

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A. No. 14/2020

in

Petition No. 124/MP/2017

Subject : Interlocutory Application under Section 94 (2) of the Electricity Act, 2003 for stay/ quash the NRPC minutes of meetings dated 29.10.2018 and 30.10.2018 and hold that this Commission has the jurisdiction for determination the tariff.

Petitioner : Kanchanjunga Power Company Private Limited

Respondents : Himachal Pradesh Power Transmission Co. Ltd &Ors

Dateofhearing :14.5.2020

Coram : Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member.
Shri Arun Goyal, Member

Partiespresent : Shri Sanjay Sen, Senior Advocate, KPCPL
Shri HemantSingh,Advocate, KPCPL
Shri Kumar UdayPratap, KPCPL
Ms.SwapnaSeshadri, Advocate, HPPCL

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned senior counsel for the Applicant submitted that the issues involved in the instant application and the petition, have already been argued, and the same is recorded in the record of proceedings dated 12.2.2020. However, on the previous date of hearing, the present interlocutory application was not listed. Learned senior counsel submitted that the assets of HPPTCL cannot be termed as Intra-State Transmission System (InSTS) on account of the following grounds:

(a) The Commission vide its order dated 17.10.2019 in Petition No. 209/MP/2017 had observed that the transmission asset of A.D Hydro, which is connected to the subject transmission system of HPPTCL and of which subject HPPTCL system is an integral part, has been considered to be an ISTS. Accordingly, the Commission has determined the tariff of the said asset, holding that it has jurisdiction to determine the same.

(b) The transmission asset of HPPTCL was certified as InSTS by NRPC based on discussions during the 32nd TCC and 36th NRPC Meetings, wherein it was decided that in order to certify a transmission line as ISTS, there should be more than 50% flow of power outside the State, while the inter-State flow of power on the LILO transmission asset of HPPTCL was 36.5%. However, the above criterion of 50% flow of power outside the State is in contradiction to the Regulations of the Commission.

(c) The factor of 50% utilization was introduced in the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2011. However, vide Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) (Third Amendment) Regulations, 2015, the above factor of 50% utilization was removed. In the Statement of Reasons to the 3rd Amendment, this aspect has been dealt with in detail, wherein it was observed that as per the Electricity Act, 2003 and Tariff Policy, all lines which are incidental to Inter-State flow of power are to be considered as ISTS. In a meshed transmission system, certain intra-State transmission lines carry inter-State power and therefore, become incidental to inter-State transmission system. The RPC may therefore uniformly decide a percentage below which (say 10%) such a line would not be considered as an ISTS. Accordingly, the jurisdiction of the Commission has to be decided strictly in terms of the language of Section 2(36) read with 79 (1) (c) of the Electricity Act, 2003. Accordingly, the determination procedure of NRPC is *de hors* the Regulations of the Commission.

(d) In terms of the Kirchhoff's Law, the flow on Patlikul (Loop in point) to Phozal section would have to be same as the flow on AD Hydro to Loop in point at Patlikul. As such, if flow on AD Hydro-Patlikul section is inter-State in nature, then the flow on remaining section between Patlikul and Phozal would have to be inter-State. Further, if the flow of power from the AD Hydro line was considered, then the power flow would have crossed the 50% threshold, and HPPTCL line would have been certified as an ISTS. This is without prejudice to the argument that the criterion of 50% has itself been repealed by the Commission.

(e) In terms of Para 37 (b) of the Commission's order dated 28.6.2016 in Petition No. 30/MP/2014, the power flowing from LILO section under the present arrangement has to be considered as a part of ISTS. The NRPC ignored both, the amendment of the regulations qua 50% power flow criteria, and the consideration of the power flow on the AD Hydro to Loop in point at Patlikul, in order to arrive at the conclusion that the subject LILO asset is not ISTS.

3. Learned Counsel for HPPTCL submitted that initially it had filed Petition before the Commission, being Petition No. 244/TT/2017 seeking determination of tariff of the subject transmission assets. However, the Commission, vide its order dated 8.10.2018, disposed of the Petition, directing that tariff determination for the instant assets was not possible in absence of the RPC certification with a liberty to HPPTCL to file fresh Petition after NRPC certification is available. Subsequently, NRPC, vide MoM dated 29.10.2018 and 30.10.2018, certified the assets as InSTS. Therefore, since the said assets were not considered as being used as ISTS, HPPTCL could not file Petition before the Commission, and has accordingly filed Petition for determination of tariff before the State Commission. She further submitted that since the Commission has passed the final order in Petition No. 209/MP/2017, the interim stay of 60% charges to be payable by the Petitioner, should be vacated, which was previously granted by the Commission.

4. Learned Counsel for the HPPTCL apprised the Commission that the Petitioner has filed an application before HPERC seeking adjournment of HPPTCL's tariff Petition on

the ground of pendency of the present IA and Petition. Therefore, the present Petition needs to be decided at the earliest.

5. After hearing the learned senior counsel and learned counsel for the parties, the Commission reserved order in the IA.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Legal)**