

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 259/2010**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A. K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Dr. M.K. Iyer, Member**

**Date of Order: 29<sup>th</sup> of September, 2017**

**In the matter of**

Petition under Section 60 of the Electricity Act, 2003 for issuance of appropriate/necessary direction to the respondents.

**And**

**In the matter of**

Everest Power Private Limited  
1<sup>st</sup> House, Bhumian Estate,  
Nav Bahar Bhumian Road, Chhota Shimla,  
Shimla-170002 (H.P.).

..... **Petitioner**

**Versus**

1. Allain Duhangan Hydro Power Limited,  
Bhilwara Towers,  
A-12, Sector-1,  
Noida-201301

2. Central Electricity Authority,  
Sewa Bhavan, R.K. Puram,  
New Delhi-110022.

3. Ministry of Power  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi.

4. Power Grid corporation of India Limited,  
Sector-29, Gurgaon  
Haryana.

5. Northern Regional Load Despatch Centre  
Katwaria Sarai,

New Delhi-110016.

6. Ministry of Power,  
Government of Himachal Pradesh, Shimla.

7. Himachal Pradesh State Electricity Board  
Complex Building II,  
Kumar House building,  
Khalini, Shimla-171004.

8. Department of Forest,  
Government of Himachal Pradesh,  
Shimla.

9. HP Power Transmission Corporation Limited,  
Barowalias House,  
Khalini, Shimla-171002.

.....Respondents

**Parties Present:**

Dr. Seema Jain, Advocate, ADHPL  
Shri Dushyant K. Mahant, Advocate, ADHPL  
Shri Sumit Garg, ADHPL  
Shri Praveen Kumar Giri, ADHPL  
Shri Kokoli Sen Gupta, ADHPL  
Ms. Swapna Seshadri, Advocate, HPPTCL  
Shri I.P. Singh, HPPTCL  
Ms. Jyoti Prasad, PGCIL  
Shri Nkit Saini, Advocate, EPPL  
Shri Satyanarayana, EPPL

**ORDER**

The Petitioner, Everest Power Private Limited (EPPL), had filed a petition under Section 60 of the Electricity Act, 2003 *inter alia* for seeking direction/clarification on the methodology and process for computation and sharing of transmission charges by EPPL and the Respondent, Allian Duhangan Hydro Power Limited (ADHPL), for use by EPPL and ADHPL of 220 kV D/C Allian Duhangan Hydro Electric Project-Nalagarh transmission line. The Commission, after hearing the parties, vide order dated 1.6.2011 in Petition No. 259/2010 had directed that the Commission has the jurisdiction to adjudicate the dispute between EPPL

and ADHPL with regard to the use of the 220 kV D/C Allian Duhangan Hydro Power Limited-Nalagarh transmission line and issued certain directions in para 20 of the said order dated 1.6.2011.

2. Aggrieved by the said order dated 1.6.2011, ADHPL filed Appeal No. 81/2011 before the Hon`ble Appellate Tribunal for Electricity (Appellate Tribunal). The Appellate Tribunal in para 53 of order dated 2.1.2013 issued specific directions with regard to capital cost, return on equity, sharing of transmission losses, priority in case of outage of a circuit, control of 132/220 kV Chhaur sub-station and granted liberty to ADHPL to raise the operational issues already decided before the Central Commission. The Appellate Tribunal directed the Commission to consider the said operational issues afresh and pass consequential orders after hearing the concerned parties. Relevant portion of the said judgment/remand order dated 2.1.2013 is extracted as under:

“53. Let us now deal with the above issues one by one.

**53.1 Capital Cost:-** The Central Commission has directed that the capital cost of the transmission line shall be mutually decided by the Appellant and the Respondent no. 1 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. We notice that the Central Commission’s Tariff Regulations, 2009 provide that the capital cost would be determined on the basis of actual expenditure incurred on completion of the project, subject to prudence check by the Commission. When the capital cost for a transmission licensee is determined on these principles, the same may be made applicable for determining the transmission charges payable by the Respondent no.1 to the Appellant for use of the transmission system of the Appellant. The Appellant and the Respondent no.1 have not been to agree on the capital cost. Therefore, we direct the Central Commission to determine the capital cost according to the Tariff Regulations, 2009, after hearing both the parties, which shall be the basis for determination of transmission charges payable by the Respondent no.1 to the Appellant.

**53.2 Return on Equity (‘ROE’):-** The Central Commission decided that the ROE shall be on the basis of rate of return allowed under the Tariff Regulations, 2009 as amended from time to time and any subsequent amendment thereof. The Appellant has sought ROE 3% higher than that allowed in the Central Commission’s Regulations. We feel that there is no justification in allowing a higher ROE to the Appellant. We are in agreement with the findings of the Central Commission. When a

transmission licensee regulated by the Central Commission is allowed ROE as per the Central Commission's Tariff Regulations which are based on the commercial principles as per Section 61 of the Act, the Appellant could not claim a ROE higher than that specified in the Regulations for transmission business for determining the transmission charges payable by the Respondent no.1. We find that the Central Commission has decided that the Operation and Maintenance charges have to be borne as per the actuals on prorata basis and not as per its Regulations. As the Appellant argued that they have not been heard on merits, we would give liberty to the Appellant to raise this issue before the Central Commission and the Central Commission shall consider the same afresh and decide the Operating and Maintenance charges to be borne by the Respondent no.1 after hearing the parties.

**53.3 Sharing of transmission losses on Allain Duhangan – Nalagarh system:-**

The Appellant had sought 4% additional loss or loss based on incremental loss to be deducted from generation of Malana II HEP. The Central Commission has decided that the estimated percentage average transmission losses shall be applied to the respective schedules of the generating companies. The estimation shall be based on the previous week's actual percentage average losses worked out through the actual meter readings. We are in agreement with the findings of the Central Commission that the transmission losses for Allain Duhangan – Nalagarh section to be borne by the Respondent no.1 should be on the basis of the average losses based on the actual meter readings on the sending and receiving ends of the lines. There is no basis for claim of 4% additional loss to be apportioned to Malana II HEP. When the transmission charges are to be shared on a pro-rata basis on the respective installed capacity of the generating stations of the Appellant and the Respondent the same principle of sharing of losses on the basis of average losses in the line section has to be adopted. For the inter-State transmission of energy also the losses are apportioned on the average basis. The Appellant for inter-State transmission of its electricity has also to bear average losses on the inter-State transmission system.

**53.4 Priority in case of a circuit:** The Central Commission has decided that the outage handling and priorities shall be similar to the one enumerated in the concerned Grid Code and in accordance with Connectivity, Long Term Access, and Medium Term Open Access Regulation. We find that these Regulations do not have specific provisions for the present case. For the Allain Duhangan – Nalagarh system in view of peculiar situation we have to give specific findings to avoid any ambiguity. For example in case of outage of Allain Duhangan – Chhaur section, Allain Duhangan-Nalagarh direct line section will evacuate the power output of Allain Duhangan and Chhaur-Nalagarh section will evacuate the output of Malana-II. In that case the evacuation from the respective HEP will be as per the capacity of each line section. However, in case of outage of Allain Duhangan-Nalagarh direct line or Chhaur-Nalagarh line section, both Allain Duhangan and Malana II shall have to be allowed to send out power on the restricted capacity of the transmission system on pro-rata basis on their respective installed capacities. According to Ld. Counsel for the Appellant, the Appellant's generating station should be given priority over the generation of the Respondent no.1. We have already explained in paragraph 46 above the reason for allowing proportionate use of the transmission system of the Appellant to the Respondent no.1 in case of outage of a line section in view of the Respondent no.1 bearing the proportionate transmission charges for the entire double circuit line of the Appellant. We direct the Central Commission to give detailed directions to the NRLDC on the above principles after hearing the parties.

**53.5 Control of 132/220 kV Chhaur sub-station:** The Central Commission has decided that the control of 132/220 kV Chhaur sub-station will be with the

Respondent no.1 and the Appellant may appoint its representative at this substation for coordination purpose. We are in agreement with the findings of the Central Commission. The Appellant has sought absolute control of Chhaur sub-station for efficient control. We notice that Chhaur substation is a part of dedicated transmission system of the Respondent no.1 as approved by the Ministry of Power in its approval under Section 68. The sub-station has been constructed and owned by the Respondent no.1. Therefore, there is no force in the argument of the Appellant that the Chhaur sub-station should be under their control. In view of our findings regarding the part of dedicated transmission system becoming the system incidental to inter-State transmission of electricity of Malana II, the operations at Chhaur sub-station for Nalagarh and Allain Duhangan sections have to be carried out under the control of the Northern Regional Load Dispatch Centre. When the operations at Chhaur have to be carried under the overall control of the NRLDC, the Appellant should not be prejudiced by the agency having physical control of the sub-station.

On the other operational issues decided by the Central Commission, as the Appellant has argued that they have not been heard by the Central Commission on merits, we give liberty to the Appellant to raise the issue before the Central Commission and the Commission shall consider the same afresh and pass consequential orders after hearing the concerned parties.”

3. The Appellate Tribunal in the said judgment dated 2.1.2013 issued the following directions:

“55. (i) The arrangement for interconnection of the dedicated transmission system of the earlier for evacuation of power from the hydro power stations of Parbati Basin and constraints hydro power project of the Respondent no.1 with the dedicated transmission system of the Appellant and the evacuation of the power of the Respondent no.1 through the dedicated transmission system of the Appellant upto the sub-station of Power Grid at Nalagarh has been planned and coordinated by the CEA and CTU in consultation with the parties. This has been necessitated by delay in construction of Parbati Pooling Station planned by the CTU in providing alternative transmission corridor in the hilly and forest area and environmental consideration.

(ii) The Central Government granted permission to the Respondent no.1 under Section 68 to construct its dedicated transmission system comprising 132 kV transmission line and 220/132 kV sub-station to loop-in-loop-out one of the circuits of Allain Duhangan-Nalagarh 220 kV double circuit approval for which was earlier granted by the Central Government to the Appellant as its associated transmission system. The approval to the Respondent no.1 under Section 68 was granted with the understanding reached in a meeting taken in the CEA for the sharing arrangement with the consent of the Appellant and the Respondent no.1.

(iii) In view of the Loop-in-Loop-out of one of the Allain Duhangan-Nalagarh circuits at Chhaur, part of the line is used for conveyance of electricity across the territory of an intervening State/within the State which is incidental to inter-State transmission of electricity of Malana II of the Respondent no.1. Thus, the transmission of power on

this line has to be regulated by the Central Commission. Thus, the Central Commission has the jurisdiction to adjudicate upon the dispute between the Appellant and the Respondent No. 1 regarding sharing of transmission charges, losses, etc. by the Respondent No. 1 as per Section 79(1)(f) of the Act. Thus, this issue is decided against the Appellant.

(iv) We have given specific findings about the various issues raised by the Appellant and the Respondent no.1 for usage of the transmission system of the Appellant, and other related issues in Paragraph 53 of the judgment. The Central Commission shall pass consequential order on the basis of our directions after hearing the concerned parties within 45 days of receipt of the copy of this judgment. However, till the passing of the consequential order by the Central Commission the interim arrangement for payment of transmission charges and transmission losses by the Respondent No.1 to the Appellant as per our interim order dated 10.6.2011 will continue.

56. The Appeal is dismissed with directions to the Central Commission to pass the consequential order. No order as to costs.”

4. In terms of directions in the said judgment dated 2.1.2013, the Commission, after hearing the parties, vide order dated 18.1.2013 directed ADHPL to file the tariff petition for the 220 kV D/C ADHEP-Nalagarh transmission line in accordance with the provisions of the 2009 Tariff Regulations and directed to list the petition for further hearing on 21.2.2013. Relevant portion of said order dated 18.1.2013 is extracted as under:

“2. In para 53 of the judgement, the Appellate Tribunal has issued specific directions regarding capital cost, return on equity, sharing of transmission losses, priority in case of outage of a circuit, control of 132/220 kV Chhaur sub-station. Briefly, the directions of the Appellate Tribunal on the above issues are as under:

(a) The Central Commission shall decide the capital cost on the basis of the provisions of 2009 Tariff Regulations which shall form the basis for determination of transmission charges payable by the petitioner to Respondent No.1.

(b) Respondent No.1 cannot claim return on equity more than that specified in the 2009 Tariff Regulations for transmission business for determine the transmission charges payable by the petitioner.

(c) The Commission shall decide the O&M charges to be borne by the petitioner afresh after hearing the parties.

(d) As regards the outage handling and priority in scheduling, the Commission shall give detailed directions to NRLDC on the principles enumerated in para 53.4 of the judgement after hearing the parties.

(e) The operations at Chhaur sub-station for Nalagarh and Allain Duhangan sections have to be carried out under the control of the Northern Regional Load Dispatch Centre.

(f) In respect of other operational issues, the Appellate Tribunal has granted liberty to Respondent No.1 (appellant) to raise the issue before the Commission which the Commission shall consider afresh after hearing the parties and pass consequential order.

3. In view of the above, we direct the Respondent No.1 to file the tariff petition for the 220 kV D/C ADHEP - Nalagarh Transmission Line in accordance with the provisions of 2009 Tariff Regulations of this Commission after serving a copy of the petition on the petitioner within 15 days of the issue of this order. The tariff petition shall be accompanied by all relevant documents including the certificate of the statutory auditor with regard to the capital cost and other expenditures. The petitioner is directed to file its reply to the tariff petition within 7 days thereafter. It is clarified that the Respondent No. 1 shall not be required to publish the public notice in the news papers as required under Regulation 5(1) of 2009 Tariff Regulations read with Central Electricity Regulatory Commission (Procedure for making of Application for Determination of Tariff, Publication of the Application and Other Related Matters) Regulations, 2004.”

5. In the meantime, ADHPL filed a Civil Appeal No. 1795/2013 before the Hon'ble Supreme Court against the Appellate Tribunal's judgment dated 2.1.2013. The Hon'ble Supreme Court vide its interim order dated 8.3.2013 in Civil Appeal No. 1795/2013 granted interim stay on the APTEL's remand order dated 2.1.2013 and directed the Commission not to proceed on the basis of APTEL's order of remand. Based on the direction of the Hon'ble Supreme Court, the proceedings before the Commission were kept in abeyance. The Hon'ble Supreme Court vide its final judgment dated 26.4.2017 vacated the interim stay and upheld the Appellate Tribunal's judgment/remand order dated 2.1.2013. The Hon'ble Supreme Court held that the Central Commission has jurisdiction over the ADHPL's transmission line including to determine its tariff and adjudicate disputes pertaining to the said

transmission line. Relevant portion of the said judgment dated 26.4.2017 is extracted as under:

“1. The present appeal is directed against the judgment dated 2.1.2013 passed by the Appellate Tribunal for Electricity, New Delhi (for short the Appellate Tribunal’) in which it has confirmed the judgment dated 1.6.2011 of the Central Electricity Regulatory Commission (for short the ‘Central Commission’) which has held that in view of the fact that inter-State transmission of electricity is involved, the Central commission would have jurisdiction to proceed further with the matter under Section 79 of the Electricity Act, 2003.

2. We have heard Mr. Parag Tripathi, learned senior counsel appearing on behalf of the respondents. Nobody has argued on behalf of the appellants, despite the fact that the matter has been passed over once and this is the second call. We have also heard Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the intervener, Mr. Aditya Dhawan, learned counsel for Respondent No.7 and Mr. A.K. Panda, learned senior counsel for the Union of India.

3. Mr. Tripathi has adverted to a concurrent finding of fact of both the Central Commission and the Appellate Tribunal. The Commission in its judgment dated 1.6.2011 held on facts as follows:-

“16. We have considered the submission 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 EPPI becomes a part of the inter-State transmission system as “inter-State transmission system” under 2(36) of the 2003 Act which included conveyance within the State which is incidental to inter-State transmission of electricity. Moreover, permission to EPPL in 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.”

4. This was affirmed by the Appellate Tribunal in para 35 as follows:

“35. The definition of the inter-State transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening state as well as within the state which is incidental to such inter-State transmission of electricity. In the present case as discussed in the previous paragraphs, Allain Dunhagan-Nalagarh line after loop-in-loop-out at Chhaur sub-station of the Respondent No.1 becomes the system incidental to inter-State transmission of electricity from Malana-II station of the Respondent



No.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Dunhangan- Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.

5) In view of the concurrent finding of fact taking into account Section 2 (36) (ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgment has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.

6) The appeal is dismissed. Needless to say, interim order, stands vacated.”

6. Subsequently, ADHPL filed Review Petition before the Hon`ble Supreme Court. The Hon`ble Supreme Court vide its order dated 12.7.2017 dismissed the Review Petition with the direction that when the Central Commission decides the matter on merits, it may do so without regard to the observations made by Appellate Tribunal in its order dated 2.1.2013. Relevant portion of the said order is extracted as under:

“Having heard Mr. Dushyant Dave, learned senior counsel appearing for the review petitioner, we find that there is no error apparent in our order dated 26<sup>th</sup> April, 2017.

However, when the Central Electricity Regulatory Commission decides the matter on merits, it may do so without regard to the observations made by the Appellate Tribunal for Electricity in its order dated 02.1.2013.

With these observations, the Review Petition is disposed of.”

7. Consequent to the disposal of the Civil Appeal and Review Petition, ADHPL has filed the Tariff Petition No. 209/MP/2017 on 8.9.2017 for determination of Transmission Charges, Transmission Losses and other conditions for use of 176.5 km Double Circuit 220 kV Dedicated Transmission line (ADHPL) from Prini (Generating station of ADHPL) to Nalagarh (Sub-station of CTU).

8. During the hearing for the Petition, learned counsel for ADHPL submitted that the Tariff Petition has been filed in accordance with the Tariff Regulations of the

Commission. Learned counsel submitted that ADHPL has filed an IA No. 69/2017 in the said petition seeking a direction to EPPL to pay the outstanding transmission charges pending determination of tariff by the Commission. Learned counsel for HPPTCL submitted that HPPTCL is in the process of filing the tariff petition for determination of transmission tariff in respect of the transmission assets of HPPTCL, namely 33/220 kV, 80/100, MVA GIS sub-station Phojal along with 220 kV D/C LILO transmission line.

9. We have considered the submissions of the parties. The Commission had disposed of Petition No. 250/2010 by its order dated 1.6.2011. The said order has been upheld by the Appellate Tribunal and the Hon`ble Supreme Court. The present petition has been re-opened on remand by the Appellate Tribunal for determination of the tariff of the transmission assets as well as decision of the matter on merit. The Hon`ble Supreme Court vide its order dated 12.7.2017 in Review Petition (C) No. 1365 of 2017 in Civil Appeal No. 1795 of 2013, has observed that the Central Commission shall decide the matter on merit without regard to the observations made by the Appellate Tribunal in its order dated 2.1.2013.

10. In view of the above observations of the Hon`ble Supreme Court, apart from deciding the tariff, the Commission shall be required to decide the other issues raised in Petition No. 259/2010 on merit. In Petition No. 259/2010, the Petitioner, Everest Power Pvt. Ltd. had prayed the following:

“49. In view of the above noted facts and the circumstances of the instant Petition, it is most respectfully prayed, that the Commission may kindly issue necessary directions/clarifications on the following main issues:

- a. The methodology and process for computation and sharing of transmission charges by the Petitioner and ADHPL, for use by the Petitioner and ADHPL

of 220 kV ADHEP- Nalagarh Transmission line, being constructed by ADHPL, for evacuation of the power generated by Malana-II HEP and ADHEP.

- b. The methodology of sharing of energy losses by the Petitioner and ADHPL, of 200 kV ADHEP- Nalagarh Transmission line being constructed by ADHPL for evacuation of power generated by both by Malana-II and ADHEP.
- c. The method and process to be adopted for calculation and determination of the capital cost of 220 kV D/C ADHEP- Nalagarh Transmission line, being constructed by ADHPL.
- d. The method and process to be adopted for ascertaining the priority of use by the Petitioner and ADHPL of 220 kV ADHEP- Nalagarh Transmission line being constructed by ADHEPL for evacuation of power generated by both Malana-II and ADHEP.
- e. The Operation & control of 132/220 kV substation of Chhaur, which has been constructed by the Petitioner and at which point the 220 kV ADHEP- Nalagarh Transmission line, being constructed by ADHPL, is to be LILOED for effectuating the evacuation of the power generated by Malana-II HEP.
- f. Scheduling, metering and energy accounting of the power generation 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 between ADHPL and EPPL should be based on the CERC Regulations applicable for inter-State transmission system and scheduling and operational issues should be based in the Indian Electricity Grid Code and RLDC norms, for inter-State Transmission System.
- h. A direction to both parties to conclude the TSA within two weeks.”

Accordingly, Everest Power Pvt. Ltd. is directed to file on affidavit in Petition No. 209/MP/2017 all the issues which are required to be decided on merit in terms of the order of the Hon`ble Supreme Court. The Petitioner and the Respondents (other than Everest Power Pvt. Ltd.) are directed to file their responses to these issues.

11. The Petition No. 259/2010 is disposed of with the above.

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

sd/-  
**(A.S.Bakshi)**  
Member

sd/-  
**(A.K. Singhal)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson