

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition Nos. 4/RP/2017 &
15/RP/2017 in Petition No. 156/TT/2015**

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order : 12.12.2018

Petition No. 4/RP/2017

In the matter of:

Review petition under Section 94(1)(f) of the Electricity Act, 2003 and Regulation 103 of Central Electricity Regulatory Commission (Conduct of business) Regulations, 1999 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014, seeking review of the order dated 29.12.2016 in Petition No. 156/TT/2015.

And in the matter of:

Parbati Koldam Transmission Company Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi 110 016

..... Review Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Vidyut Marg,
Jaipur- 302 005.
2. Ajmer Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
3. Jaipur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.



4. Jodhpur Vidyut Vitran Nigam Ltd.,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building-II
Shimla-171 004
6. Punjab State Power Corporation Limited,
Thermal Shed Tia, Near 22 Phatak,
Patiala-147 001.
7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134 109
8. Power Development Department,
Govt. of Jammu and Kashmir,
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001.
10. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110 002.
11. BSES Yamuna Power Ltd.,
Shakti Kiran Building,
Karkardooma, Delhi-110 092.
12. BSES Rajdhani Power Ltd.,
BSES Bhawan, Nehru Place,
New Delhi.
13. Tata Power Delhi Distribution Limited,
Cennet Building, Adjacent to
66/11kV Pitampura-3 Grid Building,
Near PP Jewellers,
Pitampura, New Delhi-110 034
14. Chandigarh Administration,
Sector-9, Chandigarh.



15. Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun.
16. North Central Railway,
Allahabad
17. New Delhi Municipal Council,
Palika Kendra,
Sansad Marg,
New Delhi-110 002.
18. Northern Region Electricity Board
18-A, Shaheed Jeet Singh Marg,
Katwaria Sarai,
New Delhi-110016.
19. Power Grid Corporation of India Limited
"Saudamini",
Plot No.2, Sector-29,
Gurgaon -122 001.
20. National Hydro Power Corporation Limited,
NHPC Office Complex,
Sector-33, Faridabad,
Haryana-121 003
21. Himachal Pradesh Power Corporation Limited,
Sainj (HEP), Himfed Bhawan,
Below Old MLA Quarters Bypass Road,
Tutikandi, Shimla- 171005.

Petition No. 15/RP/2017

In the matter of:

Petition for review and modification of the order dated 29.12.2016 in Petition No. 156/TT/2015 under section 94(1)(f) of the Electricity Act, 2003.

And in the matter of:

NHPC Limited
NHPC Office Complex, Sector-33,
Faridabad-121 003.

... Review Petitioner



Vs

1. Parbati Koldam Transmission Company Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016.
2. Power Grid Corporation of India Limited,
Saudamini, Plot No-2, Sector-29,
Gurgaon -122001 (Haryana)
3. NTPC Limited,
Scope Complex, Institutional Area,
Lodhi Road, Pargati Vihar,
New Delhi- 110 016.
4. Himachal Pradesh Power Corporation Limited,
Sainj (HEP), Himfed Bhawan, Below Old MLA Quarters,
Bypass Road, Tutikandi,
Shimla-171005
(Himachal Pradesh)

..... Respondents

For Petitioner : Shri Amit Kapur, Advocate, PKTCL
Ms. Abiha Zaidi, Advocate, PKTCL
Ms. Aparajita Upadhyay, Advocate, PKTCL
Shri Azad Akbar, PKTCL
Shri Sachin Datta, Sr. Advocate, NHPC
Shri Piyush Kumar, Advocate, NHPC
Shri Rajiv Shankar Dvivedi, Advocate, NHPC
Shri S.K. Sarkar, Advocate, NHPC
Shri Jitender Kumar, Advocate, NHPC
Shri A.K. Pandey, NHPC

For Respondents: Shri Rakesh Prasad, PGCIL
Shri S. K. Venkatesan, PGCIL
Shri Jyoti Prasad, PGCIL
Shri S. S. Raju, PGCIL
Shri B. Dash, PGCIL
Shri R.B. Sharma, Advocate, BRPL & BYPL
Shri Mohit Mudgal, Advocate, BRPL & BYPL



ORDER

By this common order, we shall dispose of the Review Petition Nos. 4/RP/2017 and 15/RP/2017 filed by Parbati Koldam Transmission Company Limited (“PKTCL”) and NHPC Limited (“NHPC”) respectively as both petitions have been filed seeking review of the same order dated 29.12.2016 in Petition No. 156/TT/2015 and the issues raised in the Review Petitions are related.

Brief facts of the case

2. Parbati Koldam Transmission Company Limited (PKTCL) claimed tariff for Asset-I: section of 400 kV (Quad) 2xS/C Parbati Koldam transmission line starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station to Koldam HEP (Ckt.-I) and Asset-II: from Parbati-II HEP LILO point of Parbati-III HEP (Ckt-II) in Northern Region (hereinafter referred to as the “transmission assets”) considering the date of commercial operation (COD) of the said assets as 30.6.2015 in Petition No.156/TT/2015. However, the Commission vide order dated 29.12.2016 observed that though the transmission assets were ready on 30.6.2015, the power started flowing only on 3.11.2015 and accordingly approved the COD of the transmission assets as 3.11.2015 and approved tariff from 3.11.2015 to 31.3.2019 in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”). The delay from 30.6.2015 to 3.11.2015 was attributed to NHPC and it was held that NHPC would bear the IDC and IEDC for the period 30.6.2015 to 3.11.2015. The relevant portion of the order dated 29.12.2016 is extracted hereunder:-

“24. It is observed that Ckt.-I and Ckt.-II of Parbati-III-Koldam line were originally envisaged to be commissioned with the 400 kV bays in Parbati-II switchyard of NHPC.



On account of delay in commissioning of 400 kV bays in Parbati-II switchyard of NHPC, the Ckt.-I and Ckt.-II of Parbati-III-Koldam line were put into use only on 3.11.2015 through an alternate arrangement. Since the delay is attributable to the non-commissioning of 400 kV bays by NHPC, we are of the view that the IDC and IEDC from 30.6.2015 for instant assets till 2.11.2015 shall be borne by NHPC. With effect from 3.11.2015, the transmission charges for the instant assets shall be serviced in accordance with Sharing Regulations. The IDC and IEDC borne by NHPC shall not be capitalized by NHPC in its book of accounts for the purpose of claiming tariff for its generation from Parbati HEPs as well as for transmission services by the petitioner.”

3. Aggrieved by the said order, PKTCL has filed Petition No. 4/RP/2015 and NHPC has filed Petition No. 15/RP/2017.

Review Petition No.4/RP/2015 filed by PKTCL

4. PKTCL has sought review and modification of the said order on the following issues:-

- a. Restriction of IEDC to 5% of the Hard Cost instead of 11.77% of the Hard Cost claimed by the Review Petition as per Revised Cost Estimate (RCE).
- b. Approval of COD of the assets as 3.11.2015 against the Review Petitioner's claim of 30.6.2015.
- c. Typographical errors in paras 15 and 40 of the order dated 29.12.2016.

5. PKTCL has narrated the following grounds for review and modification of the order dated 29.12.2016:-

- a. The Commission in para 40 of the impugned order observed that RCE abstract cost estimate submitted by the Review Petitioner indicated the limit of IEDC as 5% of the estimated Hard Cost and accordingly restricted the admissible IEDC to 5% of the Hard Cost. However, the IEDC considered in RCE is 11.77% of the



Hard Cost for the instant transmission assets as shown in the table in para 1.7 of the “Abstract cost estimate”. The Commission in similar cases has considered the maximum allowable IEDC limit as 10.75% of the Hard Cost.

b. The Review Petitioner claimed the COD of the instant transmission assets as 30.6.2015. However, the Commission approved the COD of the assets as 3.11.2015 as power started flowing from 3.11.2015 and allowed tariff from 3.11.2015 and included the assets in the PoC charges from 3.11.2015. As the delay from 30.6.2015 to 3.11.2015 was attributed to NHPC, NHPC was held liable for payment of IDC and IEDC for the period starting from 30.6.2015 to 2.11.2015. Owing to the said finding, the Review Petitioner is deprived from receiving other components of the transmission charges viz. return on equity, depreciation and interest on working capital for the aforesaid period. The impugned order permits the Review Petitioner to recover only about ₹2.50 crore against full transmission charges of about ₹5.56 crore for the aforesaid period. The Commission in the past had allowed the recovery of full transmission charges under similar circumstances in Petition Nos. 11/SM/2014, 19/RP/2015 in Petition No. 91/TT/2012 and 236/MP/2015. Refusal to allow the full transmission charges for the period from 30.6.2015 to 2.11.2015 has put the Review Petitioner in financial difficulties. As such, the full transmission charges from 30.6.2015 onwards for the instant assets be allowed.

c. There is typographical error in the table in para 15 of the impugned order wherein interest on working capital claimed by the Review Petitioner for 2014-15



is recorded as ₹19.70 lakh instead of ₹14.81 lakh. This inadvertent error is required to be corrected.

d. In para 40 of the impugned order, the IEDC amount that has been disallowed due to excess allowable limit is indicated as ₹160.55 lakh and ₹140.92 lakh for Assets-I and II respectively while the same figure in the table have been shown as ₹177.79 lakh and ₹156.56 lakh for Assets-I and II respectively. This inadvertent error is required to be corrected.

6. The Review Petition was admitted and the respondents were directed to file their reply. In response, NHPC Limited, Respondent No.20 filed its reply vide affidavit dated 15.3.2017.

7. No specific reply has been given by NHPC with regard to PKTCL's contention regarding restricting the IEDC to 5% of the Hard Cost instead of 11.77% of the Hard Cost as per the RCE. As regards approval of COD of the transmission assets as 30.6.2015 and allowing full transmission charges from 30.6.2015 to 2.11.2015 and making NHPC liable for the same, NHPC has submitted that the Commission has arrived at erroneous conclusion that the COD of the transmission assets was delayed from 30.6.2015 to 3.11.2015 due to non-availability of bay at NHPC switchyard. NHPC in its reply dated 30.1.2016 in Petition No. 156/TT/2015 had clearly mentioned that in the 32nd SCM meeting held on 31.8.2013, it was agreed that the subject transmission assets will be completed matching with the schedule of Sainj HEP (HPPCL) which was scheduled for commissioning in December, 2014. Further, it was also agreed that



Parbati-II bay would not be available by December, 2014, therefore the transmission assets were completed by joining both circuits at dead end tower of Parbati-II switchyard. The transmission assets are also being used as 2nd power evacuation circuit of Parbati-III Power Station, which is under commercial operation since 24.3.2014. NHPC further requested the Review Petitioner to explore the possibility of power flow in 2nd evacuation ckt of Parbati-III Power station by by-passing Parbati-II HE project. In the light of the decision taken in 32nd SCM meeting, PKTCL had opportunity to put the transmission assets into commercial operation matching with the commissioning schedule of Parbati-III, but they failed to do so. PKTCL was not ready on the commissioning of Parbati-III, which was 24.3.2014 and as such imposition of IDC and IEDC on NHPC in the impugned order or allowing full transmission charges as claimed in the instant Review Petition is not justified. NHPC is in no way responsible for causing delay in the COD of transmission assets of Review Petitioner.

8. In response, PKTCL vide affidavit dated 5.7.2017 has submitted that as per the minutes of 32nd Standing Committee on Power System Planning for Northern Region Meeting ("SCM") held on 31.8.2013 the PKTCL was directed to construct this section of transmission line by December, 2014 matching with the commissioning of Sainj HEP. Further, the Parbati Koldam-III transmission line section was to enter Parbati-III HEP at one end, it was required that the NHPC's Switchyard at Parbati-III HEP should be ready and/or available in the same time frame to meet the N-I condition for evacuation of Power. The same was again discussed in 26th Technical Coordination Sub-Committee ("TCC") meeting and 29th North Regional Power



Committee ("NRPC") meeting held on 13.9.2013 wherein NHPC was also present and was made aware about the probable commissioning schedule of transmission lines. Despite the fact that NHPC was a part of all the proceedings and meetings concerning the evacuation system, it was not able to provide the associated bays of Parbati-III HEP for successful charging of Parbati Koldam-III Section. Therefore, the delay in COD of the transmission lines is not attributable to PKTCL.

Review Petition No. 15/RP/2017 by NHPC

9. NHPC is mainly aggrieved with the finding of the Commission in order dated 29.12.2016 allowing recovery of IDC and IEDC charges from NHPC for the period 30.6.2015 to 2.11.2015 due to non-commissioning of 400 kV bay of Parbati-II within the scope of work of NHPC. NHPC has submitted the following grounds for review of the impugned order:-

a. The COD of Parbati-II switchyard was not necessary for COD of the instant transmission assets of PKTCL as the line was required for alternate evacuation system of Parbati-III Power Station which is under commercial operation w.e.f 24.3.2014. NHPC in its reply dated 30.1.2016 in Petition No. 156/TT/2015 had taken this stand but the Commission failed to take into consideration this important fact.

b. The Commission did not take into account the other important fact that transmission assets were also to be used for evacuation of power from Sainj Hydro Project, which was scheduled for commissioning in December, 2014 in



terms of the Minutes of Meeting dated 31.8.2013. This fact was not considered in the impugned order and no penalty was imposed on Sainj HEP which stands on the same footing as NHPC.

10. In support of its contention, NHPC has made the following submissions:-
 - a. The instant transmission assets constructed by PKTCL (Ckt-2) was for the purpose of evacuation of power from Parbati-III (NHPC), Sainj (HPPCL) and Parbati-II (NHPC). The units of Parbati-III Power Station are under commercial operation w.e.f 24.3.2014. As PKTCL's ckt-2 was not put into commercial operation on 24.3.2014, the 2nd evacuation bay of Parbati-III could not be put into commercial operation and consequently, the Power Station was operated with only one evacuation ckt till 3.11.2015.
 - b. PKTCL vide its letter dated 2.7.2015 had informed Parbati-III Power Station about probable charging of the transmission line. The transmission line, however, could not be charged due to requirement of re-testing of 2nd bay of Parbati-III Power Station being a technical requirement and this fact was informed by Parbati-III to PKTCL vide e-mail dated 2.7.2015. This fact finds mention in NHPC's reply dated 30.1.2016 in Petition No. 156/TT/2015. Besides this, NHPC informed officers of PGCIL and PKTCL for early commissioning of the line of PKTCL vide letter 18.8.2015.
 - c. The 2nd ckt was meant for evacuation of power generated from Sainj HEP which was scheduled to be put into commercial operation in December, 2014. In



terms of the meeting of Connectivity/Long Term Access dated 31.8.2013, PKTCL was required to construct the 400 kV 2 x S/C lines from Parbati-II HEP to Koldam HEP and portion of these lines between Parbati-III HEP and Parbati Pooling Station were completed for evacuation of Parbati-III. For evacuation of power from Sainj, it was agreed that both the circuits from Parbati-III to Parbati-II may be constructed upto Parbati-II. As Parbati-II Switchyard would not be available by December, 2014 one circuit from Parbati Pooling Station and the other from Parbati-II generation be joined together. For evacuation of power from Sainj, LILO of 400 kV direct circuit from Parbati-II HEP to Parbati Pooling Station (Banala) be implemented by HPPCL/HPPTCL which would provide reliable evacuation of power under N-1 condition. It was further decided that PKTCL be requested to extend these 400 kV lines upto Parbati-II and join both the circuit at end tower of Parbati-II switchyard by December, 2014 matching with the scheduled commissioning of Sainj HEP for evacuation of power from Sainj HEP. The said facts were mentioned in the reply affidavit dated 30.1.2016 filed by NHPC in Petition No. 156/TT/2015. However, these were not considered in the impugned order.

d. This line was to be used for evacuation of power from Parbati-II HEP, but non-availability of Parbati-II bay at that point of time was a known fact. Parbati-II HEP is still not available but the transmission line is under operation w.e.f. 3.11.2015 which indicates that non-availability of Parbati-II bay is an excuse for the delay in



COD of transmission line by PKTCL and this plea of PKTCL is misleading and has to be rejected.

11. In response, PKTCL vide its reply dated 16.6.2017 has submitted that as per minutes of 32nd Standing Committee on Power System Planning for Northern Region Meeting (SCM) held on 31.8.2013, PKTCL was to construct this section of transmission line by December, 2014 matching with the commissioning of Sainj HEP and it was given to understand that as Parbati Koldam-III transmission line section was to enter Parbati-III HEP at one end, NHPC was required to make its switchyard at Parbati-III HEP ready and/or in the same time frame to meet the N-1 criteria for evacuation of power. This was reiterated in 26th Technical Co-ordination Sub-Committee meeting held on 13.9.2013 wherein NHPC was also present and was aware of probable commissioning schedule of transmission lines. If the NHPC's switchyard was ready as claimed by it from 24.3.2014, then NHPC should have kept it fit for charging by December, 2014. NHPC despite being part of all the proceedings and meetings for evacuation system, it was not able to provide the associated bays of Parbati-III HEP for successful charging of Parbati Koldam-III section.

12. PKTCL has further submitted that the Implementation Agreement dated 23.11.2007 executed between PKTCL and PGCIL provided for the section of 400 kV S/C Parbati Koldam Transmission Line starting from LILO point of Parbati-III HEP to LILO point of Banala (Parbati) Pooling Station matching with the time frame of Parbati-III HEP. The section of transmission line under discussion in the instant petition was always required to be commissioned matching with Parbati-II HEP as was agreed in



26th SCM on 13.10.2008. As regards the amendment to Implementation Agreement, PKTCL has submitted that amendment to the Implementation Agreement was the outcome of discussions in SCMs/NRPC meetings and it was neither arbitrary nor for the convenience of PKTCL and PGCIL.

13. In response, NHPC has reiterated its submissions made in the Review Petition and denied the submissions of PKTCL. NHPC has contended that the bay of Parbati-III was complete in all respects with Power Station on 24.3.2014 for energization and the system was ready for energization on 14.2.2014 itself and there was no delay at all on the part of NHPC. NHPC has submitted that it is in no way responsible for causing delay in commissioning of PKTCL's transmission line.

14. Himachal Pradesh Power Corporation Limited (HPPCL) in its reply, vide affidavit dated 6.9.2017, in Petition No. 15/RP/2017 has submitted that the 29th meeting of Standing Committee on Power System Planning of Northern Region held on 29.12.2010 approved the evacuation of Sainj HEP Power through LILO of one circuit of 400 kV Parbati-II-Parbati-III D/C transmission line. Both PKTCL and PGCIL were not in a position to execute the said work. The evacuation for Sainj HEP through LILO 400 kV Parbati-II Banala was again discussed in the 32nd meeting of Standing Committee Meeting on 31.8.2013 on Power System Planning where it was discussed that it was not possible to LILO the said line with 400 kV Parbati-II Banala 2nd direct circuit. CEA approved Sainj HEP to inject power directly into the 1st 400 kV circuit from Parbati-II and Parbati-III in the 36th SCM on Power System Planning held on 13.7.2015 and thereafter, the work of the transmission line from Sainj switchyard to LILO point started.



HPPCL has further submitted that since there is no beneficiary to purchase power of Sainj HEP, the power is being sold through Power Exchange.

15. BRPL in its reply in Petition No. 15/RP/2017, vide affidavit dated 16.8.2018 has submitted that 2009 and 2014 Tariff Regulations do not provide for determination of tariff for part of transmission line and same can be included in the POC charges only when the entire line is completed. BRPL has further submitted that the Hon'ble Appellate Tribunal for Electricity (APTEL) in its judgement dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017 had observed that the associated communication system should be in place while declaring the COD while remanding Petition No.91/TT/2016. Accordingly, the COD of the assets are required to be worked out afresh.

16. PKTCL filed a written note before the Commission on 3.7.2018 after APTEL's judgement dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017. PKTCL has reiterated its submissions made in its Review Petition and the reply to the Review Petition filed by NHPC. PKTCL has also raised certain issues pertaining to Petition No.91/TT/2012 after the directions of APTEL in judgement dated 16.7.2018. As the issues pertaining to Petition No. 91/TT/2012 are not dealt with in this order, the issues raised by PKTCL in this regard are not considered in this order. Some of the important issues raised by PKTCL in the written submissions pertaining to the instant review petitions are as follows:-

- a. The contention of NHPC that PKTCL's claim in Petition No. 4/RP/2017 has become infructuous in light of APTEL's judgment dated 16.7.2018 is incorrect.



The review was filed for recovery of full transmission charges from NHPC as the Commission in order 29.12.2016 in Petition No. 156/TT/2015 has accepted that delay in actual power flow in PKTCL's transmission line i.e. from 30.6.2015 to 2.11.2015 was attributable to NHPC. PKTCL relied upon Commission's order dated 7.9.2016 in Review Petition No. 19/RP/2015 in Petition No. 91/TT/2012, wherein PGCIL was allowed to recover transmission charges from NHPC due to default on part of NHPC leading to delay in COD of PGCIL's transmission assets. PKTCL has further submitted that APTEL nowhere in the said judgment held that full transmission charges for the period of delay cannot be allowed by the Commission.

b. On 23.11.2007, an Implementation Agreement was signed between PGCIL and PKTCL. As per the Implementation Agreement, PKTCL was required to construct two Single Circuit lines from Parbati-II HEP to Koldam and one Double Circuit line from Koldam to Ludhiana. On 31.8.2013, Connectivity/Long Term Access meeting was held along with 32nd Standing Committee meeting. In this meeting, it was decided that the section of Parbati Koldam Transmission Lines (both Circuit-I and Circuit-II) starting from LILO point of Banala Pooling Station (section in Circuit-I) starting from Parbati-II to LILO point of Parbati-III HEP (section in Circuit-II) [i.e. portion LILO point of Banala Pooling station (a-b as shown in the enclosed schematic diagram)] can be used for the evacuation of power from Sainj HEP as well as N-1 condition in case the section is being used for evacuation of power from Parbati-III HEP. In the said meeting, it was also



clarified that Circuit-II was required only by December, 2014 i.e. matching with the commissioning of Sainj HEP.

c. The commissioning schedule of PKTCL's transmission line was again discussed in the 26th Technical Coordination sub-committee meeting held on 13.10.2008 and the Long Term Access meeting held on 32nd SCM on 31.8.2013. NHPC failed to charge the PKTCL's transmission line due to incomplete technical work. NHPC evaded its obligation to make the bays ready for connecting the transmission assets of PKTCL. The contention of NHPC that its switchyard was not required for commissioning of PKTCL's transmission lines is wrong.

d. PKTCL's transmission line (from Banala pooling station to Parbtai-II) was declared fit for charging by CEA on 30.6.2015. Further, Amendment No. V dated 17.3.2015 to the Implementation Agreement between PKTCL and PGCIL provided the Revised Commercial Operation Date of (a) Parbati-III to Parbati-II and (b) Parbati Pooling Station to Parbati-II transmission lines on 30.5.2015.

e. NHPC filed Appeal No. 81/2017 challenging the approval of COD of portion c-d-e-f (as shown in the enclosed schematic diagram) of Asset-II of PGCIL as 1.9.2013. The said portion of Asset-II could not be put to use from 1.9.2013 to 23.3.2014, due to non-readiness of NHPC's Parbati-III HEP. As per Regulation 3(12)(c) of 2009 Tariff Regulations, the COD of the transmission asset can be declared if the transmission system is capable of being put to use. The 'c-d-e-f' portion of Asset-II was completed at both ends once the bay at NHPC's end was



ready on 28.8.2013. Accordingly, COD of the said asset was declared as 1.9.2013. Parbati-III HEP of NHPC achieved COD on 24.3.2014, and accordingly, the transmission charges for delay from the COD of this element i.e. 1.9.2013 till COD of NHPC's Parbati-III HEP i.e. 24.3.2014 was directed to be borne by NHPC.

f. As per the Implementation Agreement dated 23.11.2007 executed between PKTCL and PGCIL, Circuit-II of Asset-II, being constructed by PKTCL was never envisaged to be used for evacuation of power from Parbati-III HEP. As per the transmission license granted to PKTCL, PKTCL was only required to construct two Single Circuit lines from Parbati-II HEP to Koldam and one Double Circuit Line from Koldam to Ludhiana. It was only in the 26th Standing Committee meeting held on 13.10.2008, that it was identified that a section of Parbati-II to Koldam Transmission Line, Circuit-II (starting from LILO point of Parbati-III HEP to LILO point of Banala Pooling Station) was required for the evacuation of power from Parbati-III HEP.

g. The delay in COD of PKTCL's transmission line is squarely attributable to NHPC, since NHPC failed to make the bays ready in its switchyard which were to be used for connecting PKTCL's transmission line. The same was unequivocally held by the Commission in the impugned order dated 29.12.2016, holding that PKTCL was not able to put into use its transmission line due to delay on the part of NHPC.



i. PKTCL had filed a Review Petition No. 52/RP/2016 seeking review of the order dated 30.7.2016 regarding liability of PKTCL to bear any charges including IDC and IEDC for delay in achieving COD by PGCIL. The Commission by its order dated 20.7.2018 allowed the Review Petition filed by PKTCL. The Commission has taken note of the Amendment No. V and VI to the Implementation Agreement between PKTCL and PGCIL and absolved PKTCL from the liability of paying any charges to PGCIL.

17. NHPC has also filed written submissions basically reiterating the submissions made in Review Petition No.15/RP/2017 and its reply in Review Petition No.4/RP/2017. Some of the important submissions made by NHPC are as follows:-

a. The Commission's decision that NHPC is responsible for the delay in COD of transmission assets and consequent imposition of penalty suffers from error apparent on the face of record as certain important facts were not considered while issuing order dated 29.12.2016. The COD of Parbati-II switchyard of NHPC was not required for COD of transmission assets of PKTCL. Further, the 400 kV 2nd bay at Parbati-III was available on 24.3.2014 but 2nd evacuation circuit of PKTCL was not available. Though second bay of Parbati-III was tested and ready for charging, it could not be put into commercial operation alongwith commissioning of power station because of non-availability of transmission line of PKTCL. The 400 kV bay was ready but it could not be put into commercial operation for long period (more than one year) because the PKTCL's transmission line was not ready and it was very essential to re-test the 400 kV



bay for safety and security of equipments. This requirement of testing was mentioned in the e-mail.

b. The decisions taken on 13.10.2008 in the 26th SCM was modified in 32nd SCM held on 13.8.2013. As per decisions taken, for COD of 2nd evacuation circuit, switchyard of Parbati-II was not required and the same could be achieved by joining together the transmission line at dead end tower of Parbati-II. The same was to be completed by December, 2014 matching with the schedule commissioning of Sainj HEP for evacuation of power from Sainj HEP.

c. The subject transmission line is 2nd evacuation Ckt of Parbati-III Power station (c-b-a-f portion) that was supposed to be completed for evacuation of power at the time of commissioning of Parbati-III Power Station (24.3.2014). However, the same was available only on 3.11.3015. CEA, vide its letter dated 14.2.2014 granted approval for energisation of Parbati-III and Parbati-III was complete in all respects on 24.3.2014. The bay of Parbati-III was completed before PKTCL transmission line. The units of Parbati-III were declared under commercial operation w.e.f 24.3.2014 after completing all necessary tests.

d. The transmission assets (c-b-a-f portion) are the common line intended for evacuation of power generated from Parbati-III, Parbati-II of NHPC and Sainj HEP of HPPCL. As per minutes of meeting held on 31.8.2013, the transmission assets was supposed to be completed by December, 2014 matching with commissioning schedule of Sainj Hydro Project of HPPCL to enable evacuation



of power from Sainj HEP. The impugned order is absolutely silent on above agreed facts and imposition of any penalty on Sainj HEP, which stands on the same footing as the petitioner. .

Analysis and Decision

18. We have considered the submissions of NHPC, HPPCL and PKTCL. In order dated 29.12.2016 in Petition No.156/TT/2015, the Commission while approving the tariff of Asset-I: section of 400 kV (Quad) 2xS/C Parbati Koldam transmission line starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station to Koldam HEP (Ckt.-I) and Asset-II: from Parbati-II HEP LILO point of Parbati-III HEP (Ckt-II) held that NHPC was responsible for the delay in COD of the transmission assets from 30.6.2015 to 3.11.2015 and accordingly directed NHPC to bear the IDC and IEDC for the said period. Aggrieved by the order dated 29.12.2016, PKTCL has filed Review Petition No. 4/RP/2017 on the following grounds:-

- (a) It is eligible for transmission charges for the period of delay and allowing only IDC and IEDC is an apparent error.
- (b) PKTCL was allowed only 5% of the Hard Cost instead of 11.77%.
- (c) There are certain typographical errors in the impugned order.

19. NHPC filed Review Petition No. 15/RP/2017 against order 29.12.2016 on the grounds that it was not responsible for the delay in COD of the instant transmission assets and the instant assets were scheduled to be used by Sainj HEP and hence Sainj HEP should also be held liable to bear the cost.



20. As per the transmission licence granted to PKTCL by the Commission on 15.9.2008, PKTCL was entrusted with the construction of transmission lines from Parbati-II HEP to Koldam HEP for evacuation of power from Parbati-II and Parbati-III executed by NHPC. In the 26th meeting of the Standing Committee on Transmission System Planning of Northern Region held on 13.10.2008, it was decided that a section of Parbati-II-Koldam transmission line i.e Circuit-II starting from LILO point of Parbati-III HEP to LILO point of Banala Pooling Station (i.e. portion d-e) was required for evacuation of power from Parbati-III. It was also decided that the line between Parbati-II and Parbati-III (portion a-b) and the second line between Parbati-II and Koldam (portion g-h) would be put into commercial operation matching with Parbati-II.

21. In the 32nd Standing Committee Meeting of Northern Region held on 31.8.2013 alongwith the Connectivity/Long Term Access, it was taken into cognizance that the scheduled commissioning of Sainj HEP was December, 2014 and that Parbati-II would not be available by December, 2014. It was decided that for evacuation of power from Sainj HEP, both the circuits from Parbati-III to Parbati-II may be constructed upto Parbati-II and as Parbati-II would not be available by December, 2014, both the circuits would be joined together by by-passing Parbati-II and this arrangement would provide reliable evacuation of power under N-I condition. PKTCL would also be required to join both circuits at dead-end tower of Parbati-II switchyard by December, 2014 matching with the scheduled commissioning of Sainj HEP for evacuation of power Sainj HEP. The relevant portion of the 32nd SCM OF 31.8.2013 is as follows:-



“5.5 As informed by HPPCL Sainj project is expected by Dec’14. PKTCL is constructing 400 kV 2 X S/c lines from Parbati-II HEP to Koldam HEP. Portion of these lines between Parbati-III HEP and Parbati Pooling Station has been completed for evacuation of Parbati-III HEP. It was further informed that Parbati-II and Sainj HEPs are located in very close proximity. For evacuation of power from Sainj, it was agreed that both the circuits from Parbati-III to Parbati-II may be constructed upto Parbati-II. As Parbati switchyard would not be available by December 2014, both circuits (i.e. one coming from Parbati Pooling Station and other from Parbati-III generation) may be joined together. For evacuation of power from Sainj LILO of 400 kV direct circuit from Parbati-II HEP to Parbati Pooling station (Banala) may be implemented by HPPCL/HPPTCL. This arrangement would provide reliable evacuation of power under N-I condition. It was proposed that both circuits at dead-end tower of Parbati-II switchyard by December, 2014 matching with the scheduled commissioning of Sainj HEP for evacuation of power from Sainj HEP.”

22. The Commission in the impugned order observed that on account of delay in COD of 400 kV bays in Parbati-II switchyard of NHPC, the instant transmission assets were put to use only on 3.11.2015 through an alternate arrangement and hence held that NHPC was responsible for the delay in COD of the instant assets from 30.6.2015 to 3.11.2015 and directed NHPC to bear the IDC and IEDC for the period of delay. NHPC has contended that availability of Parbati-II bay was not required for COD of the instant transmission lines and PKTCL was required to put the instant transmission lines by December, 2014 and PKTCL was not ready with the assets in December 2014. It is contended that it was pointed out by NHPC in its reply affidavit dated 30.1.2016 filed in Petition No. 156/TT/2015 that it was decided in the 32nd SCM meeting to by-pass Parbati-II and this aspect was not considered in the impugned order. Non-consideration of the said fact led to the conclusion in the impugned order that the delay occurred due to non-readiness of the 400 kV bays of Parbati-II within the scope of work of NHPC. We are of the prima facie view that the 400 kV bays of Parbati-II were not required as a pre-requisite for COD of the instant assets. It was further decided in the 32nd SCM that the instant assets were to be ready by December, 2014. However, the instant assets were



ready only on 30.6.2015 as per PKTCL. Thus, the instant assets were not ready as planned in December, 2014. Moreover, PGCIL and PKTCL amended the Implementation Agreement on 24.1.2014 to put the instant assets into commercial operation in December, 2014 as agreed in the 32nd SCM and later amended the Implementation Agreement on 17.3.2015 to put the instant assets into commercial operation by 30.5.2015.

23. NHPC has contended that instant assets are meant not only for evacuation of power from Parbati-III HEP but also for evacuation from HPPCL's Sainj HEP and accordingly, the cost of the instant assets are to be shared by Sainj HEP and NHPC. It is observed that it was agreed in the 32nd SCM that the instant assets were to be put into commercial operation in December, 2014 matching the scheduled commissioning of Sainj HEP and to be used for evacuation of power from Sainj HEP also.

24. NHPC has further submitted that Parbati-III was commissioned on 24.3.2014 in all respects and the 400 kV 2nd bay at Parbati-III was also ready on 24.3.2014. However, the 2nd evacuation circuit of PKTCL was not available, and hence, it could not be charged. The second bay of Parbati-III was tested and ready for charging but could not be put into commercial operation alongwith Parbati-III as PKTCL's transmission assets were not ready. NHPC has submitted that the 400 kV bay was ready but was not put into use for more than a year and it required re-testing for the purpose of safety and security of equipments and this was mentioned in the e-mail sent by NHPC to PKTCL. According to NHPC, this aspect was wrongly interpreted by PKTCL as non-availability



of the 2nd bay at Parbati-III HEP. This aspect was submitted by NHPC in the main petition vide affidavit dated 30.1.2016.

25. APTEL vide its judgment dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017 has directed to hear Petition No. 156/TT/2015 alongwith Petition No. 91/TT/2012 in Appeal Nos. 281 of 2016 and 81 of 2017. The relevant portion of the said judgement is as follows:-

“14.1
xxxxx

It is evident from the above that the liability of NHPC is to bear only the charges on account of IDC and IEDC during the period 30.06.2015 – 2.11.2015. Thus, there is a distinguished inconsistency in the approach of the CERC from case to case. It is further brought out by NHPC that a Review Petition in respect of the said Petition No. 156/TT/2015 is already pending before the CERC and as such, the entire issue is still at large before the Commission for a complete / comprehensive adjudication and needs reconsideration.”

26. Taking into consideration the directions of APTEL in judgement dated 16.7.2018 and the submissions made by NHPC, as elucidated in paragraphs 22, 23 and 24 above, we set down the main petition, Petition No.156/TT/2015, for hearing on the issue of date of commercial operation of Asset-I: section of 400 kV (Quad) 2xS/C Parbati Koldam transmission line starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station to Koldam HEP (Ckt.-I) and Asset-II: from Parbati-II HEP LILO point of Parbati-III HEP (Ckt-II) and sharing of the transmission assets of the said assets alongwith Petition No.91/TT/2012.

27. The issues raised by PKTCL in its Review Petition like grant of IDC and IEDC instead of transmission charges, grant of 5% of Hard Cost as IEDC instead of 11.77%



of the Hard Cost and some typographical errors while dealing with interest on working capital and IEDC will also be considered while deciding the Petition Nos. 156/TT/2015 alongwith Petition No. 91/TT/2012.

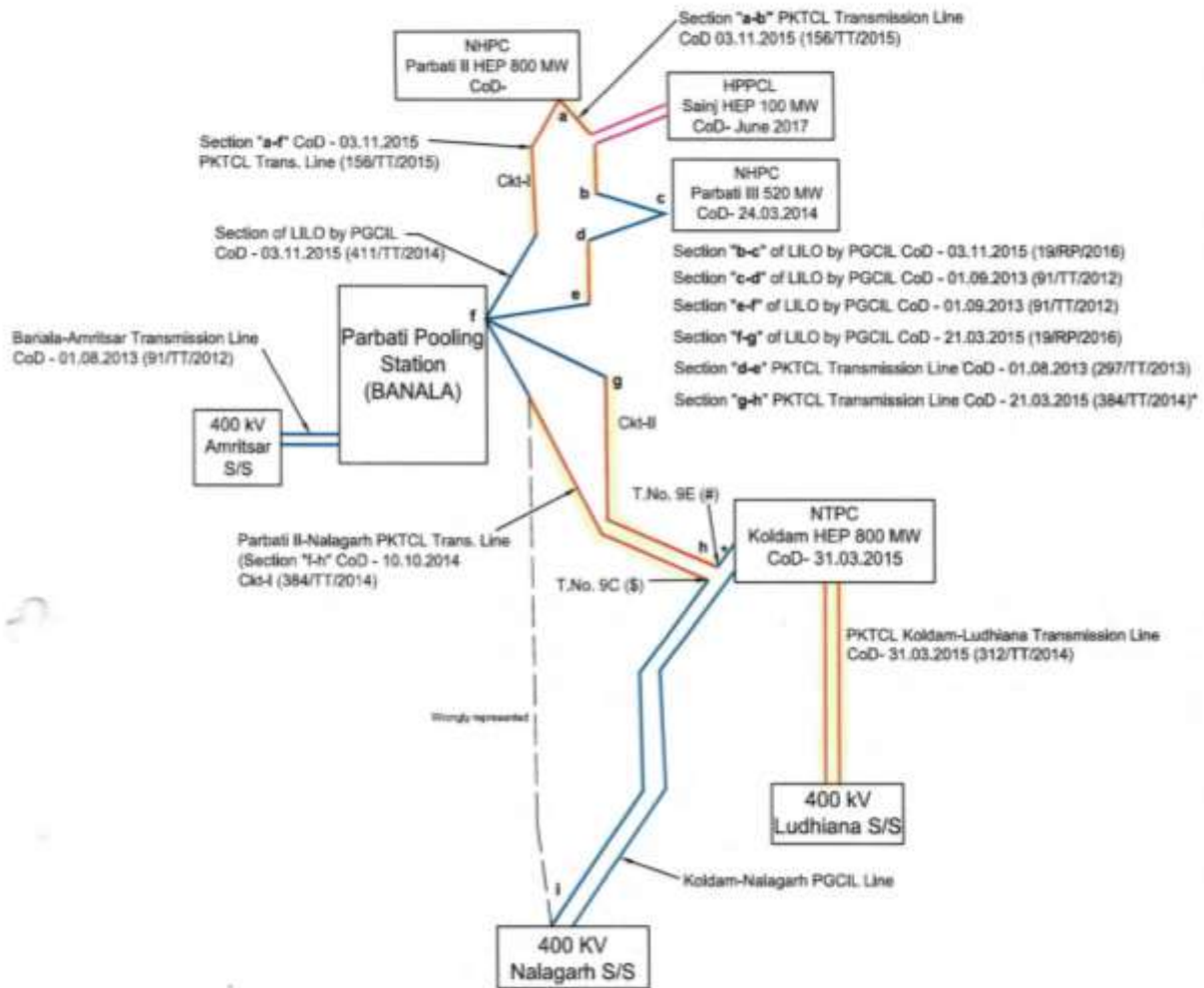
28. This order disposes of Review Petition Nos. 4/RP/2017 and 15/RP/2017 filed by PKTCL and NHPC respectively.

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

sd/-
(P.K. Pujari)
Chairperson



The Schematic diagram describing transmission system constructed by PKTCL



Power Evacuation System for Koldam-Parbati II and Parbati III HEP

LEGEND:

- PGCIL Lines
- PKTCL Lines
- HPPCL Lines
- Wrongly represented

* Section of Koldam-Nalagarh Line of PGCIL CoD 01.04.2011 (2/TT/2011)
 \$ Ckt-I "f-h" connected at Tower 9C of Koldam-Nalagarh Line of PGCIL forming Banala-Nalagarh section.
 # Ckt-II "g-h" connected at Tower 9E of Koldam-Nalagarh Line of PGCIL forming Banala-Koldam section.

