

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 104/MP/2018
With IA No. 20/2018**

**Coram:
Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Dr. M.K. Iyer, Member**

Date of Order: 18th of September, 2018

In the matter of

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

**And
In the matter of**

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

...Petitioner

Vs.

1. NRSS XXXI (A) Transmission Limited
Core-4, SCOPE Complex,
7, Lodhi Road, New Delhi-110 003
2. AD Hydro Power Limited
Bhilwara Towers,
A-12, Sector-1,
Noida-201 301, Uttar Pradesh
3. Haryana Power Purchase Centre
Shakti Bhawan, Energy Exchange,
Room No. 446, Top Floor,
Sector-6, Panchkula-134 109, Haryana
4. Punjab State Power Corporation Limited
Shed No. T-1-1, Thermal Design,
Near 22 No. Phatak,
Patiala, Punjab-147 001

5. Himachal Sorang Power Private Limited
D-7, Sector-1, Land-1, 2nd Floor,
New Shimla, Shimla-171 009, Himachal Pradesh
6. Adani Power Limited
3rd Floor, Achalraj,
Opposite Mayors Bungalow,
Law Garden, Ahmedabad-380 006
7. Jaipur Vitran Nigam Limited
Vidyut Bhawan, Janpath,
Jaipur-302 005, Rajasthan
8. Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer, Rajasthan
9. Jodhpur Vidyut Vitran Nigam Limited
400 k V GSS Building,
Ajmer Road, Heerapura, Jodhpur, Rajasthan
10. Lanco Anpara Power Limited
Plot No. 397, Udyog Vihar,
Phase-3, Gurgaon 122 016
11. Lanco Green Power Private Limited
Plot No. 397, Udyog Vihar,
Phase-3, Gurgaon 122 016
12. Power Development Department,
Government of Jammu and Kashmir
SLDC Building, 1st Floor, Gladani Power House,
Narwal, Jammu and Kashmir-180 006
13. North Central Railway
Divisional Railway Manager
DRM Office, Nawab Yusuf Road,
Allahabad, Uttar Pradesh-211 011
14. Jaiprakash Power Ventures Limited
A Block, Sector-128, Noida-201 304, Uttar Pradesh
15. BSES Yamuna Power Limited
2nd Floor, B-Block,
Shakti Kiran Building (Near Karkadooma Court)
New Delhi-110 092

16. BSES Rajdhani Power Limited
BSES Bhawan, 2nd Floor,
B- Block, Behind Nehru Place Bus Terminal,
Nehru Place, New Delhi-110 019

17. Tata Power Delhi Distribution Limited
33 k V sub-station Building
Hudson Lane, Kingsway Camp,
New Delhi-110 009

18. New Delhi Municipal Corporation
PALIKA Kendra, Sansad Marg,
New Delhi-110 001

19. Union Territory of Chandigarh
Div-11, Opposite Transport Nagar,
Industrial Phase-I, Chandigarh-160 011

20. Power Grid Corporation India Limited
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-110 016

21. Uttar Pradesh Power Corporation Limited
14th Floor, Shakti Bhawan,
Extan Building, 14 Ashok Marg,
Lucknow, Uttar Pradesh-226 001

22. PTC India Limited
2nd Floor, NBC Tower,
15, Bhikaji Cama Place,
New Delhi-110 006

23. Himachal Pradesh Power Transmission Corp. Limited
Himfed Building, Pinjari,
Shimla-171 006

24. Member Secretary
Northern Region Power Committee,
18-A, Katwaria Sarai, Shaheed Jeet Singh Marg,
New Delhi-110 016

.....Respondents

Parties Present:

Shri Anand K. Ganesan, Advocate, HPSEB
Ms. Swapna Seshadri, Advocate, HPSEB

Shri Deepak Uppal, HPSEB
 Shri Suresh Mukherjee, Advocate, PGCIL
 Shri Deep Rao, Advocate, PGCIL
 Shri Divyanshu Bhatt, Advocate, PGCIL
 Shri R.B. Sharma, Advocate, BRPL & BYPL
 Shri Mohit Mudgal, Advocate, BRPL & BYPL
 Shri B.Vamsi, PGCIL
 Shri V.C. Shekhar, PGCIL

ORDER

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

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

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

3. NRSSTL declared commercial operation of its transmission system on 12.7.2017 in terms of the provisions of 6.1.2 of the TSA. The issue regarding inclusion of the subject transmission line in PoC was raised by NRSSTL in the third Validation Committee meeting held on 29.8.2017. In the Validation Committee it was decided that the subject transmission line shall not be considered under PoC due to non-availability of the downstream network and the same shall be governed as per the Commission's order dated 4.1.2017 in Petition No. 155/MP/2016. Accordingly, NRSSTL is raising the invoices for the entire transmission system on the Petitioner.

4. Aggrieved by the said decision of NRSSTL, the Petitioner has filed the present petition under Section 79 (1) (c) and (f) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') along with the following prayers:

“(a) Hold and declare that the Respondent No. 1 is not entitled to the recovery of the entire YTC from the scheduled date of commissioning of the subject transmission system from the Petitioner;

(b) Hold and direct that the Respondent No. 1 is entitled to the recovery of the YTC from the Scheduled Date of commissioning of the subject transmission system only under the POC mechanism under the Sharing Regulations of the Commission as provided in the TSA;

(c) Award costs of the present proceedings.”

Petitioner`s submission

5. The Petitioner has submitted that the decision to make the Petitioner liable for payment of transmission charges till the COD of the downstream system is not legally tenable due to the following reasons:

(a) In the 31st Standing Committee Meeting on the Power System Planning of the Northern Region held on 2.1.2013, deliberations were held on the future expansion of the Northern Regional inter-State transmission network. In the said meeting, amongst various other systems, it was also proposed to establish 400/220 kV sub-station at Kala Amb in the State of Himachal Pradesh along with LILO of both circuit of Karcham Wangtoo-Abdullapur 400 kV D/C line at Kala Amb and 40% Series Compensation on 400 kV Karcham Wangtoo-Kala Amb D/C line. Accordingly, 400 kV Kala Amb sub-station and associated facilities including the LILO of both circuits of the Karcham Wangtoo-Abdullapur line and also the 40% Series compensation was envisaged to be developed as an integrated system for strengthening of the Northern Region grid, and not as an isolated system for the sole benefit of the State of Himachal Pradesh.

(b) Pursuant to the above decision, the transmission system for establishment of (a) 400/220 kV sub-station at Kala Amb in the State of Himachal Pradesh; (b) LILO of both circuits of Karcham Wangtoo-Abdullapur 400 kV D/C line at Kala, Amb, and (c) 40% Series Compensation on 400 kV Karcham Wangtoo-Kala Amb D/C line were taken up for execution under the tariff based competitive bidding process under Section 63 of the Act.

(c) Subject transmission system is not dedicated to the use of the State of Himachal Pradesh, but is part of the Northern Regional System Strengthening Scheme as agreed to by all the constituents. Apart from providing for infrastructure for further downstream system to be created by the Petitioner, the subject transmission system also envisaged to provide 40% compensation on the Karcham Wangtoo-Kala Amb line to strengthening the Karcham Wangtoo-Abdullapur 400 kV D/C line and for the purpose of creation of LILO on both the 400 kV circuits of the Karcham Wangtoo-Abdullapur 400 kV D/C line;

(d) The subject transmission system was not created for the sole benefit of the Petitioner. In fact, the 2x315 MVA transformers and the six numbers of 220 kV bays being developed by the Petitioner constitute a small portion of the total cost. The LILO on both circuits of the 400 kV Karcham Wangtoo-Abdullapur 400 kV line, 2x80 MVAR Bus Reactor and 40% series compensation and the other shared facilities including land, etc. are not for the exclusive benefit of the Petitioner, but for general Northern Regional System Strengthening.

(e) The Petitioner has taken all possible steps to establish downstream system. However, due to non-availability of land and impediments in taking possession over the land to be acquired, the Petitioner could not establish downstream system.

(f) NRSSTL declared the commercial operation of the transmission system on 12.7.2017 on deemed basis since NRSSTL did not obtain immediate permission for connecting to the Karcham Wangtoo-Abdullapur line due to system constraints. However, regular commercial operation of the transmission system started from the date of grant of permission. NRSSTL has been raising the invoices for the entire transmission charges of the transmission system from 12.7.2017 on the ground that the Petitioner did not construct downstream transmission system and following the Commission`s decision dated 4.1.2017 in Petition No. 155/MP/2016.

(g) There is no provision in the TSA which provides that the transmission system is dependent on the downstream transmission assets. The downstream transmission assets are also not a part of the project.

(h) In the 37th TCC and 40th NRPC meeting held on 27th and 28th October, 2017, all the beneficiaries of the Northern Region have agreed that charges for the subject transmission system are to be recovered under POC mechanism. Therefore, the recovery of transmission charges ought to be under the PoC mechanism in the present case.

(i) As per Article 10.1 of the TSA, LTTCs are required to pay the TSP, the monthly charges from the COD of the transmission system till the expiry of the Agreement or the termination of the TSA. Therefore, LTTCs have to bear the transmission charges and not for any single LTTC to pay the transmission charges. Article 18.20 of the TSA provides that the terms and conditions of the TSA are the entire agreement between the parties. Therefore, it is not open to NRSSTL to claim any right apart from the rights provided in the TSA.

(j) As per Regulation 3 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time (hereinafter referred to as the Sharing Regulations), ISTS customers are required to share the Yearly Transmission Charges and only methodology provided in the Sharing Regulations is for the payment of the transmission tariff by the beneficiaries under the POC mechanism. Once the tariff is decided either under competitive bidding under Sections 63 or 62 of the Act and a date of commercial operation is fixed, the said tariff has to be automatically shared by all the LTTCs under the Sharing Regulations under the PoC mechanism.

(k) Linking the recovery of the transmission charges and rather postponing the recovery till the downstream system is neither envisaged in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 2014 Tariff Regulations) nor in the Sharing Regulations. Once a transmission asset is declared under commercial operation,

its recovery automatically gets shared as per the provisions of the Sharing Regulations.

(l) As per Regulation 43 of the 2014 Tariff Regulations, the transmission charges are required to be shared by the beneficiaries or LTTCs in accordance with the Sharing Regulations. Therefore, it is not open to any person to seek the recovery of transmission charges in any manner other than the methodology provided for in the regulations. In this regard, the Petitioner has placed its reliance on the judgments of the Hon`ble Supreme Court in PTC India Vs. Central Electricity Regulatory Commission & Others [(2010) 4 SCC 603, Paras 45,44,56 and 57] wherein it has been held that once a Regulation is framed, all measures taken by the Commission has to be in conformity and consonance with the Regulations.

(m) Considering the facts of the present case wherein the subject transmission system is a composite system and not for the exclusive use or benefit of the Petitioner, the question of recovering the entire cost of the subject transmission system from the Petitioner alone does not arise.

(n) The Petitioner has been affected by force majeure in relation to land acquisition for establishment of the downstream system at 220 kV level. There is no difficulty with regard to the 132 kV system which was the initial proposal of the Petitioner. The issues of force majeure affecting the Petitioner need to be gone into in case the Petitioner is to be found in default, which has not been gone into.

(o) Being aggrieved from the methodology of recovery of transmission charges the Petitioner raised the issue in the 37th TCC meeting of NRPC held on 27.10.2017 in which member present and NRSSTL supported the contention of the Petitioner that the transmission charges should be recovered through POC mechanism and NRPC concurred the TCC deliberations in its 40thTCC meeting held on 28.10.2017 and directed Member Secretary, NRPC to forward the opinion of Members to the Commission for consideration.

6. The Petitioner has filed IA No. 20/2018 seeking stay on the recovery of the transmission charges by NRSSTL from the Petitioner.

7. Notices were issued to the Respondents to file their replies. NRSSTL, and BSES Rajdhani Power Limited have filed their replies. The Petitioner and NRSSTL filed their written submissions.

Respondent`s submissions

8. NRSSTL in its reply dated 10.5.2018 has submitted as under:

(a) NRSSTL completed its transmission project in accordance with TSA and declared COD on 12.7.2017. NRSSTL gave notice dated 11.5.2017 to all the LTTCs in accordance with Clause 6.1.1 of the TSA providing sixty days notice of inter-connection of its transmission project. On 5.7.2017 and 12.7.2017, NRSSTL gave notices to all the LTTCs in terms of Article 6.2 1 of the TSA declaring that transmission project is ready for charging and the transmission project has been declared under commercial operation on 12.7.2017 respectively.

(b) PoC charges must be borne by the pool of DICs as a whole from COD onwards. As per the Request for Proposal (RfP), the transmission charges are required to be shared and recovered for payment in terms of the Sharing Regulations. From the pre-bidding stage itself, it was understood by all concerned including NRSSTL that the recovery mechanism under the TSA would be through the Sharing Regulations, and not through any bilateral billing on a particular beneficiary.

(c) The scheme is a system strengthening scheme and transmission charges shall be paid by all the beneficiaries and the same was agreed by the LTTCs, CEA and CTU in the 40th NRPC meeting held on 28.10.2017.

(d) At the time of bidding, NRSSTL was never informed of the possibility that only one entity could be made liable for the transmission charges instead of POC pool. NRSSTL has received Rs. 10 crore from the Petitioner from the COD of the project. However, as on today, about 33 crore are outstanding. NRSSTL has prayed to direct that the outstanding transmission charges along with late payment surcharge be paid to ensure the continued viability of its project.

9. BSES Rajdhani Power Limited in its affidavit dated 28.6.2018 has submitted that since, non-completion of the downstream network is not related to BRPL, no reply is required to be filed on the issue and other similar issues.

10. Vide Record of Proceedings for the hearing dated 26.4.2018, PGCIL was directed to submit information, namely (i) whether downstream 200 kV lines were part of system strengthening scheme and action taken by PGCIL in response to the Petitioner's letter dated 2.6.2017. PGCIL vide its affidavit dated 14.5.2018 has submitted the information called for. With regard to (i) above, PGCIL has submitted that downstream 220 kV line being built by the Petitioner was not part of system strengthening. As per 31st Standing Committee Meeting on Power System Planning of Northern Region held on 2.1.2013, downstream assets were not part of the project and the same has been concurred in the 28th Northern Regional Power Committee meeting held on 26.4.2013. With regard to (ii), PGCIL has submitted that the Petitioner vide its letter dated 2.6.2017 requested NRSSTL to delay the GIS sub-station under the project being constructed, in the light of the fact that it was confronting significant Right of Way issues. Further, the Petitioner requested that it be allowed to install its 220/132 kV 50/63 MVA transformer in the switchyard of NRSSTL sub-station due to non-readiness of the own sub-station. PGCIL has submitted that NRSSTL vide its letter dated 16.6.2017 informed the Petitioner that all activities have been progressively undertaken since May 2014 to complete the project as per the schedule date i.e. July, 2017. Since only a month was left for completion and almost all investment incurred at the time of the Petitioner's was made, NRSSTL informed the Petitioner that the request to delay the project by six months could not be entertained. PGCIL has submitted that with regard to request for installation of transformer, NRSSTL informed the Petitioner that no such provision had been envisaged during the bidding stage. However, joint visit could be conducted by officials of the Petitioner and NRSSTL to explore the possibility of accommodating the transformer.

Analysis and Decision:

11. We have perused documents on record. The issue that arise that for our consideration in the Petition is “Whether the Petitioner is liable to pay the transmission charges till the downstream system being executed by it are commissioned or the recovery should be made through the PoC mechanism ?”

12. NRSSTL has submitted that the scope of work awarded to it was based on the tariff based competitive bidding. The SCOD of the said transmission system is 38 months from the effective date (12.5.2014). NRSSTL declared the commercial operation of the transmission system on 12.7.2017 which is within time. NRSSTL has submitted that it is entitled for recovery of transmission charges in accordance with the Sharing Regulations from the DICs. NRSSTL has submitted that payment of transmission charges is not linked with the readiness of upstream or downstream transmission system which is beyond the scope of the developer. NRSSTL vide its notice dated 12.7.2017 informed the LTTCS about declaration of COD of the project w.e.f 12.7.2017 in terms of Article 6.2.1 of the TSA.

13. The Petitioner has stated that 400/220 kV sub-station has been established under the ISTS and the Petitioner is required to construct 220 kV downstream. However, the same could not be constructed due to force majeure, namely delay in land acquisition, which is beyond the control of the Petitioner. The Petitioner has placed on record the 31st Standing Committee Meeting on the Power System Planning of the Northern Region held on 2.1.2013 where future expansion of the Northern Regional inter-State transmission network was discussed and it was proposed to establish 400/220 kV sub-station at Kala

Amb in the State of Himachal Pradesh along with LILO of both circuits of Karcham Wangtoo-Abdullapur 400 kV D/C line at Kala Amba and 40% Series Compensation on 400 kV Karcham Wangtoo Amb D/C line as part of Northern Region System Strengthening Scheme. The relevant portion of the minutes of meeting of the 31st Standing Committee on the Power System Planning of the Northern Region is extracted as under:

“17. Establishment of 2x315 MVA 400/220 kV substation at Kala Amb

POWERGRID stated that HPPTCL has informed that the present load in Kala Amb /Poanta/Giri area is about 350 MVA, which is likely to increase to about 500 MVA by 2015-16 whereas the available generation and transmission network in the area is not adequate to meet the present load.

In order to meet the present and future load requirement of the area, HPPTCL had proposed for establishment of a 400/220/132 kV substation at Kala Amb by LILO of one circuit of either N’Jhakri – Abdullapur or KarchamWangtoo – Abdullapur 400kV line. The matter was analysed and it was observed that N’Jhakri – Abdullapur 400kV D/c line has already been looped in looped out at Panchkula and LILO of the same line has been approved at Sainj (near Simla). Considering the capacity of the line, it would not be desirable to LILO the N’Jhakri – Abdullapur line at Kala Amb. Further, as Karcham Wangtoo – Abdullapur 400 kV D/c line is also passing in close proximity to Kala Amb area and to meet the loads in the area, the LILO of the Karcham Wangtoo – Abdullapur 400 kV D/c was proposed to be carried out at Kala Amb. HPPTCL had proposed to LILO only one circuit 400 kV line however LILO of one circuit would result into unbalanced loading, it was therefore proposed that LILO of both the circuits may be carried out at Kala Amb.

Considering the issues of hilly terrain & scarcity of land in Himachal Pradesh, it was proposed to establish this substation as GIS station. HPPTCL had proposed the substation as 400/220/132 kV substation, however it was decided that the substation be established as 400/220 kV under ISTS and further works of 220kV and 132kV may be carried out by HPPTCL as per their requirement. **It was also agreed that LILO may be carried out on Multi-circuit Towers to conserve R-o-W.**

The constituents agreed to take up the above proposed works as Northern Regional System Strengthening Scheme- NRSS-XXXI.

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10. System strengthening to overcome constraints in Northern Region

a) High loading in Nathpa Jhakri - Nalagarh lines:

POWERGRID stated that from the operation experience, it has been observed that during the paddy season loading on 400 kV NathpaJhakri – Nalagarh – Patiala lines remains on the very high side i.e. in the range of 800 MW per circuit and outage of one circuit in this corridor

results in the overloading on the remaining circuit, thus endangering the grid security whereas loading on NathpaJhakri – Panchkula – Abdullapur line remains on the lower side. To alleviate this problem, it is necessary to provide alternate supply to Patiala.

Studies were carried out with Panchkula – Patiala 400 kV D/c line to meet this requirement. From the results of the studies, it is observed that this line provides a relief to NathpaJhakri – Nalagarh lines as well as help during the contingency of outage of one circuit NathpaJhakri – Nalagarh 400 kV line. **The study results are given at ANNEX-III.**

POWERGRID informed 400 kV KarchamWangtoo – Abdullapur D/c line is constructed with Quad conductor and in order to increase loadability of this line for better sharing of load, **it was proposed to provide 40% series compensation on 400 kV KarchamWangtoo – Abdullapur D/c line. This would not only improve the loadability of KarchamWangtoo – Abdullapur 400 kV D/c but also help in reducing the oscillations.**

HVPNL stated that there might be R-o-W issue for this line and they have also planned 220kV lines from Panchkula. There is already constraint in the area as forest area fall en-route of lines from Panchkula S/s.

The scheme was discussed and it was agreed that multi circuit towers for 400 and 220kV lines emanating from Panchkula S/s would be considered to optimally utilize the R-o-W, in consultation with HVPNL (here it is to mention that 220 kV line to UT Chandigarh is also being planned which may also be taken up on the Multi circuit towers in forest area depending upon the requirement & feasibility).

NLDC stated that this line is an urgent requirement for reliable evacuation of power from KarchamWangtoo / NathpaJhakri complex and **should be implemented on priority by Powergrid on compressed time schedule.**

Members agreed to the above proposal.

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Keeping above (point 10 (a to f) and para 6, 11 17, 36 & 41 in view, following transmission works were proposed as Northern Regional System Strengthening scheme

NRSS-XXXI (Under Tariff Based Competitive Bidding)

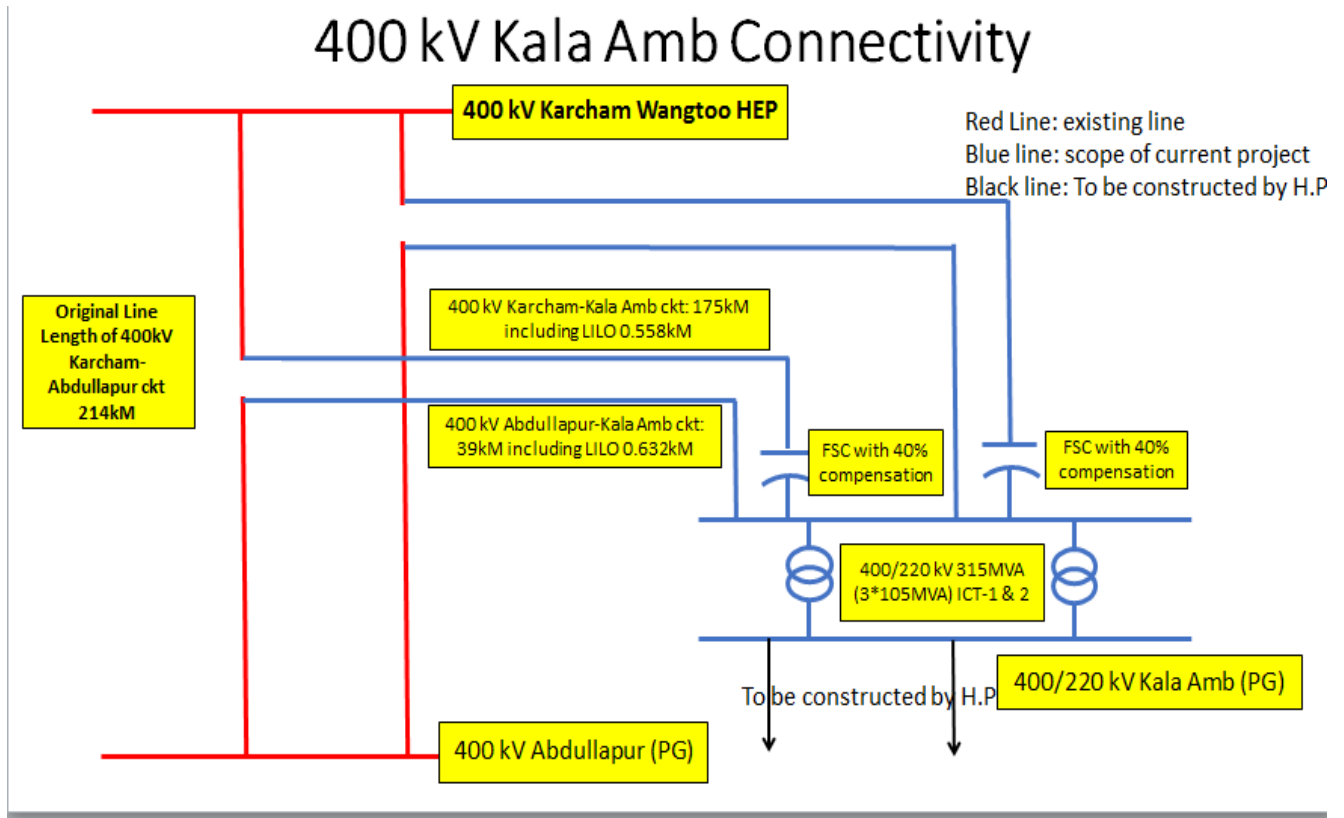
- Establishment of a 2X315MVA, 400/220 kV substation at Kala Amb(**refer para no-17**)
- LILO of both circuits of KarchamWangtoo-Abdullapur 400kV D/c line at Kala Amb(**refer-para no-17**)
- 40% Series Compensation on 400 kV KarchamWangtoo-Kala Amb D/c line
- 400 kV Kurukshetra – Malerkotla D/c line
- 400 kV Malerkotla – Amritsar D/c line
- Bay extension at existing / under construction substations of POWERGRID, shall be carried out by POWERGRID

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14. On perusal of the above minutes of meeting, the following emerges:
- (a) The transmission system executed by NRSS XXXI (A) transmission Limited comprise of the following elements:
- (i) LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation alongwith establishment of Kala-Amb substation.
 - (ii) 40% FSC (series compensation) on Karcham-Wangtoo --Abdullapur line.
- (b) System at (i) above is required solely for purpose of additional load requirement of HPPTCL. The following is recorded in 31st SCM:
- “POWERGRID stated that HPPTCL has informed that the present load in Kala Amb /Poanta / Giri area is about 350 MVA, which is likely to increase to about 500 MVA by 2015-16 whereas the available generation and transmission network in the area is not adequate to meet the present load.
- In order to meet the present and future load requirement of the area, HPPTCL had proposed for establishment of a 400/220/132 kV substation at Kala Amb by LILO of one circuit of either N’Jhakri – Abdullapur or KarchamWangtoo – Abdullapur 400kV line.”
- (c) System at (ii) above is for system strengthening i.e to increase loadability of existing Karcham-Wangtoo -- Abdullapur line by providing FSC.
- (d) It is observed that System at (i) above could be put to its intended use only with availability of downstream of H.P. It is specifically recorded in 31st SCM that the transmission system is to be established including a sub-station at Kala Amb 400/220 KV and further works of 220 kV and 132 kV was required to be carried out by HPPTCL, Respondent no. 23 as per its requirement.
- (e) The FSC is a series compensation which helps reducing impedence of a line and thereby helps to increase loadability of a line. It could have been installed

either at Karcham end or at Abdullapur to serve this purpose. From the 31st SCM minutes it can be inferred that it was installed at Kala Amb only because Kala Amb was being planned parallel for additional load requirement of HP.

(f) The Single Line diagram for the Scheme is attached as under:



15. In the 3rd Validation Committee`s meeting held on 29.8.2017, the issue regarding inclusion of Powergrid Kala Amb Transmission Ltd. in PoC was raised by the representative of the Powergrid Kala Amb Transmission Ltd. Relevant portion of minutes of the said meeting held on 29.8.2017 is extracted as under:

“6. Other Issues:

(ii) Transmission system of Powergrid Kala Amb Transmission Ltd.

Representative of POWERGRID Kala Amb Transmission Ltd. stated that its system be considered under PoC. Representative of IA stated that LILO of 400 kV D/C Karcham Wangtoo-Abdullapur along with 40% series compensated by POWERGRID Kala Amb Transmission Ltd. cannot be considered in PoC computation at present due to non-availability of the downstream network. It was also informed that in line with the CERC order dated 4.1.2017 in Petition No. 155/MP/2016, the cost of said transmission line may be recovered from the owner of the downstream network. It was also informed that the said line and associated sub-station have not been commissioned reportedly due to non-availability of shutdown of 400 kV D/C Karcham Wangtoo-Abdullapur during high hydro season. It was also observed that issue emerge as to ascertaining date of COD to be considered by TBCB in accordance with the TSA and the date from which such TBCB system shall be considered under POC. In the light of the above, it was decided that transmission system of POWERGRID Kala Amb Transmission Ltd. shall not be considered under POC due to non-availability of the downstream network and the same shall be governed as per order dated 4.1.2017 in Petition No. 155/MP/2016.”

16. The Commission in its order dated 4.1.2017 in Petition No. 155/MP/2016 has stated as under:

“11. *****

CEA vide letter dated 1.12.2016 has submitted that as on date, the assets of the petitioner on 400 kV side is already integrated with the grid. However, the 400/220 kV Patran sub-station of Patran Transmission Limited cannot be utilized in the absence of downstream networks (220 kV outlets) which is under implementation by PSTCL.”

17. Recently, the Commission in its order dated 31.5.2018 in Petition No. 99/MP/2017 has held as follows:

“20. The Commission has taken a consistent view that the entity who is responsible for the asset not being put to use shall be liable to pay the transmission charges from the date of deemed CoD till the asset is put to use. The issue regarding payment of transmission charges from the date of SCOD was deliberated in Petition No. 43/MP/2016 and the Commission vide order dated 21.9.2016 laid down the principles for such cases and observed as under:

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

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

The above decision of the Commission has been upheld by the Appellate Tribunal in its judgement dated 27.3.2018 in Appeal No 390 of 2017 and IA Nos. 566 of 2017, 725 & 1063 of 2017 (Punjab State Power Corporation Limited Vs Patran Transmission Company Limited & Others). The following observations of the Appellate Tribunal are relevant:

“(vii).....The most relevant decision of the Central Commission matching to the circumstances of the present case is its order dated 21.9.2016 in Petition No. 43/MP/2016 where the principles were laid down clearly that the entity due to which system developed through TBCB route cannot be put to use is liable to pay the transmission charges from SCOD till commissioning of the upstream/downstream system/terminal bays. The Transmission System in question has also been developed through TBCB route. In the present case as per the principles laid down by the Central Commission it appears that PSTCL is the defaulting party and should have been made liable to pay the said transmission charges. However, we find that there is no contractual relation between the Respondent No. 1 and PSTCL. The contractual relation between the Appellant and the Respondent No. 1 is the TSA, which lays down the rights and obligations of the parties. The Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The Article 4.2 of the TSA deals with the obligations of the LTTCs in implementation of the project. The relevant portion is reproduced below:

“4.2 Long Term Transmission Customers’ obligations in implementation of the Project:

4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers’, at their own cost and expense, undertake to be responsible b. for arranging and making available the Interconnection facilities to enable the TSP to connect the Project;”

The LTTCs, including the Appellant at their own cost and expense were required to provide interconnection facilities to the Respondent No. 1 so that the Transmission System could be connected by SCOD and made operational.”

21. In the said case, Patran Transmission Company Limited was implementing the transmission line through TBCB route which achieved CoD as per the SCOD whereas the downstream transmission system being developed by Punjab State Power Corporation Limited (PSPCL) could not be commissioned matching with the TBCB line. The Appellate Tribunal held that the LTTCs including PSPCL were responsible for providing inter-connection facility and PSPCL amongst all the LTTCs was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. Accordingly, PSPCL was held liable for payment of transmission charges from the SCOD till the commissioning of the downstream transmission system.”

In the above cases, the Commission has held that when the transmission asset is not being put to use on account of the default of the entity establishing the downstream transmission line, the defaulting entity should pay the transmission charges till the completion of the downstream system. The said decision has been upheld by Appellate Tribunal for Electricity.

18. It is observed that the transmission system as identified at Para 14 (a)(i) i.e LILO of Karcham–Wangtoo- Abdullapur Line at Kala Amb sub-station along with establishment of Kala-Amb substation appears to be similar to the transmission system established by Patran Transmission Limited in Petition No. 155/MP/2016 . The scope of PTCL as recorded in Petition No. 155/MP/2016 is (i) Creation of 2x500 MVA, 400/220 kV sub-station at Patran (ii) LILO of both circuits of Patiala-Kaithal 400 kV D/C at Patran (Triple Snow Bird Conductor), (iii) 400 kV bays (iv) 220 k V bays and (v) Space for spare bays. However, only difference in the two cases is that the assets in Petition No. 155/MP/2016 could not be put to use due to non-commissioning of downstream system; whereas in the instant case transmission system identified at Para 14(a)(i) i.e LILO of Karcham–

Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation was planned with twin purpose of system strengthening and to meet additional load of HPSEB and part of it i.e FSC has been put to use w.e.f. 12.7.2017. But the transmission system identified at Para 14(a)(i) i.e LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation was intended for meeting additional load of HPSEB and this purpose cannot be served till the downstream system is ready. Hence, keeping in view earlier orders of this Commission and the judgment of the Appellate Tribunal we are of the view that transmission system identified at Para 14(a)(i) i.e LILO of Karcham–Wangtoo – Abdullapur Line at Kala Amb substation along with establishment of Kala-Amb substation cannot be said to put to use till establishment of downstream system by HP. Hence, the transmission charges for the same are payable by HPSEB in light of our order in Petition No. 155/MP/2016.

19. We find that FSC [element at paragraph 14 (a)(ii)] has been planned as a system strengthening scheme and is in use from date of its COD i.e 12.7.2017. We have perused the TSA of NRSSTL which provides as follows:

**“Schedule: 3
Scheduled COD**

[Note: As referred to In the definition of "Element", "Scheduled COD", and in Articles 3.1.3 (C), 4.1(b) and 4.3 (a) of this Agreement]

Sr. No	Name of the Transmission Element	Schedule COD in months from Effective Date	Percentage of Quoted Transmission Charges recoverable on Scheduled COD of the Element of	Elements) which are pre-required for declaring the commercial operation (COD) of the respective Element 18.23.1

			the Project	
1	Establishment of a 7 x 105 MVA (1-ph.), 400/220 kV GIS substation at Kala Amb	38	84.5%	Elements at Sr No.1 & 2 need to be commissioned together
2	LILO of both circuits of Karcham Wangtoo Abdullapur 400 kV D/C** (Quad Moose) line at Kala Amb (on multi Ckt towers)			
3	40% Series Compensation— on 400kV Karcham Wangtoo - Kala Amb quad D/C line at Kala Amb ends	38	15.5%

**Note: One circuit of Karcham Wangtoo - Abdullapur line is getting LILOedout at Sorang HEP.This is for information.”

It is observed that the transmission charges for FSC component is identified separately in the TSA. Accordingly, the tariff for this component (item no. 3 in above table) shall be included in POC from date of its COD.

20. The Petitioner has submitted that during the 37th TCC and 40th NRPC meeting held on 27th and 28th of October 2017 respectively, all the constituent members had unanimously agreed that the transmission charges should be recovered under POC mechanism. The relevant portion of the minutes of meeting of 37th TCC and 40th NRPC is extracted as under:

“C16. Review on exemption on levy of Transmission Charges for PGCIL assets when downstream system due to legitimate constraints could not be developed on or before COD.

TCC Deliberation

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

2 no. 220 k V bays at 400/220 k V sub-station Hamirpur:

2 no bays out of 4 nos bays of the said sub-station are still not being used by HPSEBL.

6 no bays of 400/220 kV sub-station Kala Amb

Due to forest clearance and land acquisition related issues HPSEBL could not develop downstream system for usage of 6 no. bays of said sub-station of PGCIL.

C.16.2 He further stated that on account of several constraints it was not possible to commission the downstream network exactly matching with the commissioning of ISTS system. It was also highlighted that the commissioning of ISTS system benefit the regional power system in form of improved reliability. **He suggested that the tariff of the ISTS system should be included in POC charges instead of charging the same from a single utility.**

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

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

NRPC deliberation

C.16.5 Committee concurred with the TCC deliberations.”

We note that observation of NRPC is of generic nature being made for all ISTS systems indicating that on account of several constraints, it was not possible to commission the downstream network exactly matching with the commissioning of ISTS system and that in such cases tariff of the ISTS system should be included in POC charges instead of charging the same from a single utility.

21. We do not agree with the suggestions forwarded by NRPC as NRPC has not discussed anything on technical usage as to whether the scheme in its present form i.e without availability of downstream can serve its intended usage in the grid. It has also not discussed as to how the scheme will improve reliability in the absence of downstream system. Further, we note that NRPC has only agreed to forward the matter to CERC for consideration. An asset can be included in POC only after it is put to intended use and its utilization can be determined. We have taken similar views in our earlier orders in Petition Nos. 85/TT/2015, 155/MP/2016, 403/TT/2014, 100/TT/2014, 99/TT/2014 and 247/TT/2015.

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

(a) Establishment of a 7 x 105 MVA (1-ph.), 400/220 kV GIS substation at Kala Amb

(b) LILO of both circuits of Karcham Wangtoo Abdullapur 400 kV D/C** (Quad Moose) line at Kala Amb (on multi Ckt towers)

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

24. The Petition No. 104/MP/2018 along with IA No. 20/2018 is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(P.K. Pujari)
Chairperson