

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 259/2009
alongwith
IA No.4/2011 & 5/2011**

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date of Hearing: 29.3.2011

Date of Order: 1.6.2011

In the matter of

Petition under Sections 60 and 79 of the Electricity Act,2003 for issuance of appropriate /necessary directions to the respondents.

And in the matter of

Everest Power Private Limited

... **Petitioner**

Vs

- 1 Allian Duhangan hydro Power Limited, Noida
- 2 Central Electricity Authority, New Delhi
- 3 Ministry of Power, New Delhi
- 4 Power Grid Corporation of India Ltd., Gurgaon
- 5 Northern Regional Load Despatch Centre
- 6 Ministry of Power, Govt. of Himachal Pradesh
- 7 Himachal Pradesh State Electricity Board, Shimla
- 8 H.P. Power Transmission Corporation Ltd., Shimla
- 9 Department of Forest, Govt. of Himachal Pradesh, Shimla ..

Respondents

Following were present:

1. Shri M.G.Ramchandran, Advocate for the petitioner
2. Shri Tarun Johri, Advocate for the petitioner
3. Shri Vikas Singh, Senior Advocate for the Respondent No.1
4. Shri Kulbir Singh Chauhan, Dy. District Attorney, Govt. of Himachal Pradesh
5. Shri S. K. Bhowmick, EPPL
6. Shri R.S.N.P. Achanta, EPPL
7. Shri D. P. Sinha, EPPL
8. Shri Jaideep Lakhtakia, EPPL
9. Shri Ankur Gupta, EPPL
10. Ms. Ranjitha, EPPL



11. Shri U. C. Dubey, ADHPL
12. Shri Sumit Garg, ADHPL
13. Shri Praveen, ADHPL
14. Shri S. Thulasi Naik, ADHPL
15. Shri R. C. Kaundal, Govt. of Himachal Pradesh
16. Ms. Jyoti Prasad, NRLDC

ORDER

The Petitioner, Everest Power Private Limited, a generating company is engaged in executing, implementing, and developing a 2x50 MW Malana –II Hydro Electric Project in Kullu District of Himachal Pradesh on Build, Own, Operate and Transfer basis. The Respondent No.1, Allain Duhangan Hydro Power Limited is another generating company engaged in the development and implementation of 192 MW Allain Duhangan Hydro Electric Project in the State of Himachal Pradesh. The dispute between the Petitioner and Respondent No. 1 pertains to the use of 220 kV D/C ADHEP-Nalagarh Transmission line of Respondent No. 1 by the petitioner for evacuation of power from its generating station to the sub-station of PGCIL at Nalagarh. The petitioner has filed the present petition under Section 60 of the Electricity Act, 2003 (“the 2003 Act”) for seeking directions/clarifications on the following issues:

- (a) The methodology and process for computation and sharing transmission charges by the petitioner and ADHPL, for use by the petitioner and ADHPL of 220 kV D/C Allain Duhangan Hydro Electric Project (ADHEP)-Nalagarh transmission line;
- (b) The methodology of sharing of energy losses by the petitioner and ADHPL for use of the said line;



- (c) The method and process to be adopted for calculation and determination of the capital cost of the said line;
- (d) The method and process to be adopted for ascertaining the priority of use by the petitioner and ADHPL for the said line;
- (e) The operation and control of 132/220 kV sub-station at Chhaur constructed by the petitioner and at which point the 220 kV ADHEP-Nalagarh transmission line being constructed by ADHPL is to be LILLOed for evacuation of the power by Malana-II HEP;
- (f) Scheduling, metering and accounting of the power generated by Malana-II HEP and ADHEP by NRLDC at the individual periphery of the respective generator;
- (g) All commercial aspects of the Transmission Service Agreement (TSA) between ADHPL and EPPL should be based on the Commission`s regulations applicable for inter-State transmission system and scheduling and operational issues should be based on the IEGC and RLDC norms for Inter State Transmission System.
- (h) A direction to both parties to conclude the TSA within two weeks.
- (i) Any other order that the Commission may deem fit and proper in the facts and circumstances of the case.

2. After hearing the petitioner on 23.9.2010, we had admitted the petition and issued notice to the respondents. The Respondent No. 1 filed a short reply limited to the question of jurisdiction of the Commission to entertain the petition



under section 60 or 79 of the 2003 Act. Respondent No.5, Northern Regional Load Despatch Centre has filed a reply with response to the prayer of the petitioner as quoted in sub-para (f) of the preceding paragraph and has submitted that all operational and commercial coordination with NRLDC including metering and scheduling etc., shall be at Nalagarh. Respondent No.8, Himachal Pradesh Power Transmission Corporation Limited in its reply dated 28.10.2010 has submitted that keeping in view the need for optimum utilization of transmission corridors in Himachal Pradesh, the petitioner and the Respondent No.1 should execute Transmission Service Agreement in accordance with the benchmarks and conditions imposed under the prevailing regulations of CERC concerning determination of tariff of the transmission line and sharing of transmission charges and losses by various beneficiaries of Inter-State Transmission System (ISTS). The petitioner has filed its rejoinder vide affidavit dated 18.11.2010.

3. During the hearing on 7.12.2010, the learned counsel for the Respondent No.1 submitted that the Commission does not have the jurisdiction to entertain the petition since the transmission line is a dedicated transmission line and before proceeding to the merits of the case, the Commission should first decide the question of jurisdiction. Subsequently, the petitioner filed two Interlocutory Applications, namely IA No. 4/2011 seeking amendment of the petition and IA No. 5/2011 seeking interim reliefs. Notices were issued to the respondents on the IAs on 8.3.2011. Respondent No.1 filed its reply to the IAs vide its affidavit



dated 15.3.2011 and the Petitioner has filed its rejoinder. The matter was heard on 29.3.2011 on the maintainability of the IAs and on the merits of the case.

4. The petitioner has filed IA No.4/2011 under Regulation 114 of the Central Electricity Regulatory Commission(Conduct of Business) Regulations, 1999 seeking amendment to the cause title and para 45 of the petition. The learned counsel for the petitioner submitted that though the petition was filed under section 60 of the 2003 Act, he had argued during the hearing on 23.9.2010 that the Commission has the jurisdiction under section 79(1)(c) and (f) of the 2003 Act to entertain the petition which was also recorded in the Record of Proceedings of the same date. The petitioner has filed the IA No. 4/2011 for the purpose of incorporating its contentions in respect of the Commission's jurisdiction under section 79(1)(c),(d) and (f) and section 60 of the 2003 Act to try and adjudicate the issue raised in the petition.

5. Respondent No.1, ADHPL in its reply dated 15.3.2011 to the IA has submitted that the application is not maintainable under Regulation 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter "Conduct of Business Regulations") as the petitioner has not averred any defect or error in the proceedings. Moreover, no new fact/event has been pleaded which necessitate the amendment for adjudication of the issue raised in the petition and the application has been filed after the Commission has reserved its order after extensively hearing the parties. The Respondent No.1 has further submitted that the petitioner had filed the petition under section 60 of the 2003 Act whereas by virtue of the present application,



the petitioner is invoking the jurisdiction of the Commission under an altogether different section viz. section 79(1)(f) of the 2003 Act. The application is basically in the nature of rejoinder to the case of the Respondent No. 1 that the petitioner had no case either under section 60 or section 79 of the 2003 Act.

6. We have considered the submission of the petitioner and respondent No.1 with regard to the admissibility of the IA for amendment of the petition.

7. The petitioner had initially filed the petition under section 60 of the 2003 Act. However, during the course of argument at the admission stage of the petition on 23.9.2010, the learned counsel for the petitioner submitted that apart from section 60 of the 2003 Act, the petition was maintainable under section 79(1)(f) read with section 79(1)(c) of the 2003 Act since the transmission system is an inter-State Transmission System as per the definition of ISTS in the Act. Taking note of the submissions of the petitioner, the petition was admitted and notice was issued to the respondents to file their replies. The Respondent No.1 filed a short reply confined to the question of jurisdiction vide its affidavit dated 12.11.2010. It has been averred by the Respondent No. 1 in para 22 of the reply that “the issues raised in the present petition do not fall within the ambit of section 79 or section 60 of the 2003 Act.” During the hearing of the petition on 7.12.2010, the matter was argued on the question of jurisdiction of the Commission in which the learned counsel for the Respondent No.1 submitted that the petition was neither maintainable under section 60 nor under section 79 of the Act. Thus both in the written pleadings and oral submission, Respondent No.1 has argued on the question of maintainability of the petition



under section 79 of the Act. By virtue of filing IA No. 4/2011, the petitioner seeks to amend the cause title and para 45 of the petition in order to bring on record its case under section 79 of the 2003 Act and to obviate any confusion in this respect. In our view, the Commission has already taken cognizance of the submission of the petitioner during the hearing on 23.9.2010 that the petition is maintainable under section 79 of the 2003 Act in addition to section 60 of the 2003 Act under which the application has been filed. The Respondent No.1 has also extensively dealt with section 79 in its reply to the petition as well as during the hearing of the petition on 7.12.2010 and also during the hearing on 29.3.2011. It is for the Commission to decide as to whether it has jurisdiction in the matter and if so, under which provision of law. Without formal amendment of the petition, the Commission is within its power to consider the petition under Section 79 of the Act in addition Section 60 of the Act as prayed in the petition. The IA No. 4 of 2011 is disposed of accordingly.

8. Before we consider the petition on merit, the first issue which needs to be decided is whether the Commission has the necessary jurisdiction under the Electricity Act, 2003 or the regulations made thereunder to deal with the dispute raised in the petition.

Jurisdiction of the Commission

9. For deciding the question of jurisdiction, we consider it necessary to lay down the factual matrix as culled out from the pleadings of the parties. The chronological sequence of events are as under:



(a) Everest Power Private Limited (EPPL) is a generating company engaged in executing, implementing and developing the 2x50 MW Malana II Hydro Electric Project in Kullu District of Himachal Pradesh on Build, Own, Operate and Transfer basis. Allain Duhangan Hydro Power Limited (ADPHL) is also a generating company engaged in execution, implementation, development and operation of 2x96 MW Allain Duhangan Hydro Electric Project(ADHEP) in Kullu District of Himachal Pradesh on Build, Own, Operate and Transfer basis.

(b) As per the power evacuation arrangement envisaged by the Central Electricity Authority and Powergrid Corporation of India Limited for large public and private sector hydro power projects coming up in the tributaries of Beas River in Kullu Valley, separate transmission lines from ADHEP and Malana II HEP were to terminate at 400 kV Pooling Station of Power Grid at Panarsa/Banala which was planned and constructed by the Power Grid for evacuation of power from Parbati II and III HEP of NHPC and Kol Dam HEP of NTPC.

(c) Central Electricity Authority in its letter File No.2/HP/18/96-PAC/8108-39 dated 20.8.2002 accorded techno-economic clearance to ADHEP under Electricity (Supply) Act, 1948. As per para 4(vii) of the said letter, Power Grid after detailed route survey was required to confirm the adequacy of land for construction of Parbati pooling point, and accordingly, the decision to take the line from Allain Duhangan to Parbati pooling point instead of Allain Duhangan to Nalagarh was to be reviewed.



(d) On 18.7.2005, Respondent No.1 made an application to PGCIL for long term open access. PGCIL in its letter dated 1.8.2005 informed that commissioning schedule of Panarsa would not coincide with the commissioning of ADHEP. Consequent to the said letter, Respondent No.1 approached Central Electricity Authority who vide its letter dated 14.8.2006 informed PGCIL that if there was any delay in commissioning of Panarsa pooling station, then connectivity should be granted to Respondent No.1 at Nalagarh inter-connection point. Accordingly, PGCIL granted connectivity to ADHEP at Nalagarh.

(e) Ministry of Power, Government of India in its letter No.21.8.2007 accorded its approval under section 68 of the Act for construction of overhead lines up to Nalagarh. Ministry of Environment and Forest, Government of India accorded forest clearance vide letter Nos. 8-107/2007-FC dated 15.4.2009 and No.8-109/2008-FC dated 15.5.2009 for termination of the dedicated transmission line at Nalagarh. The Central Electricity Authority while recommending the case of ADHPL to Ministry of Power for grant of sanction under section 68 of the Act had put the following conditions to be complied with by ADHPL:

- (i) While finalizing the corridor of the proposed Allain Duhangan – Nalagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately co-ordinated with respect to the corridor identified by POWERGRID for the 400kV transmission lines in the area

planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs.

- (ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana – II (100 MW) AND Sainj (100MW).

(f) The petitioner had entered into a Power Purchase Agreement dated 7.5.2005 with PTC for supply of power from Malana II HEP which would be delivered at the proposed 220/400 kV Parbati Pooling Station of Power grid located at Panarsa/Banala. PTC has executed a Power Sale Agreement with Punjab State Electricity Board for sale of the complete design saleable energy from the Malana II HEP. PTC was granted Long Term Open Access for injection of power from Malana II HEP at the 400 kV bus of Parbati Pooling station.

(g) The petitioner after coming to know that PGCIL had granted open access to ADHEP beyond the power delivery point of 400/220 kV sub-station of Power Grid at Nalagarh due to slippage in the commissioning of the Parbati II HEP, approached the Central Electricity Authority for firming up the transmission network for evacuation of power from Malana II HEP. A meeting was convened by Central Electricity Authority on 10.4.2008 which was attended by the representatives of PGCIL, HPSEB, ADHPL, EPPL and PTC and it was decided as under:



“a. Malana-II without any further delay should proceed to tie up evacuation of their power through 220 kV ADHEP-Nalagarh line of ADHPL. They would need to establish 220/132 s/s at their own cost.

b. ADHPL and EPPL would have a joint meeting on 23rd April 2008 to decide the modalities for agreement on the sharing of the cost for the 220 kV ADHEP-Nalagarh line and also its O & M charges for evacuation of the power of Malana II HEP.

c. If ADHPL and EPPL arrive at an agreed proposal, the same should be sent to CEA and both parties should proceed accordingly. However, if they are not able to agree on a proposal, both ADHPL and EPPL should send their individual proposal to CEA and a meeting could be held to resolve the issue. However, in any case, both parties should proceed to ensure completion of the evacuation system in the required time frame.

d. ADHPL would take up the issue with CERC regarding sharing of the 220 kV ADHEP-Nalagarh line with EPPL for evacuation of power from Malana HEP as well. CEA would extend all support to ADHPL to obtain approval of CERC.”

(h) Ministry of Power, Government of India in its letter No.11/4/07/PG dated 17.6.2008 accorded approval to EPPL under section 68 of the Act as under:

*“I am directed to refer to Everest Power Private Limited’s letters dated 8.5.08 on the above subject and to convey prior approval of the Central Government under sub-section (1) of section 68 of the Electricity Act, 2003 for construction of 132 kV line for evacuation of power of Malana II HEP and its **inter-connection with 220 kV D/C Allain Duhangan-Nalagarh line near tower no.159 by constructing as 132/220 kV substation** as discussed in a meeting taken by Chairman, CEA on 10.4.2008 wherein it was decided that **Malana should proceed to tie up evacuation of their power through 220 kV ADHEP-Nalagarh line of ADHPL. They would need to establish 220/132 kV sub-station at their own cost on one circuit of the 220 kV Allain Duhangan-Nalagarh line and 132 kV D/C line from Malana II HEP to the 220/132 kV sub-station on 220 kV D/C Allain Duhangan-Nalagarh line. The 220/132 kV sub-station as well as 132 kV line would be the dedicated system of the generating company.”***

(i) In pursuance of the decision in Minutes of Meeting taken by Chairman, CEA on 10.4.2008, the representatives of ADHPL and EPPL met on 14.8.2008 wherein ADHPL expressed its no objection to evacuate the power of Malana II HEP on ADPHL’s 220 kV Allain Duhangan-Nalagarh line subject to commercial settlement and CERC’s approval.

(j) In a meeting taken by Chief Secretary, Government of Himachal Pradesh on 19.11.2008, it was agreed by ADHPL that after the

commissioning of 400 kV pooling point at Panarsa by PGCIL, it would inject power at Panarsa pooling station and the line from Panarsa to Nalagarh would be handed over to HPTCL on mutually agreed terms and conditions.

(k) Additional Chief Secretary (Forests) to the Government of Himachal Pradesh in its letter No.FFE-B-F(2)-63/2008 dated 9.12.2008 addressed to Senior Asstt Inspector General of Forest, Ministry of Forests and Environment Government of India, has conveyed forest clearance in favour of ADHPL for diversion of forest land for laying the 220 kV D/C transmission line from Pirni to Nalagarh. In the letter, the following were recommended:

*“As the proposal attracts the provisions of FCA, 1980, the same is submitted to you for consideration and approval subject to the following conditions which are intended to pool and reduce the number of transmission corridors in the valley.
i. AD Hydro shall inject its power at Panarsa pooling after the commissioning of this 400 kV pooling point by PGCIL and line beyond Panarsa shall be handed over to HPTCL on mutually agreed terms and conditions.*

*x x x x x x
v. AD Hydro shall also carry/transmit on this transmission line the power generated by M/s Everest Power at Malana II HEP on mutually agreed terms and conditions.”*

(l) Based on the recommendations of the State Government, Ministry of Environment and Forest, Government of India vide its letters dated 15.4.2009 and 15.5.2009 accorded approval under section 2 of the Forest (Conservation) Act, 1980 for forest clearance for laying the 220 kV D/C transmission line from Pirni to Panarsa to Nalagarh.

(m) In a meeting taken by Member(PS), Central Electricity Authority on 3.9.2009, the following decisions regarding the modalities/solutions to the issues between ADHPL and EPPL were taken:

“(i) ADHPL shall furnish the design details of the dead end towers for the LILO portion and the foundations and also intimate the name of the supplier and erecting agency to EPPL. The construction of LILO portion will be done by EPPL.

(ii) Since the proposed 220/132 kV Chhaur S/S will be constructed by EPPL, the control/ownership of O&M of proposed 220/132 kV Chhaur S/S will remain with EPPL. However, ADHPL also may depute their person for 220 kV S/S control and operation.

(iii) The transmission charges between the Allain Duhangan Nalagarh 220 kV D/C line will be shared between ADHPL and EPPL in proportion to the installed generation capacity.

(iv) The control/operation of 220 kV circuit breakers for regulating power flow is done as per the instructions of SLDC.”

(n) The question of termination of Allain Duhangan-Nalagarh transmission system at Panarsa upon commissioning of the 400 kV pooling station of Power Grid which has been committed by ADHPL to HPPTCL was discussed in a meeting under the chairmanship of Chief Engineer (SP&PA) of CEA and ADHPL was advised to interact with HPPTCL and put up a proposal to CEA and PGCIL. As regards future termination of 220 Allain Duhangan-Nalagarh transmission line at Panarsa pooling station, it was decided that ADHPL's liability to wheel EPPL's power shall be limited to Panarsa pooling station of PGCIL subject to commercial agreement between ADHPL, HPPTCL and EPPL for establishment of termination of Allain Nalagarh D/C line at Panarsa and delivery point of Malana would get shifted from Nalagarh to Panarsa pooling station. Both ADHPL and EPPL agreed to enter into agreement on these lines.

(o) In the meeting taken by Director, HPPTCL it was agreed that ADHPL and EEPL should finalize inter-connection agreement expeditiously. Pursuant thereto, ADHPL furnished the draft inter-connection agreement on 31.03.2010. The main features of the inter-connection agreement are as under:

- (i) Return on Equity : 3 % higher than CERC norms
- (ii) Cost of 220 kV ADHEP-Nalagarh line: Rs. 2.2 crores per km.
- (iii) Absolute control of 132/220 kV Chhaur substation established by EPPL to remain with ADHPL.
- (iv) Priority to be with ADHPL in case of outage of one circuit of ADHEP-Nalagarh line.
- (v) Scheduling & dispatch of Malana-II HEP by ADHPL.
- (vi) 4% additional loss to be deducted from generation of MALANA II HEP.

(p) The inter-connection agreement could not be concluded due to insistence by ADHPL to enforce its terms and conditions in disregard of the prevailing norms.

(q) On 12.5.2010, Joint Secretary, Ministry of Power conducted a meeting wherein it was agreed as under:

“(i) The issue of right to use the transmission capacity should be left to the concerned Load Dispatch Centre, which would decide the priorities on the exigencies in public interest.

(ii) With regard to the control over 220 kV sub-station at Chhaur, it was noted that the sub-station belonged to EPPL and the solution suggested by the CEA for having a supervisor from ADHPL along with the staff of EPPL should be adhered to.

(iii) With regard to sharing of transmission charges, ADHPL agreed to show the accounts for third party inspection so that the transmission charges can be

determined in a realistic manner, both the parties can consult CEA , PGCIL and RLDC's in this regard.

(iv) The CEO, POSOCO who had also been requested by Ministry of power to join the meeting suggested that the issue of priority can be determined by CERC”

10. Against the factual matrix as discussed in the foregoing paragraphs above, the petitioner has invoked the jurisdiction of the Commission under Section 79 (1)(c) read with Section 79(1)(f) of the Act and Section 60 of the Act for seeking appropriate directions upon Respondent No.1 to grant inter-connection and other reliefs. The provisions provisions of sections 60 and 79 of the Act are extracted as under:

“Section 60. (Market domination):

The Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry

Section 79. Functions of Central Commission :

(1) The Central Commission shall discharge the following functions, namely:-

.....

(c) to regulate the inter-State transmission of electricity ;

.....

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”

11. Thus the Commission has the power to issue appropriate directions to a generating company or a licensee if such licensee or generating company enters into agreements or into combinations or abuses its dominant position which has an adverse effect on the competition in electricity industry. Section 79 (1)(c) confers the power on the Commission to regulate inter-State transmission of electricity and section 79(1)(f) to adjudicate dispute involving generating company or transmission licensee.

12. The Respondent in its reply has submitted that none of the conditions for operation of Section 79 (1) (f) of the 2003 Act have been fulfilled in the present case as the Respondent no. 1 is neither a transmission licensee nor the issue raised in the petition falls within the ambit of Section 79 (1) (c) or 79 (1) (d) of the Act. It has been submitted that the dedicated transmission line laid by Respondent No.1 can be used as the dedicated transmission line for two generating stations, namely, that of the petitioner and Respondent No. 1, and the terms and conditions for evacuation of power of the petitioner can be mutually agreed through negotiations. Respondent No.1 has further submitted that the parties are within their rights to negotiate the terms and conditions in respect of use of the dedicated transmission line without the intervention of the Commission. Respondent No.1 has further submitted that for invoking Section 60 of the 2003 Act, the Commission has to arrive at the conclusion that the Respondent was in a dominant position in the relevant market; and such dominant position is being abused by Respondent No.1. For these, the Commission shall be required to conduct an investigation as regards the relevant market, the dominant position of the Respondent No. 1, the abuse of such dominant position by Respondent No.1 and its impact on the competition in the relevant market. According to Respondent no.1, the petitioner has not been able to make out a case under Section 60 of the Act against the Respondent No. 1 for abusing its dominant position.

13. The petitioner in its rejoinder has submitted that perusal of various letters, documents and minutes of the meeting held over the last three years prove beyond doubt the fact that Respondent No.1 has already been conferred with



the responsibility of evacuating the power generated by the project of the petitioner which falls in the same corridor/region and therefore, the said transmission line cannot be treated as a dedicated transmission line of the Respondent No.1 and the said line is dedicated to the corridor and should be utilized for evacuation of power being generated by other projects in the said area. The petitioner has further submitted that as per the Master Plan of Central Electricity Authority, the evacuation of power from Malana II HEP is envisaged by LILo of one circuit of Allain Duhangan 220 kV D/C line.

14. On consideration of the factual matrix of the case and submissions of both petitioner and Respondent No.1, it emerges that the transmission lines of Power Grid were planned to extend till Panarsa pooling station in order to meet the evacuation requirements of the generating stations coming up in the Kulu valley of the State of Himachal Pradesh. EPPL was granted open access by CTU for injecting power in the pooling station of Power Grid at Panarsa. On account of the delay in the commissioning of Parbati HEP, the construction of the transmission lines by CTU was delayed. When ADHPL applied for LTOA to Power Grid, it was informed that the pooling station at Panarsa would be delayed. After a joint meeting with Power Grid and CEA, with regard to the evacuation plan, CEA recommended to the Ministry of Power to grant approval under Section 68 of the Act to ADHPL for construction of its dedicated transmission line till Nalagarh. Central Electricity Authority being fully aware of the corridor constraints in the region and the need for a back-up evacuation plan for all generators in the region who are likely to be affected by the delay in



construction of the transmission lines by CTU, while recommending the case of ADHPL for sanction under section 68 of the Act to construct its dedicated transmission line till Panarsa, had advised Ministry of Power as under:

“(i) While finalizing the corridor of the proposed Allain Duhangan – Nalagarh 220 kV D/C line, ADHPL should ensure that their corridor is appropriately co-ordinated with respect to the corridor identified by POWERGRID for the 400kV transmission lines in the area planned for the evacuation of power from Parbati II, Parbati III and Koldam HEPs.

*“(ii) Out of the total 400 MW transmission capacity of the 220kV D/C line, ADHPL would utilize 192 MW for evacuation of ADHPL power and the **balance spare transmission capacity of the line would be made available for evacuation of power from other projects in the Parbati/Beas valley viz, Malana – II (100 MW) AND Sainj (100MW).**”*

Thus the dedicated transmission line has been constructed by one generator in place of the development of the inter-state transmission line by Power Grid till Panarsa as planned earlier. All generators in the region whose requirements were taken into account by CEA at the time of planning the inter-State transmission line till Panarsa have been tied up with the dedicated transmission line of Respondent No.1 to evacuate power from their generating stations. Though the 220 kV D/C Allain Duhangan Hydro Electric Project (ADHEP)-Nalagarh transmission line has been developed by Respondent No.1, the main purpose of the line is to evacuate power of all generating stations in the region till Nalagarh where it is connected to the transmission system of CTU.

15. Respondent No.1 has submitted that the original TEC approval of its project and subsequent amendment issued by the Central Electricity Authority mention that transmission line to be constructed for Respondent No.1 was a dedicated transmission line. The petitioner in its rejoinder has submitted that perusal of various letters, documents and meetings over the last three years prove that the Respondent No.1 has been conferred with the responsibility of

evacuating the power generated by the project of the petitioner which falls within the same region/corridor and therefore the said transmission line cannot be treated as a dedicated transmission line. The said transmission line is dedicated to the corridor and would be utilised for evacuation of power being generated by other projects also in the said area. It has been further submitted that even prior to the grant of approval under section 68 of the 2003 Act to ADHPL for their ADHPL-Nalagarh transmission line, the Central Electricity Authority had recommended to MOP that the balance transmission capacity of the transmission lines should be made available to other projects in the region including Malana II. Moreover, Power Grid has communicated to EPPL in its letter dated 24.10.2007 that the master plan of CEA envisaged evacuation of power from Malana II HEP by LILO of one circuit of Allain Duhangan-Nalagarh 220 kV D/C line.

16. We have considered the submissions of the petitioner and Respondent No.1. There is no doubt that as per the Master Plan envisaged by the Central Electricity Authority, the transmission line is required to wheel the power of other generators in the region till the Nalagarh sub-station of Power Grid. Since, the petitioner has been permitted by Ministry of Power, Government of India in its sanction letter under section 68 of the Act to wheel its power by LILO of one circuit of Allain Duhangan-Nalagarh transmission line till the Nalagarh sub-station of Power Grid, the portion of the transmission line to be used by EPPL becomes a part of the inter-State transmission system as "inter-State transmission system" under 2(36) of the 2003 Act which includes conveyance within the State which is incidental to inter-State transmission of



electricity. Moreover, permission to EPPL in the sanction letter under section 68 of the Act to use the transmission line of ADHPL is deemed to be read into the sanction letter to ADHPL under section 68 of the Act and such permission to ADHPL is conditional to wheeling the power of other generators in the region whose generating stations were included in the planning process of CTU and CEA. Since the subject transmission line has been planned to evacuate power from the region for injection into the sub-station of Power Grid at Nalagarh, the transmission line is incidental to inter-State transmission system. The Commission which has been vested with the responsibility to regulate inter-State transmission has the jurisdiction to issue directions under section 79(1)(c) of the Act to regulate transmission on the subject transmission line.

17. The learned Counsel for Respondent No.1 argued during the hearing of 29.3.2011 that ADHPL has created a redundancy to wheel its own power during outage and it can share this redundancy with others on its own terms. We are not in agreement with the submission of the Respondent No.1 for the reason that the redundancy sanctioned in the Techno-economic clearance stands superceded as per the latest Master Plan of CEA which envisaged that the transmission line will be used for other generators in the region. Therefore, Respondent No.1 has a liability to carry the power generated by other generators in the region. Besides EPPL, there are other generators who would require this line for wheeling their power. Therefore, the Commission being vested with the power of regulation of inter-State transmission of electricity is under a statutory obligation to regulate and facilitate inter-State transmission of power and in discharge of the said function, the Commission is of the view that

the applicant has made substantial investment for setting up the generating station which is ready for commercial operation on the basis of the LTOA granted by CTU. Now the liability for making available the transmission line by CTU has been shifted to the Respondent No.1 in terms of the approval under section 68 of the Act to the applicant. The power from the generating station of EPPL will ultimately go to PSEB and the end consumers of Punjab apart from 12% free power to the State of Himachal Pradesh. Non-scheduling of power from the generating station on account of the dispute between applicant and Respondent No. 1 will be a huge national loss especially in the present shortages of electricity. The Commission has been vested with the power to regulate inter-State transmission of electricity which means that the Commission is required to ensure free flow of electricity on the inter-State transmission system and for that purpose, the Commission can issue appropriate directions even in respect of dedicated transmission lines which are planned and developed for inter-State transmission of power.

18. In view of our finding in the preceding paragraph with regard to Commission's jurisdiction to deal with the matter under section 79(1)(c) of the Act and in the facts and circumstances of this case, we do not consider it necessary invoke our jurisdiction under Section 60 of the Act.

19. The next question therefore arises as to what directions could be issued by the Commission under the facts and circumstance of the case to ensure that inter-State transmission of electricity on the subject transmission line does not



suffer on account of persistent difference between Petitioner and the Respondent No. 1 with regard to the terms and conditions of the Transmission Service Agreement (TSA). The Petitioner and Respondent No. 1 are not *ad idem* on the terms and conditions of the –TSA on the following aspects:

- (i) Return on Equity : 3 % higher than CERC norms.
- (ii) Cost of 220 kV ADHEP-Nalagarh line: ₹ 2.2 crores per km.
- (iii) Absolute control of 132/220 kV Chhaur substation established by EPPL to remain with ADHPL.
- (iv) Priority to be with ADHPL in case of outage of one circuit of ADHEP-Nalagarh line.
- (v) Scheduling & dispatch of Malana-II HEP by ADHPL.
- (vi) 4% additional loss to be deducted from generation of MALANA II HEP.

20. In view of the peculiar nature of the case where refusal of connectivity by Respondent No.1(ADHPL) to the petitioner (EPPL) may result in bottling of power of Malana-II HEP, the Commission after detailed deliberation hereby directs the parties to follow the following procedure for coordinated operation and control of generating stations and transmission assets:

- (a) **Connectivity:** The ADHPL shall provide connectivity to EPPL on 220 kV ADHEP-Nalagarh transmission line with immediate effect.
- (b) **Capital cost:** The capital cost of the transmission line shall be mutually decided by EPPL and ADHPL taking into consideration approved project cost of the transmission line and the audited expenditure of the transmission line, and the benchmark capital cost for similar line of CTU.

- (c) **Return on Equity:** Return on Equity shall be on the basis of the rate of return allowed under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 as amended from time to time and any subsequent amendment thereof.
- (d) **O&M Expenses:** O&M expenses shall be calculated on actual and borne in proportion to the use of the transmission line.
- (e) **Control of Sub-station:** The control of 132/220 kV Chhuar Substation will be with EPPL and ADHPL may appoint its representative at this substation for coordination purposes.
- (f) **Lead Generator:** In accordance with Central Electricity Regulatory Commission (Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time, ADHPL will take responsibility of lead generator.
- (g) **Control Area:** The area comprising Allain Duhangan HEP, Malana II HEP and 220 kV ADHEP-Nalagarh transmission line, LILO of this transmission line alongwith 132/220 kV substation at Chhuar will form separate control area. To further clarify this, before Nalagarh inter-connection point at ISTS, all electric elements shall be part of this control area and interface point of 220 kV ADHPP-Nalagarh circuit with Nalagarh shall be considered as the interface point of this control area .
- (h) **Formation of a coordination Centre:** A coordination centre similar to sub-Load dispatch centre shall be established which would coordinate on behalf of all the generators with respective RLDC or SLDC in all respects of combined schedule, deviations, registration as a single user, payment of transmission charges for ISTS/STS,

payment of LDC charges etc. This would also be take care of its areas responsibility in term of switching and security issues in consultation with concerned RLDC/SLDC. Thus all system operation and market operation issues would be handled by this coordination centre for such new control area in coordination with concerned RLDC/SLDC. This coordination centre shall be managed jointly by both generating companies. The cost of establishing this centre shall be borne by both parties in proportion to their generating capacity .If both parties agree, control room of the one substation or generating stations may be used as control centre by making arrangement of Communications required for performing all functions of Load Despatch centre(LDC).

(i) **Responsibility of the coordination Centre:** The coordination Centre shall be responsible for:

(i)Coordinate with the concerned RLDC/SLDC on behalf of entire electrical control area upto the common connection point on all matters of system operation and market operation.

(ii)Coordinate with individual generators on all matters of system operation and market operation.

iii)Represent whole control area (all generators and dedicated transmission system) in various forums of Regional Power Committees.

(iv) Metering, protection coordination, shutdown coordination, outage coordination, switching instruction, scheduling and accounting within its control area.

(v) Payment of Transmission charges, losses, UI charges, Reactive energy charges, LDC fee and charges to the

concerned pool/authority for ISTS/STS usages on behalf entire control area.

(vi) Calculation/exchange of individual schedules, accounts for individual deviation, computation of individual charges/losses for dedicated portion as well apportioning for ISTS/STS portion which would be communicated by concerned RLDC/SLDC for entire control area.

(vii) On-line communication and real-time data telemetry to RLDC/SLDC

(viii) Off-line data about various information to RLDC/SLDC

(ix) Sending meter data of interface meters installed by CTU/STU to RLDC/SLDC.

(j) **Procedures:** Various procedures to be adopted by the coordination centre/Lead coordinator:

(i) Scheduling: Time line for information exchange between coordination centre and RLDC/SLDC for this activity would be as given in the concerned Grid Code. The coordination centre has to take care of 'to and fro' information exchange between individual generators and coordination centre and computation to be done at its end so that above time line of exchange between RLDC/SLDC and coordination centre is met.

(ii) Metering and Accounting: The principle adopted by the coordination centre for metering and accounting within control area should be similar to one notified in the concerned grid code. Additional meters if required for this purpose may be

installed. The special energy meter shall be installed by CTU at the cost of respective generating stations as per scheme agreed in the meeting held on 3.9.2010 with RLDC. For sake of clarity, the metering arrangement is shown in Annexure-I. Computation of deviation energy account, Reactive Energy charges account shall be done in based on regulations framed by the Commission and duly taking into the account the figures computed by RLDC/SLDC at its interface point with ISTS/STS.

(lii)Computation and apportionment of transmission charges for within its control area transmission system (dedicated transmission system): The tariff may be worked based on norms, in respect of return on equity, depreciation, interest on load, working capital etc, followed by the concerned SERC/CERC. The capital cost shall be as per audited figures and worked out as per the principle enumerated in sub-para (b) above. Allocation of this cost may in *pro rata* to the installed capacity of the generation.

(iv)Computation and apportionment of transmission losses in shared dedicated section: The estimated percentage average transmission losses shall be applied to the respective schedules. The estimation shall be based on the previous week's actual percentage average losses worked out through the actual meter readings.

(v)Outage handling and priorities shall be similar to the one enumerated in the concerned grid code and in accordance with Central Electricity Regulatory Commission (Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2010 as

amended. Although in normal case no evacuation constraint is envisaged for power of both ADHPL and EPPL, in case of eventuality of transmission constraints, Regional system operator will decide schedule of generation depending on system conditions and prevailing hydro condition and his decision in this regard shall be final.

(k) All the above procedures/ rules may be enumerated in writing beforehand and copy may also be submitted to the concerned RLDC/SLDC under intimation to the Commission.

(l) Help of concerned RLDC/SLDC may be sought on the above issues so that above procedures are in line with concerned regulations implemented by RLDCs/SLDCs.

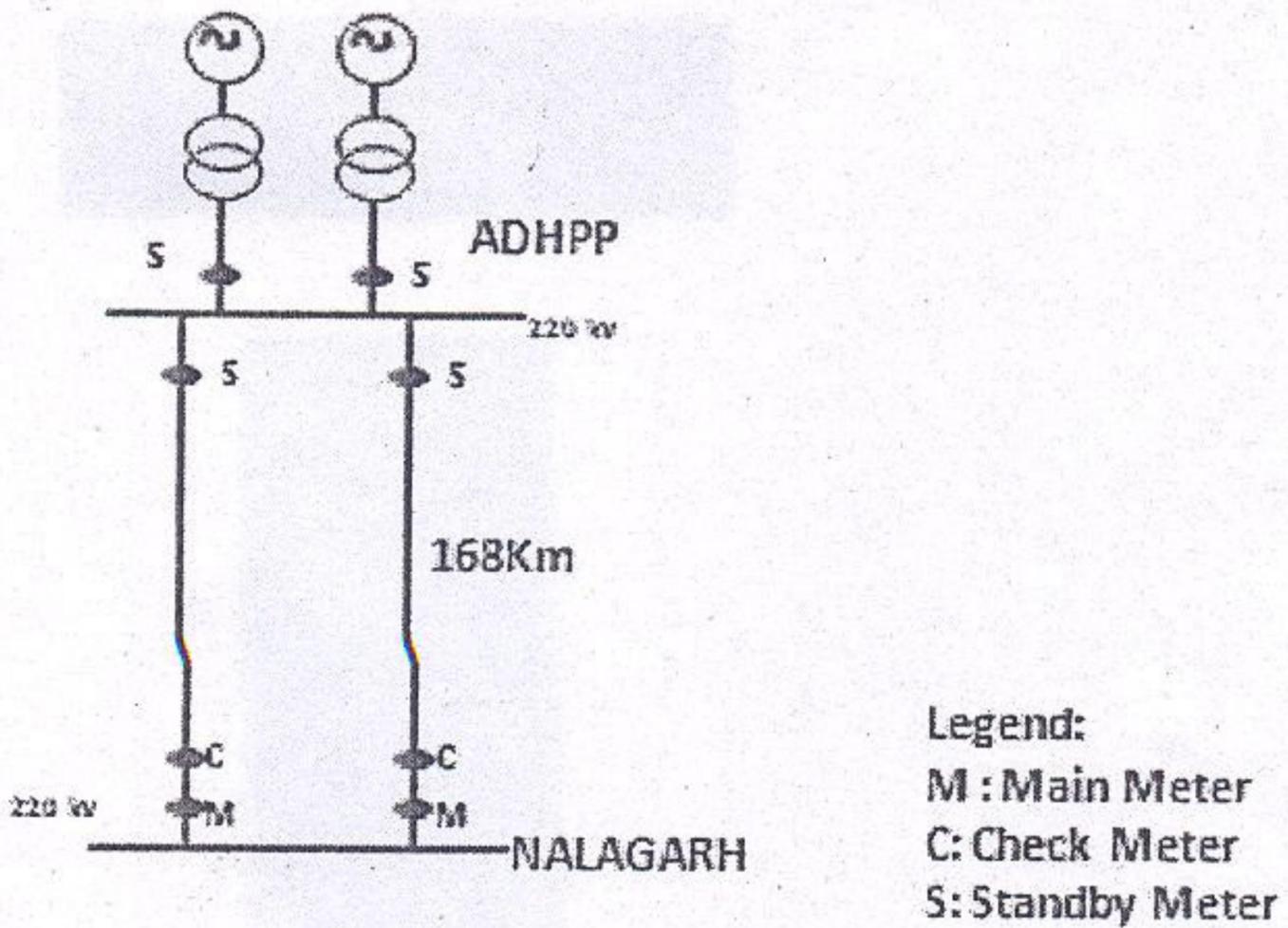
21. IA No.5/2011 has become infructuous in view of above directions.

22. Petition No.259/2010 is disposed of accordingly.

Sd/-	sd/-	sd/-	sd/-
(M.DEENA DAYALAN)	(V.S.VERMA)	(S.JAYARAMAN)	(Dr. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON



**Inter-face Metering arrangement for Allain Duhangan
Hydro Power Project (ADHPP)
{Before commissioning of Malana-II HEP}**



**Inter-face Metering arrangements for Allain Duhangan
Hydro Power Project (ADHPP) and Malana-II HEP
{After commissioning of Malana-II HEP}**

