Delhi Municipal Council,
Palika Kendra, Parliament Street, New Delhi-110001
20. PTC India Limited,
2nd Floor, NBCC Tower, 15 Bhikaji Cama Place,
New Delhi -110066

.....Respondent(s)

Parties Present: Shri Sanjay Sen, Senior Advocate, GBHPPL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Ms. Aastha Jain, Advocate, CTUIL
Shri Hemant Singh, Advocate, GBHPPL
Shri Lakshyajit Singh Bagdwal, Advocate, GBHPPL
Shri Alchi Thapliyal, Advocate, GBHPPL
Shri Venkatesh, Advocate, NHPC
Shri Ashutosh Srivastava, Advocate, NHPC
Shri Siddhart Nigtoa, Advocate, NHPC
Shri Ravi Kishore, Advocate, PTC India
Shri Keshav Singh, Advocate, PTC India
Shri Dhruv Tripathi, Advocate, PTC India
Shri Aman Mahajna, NHPC
Shri Ajay Shrivastava, NHPC
Shri Ajay Upadhya, CTUIL
Shri Yogeshwar, CTUIL
Shri S.K Meena, NHPC

ORDER

Power Grid Corporation of India Limited (PGCIL) (hereinafter to be referred as “the Petitioner”) has filed Petition under Section 79(1)(f) of the Electricity Act, 2003 in compliance of directions issued by the Commission’s order dated 10.5.2019 passed in Petition No.65/RP/2016, Petition No.66/RP/2016, Petition No.18/RP/2017 and Petition No.19/RP/2017 for seeking appropriate orders from this commission in the matter of payment of transmission charges. The Petitioner has made following prayers:

(a) Direct Respondent No.2 to make immediate payment towards transmission charges from 1.11.2011 to 24.5.2012, and

(b) Pass such further and other order(s) as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the present case.

2. Greenko Budhil Hydro Power Pvt. (GBHPPL) has filed also I.A. No. 59/2022 and made following prayers:

(a) Allow the present application and defer the proceedings of the present petition, till the Hon’ble APTEL decides/ adjudicates Appeal Nos. 261 of 2018 and 296 of 2019 filed against the order dated 31.05.2018 of this Hon’ble Commission in Petition No.

190/MP/2016 and Appeal Nos. 69, 70, 72 and 73 of 2020 filed against the common review order dated 10.05.2019 in Review Petition Nos. 65/RP/2016, 66/RP/2016, 18/RP/2017 and 19/RP/2017, in terms as stated in the present application; and

(b) Pass such further or other order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

Submissions of the Petitioner:

3. The petitioner has mainly submitted as follows:

- (a) The Petitioner is the Central Transmission Utility (CTU) notified under Section 38 of the Electricity Act, 2003 and has been vested with the functions of planning and coordination in relation to inter-State transmission system (ISTS). The Petitioner has also been vested with the function to grant non-discriminatory open access in ISTS for use by any licensee or generating company or to any consumer upon payment of transmission charges for the same. The said transmission charges are payable to the Petitioner in accordance with the applicable Regulations of this Commission and the contractual arrangements entered into in that behalf with the entities to whom open access rights have been granted by the Petitioner.
- (b) NHPC Ltd. has implemented three hydro-electric projects (HEPs) in Himachal Pradesh viz. Chamera-I HEP for 540 MW, Chamera-II HEP for 300 MW and Chamera-III HEP for 231 MW. The said HEPs are connected to the ISTS at the Chamera pooling station of the Petitioner; power evacuation from Chamera-III HEP is relevant for adjudication of the controversy before this Commission.
- (c) Greenko Budhil Hydro Power Pvt. Limited (GBHPPL) owns and operates a 70 MW hydro power plant located at Village Budhil, District Chamba, Himachal Pradesh (the Budhil HEP). The power plant of GBHPPL has been originally developed by M/s Lanco Green Power Private Ltd. (LGPPL) and the said plant has later been taken over by GBHPPL in the year 2014-15.
- (d) In its Order dated 10.05.2019 passed in Petitions No. 18/RP/2017, 19/RP/2017, 64/RP/2016 and 66/RP/2016 while adjudicating on the issue as regards payment of

transmission charges for the transmission system for power evacuation from the 70 MW hydro power plant of GBHPPL, the Commission observed that the transmission system has been built by the PGCIL for evacuation of power from the hydro power projects of both GBHPPL and NHPC Limited and though the Petitioner has entered into an Indemnification Agreement with NHPC for any delay in commissioning of the generating station/transmission system, the same has not been considered at the time of passing of the Tariff Order dated 02.01.2013, approving the transmission tariff for the said transmission system. The Commission accordingly directed the Petitioner to file a fresh Petition for determining the issue of sharing of transmission charges for the period from **01.11.2011 to 24.05.2012** for the subject transmission system after impleading NHPC and GBHPPL.

(e) The generation projects of NHPC and GBHPPL are located in difficult terrain, where finding right of way, land for establishment of sub-station and construction of transmission line was very difficult. Therefore, the transmission system was subjected to review on considerations based on site feedback, availability of bays, different time schedules of generation systems involved, development of master plan for generation projects in the State by the Central Electricity Authority (CEA), etc. The same were discussed with the stakeholders in various Standing Committee Meetings and were finalized after exchange of several correspondences between the Petitioner and beneficiaries of the system, whereafter, the final transmission system for evacuation of power from the HEPs in the Ravi basin was agreed as under.

- (a) Establishment of 400/220kV GIS pooling station near Chamera-II;
- (b) Chamera-II-Chamera-III pooling station 400kV S/c line;
- (c) Chamera-III to Chamera-III pooling station 220 kV D/c line;
- (d) 220kV S/c line from Budhil HEP to Chamera-III HEP.

(f) During the period, when the aforesaid system was being planned, GBHPPL, through PTC India Limited (PTC), made an application to the Petitioner for grant of long-term open access (LTA) for evacuation and sale of power from its Budhil HEP. As per the application, the generation project was likely to materialize by 2008-09,

which was earlier than Chamera-III HEP whose schedule commissioning was in 2010. In the 18th Meeting of Standing Committee on Power System planning in Northern region held on 06.06.2005, the evacuation system from both Budhil HEP and Chamera-III JEP was discussed wherein it was proposed to develop a 400/220 kV sub-station at a location close to Chamera-II (or at Chamba) for pooling power from Chamera-III and other upstream projects located in Ravi basin and transmit the power to Jalandhar through a 400 kV D/c line and for evacuation of power from Budhil HEP, it was agreed that the cost of 220 kV D/c line from Budhil HEP to the pooling station shall be in the scope of the generator and full transmission charges for 400/220 kV pooling station and its connectivity to Chamera-II shall be borne by the beneficiaries of Budhil HEP/GBHPPL till the time Chamera-III materialize.

- (g) Thereafter, in a Meeting held on 22.09.2006 with the CEA, the issue regarding transfer of power from Budhil HEP to its beneficiaries was discussed. In the said Meeting, the construction of the substation near Chamera-II was agreed by Northern Region constituents as a regional scheme under Chamera-III transmission system. The time schedule of Chamera-III generation project was 2010 and as such, it was decided that PTC shall pay transmission charges for the works till they become part of the regional transmission system.
- (h) In a subsequent meeting held on 24.11.2006, GBHPPL informed that it is ready to bear full transmission charges for the agreed transmission system. In another Meeting dated on 23.08.2007, the Petitioner volunteered to prepone the construction of transmission line from Chamera-III to Chamera-II pooling station subject, inter alia, to GBHPPL bearing the full transmission charges for the line till Chamera-III was commissioned and the line became part of regional transmission system.
- (i) The GBHPPL vide letter dated 29.08.2007, confirmed to the Petitioner that it agrees to pay the transmission charges of the line from Chamera-III to Chamba pooling station till such time the system becomes part of the regional grid.

- (j) A tripartite Bulk Power Transmission Agreement (BPTA) was executed between Greenko Budhil, PTC and the Petitioner on 18.10.2007. Since, the Budhil HEP was projected to be getting commissioned ahead of Chamera-III HEP, it was agreed in the BPTA that the entire transmission charges of 400/220 kV pooling station and its 400 kV connectivity to Chamera-II HEP of NHPC would be borne by Greenko Budhil, till the said assets became part of the regional transmission system.
- (k) In order to match the commissioning schedule of the generating stations being set up by NHPC and the associated transmission system being implemented by the Petitioner, the petitioner entered into an Indemnification Agreement with NHPC on 22.07.2005, which entitled the Petitioner to recover the transmission charges from NHPC in case of any delay in commissioning of the Chamera-III HEP of NHPC beyond August 2010.
- (l) Neither the Budhil HEP of Greenko Budhil, nor the Chamera-III HEP of NHPC Limited nor the transmission system of Petitioner could achieve COD as scheduled. **The Budhil HEP was commissioned in two phases on 25.05.2012, the Chamera-III HEP of was commissioned in June 2012 whereas the transmission system of the Petitioner was put to commercial operation on 01.11.2011.**
- (m) **The zero date of 01.09.2010 agreed under the IA was accordingly missed and as such, the IA could not be implemented between the Petitioner and NHPC Ltd.**
- (n) PGCIL filed Petition No. 92/TT/2011 for approval of transmission charges for
1. 400 kV D/C transmission line from GIS Pooling Station Chamba-Jalandhar,
 2. 220 kV D/C transmission line from GIS Pooling Station Chamba-Chamera HEP and
 3. Jalandhar Sub-station Extension under Transmission System associated with Chamera-III HEP for 2009-14 period

Tariff was granted for these assets vide order dated 16.11.2012 and it was held that the transmission charges for the assets would be borne by LGPPL (mentioned as PTC/LANCO in the Order) till they become part of the regional system.

(o) PGCIL also filed Petition No. 94/TT/2011 seeking transmission charges for

1. 400 kV S/c Chamera-II Pooling Station transmission line,
2. 400/220 kV 315 MVA ICT – I & ICT- II and
3. 80 MVAR Bus Reactor at pooling point under establishment of 400/220 kV GIS Pooling Station near Chamera-II HEP (referred to as “transmission assets”) for the 2009-14 period under the provisions of the 2009 Tariff Regulations.

The transmission charges for the transmission system were allowed vide order dated 02.01.2013. As in the case of Petition No. 92/TT/2011, the Commission held that the transmission charges would be borne by LGPPL in accordance with the BPTA dated 18.10.2007 signed between LGPPL and the petitioner, till they become part of the regional system.

(p) Meanwhile, PGCIL also filed Petition No. 528/TT/2014 and Petition No. 18/TT/2015 for truing up the tariff allowed in Petition No. 94/TT/2011 and Petition No. 92/TT/2011 respectively for 2009-14 tariff period. The tariff was trued up vide orders dated 17.02.2016 and 23.02.2016 in Petition No. 528/TT/2014 and Petition No. 18/TT/2015 respectively.

(q) During the pendency of the aforesaid Petitions, GBHPPL held a meeting on 25.04.2012 with the Petitioner and the CEA to expedite the commissioning program of its generating project wherein representatives of NHPC and GBHPPL were also present. In the said meeting among other issues, the issue as regards payment of transmission charges was also discussed. Since the LTA for Budhil HEP had been applied for and was granted to PTC and the predecessor of GBHPPL had terminated the PPA entered into with PTC in December 2009, GBHPPL agreed to apply for a fresh LTA for the full maximum injection quantum and further agreed that

till a fresh LTA was granted to it, it shall bear the transmission charges for evacuating power from its generation project.

- (r) The Petitioner raised the bills on GBHPPL for payment of Transmission charges for the period from November 2011 to June 2012. Instead of making payment of above invoices, GBHPPL, vide its letter dated 15.02.2016, informed the Petitioner that management of the company has been taken over by Greenko Group in June 2014. While handing over management the previous management Lanco has not informed Greenko of any liability or any amount payable to PGCIL for the service/charges raised in invoices.
- (s) Greenko Budhil vide its letter dated 13.04.2016, informed the Petitioner that it had taken up the matter with its predecessor-in-interest and requested the Petitioner to provide another three months, time to get the matter resolved.
- (t) Aggrieved by the order dated 16.11.2012 in Petition 92/TT/2011, order dated 02.01.2013 in Petition No. 94/TT/2011, order dated 17.02.2016 in Petition No. 528/TT/2014 and order dated 23.02.2016 in Petition No. 18/TT/2015, GBHPPL (which took over LGPPL in 2014-15) filed Interlocutory Applications (IAs) for recall of the orders and for quashing the invoices issued by PGCIL pursuant to the said orders. The said IAs were converted into Review Petitions (65/RP/2016, 66/RP/2016, 18/RP/2017, 19/RP/2017) as per the directions of the Commission.
- (u) During the pendency of the aforesaid Review Petitions, the Petitioner issued a letter dated 07.06.2017 to GBHPPL and requested to clear its outstanding payments of transmission charges by 12.05.2017. GBHPPL filed another I.A. in Petition No. 19/RP/2017 (being IA No. 23/2017) seeking directions from this Commission to restrain the Petitioner from taking any coercive action against GBHPPL under its letter dated 09.05.2017. The Commission, vide its RoP dated 11.05.2017, directed GBHPPL to make at least 50% of the outstanding LTA charges for the disputed period and if the matter is decided in favour of GBHPPL, the same shall be adjusted against the future transmission charges. Subject to compliance with this direction, the Commission directed PGCIL not to take any coercive measures to realize the

balance transmission charges till further orders. The Commission vide another RoP dated 29.05.2017 modified its Record of Proceedings dated 11.05.2017 to the extent that the GBHPPL shall make a payment of Rs. 6 crores to PGCIL and furnish a Bank Guarantee to PGCIL for the balance amount (i.e. 50% of outstanding dues of Rs. 33.03 crores less Rs. 6 crores) by 31.05.2017. Accordingly, GBHPPL made a payment of Rs. 6 crores to the Petitioner and also furnished a bank guarantee dated 09.06.2017 for Rs. 10.51 crores.

(v) The Commission disposed of the Review Petitions of GBHPPL and held that the instant transmission system was to be shared by LGPPL and NHPC and that there is an Indemnification Agreement, which was not considered by the Commission at the time of issue of the impugned orders. Thus, there is sufficient cause for reconsideration of the impugned orders in the light of the said facts regarding the sharing of the transmission charges of the subject transmission assets from 01.11.2011 till 24.05.2012, the day they are treated as part of regional transmission system.

(w) The Commission observed that NHPC was not a party in the Petition Nos. 92/TT/2011, 94/TT/2011, 19/TT/2015 and 528/TT/2014. Accordingly, the Commission vide its order dated 10.05.2019 in Petitions No. 18/RP/2017, 19/RP/2017 etc. directed PGCIL to file a fresh petition for determining the issue of sharing of transmission charges from 01.11.2011 to 24.05.2012, impleading GBHPPL and NHPC, besides the other beneficiaries of the instant transmission assets.

Hearing dated 14.01.2020:

4. During the hearing dated 14.01.2020, the Commission admitted the Petition and condoned the delay of 149 days in filing the present Petition and accordingly, disposed of IA No. 93 of 2019.

Submissions of GBHPPL in I.A. No. 59/2022:

5. GBHPPL has mainly submitted as follows:

- (a) The Commission in the Petition No. 190/MP/2016 held that the GBHPPL is not the LTA customer since it is not the Long-Term Transmission Customer (LTTC) under the BPTA dated 18.10.2007.
- (b) The transmission charges primarily remain the responsibility of PTC. Even though the issue in the above proceedings was for the period post May 2012, however, the same principle would apply for the period prior, as transmission charges emanate from the BPTA only.
- (c) The Applicant has now filed a limited appeal against the above order dated 31.05.2018 before the APTEL (Appeal No. 296 of 2019) and the same is pending adjudication.
- (d) The liability towards payment of transmission charges (either in the form of PoC or Non-PoC) arises out of an agreement/ contract entered into between a LTTC and CTU.
- (e) Once this Commission has already taken a view that the LTTC under the BPTA is PTC India Limited and not the Applicant, there cannot at all be an instance that the Petitioner can seek recover of transmission charges (including non-PoC charges) from the said Applicant.
- (f) The appeals (Appeal No. 261 of 2018 filed by PTC and Appeal No. 296 of 2019 filed by the GBHPPL) are pending adjudication. Therefore, till such time, the APTEL adjudicates and decides the aforesaid appeals, which would clarify as to which entity has the onus of payment of transmission charges (whether the Applicant or PTC India Limited), the present petition may be deferred.

Hearing dated 27.09.2022

- 6. During the hearing dated 27.09.2022, the Commission admitted the IA filed by the GBHPPL and directed the respondents to file their reply to both the petition and the IA.

Reply of NHPC

7. NHPC in its Reply vide affidavit dated 14.10.2022 has submitted as follows:

- (a) During Meeting dated 22.09.2006 with the Central Electricity Authority, the issue regarding transfer of power from Budhil HEP to its beneficiaries was discussed. In the said meeting, the construction of the sub-station near Chamera-II was agreed by the parties as a regional scheme under the Chamera-III transmission system. Further, it was decided that PTC was to pay the transmission charges for the works till they became part of the regional transmission system.
- (b) It was agreed in the BPTA that the entire transmission charges for 400/220 kV pooling station and its 400-kV connectivity to Chamera-III HEP of NHPC Ltd. would be borne by the GBHPPL (and its successors) till the said assets became part of the regional transmission system.
- (c) The stand taken by GBHPPL that the liability to pay transmission charges as claimed by the Petitioner in its invoices, were not spelt out by the predecessor in interest of GBHPPL at the time of due diligence or at the time of handing over the management is of no consequence as the BPTA is applicable even on the successors of GBHPPL.
- (d) The Indemnification Agreement has no bearing on the responsibility of GBHPPL to pay the transmission charges. The Indemnification Agreement was never implemented for the following reasons:
 - i. As per Clause 2 of the said agreement, the indemnity was limited to Interest During Construction ("IDC") including Foreign Exchange Rate Variation and government guarantee, if any. It was not applicable for the entire transmission charges. As such, the said agreement has no bearing on the liability of GBHPPL.
 - ii. In any case, GBHPPL was not a party to the Indemnification Agreement. Hence, GBHPPL cannot rely on it to deny its obligations which were crystallized from various meetings and the BPTA.

(e) Indemnification Agreement was executed on 27.07.2005 while the BPTA was executed on 18.10.2007 to conclusively decide the liability of transmission charges. The Indemnification Agreement between NHPC and the Petitioner was never implemented. Subsequently, the Petitioner, GBHPPL and PTC executed the BPTA to fix liability to pay transmission charges on GBHPPL. Therefore, the liability of NHPC, if any, arising out of the Indemnification Agreement stood extinguished in light of the express terms of BPTA and subsequent meetings and conduct of GBHPPL.

Reply of GBHPPL

8. GBHPPL in its Reply vide affidavit dated 13.10.2022 has submitted as follows:

- (a) GBHPPL has not made any payment voluntarily. Even the payment of Rs. 16 crores (Rs. 6 crores in cash and Rs. 10 crores by way of Bank Guarantees) were made by GBHPPL pursuant to an interim order dated 11.05.2017 passed in 26/IA/2016, which issue is now pending before the APTEL.
- (b) The sole responsibility and liability to pay the transmission/ LTA charges was upon the LTTC, i.e., PTC India Limited, whether exclusively or by sharing, as also correctly interpreted and held by this Commission in the order dated 31.05.2018 in Petition No. 190/MP/2016.
- (c) GBHPPL is also supplying free power of 12% of its generating unit viz., 8.4 MW to the State of Himachal Pradesh (through Himachal Pradesh State Electricity Board) in terms of a Memorandum of Understanding (MoU) dated 23.09.2004 and the Implementation Agreement dated 22.02.2001. This Commission vide order dated 20.11.2019 in Petition No. 265/MP/2018 held that the GBHPPL is not at all liable to pay the transmission/ LTA charges as there is no LTA for the above 12% (8.4 MW) free power supplied to HPSEB.
- (d) The directions issued by the Commission in its common review order qua payment of transmission charges, have been challenged by the GBHPPL before the APTEL

by way of appeals, being Appeal Nos. 69, 70, 71 and 72 of 2020. In the said appeals, the issue of exclusive levy of transmission charges is pending adjudication, as on date.

- (e) The exclusive levy of transmission charges was based upon a contingent contract/ agreement, in as much as the same was contemplated only in the event of the Petitioner/ CTUIL preponing or advancing the commissioning of the transmission system for the GBHPPL between December, 29 2009 and August 2010. However, the Petitioner/ CTUIL failed to commission the transmission lines within the above time period, as the said system was commissioned much after i.e., on 01.11.2011. Thus, the precondition for exclusive levy of transmission charges/ LTA ceased to exist.
- (f) There cannot be any reconsideration of the issue of exclusive levy of transmission/ LTA charges by the Answering Respondent, when the Hon'ble APTEL is seized of the same issue.

Hearing dated 15.11.2022

- 9. During the hearing dated 15.11.2022, the Commission directed GBHPPL to submit the specific prayers made in the Appeal No. 69, 70, 71 and 72 of 2020 and Appeal No. 296 of 2019 filed before the APTEL. The Commission also directed PTC India Ltd. to submit the specific prayers made in the Appeal No. 261 of 2018 filed before the APTEL.

Submissions of PTC India Ltd.:

- 10. PTC India Ltd. vide affidavit dated 24.11.2022 has submitted as follows:

- (a) PTC had challenged the order dated 31.05.2018 passed by this Commission, to the extent that is applicable against the PTC as the same was devoid of any merit as the LTA was already surrendered by the PTC pursuant to **the minutes of meeting held on 25.04.2012 in the Chamber of Member (PS) of CEA. It was agreed by all the parties present that till the decision in matter related to jurisdiction of the appropriate commission to adjudicate the termination of the PPA entered between the PTC and GBHPPL attains finality, Greenko Budhil had agreed to**

pay the transmission charges directly to the Petitioner/PGCIL. In pursuance of the said meeting, the Greenko Budhil started paying the transmission charges directly to the Petitioner/PGCIL, but suddenly the payment of transmission charges was discontinued by Greenko Budhil and approached this Commission for certain directions by way of Petition No.190/MP/2016.

(b) In the appeal No.261 of 2018 filed by PTC following reliefs were sought:

“

(a) *Allow the Appeal and set out the order dated 31.05.2018 passed by the CERC in 190/MP/2016 to the extent challenged in the present Appeal.*

(b) *Pass such other order(s) as this Hon'ble Tribunal may deem just and proper”*

(c) Appeal was heard on 04.09.2018 wherein after hearing; the APTEL had directed to maintain the status quo. Appeal was further listed on various dates but was not heard finally and still pending before the APTEL. The interim order continues till date.

Submissions of GBHPPL

11. GBHPPL vide affidavit dated 30.11.2022 has submitted as follows:

(a) Appeal No. 69 of 2020, 70 of 2020, 72 of 2020 and 73 of 2020, filed by the GBHPPL on 29.06.2019, seeks the following specific prayers:

“a. set aside the impugned review order dated 10.05.2019 passed in Petition No. 18/RP/2017, 19/RP/2017, 65/RP/2016 and 66/RP/2016 by the Ld. CERC, to the extent challenged herein;

b. set aside the impugned tariff order dated 16.11.2012 passed in Review Petition No. 92/TT/2011, 94/TT/2014, 18/TT/2015 and 528/TT/2014 by the Ld. CERC, to the extent challenged herein;

c. quash the invoices dated 02.07.2014, 02.07.2015 and 18.05.2016, raised by the Respondent No. 2 upon the Appellant for amounts of Rs. 25,11,59,694/-, Rs. 4,04,01,531/- and Rs. 3,87,43,000/-

- d. *direct the Respondent No. 2 to return to the Appellant the bank guarantee which was furnished to the said Respondent in accordance with the Respondent Commission's order dated 29.05.2017;*
- e. *direct the Respondent No. 2 to refund to the Appellant the amount of Rs. 6.5 Crores, alongwith interest, which was paid in accordance with the Respondent Commission's order dated 29.05.2017."*

(b) GBHPPL has also filed Appeal No. 296 of 2019 against the order dated 31.05.2018 passed by this Commission in Petition No. 190/MP/2016 before the APTEL, to the limited extent the said order holds that the GBHPPL would not get a refund of the transmission charges voluntarily paid on behalf of PTC. For this, the specific prayer sought is as below:

"a) set aside the impugned order dated 31.05.2018 passed by the Respondent Commission in Petition No. 190/MP/2016, to the extent challenged in the present appeal"

Reply of PTC India Ltd.:

12. PTC India Ltd. in its Reply dated 02.12.2022 has submitted as follows:

- (a) The GBHPPL had categorically undertaken vide various communications that he will bear the transmission charges for the associated transmission system till it becomes part of the regional system. Petitioner had undertaken to prepone the associated transmission system on firm commitment by GBHPPL that it will bear the transmission charges till the same becomes part of the regional grid.
- (b) It is evident that one of the prayers of GBHPPL in Petition No.190/MP/2016 was to *"Declare that the petitioner is not liable to pay the amounts under BPTA in terms BPTA dated 18.10.2007 from May, 2012 onwards"*. Whereas, in the instant Petition, the period for which transmission charges, payable by GBHPPL, pertains to the period 01.11.2011 to 24.05.2012 i.e. for the period prior to commissioning of GBHPPL project.

- (c) Regulation 26 of CERC Connectivity Regulation, 2009 clearly specifies that transmission charges shall be recovered from LTTC for use of the inter-State transmission system. However, here the core issue is of liability of payment of transmission charges of associated transmission system for the period of mismatch in commissioning of generation project and the associated downward transmission system due to which the system cannot be put to use.
- (d) The Commission in its several orders has already taken consistent view that **in the event of mismatch in execution of the linked transmission/generation elements, the party whose assets are not yet ready and because of which the already executed assets of the other transmission licensee have not been put in regular service, the defaulting party is liable to pay the transmission charges till the elements become part of the regional system and transmission charges are recovered through the POC charges from the LTTCs.**

Hearing 17.01.2023:

13. During the hearing dated 17.1.2023 the learned counsel for the petitioner submitted that the limited question for determination before the Commission in this petition being whether, the liability for payment of transmission charges of the transmission assets imposed on GBHPPL vide order dated 16.11.2012 in Petition No. 92/TT/2011, is required to be shared with NHPC or not in view of the Indemnification Agreement (IA) dated 22.7.2005 entered into between the Petitioner and Respondent No.1/NHPC?. Referring to Indemnification Agreement, she submitted that since the timeline agreed in the Indemnification Agreement lost its significance, Indemnification Agreement lost its relevance in the present proceedings. She further submitted that the transmission charges, in the present case, pertain to pre-operationalisation period and, therefore, the liability of GBHPPL continues and Indemnification Agreement has no effect on the present controversy. Learned senior counsel for GBHPPL submitted that Minutes of the Meeting dated 22.4.2012 show that payment of LTA charges by GBHPPL on behalf of PTC was an interim arrangement to facilitate the payment of transmission charges. In the order dated 31.5.2018 in Petition No. 190/MP/2016, the Commission has observed

that liability for payment of LTA charges remains with PTC till the time LTA is relinquished in accordance with the provisions of the BPTA. The said order clearly mentions the obligation of PTC. Referring to BPTA dated 18.10.2007, learned counsel for PTC submitted that the Petitioner herein had undertaken to prepone the associated transmission system on firm commitment of GBHPPL that GBHPPL will bear the transmission charges till the same becomes part of the regional grid. Thus, the period for which transmission charges are payable by GBHPPL is from 1.11.2011 to 24.5.2012. Placing reliance on the judgment of Hon'ble Supreme Court dated 3.3.2016 in the case of PGCIL v. PSPCL & Ors. in Civil Appeal No. 9193 of 2012 and the judgment of APTEL in the matter of NPCIL v. CERC in Appeal No. 332 of 2016, he submitted that responsibility to pay transmission charges in the case of mismatch of commissioning of linked elements is solely with the defaulting party irrespective of any relation between the parties executing the linked elements. Learned counsel for NHPC referring to Clause 2 of the Indemnification Agreement dated 22.7.2005, submitted that Indemnification Agreement could have been implemented only if zero date was met by the parties. However, in the present case, zero date was not met by any of the parties. He further submitted that as per Clause (2) of the Indemnification Agreement, indemnity was limited to IDC and was not applicable to transmission charges.

14. After hearing the parties, the Commission directed the Petitioner to submit the following information and reserved the order in matter:

- (a) Scheduled Commissioning Date of Budhil Hydro Electric Project.*
- (b) Date up to which Budhil HEP sought preponement in respect of transmission system required for evacuation of power of Budhil HEP from Powergrid along with supporting letters/minutes of meeting in this regard.*

Submissions of NHPC Ltd.

15. NHPC Ltd. in its submissions dated 31.01.2023 has submitted as follows:

- (a) The Indemnification Agreement between NHPC and PGCIL was premised on the fact that both NHPC and PGCIL were desirous to match the commissioning schedule of their respective projects. As per Article 1 (Schedule of Commissioning)

of the Indemnification Agreement, the 'Zero Date' shall be the date from which the indemnification mechanism shall apply. The said date as agreed at Annexure 1 of the said Agreement was 01.09.2010. It is the date on which both the transmission system of PGCIL and generating units of NHPC had to simultaneously come up.

- (b) It is an undisputed position that both NHPC and PGCIL could not come up with their respective projects by the said 'Zero Date' and there was no discussion/agreement on any further 'Zero Date' between the parties. Hence, since the 'Zero Date' was never achieved, the indemnification mechanism envisaged under the said agreement could not come into force.
- (c) In the facts of the present case, admittedly the contingent event that i.e. 'Zero Date' had not occurred, therefore, the provision of Article 2 (a) is unenforceable in terms of Section 32 of the Indian Contract Act, 1872.
- (d) As per Article 2 of the said agreement, the indemnity was limited to Interest During Construction ("IDC") including Foreign Exchange Rate Variation and government guarantee, if any. There is no obligation with respect to payment of transmission charges. As such, the said agreement has no bearing on the liability of GBHPPL.

Rejoinder of PGCIL

16. PGCIL vide affidavit dated 03.02.2023 in its rejoinder has submitted that after commissioning of the project free power from the project was transferred to HPSEB through the ISTS and as such, Respondent No.2 became liable to pay transmission charges for the same, there was no arrangement whatsoever made for delivery of free power to HPSEB through another arrangement connecting to the State grid. The Respondent No.2 is therefore wrong in contending that since it is not an LTA grantee and has supplied free power to HPSEB on short-term basis, it is not liable to pay transmission charges to the Petitioner for the same.

Submissions of CTUIL

17. CTUIL vide affidavit dated 23.02.2023 in compliance to the RoP for the hearing dated 17.01.2023 submitted that SCOD of the Budhil HEP was December 2008. The Budhil HEP was finally Commissioned in two phases on 25.05.2012 and 30.05.2012 and the transmission system of the petitioner was put into commercial operation on 01.11.2011.
18. The 2 units of 35 MW each of the Budhil HEP were expected to be commissioned by October, 2010. In this regard, the date up to which Budhil HEP sought preponement in respect of transmission system required for evacuation of power of Budhil HEP from Powergrid was September, 2010. The same is evident from the Minutes of Meeting held on 5.2.2010 in the office of the Chief Engineer (SP&PA) regarding evacuation system of Budhil HEP (70 MW) in Ravi Basin of Himachal Pradesh.

Submissions of GBHPPL

19. GBHPPL in its submissions dated 03.03.2023 has submitted as follows:

- (a) During the minutes of meeting dated 23.08.2007, it was agreed that the Petitioner would prepone its commissioning of the transmission system and would be ready for evacuation by December, 2009. It is relevant to note that the transmission system was originally being constructed for evacuation of power from Chamera – III, i.e., from the power plant of the NHPC. Since, GBHPPL was upcoming and required evacuation of its power, it was proposed that its power would also be evacuated from the above line, for which, a pooling station at Chamera – II and associated infrastructure was to be constructed.
- (b) GBHPPL was proposed to be commissioned by December, 2009, while NHPC was proposed to be commissioned by August, 2010. It is for this reason, that PTC/GBHPPL agreed to bear transmission charges only in the event the transmission system was commissioned prior to August, 2010. This is what is also reflected in the BPTA dated 18.10.2007. In fact, just after the signing of the BPTA, during the 23rd Standing Committee meeting held on 16.02.2008, GBHPPL requested the Petitioner to change the date of commissioning from December, 2009 to March, 2010, which request was refused. Instead, it was informed by the Petitioner that the

transmission charges would be levied from December, 2009. During the said meeting, the NHPC also mentioned its commissioning date as August, 2010. However, no transmission charges were levied upon GBHPPL as the Petitioner itself could not commission its transmission system before August, 2010. However, the Petitioner commissioned its transmission system only on 01.11.2011, i.e., beyond the deadline of August, 2010 for triggering any bilateral levy of transmission charges

- (c) There cannot be any dispute to the fact that it is only PTC which is liable to pay transmission charges for 88% of GBHPPL generation capacity not only for the period after the commissioning of the transmission system of PGCIL, but also for the period prior to the commissioning of the said system.
- (d) If GBHPPL would have been aware that the Petitioner would not be in a position to commission its system before August, 2010, then PTC/GBHPPL would not have agreed to bear transmission charges bilaterally for the period between preponing of commissioning of the transmission system and August, 2010.
- (e) The pre-condition for levying transmission charges (prior to the system of the Petitioner/ PGCIL becoming part of regional system), was never achieved. As such, no transmission charges for the said period can be raised/ levied by the Petitioner.

Analysis and decision

20. We have carefully perused the submissions of the Petitioner and Respondents also the documents placed on record.

21. The present Petition has been filed by the Petitioner in compliance to this Commission Order dated 10.05.2019 passed in Petitions No. 18/RP/2017, 19/RP/2017, 64/RP/2016 and 66/RP/2016. The relevant extract of the order dated 10.05.2019 is as under:

*"24. The instant transmission assets under the scope of PGCIL were constructed for evacuating power from Budhil HEP of LGPPL and Chamara-III HEP of NHPC and they were scheduled to be put into commercial operation on 1.4.2010. **On the request of***

LGPPL, PGCIL agreed to pre-pone the COD of these assets to December 2009 in terms of the BPTA signed with PTC and LGPPL on the agreement that PTC/LGPPL would bear the transmission till they become regional system. Had PGCIL been ready with the transmission assets under its scope in December 2009 (as agreed in the BPTA amongst PTC, LGPPL and PGCIL), LGPPL would have been liable to pay the transmission charges from December 2009. However, the instant assets were put into commercial operation on 1.11.2011. Accordingly, the Commission in the impugned orders had held that LGPPL is liable to bear the transmission charges from 1.11.2011 to 24.5.2012 taking into consideration the BPTA between LGPPL and PGCIL.

25. However, it is observed that the instant transmission system was constructed for evacuating power from Budhil HEP of LGPPL and Chamera-III HEP of NHPC. **It is further observed that there is an Indemnification Agreement between PGCIL and NHPC dated 22.7.2005 and as per the said Agreement, in case of delay in commissioning of generating station or COD of the transmission system, the defaulting party shall compensate the other party.**

.....

26. The fact that the instant transmission system was to be shared by LGPPL and NHPC and that there is an Implementation Agreement was not considered by the Commission at the time of issue of the impugned orders. Thus, there is sufficient cause for reconsideration of the impugned orders in the light of the said facts regarding the sharing of the transmission charges of the subject transmission assets from 1.11.2011 till 24.5.2012, the day they are treated as part of regional transmission system.

27. However, it is noticed that NHPC was not a party in the Petition Nos.92/TT/2011, 94/TT/2011, 19/TT/2015 and 528/TT/2014. Accordingly, PGCIL is directed to file a fresh petition for determining the issue of sharing of transmission charges from 1.11.2011 to 24.5.2012, impleading GBHPPL and NHPC, besides the other beneficiaries of the instant transmission assets within 30 days from date of issue of this order. Further, GBHPPL shall keep the BG valid as per the Commission's order dated 29.5.2017 in I.A No.29/IA/2017, till further directions of the Commission."

As per above, it was observed that the instant transmission system was to be shared by LGPPL and NHPC and that there is an Implementation Agreement which was not considered by the Commission at the time of issue of the impugned orders. Further it was noticed that NHPC was not a party in the Petition Nos.92/TT/2011, 94/TT/2011, 19/TT/2015 and 528/TT/2014. Accordingly, PGCIL was directed to file a fresh petition for determining the issue of sharing of transmission charges from 1.11.2011 to 24.5.2012, impleading GBHPPL and NHPC, besides the other beneficiaries of the instant transmission assets.

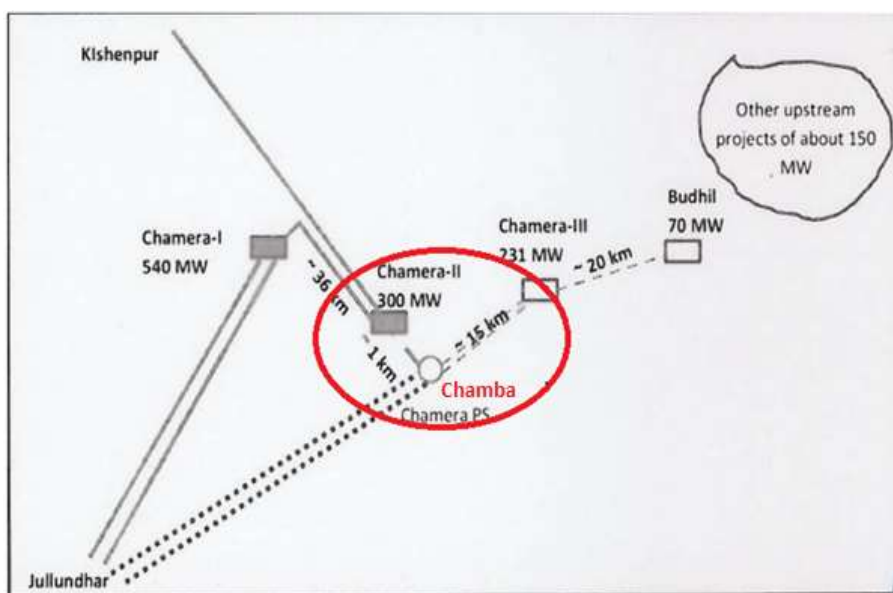
22. Considering the above, the issue which arise for our consideration in the present Petition is as to **who shall be liable to pay the applicable transmission charges in**

respect of the subject transmission assets for the period 01.11.2011 to 24.05.2012. The above issue has been dealt in detail in the succeeding paragraphs.

23. Petitioner has filed the instant Petition seeking transmission charges for assets covered under Petition No. 92/TT/2011, Petition No. 94/TT/2011, 19/TT/2015 and 528/TT/2014 for period from 1.11.2011 to 24.5.2012. We observe that Petition Nos 92/TT/2011 and 94/TT/2011 pertain to determination of tariff for period falling under Tariff Regulations, 2009 for the period from COD of the transmission assets till 31.03.2014 and Petition Nos. 19/TT/2015 and 528/TT/2014 are true up Petitions for the respective transmission assets. The transmission system covered under the said Petitions are as follows:

- (a) Petition No. 92/TT/2011 - 220 kV D/c transmission line from Chamera Pooling station (Chamba) - Chamera-III HEP.
- (b) Petition No. 94/TT/2011:
 - i. 400 kV S/C twin conductor Chamera pooling Station -Chamera II transmission line; and
 - ii. 400/220 kV Chamera Pooling station.
 - iii. Bays at Chamera-II HEP

The schematic diagram of the Transmission system is as below:



24. Petitioner has prayed for payment of transmission charges from the Respondent No.2- GBHPPL citing various minutes of meetings, BPTA entered into with GBHPPL and

letters by GBHPPL to the Petitioner agreeing to pay transmission charges for the said system. Petitioner has also submitted that the petitioner entered into an Indemnification Agreement with NHPC on 22.07.2005 with zero date of 01.09.2010 which was missed and as such, the IA could not be implemented between the Petitioner and NHPC Ltd. The transmission charges, in the present case, pertain to pre-operationalization period and, therefore, the liability of GBHPPL continues and Indemnification Agreement has no effect on the present controversy.

25. Respondent No.2 has refuted the claims of Petitioner and has submitted that the transmission charges should be levied on PTC. GBHPPL has referred to Order dated 31.05.2018 in Petition No. 190/MP/2016 to claim that it not a LTTC under the BPTA dated 18.10.2007 and hence charges cannot be levied on GBHPPL.
26. Respondent NHPC has referred to various meetings and BPTA dated 18.10.2007 and has submitted that the liability to pay transmission charges is with GHPPL as expressly agreed by it. Further with regards to Indemnification Agreement between NHPC and PGCIL, NHPC has submitted that the indemnity was limited to Interest During Construction ("IDC") including Foreign Exchange Rate Variation and government guarantee, if any. It was not applicable for the entire transmission charges. As such, the said agreement has no bearing on the liability of GBHPPL. In any case, GBHPPL was not a party to the Indemnification Agreement. Hence, GBHPPL cannot rely on it to deny its obligations which were crystallized from various meetings and the BPTA.
27. Respondent PTC has submitted that there is no merit in argument of GBHPPL against PTC since LTA was already surrendered by the PTC pursuant to the minutes of meeting held on 25.04.2012 in the Chamber of Member (PS) of CEA. It was agreed by all the parties present that till the decision in matter related to jurisdiction of the appropriate commission to adjudicate the termination of the PPA entered between the PTC and GBHPPL attains finality, Greenko Budhil had agreed to pay the transmission charges directly to the Petitioner/PGCIL. Further prayer of GBHPPL in Petition No.190/MP/2016 was to "*Declare that the petitioner is not liable to pay the amounts under BPTA in terms BPTA dated 18.10.2007 from May, 2012 onwards*". Whereas, in the instant Petition, the period for which transmission charges, payable by GBHPPL,

pertains to the period 01.11.2011 to 24.05.2012 i.e. for the period prior to commissioning of GBHPPL project.

28. Let us peruse the Orders passed by the Commission, BPTA dated 18.10.2007 and other documents referred to in the instant case.

Order dated 02.01.2013 in Petition no. 94/TT/2011:

“Sharing of transmission charges

49. The petitioner has submitted that the transmission charges for the assets covered under Part-I, shall be borne by PTC/LANCO till it becomes part of the regional system, in line with the BPTA dated 18.10.2007 entered into by PTC/LANCO and the petitioner. PSPCL has submitted that the transmission charges should be borne by LANCO/ PTC till the transmission system becomes a part of the Regional System. UPPCL has submitted that transmission charges for 400 kV line from pooling station to Jalandhar line and the proportionate transmission tariff of the pooling station will be borne by the constituents of Northern Region. The balance transmission tariff of pooling station shall be shared by HPSEB/ LANCO and PTC.

50. In the light of the submissions of the petitioner, we direct that the transmission charges for the transmission assets covered under Part-I shall be shared by the PTC/ LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets become part of the regional system i.e till the commissioning of Chamera –III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with Central Electricity Regulatory Commission (sharing of inter-state transmission charges and losses) Regulations, 2010.”

Order dated 16.11.2012 in Petition No. 92/TT/2011:

“59. The transmission charges for the transmission assets covered under this petition shall be shared by the PTC/LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets become part of the regional system, i.e. till the commissioning of Chamera-II/ HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010.”

As per above, the transmission charges for the subject transmission assets were to be shared by the PTC/ LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets become part of the regional system

29. Various minutes of meeting regarding the instant matter are quoted as follows:

- (a) 18th Standing Committee meeting dated 06.06.2005 on Power System Planning in Northern Region- held on 6.06.2005:

3.6 Evacuation system for Budhil project

ED (Engg), POWERGRID informed that a 70 MW Budhil HEP is also taken up in the vicinity by an IPP for which they had applied for Long Term Open Access to POWERGRID. The generation project was likely to materialize by 2008-09, which would be earlier than Chamara III HEP. For evacuation of power from Budhil project, looking into the severe R-O-W constraints, it was proposed that power from the Budhil project be pooled at Chamba pooling station at 220 kV level. Considering that Budhil HEP would be matarialising earlier than Chamara III, for onwards transmission of Budhil power, two options were suggested. One option was to advance the establishment of the 400/220 kV Chamba pooling station along with connectivity to Chamara II and the other option was to advance the Chamba pooling station - Jullundhar 400 kV D/C line and charge it at 220 kV.

It was deliberated that the first option, ie, advancing the establishment of 400/220 kV Chamba pooling station along with its connectivity to Chamara II, could be adopted as this would be optimal solution, as the cost of the other option would be very high. It was further agreed cost of 220 kV D/C line from Budhil to pooling station would be in the scope of the generator and full transmission charges for 400/220 kV pooling station and its 400 kV connectivity to Chamara II would have to be borne by the beneficiaries of the Budhil project/generator till the time Chamara III materialize”

As per the above, it was agreed that the cost of 220 kV D/C line from Budhil HEP to the pooling station was to be in the scope of the generator and full transmission charges for 400/220 kV pooling station and its connectivity to Chamara-II were to be borne by the beneficiaries of Budhil HEP (GBHPPL) till the time Chamara-III materializes.

- (b) Minutes of Meeting for Long term Open Access Application for transfer of power from Budhil HEP (70 MW) to Haryana held at PGCIL, Gurgaon on 22.09.2006:

"POWERGRID informed that the time period left for construction of the Substation is very less considering that commissioning schedule of Budhil project is December, 2008. In order to make investment by POWERGRID for early construction of Power Pooling station and 400kV line to Chamara-II, M/s PTC need to sign BPTA with POWERGRID without any delay...

...M/s. PTC informed that they had an agreement with Haryana and M/s Lanco for above allocated power. Therefore PTC shall share the transmission charges for the early commissioning of Power Pooling station and 400kV line proportionately. POWERGRID mentioned that it will take up the implementation of the above part only when the BPTA is signed for the recovery of entire Transmission charges”.

- (c) Minutes of Meeting for Long term Open Access Application for transfer of power from Budhil HEP (70 MW) to Haryana held at PGCIL, Gurgaon on 24.11.2006

"Concluding the discussions, following was agreed:

1. *For transfer of power from Budhil generation project to Haryana, a pooling station near Chamera-II alongwith its connectivity with Chamera-II, which is a part of Chamera-III transmission system, may be preponed. The transmission charge for this part, till this become part of regional system shall be borne by Mis PTC and/or M/s. Lanco.*

.."

- (d) Meeting dated 23.08.2007 held at Powergrid Office

Note on the discussions held at Power Grid on 23/08/07 at Power Grid Office

Date: 23rd August, 2007

A meeting was called by AGM, Power Grid to discuss the issue of evacuation of power from various power stations being set up in Ravi basin. The undersigned and Mr. T.R. Sharma attended the meeting. Main issue discussed was regarding evacuation of power from Budhil since this is the first power house coming in the scheme and the next nearest power house is likely to come only after 18 months of commissioning of Budhil. It was decided that the pooling station will be established near Chamera - II.

Power Grid volunteered to prepone the construction of Transmission line from Chamera-III to Chamera-II pooling station, subject to the following conditions:

LANCO has to confirm within one week that

- 1) Lanco will bear the full transmission charges for the line between Chamera-III to pooling station till Chamera-III is commissioned and these lines become regional transmission.
- 2) Transmission charges for 12% of free power to H.P. Govt. should also be borne by Lanco and it is between Lanco and H.P. Govt. as to how recovery of this free power cost from H.P. Govt is settled
- 3) It was also agreed that all future power stations nearer to Budhil namely Kuthar, Bajoll Holl, Bara Bangal and Bharmour will be required to transmit their power through line constructed by Lanco and hence the transmission charges shall be shared by all future developers, thereafter.
- 4) CEA has already made a composite plan regarding (3) above and this will be fully implemented.

Submitted for kind information and guidance.

R.R. S. Manian
(VP - E&M)

COO

T.R. Sharma
Sr. DGM

- ① written to ITC to confirm that Haryana will bear this cost
② written to H.P. Govt. asking for their acceptance of this cost
③ ok
④ ok

As per the above, Lanco agreed to bear full transmission charges for transmission line between Chamera-III to pooling station, till Chamera-III is commissioned and these lines become regional transmission system.

- (e) GBHPPL (Lanco Green Power Private Limited) vide its Letter dated 29.08.2007 to PGCIL stated as follows:

“(a) Budhil HEP shall construct the 220 kV double circuit transmission line from Budhil power house to Chamera-/11 HEP. It shall have initially single circuit single moose conductor, and shall be upgraded to twin moose double circuit conductor once the projects near Budhil HEP take shape.

- (b) Power Grid shall advance the construction of the Chamera-III transmission system to match the commissioning schedule of Budhil HEP by LILo. Whereas it is expected that transmission charge from Chamera-III to pooling station is to be paid by the beneficiary of power, Lanco agrees to pay the transmission charges of the line from Chamera-III to Chamba pooling station till such time the system becomes part of the regional grid. Lanco is agreeing to this only to facilitate the process of Power Grid starting work on the line. However, it is expected that the beneficiary of the power will pay this transmission charge”*

As per the above, Lanco agreed to pay transmission charges for the line from Chamera-III to Chamba pooling station till such time the system becomes part of the regional grid.

- (f) In the letter dated 12.09.2007 by the Petitioner issued to GBHPPL, the Petitioner informed about the further system planning modification undertaken by the CEA:

“Further, it may also be mentioned that earlier POWERGRID was to construct a separate 200 kV D/c line from Chamera-III to Chamera pooling station for evacuation of power from Chamera-III. However, now with the Master Plan of CEA, LILo of one ckt of Budhil - Chamera pooling station 220 kV D/c line is to be carried out at Chamera-III by POWERGRID

In regard to your letter no. LGPPL/PTC/07/376 dated 24/08/2007 addressed to PTC with a copy marked to POWERGRID mentioning about implementation of transmission line from Chamera-III to Chamera Pooling station by POWERGRID, matching with Budhil generation, we would like to mention that considering the limited time available upto the commissioning of Budhil HEP i.e. March, 2009, it would not be possible for POWERGRID to construct the said line. In view of above you may kindly take up the construction of Budhil- Chamera pooling point 220 kV D/c line with Single Moose conductor, one circuit of which can be looped in looped out at Chamera-III.”

- (g) 23rd Standing Committee Meeting held on 16th February 2008 noted as follows:

“

- 9.1 Creation of 400/220kV pooling station at Chamera-II had been finalized to provide 220kV injection point for Chamera-III, Budhil and other HEPs in the Ravibasin and considering the severe R-O-W constrain in the hilly region, an integrated evacuation system had been evolved.
- 9.2 NHPC informed commissioning schedule of Chamera-III as August 2010.
- 9.3 M/s Lanco, the Generation developer of Budhil HEP, informed that Budhil HEP was scheduled to be commissioned by December 2009, but they had planned to reschedule it to March 2010.
- 9.4 PGCIL stated that they had scheduled commissioning of pooling station near Chamera-II by December 2009 based on earlier commitment of M/s Lanco/PTC to pay its full transmission charges for the period of its advancement ahead of Chamera-III after which it would become part of regional pooled system. Accordingly, M/s Lanco/PTC had to pay transmission charges for advanced creation of pooling station near Chamera-II by December 2009 as was already agreed that is its full transmission charges up to commissioning of Chamera-III after which it would become part of regional system.
- 9.5 HPSEB stated that it may not be feasible to construct of 3 nos of 220kV D/C lines between the pooling station near Chamera-II and the future proposed pooling station upstream of Chamera-III, and therefore only 2 nos of 220kV D/C lines with twin MOOSE conductors should be adopted.
- 9.6 PGCIL stated that they had carried out preliminary survey and observed that three lines could be possible, though the cost of the third line could be higher.
- PGCIL further stated that they did not have readily available design for 220 kV D/C line with single moose conductor but had available design for twin moose conductor for 400 kV D/C line and if the same was adapted for the 220 kV D/C line, completion of the line could be done in shorter time.
- POWERGRID further stated that at pooling station near Chamera-II, provision for 4 nos. of 220 kV line bays had been made. These bays were to be utilized for evacuation of power from future hydro projects in that river basin. Looking into the progress of the other hydro projects, provision in the first phase should be limited for the bays required with Chamera-III/Budhil HEPs and future bays could be provided as per the requirement. Accordingly, necessary changes may be made in the scope of works in the scheme for pooling station near Chamera-II.
- 9.7 HVPNL stated that as Haryana was the main beneficiary of power from Budhil HEP and had to pay all the associated transmission charges, the system should be evolved keeping in view the cost implication. If higher capacity was provided to take care of future projects allocated by HP to IPPs by taking upfront charges, HP should also share the transmission charges. CEA suggested that they should take up this issue with the tariff regulator.
- 9.8 HVPLN further stated that corresponding to Budhil time frame, instead of 2 nos of 400/220kV ICTs at pooling station near Chamera-II only one ICT may be installed and the second ICT may be installed matching with Chamera-III. POWERGRID stated that award for both the ICTs had already been placed however they would look into the matter.
- 9.9 The proposal, its implementation and transmission charge sharing issues were discussed in detail and after discussions considering the view points expressed by the participants, the following was agreed:
- (1) Evacuation system for Chamera-III and Budhil HEPs would be implemented through following schemes:
 - A- Establishment of 400/220kV GIS pooling station near Chamera-II Scope of works advanced ahead of Chamera-III for commissioning matching with Budhil time frame:
 - (i) Chamera-II – Chamera-II Pooling Station 400kV S/C line
 - (ii) 400/220kV GIS pooling station near Chamera-II with
 - Provision of 1 number of 400kV line bay for the 400kV S/C line from Chamera-II
 - 2x315MVA 400/220kV ICTs

- 2 numbers of 220kV line bays for the 220kV D/C line from Chamera-III/Budhil/PS upstream of Chamera-III
- (iii) Extension of Chamera-II HEP S/yard for providing 1 number of 400kV line bay for the 400kV S/C line from pooling station near Chamera-II.

B- Extension of 400/220kV GIS pooling station near Chamera-II

Scope of works matching with Chamera-III:

- (i) 2 numbers of 400kV line bays for the 400kV D/C line from pooling station near Chamera-II to Jullandhar
- (ii) 80 MVAR bus reactor with bus reactor bay

C- Evacuation system for Chamera-III:

- (i) 220kV D/C line from Chamera-III to Pooling Station near Chamera-II. The line would be with twin moose conductor adopting tower design of 400kV D/C line.
- (ii) Pooling Station near Chamera-II – Jullandhar 400kV D/C line

D- Interconnecting line for power evacuation from Budhil HEP to be implemented by Budhil developer

- (i) 220kV D/C line from Budhil to Chamera-III to be LILoed into one circuit of 220kV D/C line between Chamera-III and pooling station near Chamera-II. The line from Budhil to Chamera-III would be with twin moose conductor.

- (2) PGCIL had already firmed-up implementation of the schemes at A and B after obtaining investment approval. The approved scheme also included provision for 220kV future bays as per the earlier scheme. PGCIL would modify their scope of works to delete the additional 220kV bays and these would be subsequently tied-up with future projects.
- (3) As per their already signed agreement between PGCIL and M/s Lanco/PTC, full transmission charges for the scheme-A would be payable by M/s Lanco/PTC till commissioning of Chamera-III scheduled to be commissioned by August 2010. In this context, PGCIL would look into possibility of deferring one ICT to Chamera-III time frame. After commissioning of Chamera-III HEP, this system would become part of regional pooled transmission system and transmission charges recovered through pooled recovery method.
- (4) PGCIL would take-up Scheme-C matching with Chamera-III HEP with target of commissioning of August 2010 as confirmed by NHPC.
- (5) If Budhil developer desires advancement and PGCIL finds that to be feasible, Chamera-III – Chamera-III PS 220kV D/C line (that is works covered under item (i) of Scheme-C) could be advanced with full transmission charges for advanced period payable by Budhil developer (or its trader) and after the commissioning of Chamera-III, it would become part of regional pooled transmission system and transmission charges recovered through pooled recovery method. If Budhil developer desires for the above arrangement, it may coordinate with PGCIL for suitable arrangement for optimizing the execution of the 220kV line.
- (6) Scheme-D would be taken-up by Budhil developer matching with their generation project.
- (7) In phased development, pooling station upstream of Chamera-III would be constructed by PGCIL as a regional pooling station with transmission charges recovered through pooled recovery method. On creation of this new regional pooling station, transmission charges for the section between the new pooling

station and Chamera-III LILO point of 220kV line of Budhil would also become part of regional system. All future hydro generation like Kutehar (260MW), Bajoli Holi (200MW), Bara Bangal (200MW), Bharmor (45MW) and Kugti (45MW) would terminate their 220kV lines from their projects to this pooling station. Beyond this pooling station, more 220kV D/C lines towards Chamera-II pooling station, shall be planned as and when required.

- (8) *Revised plan of integrated evacuation system would be as following:-*

This system shall be built, owned, operated and maintained by M/s Lanco Green Private Power Ltd. For evacuation of power from Chamera-II, LILO of this line at Chamera-III shall be carried out by POWERGRID as a regional scheme along with the commissioning of Chamera-III which is expected in August 2010 as intimated by NHPC.

The sharing of applicable transmission charges of line segment from Chamera-III to Chamera pooling point after the commissioning of Chamera-III HEP shall be discussed in the standing Committee Meeting of Northern Region and Lanco shall approach CERC for sharing of transmission charges.

ii) Establishment of 2x315 MVA, 400/220 kV Chamera pooling station with 400 kV interconnection with Chamera-II HEP (Part of Chamera-III transmission system to be preponed to facilitate evacuation of power from Budhil HEP (to be constructed by POWERGRID as regional scheme).

“Transmission charges:

For transfer of power from Budhil generation project, a pooling station near Chamera-II along with its connectivity with Chamera-II, (which is a part of Chamera-III transmission system) is required to be preponed. The system would be built by POWERGRID and the transmission charges for this part, till it becomes part of regional system shall be borne/shared by PTC/Lanco. In regard to the payment of transmission charges corresponding to the amount of power as given in the Long Term application and for transfer of 12% free power for the first 12 years and 18% free power thereafter from Budhil generation project to Himachal Pradesh (HP), following is agreed:;

Case1: Evacuation arrangements made for transfer of free power to HP

M/s HPSEBL/Lanco shall make adequate transmission arrangement at their own cost and draw 12%/ 18% free power from Budhil generating station. PTC will bear the complete transmission charges of above Chamera pooling station for the period it is preponed till it becomes part of the regional and regional transmission charges of NR corresponding to 88% of the generation capacity of Budhil generation project for the first 12 years and 82% of the generation capacity of Budhil generation project thereafter.

Case II: Evacuation arrangement not made for transfer of free power to HP

In the event, HPSEB/Lanco either does not make adequate transmission arrangement or draws 12% /18% free power from the Budhil generation, switchyard, full, power from Budhil generation project would be injected at Chamera Pooling station. For this, Lanco shall bear the transmission charges for Chamera Pooling station from its (date Of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of Northern region corresponding to 12% of the generation capacity of Budhil generation project for the first 12 years and 18% of the generation capacity of Budhil generation project thereafter.

And PTC shall bear transmission charges for Chamera Pooling station from its (Date of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of NR corresponding to 88% of the generation capacity of Budhil generation project for the first 12 years and 82% of the generation capacity of Budhil generation project thereafter.

And whereas long term transmission customer has agreed to share and pay all the transmission charges of POWERGRID including FERV, incentive, taxes etc. for the use of its transmission system of Northern Region including inter regional links and any addition thereof.

And whereas it has become incumbent upon both the parties to enter in to Bulk Power Transmission Agreement as envisaged under the Central Electricity Regulatory Commission (Open Access in inter-state transmission) Regulations, 2004.

xxxxxx

Now, therefore in consideration of the premises and mutual agreements, covenants and conditions set forth herein, and in the Agreement as contained in the Annexure A attached hereto which shall form an integral part of this Agreement, it is hereby agreed by and between the parties as follows:

1.0 (a) Long term transmission customer shall share and pay the transmission charges including FERV, incentive, taxes, etc of POWERGRID transmission system of Northern Region including charges for inter regional links and system strengthening scheme.”

31. We have carefully perused the BPTA as quoted above and observe that there are two parts covered in the BPTA, (a) transmission charges for the period before transmission system becomes part of regional system and (b) transmission charges after the transmission system becomes part of regional system. Since the entire case is about transmission charges for period prior to the transmission system became part of regional system, only part (a) shall be discussed herein. We observe that the case is covered under Case-II stated above, since no separate arrangement was made by HPSEB/Lanco to evacuate free power. There is an express agreement about the transmission charges for the pooling station near Chamara-II along with its connectivity with Chamara-II to be paid by PTC/Lanco.

32. Subsequent to BPTA, a meeting was held on 5.2.2010 in the office of the Chief Engineer (SP&PA), CEA to review the evacuation system of Budhil HEP (70 MW) in Himachal Pradesh. The relevant extracts of the said minutes are as under:

“

2. Chief Engineer (SP&PA) inquired from Powergrid regarding targeted completion of Chamara-II-Chamera Pooling point 220 kV D/C line, 400/220 kV Chamara pooling point sub-station and 400 kV Chamara pooling point-Chamera-II S/C line. Powergrid informed that the above works are targeted for completion by Dec. 2010 matching with the commissioning of Chamara-III generation. However, in case these works are required to be advanced M/s Lanco may confirm the same to



Powergrid for bearing the transmission charges for the period Sept. 2010 to Dec. 2010.

3. M/s Lanco agreed for the same and requested that earlier BPTA signed between Powergrid and Lanco needs to be modified. Powergrid agreed for the same.

4. Powergrid indicated that the Forest clearance is required for small portion of 220 kV Chamera-III-Chamera pooling point D/C line which is under process. Powergrid agreed to make their best efforts to advance these works from Dec. 2010 to Sept 2010 subject above forest clearance and M/s Lanco agreeing to bear the transmission charges alone from Sept'10 to Dec'10. PGCIL was advised to enter into an agreement with Lanco accordingly."

As per the above, transmission system is scheduled to be commissioned by Dec. 2010 matching with the commissioning of Chamera-III of NHPC, and in case commissioning of the transmission system is advanced matching with Budhil HEP of Lanco, Lanco agreed to bear entire transmission charges for a specific period for preponement of required transmission system stating that BPTA needs to be modified. We observe that there is nothing on record submitted by any of the parties whether the BPTA was revised to include the above.

33. Further the Commission vide Order dated 10.05.2019 in Review Petition Nos. 65/RP/2016, 66/RP/2016, 18/RP/2017 and 19/RP/2017 specifically directed to consider the Indemnification Agreement of NHPC. We have perused the Indemnification agreement dated 22.07.2005 signed between the NHPC and PGCIL as follows:

“

1. SCHEDULE OF COMMISSIONING

a) The schedule of commissioning of generating units alongwith the ATS (the zero date from which the indemnification mechanism shall be applicable) shall be worked out for each generating units vis-à-vis ATS and mutually agreed in the quarterly director level co-ordination meeting between POWERGRID and NHPC within 3 months of investment approval which will form an integral part of this agreement. The above schedule for the generating units and the ATS shall be regularly reviewed in the quarterly director level coordination meeting between NHPC and POWERGRID

.....

2. INDEMNIFICATION

*a) In the event of delay in commissioning of generating units vis-à-vis ATS the defaulting party shall pay the **Interest During Construction including Foreign Exchange Rate Variation (FERV) and Govt. Guarantee Fee** if any for generating units and ATS calculated as lower of the two, up to a period of six months from the zero date. However, the defaulting party shall pay the indemnification claim only in case of revenue loss of part*



thereof suffered by the other party due to delay in *commissioning by the defaulting party.

b) Either party who was ready to commission and have notified the other party, shall obtain a certificate from Statutory Auditors at the end of financial year certifying the amount of IDC from zero date to actual date of commissioning or 6 month IDC, whichever is less.

.....

4. No claim other than IDC including FERV and Govt. Guarantee fee if any referred to above, i.e., any indirect loss due to delay in commissioning Generating Units/ ATS shall be payable by either party to the other party.

...

ANNEXURE TO INDEMNIFICATION AGREEMENT DATED 22.07.05
BETWEEN
NHPC AND POWER GRID CORPORATION OF INDIA LTD.

Schedule Agreed for the purpose of Indemnification

PROJECT: CHAMERA-III, (3X77 MW)

1. Commissioning Schedule of power project August 2010
2. Commissioning Schedule of Associated Transmission System (ATS): August 2010

List of Associated Transmission System

- 400KV D/C Chamera Pooling Station – Jalandhar line
- 220KV D/C Chamera Pooling Station – Chamera-III line
- Bay Extension at Jalandhar
- 400/220KV GIS Pooling Station near Chamera-II
- 400KV S/C Chamera Pooling Station-Chamera-II line

3. For the purpose of Indemnification, the zero date would be:
1.09.2010

Sd./-
11.06.07
Stamp

Sd./-
11/6/07
Stamp

”

We observe that the Indemnification Agreement provides for payment of Interest During Construction in case commissioning of a transmission system is required to be delayed. We observe that once COD of the transmission system is declared, payment of IDC does not carry any relevance which is applicable



prior to COD of the transmission system. We also observe that the zero date agreed in the Indemnification Agreement is “1.9.2010” with the commissioning schedule of generation project Chamera-III and the commissioning schedule of the Associated Transmission System as August 2010.

34. We also observe from various minutes of meetings and letters quoted above that Petitioner requested for advancement of Associated transmission system for Chamera-III for which it was agreed that transmission charges shall be paid by PTC/Lanco till the commissioning of Chamera-III. We have noted the BPTA dated 18.10.2007 which also notes the scheduled commissioning date for Chamera-III as August 2010. However there is no denial to the fact that neither the Budhil HEP of Greenko Budhil, nor the Chamera-III HEP of NHPC Limited nor the transmission system of Petitioner could achieve COD as scheduled. The Budhil HEP was commissioned in two phases on 25.05.2012, the Chamera-III HEP was commissioned in June 2012 whereas the transmission system of the Petitioner was put to commercial operation on 01.11.2011. There is also no denial of the fact that the instant transmission system was planned for Chamera-III generation project and Budhil as observed from various Standing Committee Meetings. Since both Budhil project and Chamera-III were delayed beyond their scheduled commissioning dates, however transmission was commissioned, we find that both Chamera-III and Budhil generation project are defaulters due to whom the transmission system could not be put to use. Hence we exercise our regulatory powers and direct that transmission charges shall be shared by both the defaulters i.e Chamera-III and Budhil generation project (GBHPPL) in the ratio of their Installed capacity, till the transmission system became part of the regional system i.e from 1.11.2011 till 24.05.2012.

35. We observe that GBHPPL has referred to Order dated 31.05.2018 in Petition No. 190/MP/2016 where following was noted:

“Issue No.5: Who shall be liable to pay the LTA charges under the existing LTA till the same is relinquished or reallocated?”



39. The Petitioner has sought a direction that it is not liable to pay the transmission charges under BPTA from May, 2012 onwards. As regards the liability for payment of LTA charges, it primarily remains the responsibility of PTC till the time the LTA is relinquished in accordance with the provisions of the BPTA. In the Minutes of Meeting dated 25.4.2012 held under the aegis of Member (PS) CEA, the following was decided with regard to payment of transmission charges:

.....
As an interim arrangement, the predecessor of Petitioner agreed to reimburse the LTA charges on behalf of PTC till PTC surrenders the LTA and the Petitioner applies for LTA either to a target region or to a new beneficiary. The Petitioner initially paid for two years and thereafter stopped payment of LTA charges. In our view, an interim arrangement between the Petitioner and PTC was made to facilitate payment of transmission charges and cannot shift the liability for payment from PTC to the Petitioner which shall continue with PTC. Therefore, the liability for LTA charges shall continue with PTC except for the period where the Petitioner willingly bears the LTA charges.

GBHPPL has argued referring to above Order that it is not a LTTC, hence is not liable to pay the charges. We observe that the said argument of Respondent GBHPPL is not correct. Firstly, the abovesaid Order was for a period after May 2012 whereas the instant case is prior to May 2012. Secondly, the abovesaid Order was for the LTA charges whereas the instant case is for transmission charges for the specific assets which were agreed to be paid by PTC/Lanco bilaterally and is different than regular LTA charges. There is no requirement for an entity to be a LTTC to agree to pay bilateral charges for a specific reason. .

36. We have also perused minutes of meeting held on 25.04.2012, held between GBHPPL, Petitioner, PTC and the CEA where following was agreed:

"6. PTC stated that till the time the matter is resolved M/s. Lanco Budhil should reimburse the LTA charges of ISTS network to PTC. Lanco was agreeable to pay the long term access charges directly to PGCIL. PTC also suggested that LTA charges could be directly billed on Lanco. PGCIL stated that billing directly to Lanco cannot be done since LTA is in the name of PTC. PTC agreed to surrender the LTA. Lanco agreed to apply for fresh LTA for full maximum injection envisaged for a target region or for a new beneficiary as the case may be. It was decided that in the interim, Lanco would reimburse the LTA charges till the decision of the Standing Committee of Power System Planning on Lanco's application for LTA.

..

9. Conclusion

..

3. Lanco Budhil HEP was agreeable to reimburse long term access charges during the interim period as stated in Para 6 above which will be billed by Powergrid to PTC in order to neutralize the liability of PTC on account of the LTA.



4.Lanco Budhil HEP would approach the CERC with the minutes of this meeting within one week upon receipt of this minutes of meeting with the requisite information about their project for the kind information of the Commission and issuance of direction, if any, NRLDC, CTU,PTC, HP STU and HPSLDC would be made the respondents.

5. Lanco Budhil HEP was agreeable to bear any liability arising out of the Orders of HERC,CERC or APTEL. Lanco Budhil HEP agreed to indemnify CEA, NRLDC and Powergrid at all times from all damages, losses, claims, actions and any other legal or commercial liabilities.”

We observe that abovesaid meeting was in the context of LTA charges and does not cover charges for the transmission system prior to it becoming part of the regional system.

37.We also observe that the GBHPPL has filed Appeal No. 69 of 2020, 70 of 2020, 72 of 2020 and 73 of 2020, challenging the review order dated 10.05.2019 passed in Petition No. 18/RP/2017, 19/RP/2017, 65/RP/2016 and 66/RP/2016 by this Commission which are pending for adjudication before the APTEL. GBHPPL vide the I.A. No. 59/2022 prayed to defer the present Petition till such time, the APTEL adjudicates and decides the aforesaid appeals, however we are not inclined to accept the prayer of GBHPPL in the IA No. 59/2022 and keep pending the present Petition. However, the liberty is granted to the Petitioner as well as Respondents to approach this Commission, if required in accordance with law after passing of the final order by the APTEL.

38.The Petition no. 451/MP/2019 along with IA 59/2022 is disposed of in terms of the above.

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

**Sd/
(Arun Goyal)
Member**

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

