

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No.65/RP/2016 in Petition No.18/TT/2015
Review Petition No.66/RP/2016 in Petition No.528/TT/2014
Review Petition No.18/RP/2017 in Petition No. 92/TT/2011
Review Petition No.19RP/2017 in Petition No. 94/TT/2011**

Coram:

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

Date of Order : 10.05.2019

Petition No.65/RP/2016 in Petition No.18/TT/2015

In the matter of:

Application under Sections 79(1)(c), 79(1)(d), 79(1)(f), 79(1)(k) and 94 of the Electricity Act, 2003 read with Regulations 111, 112 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking recall of order dated 23.2.2016 in Petition No.18/TT/2015

Petition No.66/RP/2016 in Petition No.528/TT/2014

And in the matter of:

Application under Sections 79(1)(c), 79(1) (d), 79(1)(f), 79(1)(k) and 94 of the Electricity Act, 2003 read with Regulations 111, 112 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking recall of order dated 17.2.2016 in Petition No.528/TT/2014

And in the matter of:Greenko Budhil Hydro Power Pvt. Ltd.

(Formerly known as Lanco Budhil Hydro Power Private Limited)

P. No.1367, Road No.45, Jubilee Hills,
Hyderabad – 500033

...Review Petitioner

Vs

1. Power Grid Corporation of India
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001
2. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Vidyut Bhawan, Janpath, Jaipur - 302 005
Rajasthan



3. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer– 305004,
Rajasthan
4. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur - 302 005
Rajasthan
5. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area
Jodhpur-342003, Rajasthan
6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan Shimla
Himachal Pradesh -171004
7. Punjab State Electricity Board,
1st Floor, Opposite Kali Mata Mandir
Shakti Sadan, Patiala - 147001,
8. Haryana Power Purchase Centre,
Shakti Bhawan, Sector -6,
Panchkula-134109
9. Power Development Department,
Exhibition Ground, PDD Building,
Jahangir Chowk, Srinagar- 190001
10. Uttar Pradesh Power Corporation Ltd.,
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001, Uttar Pradesh.
11. Delhi Transco Limited,
Shakti Sadan, Kotla Marg,
New Delhi-110002
12. BSES Yamuna Power Limited, New Delhi
C-7, Yamuna Vihar, New Delhi - 110053
13. BSES Rajdhani Power limited,
33 kV Grid, BSES Bhawan,
Adchini, New Delhi -110017
14. North Delhi Power Limited,
Shakti Deep Building,
District Office Building,
Rohini Sector 3, New Delhi– 110085



15. Chandigarh Administration,
Union Territory
5th Floor, Secretariat Deluxe Building,
Sector - 9 - D, Chandigarh-160017
16. Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeyta Gabar Singh Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun-248001, Uttarakhand
17. North Central Railway,
Subedarganj, Doomanganj,
Allahabad – 211011, Uttar Pradesh
18. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi-110001

..... Respondents

Petition No.18/RP/2017 in Petition No. 92/TT/2011

And in the matter of:

Application under Sections 79(1)(c), 79(1) (d), 79(1)(f), 79(1)(k) and 94 of the Electricity Act, 2003 read with Regulations 111, 112 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking recall and setting aside of order dated 16.11.2012 in Petition No. 92/TT/2011.

Petition No.19/RP/2017 in Petition No. 94/TT/2011

And in the matter of:

Application under Sections 79(1)(c), 79(1)(d), 79(1)(f), 79(1)(k) and 94 of the Electricity Act, 2003 read with Regulations 111, 112 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking recall and setting aside of order dated 2.1.2013 in Petition No. 94/TT/2011.

And in the matter of:

Greenko Budhil Hydro Power Pvt. Ltd.
(Formerly known as Lanco Budhil Hydro Power
Private Limited)
P. No.1367, Road No.45, Jubilee Hills,
Hyderabad – 500033

...Review Petitioner

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5. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Industrial Area
Jodhpur-342003, Rajasthan
6. Himachal Pradesh State Electricity Board,
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Shakti Bhawan, Sector -6,
Panchkula-134109
9. Power Development Department,
Exhibition Ground, PDD Building,
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Shakti Sadan, KotlaMarg,
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C-7, Yamuna Vihar, New Delhi - 110053



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33 KV Grid, BSES Bhawan,
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Shakti Deep Building,
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5th Floor, Secretariat Deluxe Building,
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16. Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeyta Gabar Singh Bhawan,
Kanwali Road, BalliwalaChowk,
Dehradun-248001, Uttarakhand
17. North Central Railway,
Subedarganj, Doomanganj,
Allahabad – 211011, Uttar Pradesh
18. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi-110001
19. PTC India Limited
2nd Floor, NBCC Tower
15 Bhikaji Cama Place
New Delhi - 1100666

..... Respondents

For Review Petitioner: Shri Harish Vaidyanathan Shankar, Sr. Advocate, GBHPPL
Shri Piyush Singh, Advocate, GBHPPL
Ms. Nisha Mohandas, GBHPPL
Shri AkshayaBabu, GBHPPL

For respondents : Ms. Suparna Srivastava, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Shri R.P. Padhi, PGCIL
Shri A.M. Pavgi, PGCIL



ORDER

Lanco Green Power Private Limited (LGPPL) owned and operated a 70 MW Hydro Power Plant located at Budhil Village, Chamba District, Himachal Pradesh (hereinafter referred to as the "Budhil HEP"). GBHPPL (Greenko Budhil Hydro Power Pvt. Ltd.), took over the Budhil HEP from LGPPL in the year 2014-15. A brief background of the matter is as under:

2. LGPPL, through PTC India Ltd. (hereinafter referred to as PTC), had made an application to PGCIL for grant of long-term open access (LTOA) for evacuation and sale of power from the Budhil HEP. PGCIL granted LTOA to the Petitioner.. Accordingly, a tripartite BPTA was executed between LGPPL, PTC and PGCIL on 18.10.2007. As per the terms and conditions of the BPTA, LGPPL was required to construct a dedicated transmission line from Budhil HEP to the nearest pooling station of PGCIL. On the other hand, PGCIL was required to construct the 400/220 kV pooling station near Chamera-II HEP of NHPC. It was further agreed in the BPTA that the transmission charges for 400/220 kV pooling station and its 400 kV connectivity to Chamera-II HEP of NHPC would be borne by LGPPL till the time Chamera-III of NHPC was commissioned.

3. LGPPL made a request to PGCIL for pre-ponement of the date of commercial operation (COD) of the 440/220 kV pooling station as the Budhil HEP was anticipated to commence generation and supply of power during the period 2008-09. PGCIL agreed to pre-pone the establishment of 440/220 kV Chamera-II pooling station to match with the commissioning of the Budhil HEP. However, neither the



Budhil HEP of LGPPL nor the Chamera-III HEP of NHPC nor the transmission system of PGCIL could achieve COD as scheduled.

4. PGCIL filed Petition No.92/TT/2011 for approval of transmission charges for (a) 400 kV D/C transmission line from GIS Pooling Station Chamba-Jalandhar, (b) 220 kV D/C transmission line from GIS Pooling Station Chamba-Chamera HEP and (c) Jalandhar Sub-station Extension under Transmission System associated with Chamera-III HEP for 2009-14 period under the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the “2009 Tariff Regulations”). Tariff was granted for these assets vide order dated 16.11.2012 and it was held that the transmission charges for the assets would be borne by LGPPL (mentioned as PTC/LANCO in the Order) till they become part of the regional system. The relevant portion of the said order is as follows:-

“59. The transmission charges for the transmission assets covered under this petition shall be shared by the PTC/LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets become part of the regional system, i.e. till the commissioning of Chamera-III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010.”

5. PGCIL also filed Petition No.94/TT/2011 seeking transmission charges for (a) 400 kV S/C Chamera-II Pooling Station transmission line, (b) 400/220 kV 315 MVA ICT-I & ICT-II and (c) 80 MVAR Bus Reactor at pooling point under establishment of 400/220 kV GIS Pooling Station near Chamera-II HEP (referred to as “transmission assets”) for the 2009-14 period under the provisions of the 2009 Tariff Regulations. These transmission assets were part of “Establishment of 400/220 kV GIS Pooling Station near Chamera-II HEP”. The transmission charges for the transmission



system were allowed vide order dated 2.1.2013. As in the case of Petition No.92/TT/2011, the Commission held that the transmission charges would be borne by LGPPL in accordance with the BPTA dated 18.10.2007 signed between LGPPL and the petitioner, till they become part of the regional system. The relevant portion of the order dated 2.1.2013 is extracted hereunder:-

“50. In the light of the submissions of the petitioner, we direct that the transmission charges for the transmission assets covered under Part-I shall be shared by the PTC/LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets becomes part of the regional system i.e. till the commissioning of Chamera–III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with Central Electricity Regulatory Commission (sharing of inter-state transmission charges and losses) Regulations, 2010.”

6. Based on the aforementioned orders in Petition No.92/TT/2011 and Petition No. 94/TT/2011, PGCIL raised invoice dated 2.7.2014 for an amount of ₹404.01 lakh and ₹2511.59 lakh in terms of the BPTA dated 18.10.2007 towards the transmission charges for the period between November 2011 and June 2012.

7. Meanwhile, PGCIL also filed Petition No.528/TT/2014 and Petition No. 18/TT/2015 for truing up the tariff allowed in Petition No. 94/TT/2011 and Petition No. 92/TT/2011 respectively for 2009-14 tariff period under the provisions of the 2009 Tariff Regulations and for grant of tariff for the 2014-19 tariff period under the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”). The tariff was trued up vide orders dated 17.2.2016 and 23.2.2016 in Petition No.528/TT/2014 and Petition No. 18/TT/2015 respectively.

8. Aggrieved by the order dated 16.11.2012 in Petition 92/TT/2011, order dated 2.1.2013 in Petition No. 94/TT/2011, order dated 17.02.2016 in Petition No. 528/TT/2014 and order dated 23.2.2016 in Petition No. 18/TT/2015, GBHPPL (which



took over LGPPL in 2014-15) filed Interlocutory Applications (IAs) for recall of the orders and for quashing the invoices issued by PGCIL pursuant to the said orders. The said IAs were converted into instant Review Petitions (65/RP/2016, 66/RP/2016, 18/RP/2017, 19/RP/2017) as per the directions of the Commission.

9. During the pendency of the aforesaid Review Petitions with the Commission, PGCIL moved to curtail STOA (Short-term Open Access) to GBHPPL on account of non-payment of outstanding dues of ₹33.03 crore. The Commission vide Record of Proceedings (RoP) dated 11.5.2017 directed GBHPPL to pay atleast 50% of the outstanding transmission charges for the disputed period to PGCIL. On the condition of payment of 50% of the outstanding transmission charges by GBHPPL, PGCIL was directed not to take any coercive action to realise the balance transmission charges till further orders.

10. GBHPPL filed I.A. No.29/IA/2017 seeking modification of the RoP dated 11.5.2017. The Commission taking into consideration the submissions of GBHPPL and PGCIL modified the said RoP vide order dated 29.5.2017 directing GBHPPL to make a payment of ₹6 crore to PGCIL and to furnish a Bank Guarantee to PGCIL for the balance amount (i.e. for outstanding dues of ₹33.03 crore less ₹6 crore). GBHPPL has complied with our directions in order dated 29.5.2017.

11. GBHPPL has made the following prayers: -

- “a) Recall and set aside the impugned order dated 02.01.2013 passed by this Hon’ble Commission in Petition No.94/TT/2011, in terms of the present application;
- b) Quash the invoice dated 02.07.2015;
- c) Direct PGCIL to modify the BPTA dated 18.10.2007 in terms as stated in the present application;



d) In the interim, direct PGCIL not to take any coercive actions whatsoever, against the Applicant in terms of the Invoice dated 02.07.2015, during the pendency of the present application; and

e) Pass any other order/orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the instant case”

Submissions of GBHPPL and PGCIL

12. GBHPPL has made the following submissions:-

(a) The evacuation system for the Budhil HEP was discussed in various Standing Committee Meetings and following arrangements for evacuation of power from Budhil HEP were decided:-

- (i) PGCIL would construct a 400/220 kV pooling station near Chamera-II HEP of NHPC;
- (ii) The pooling station was proposed to be connected through a 400 kV S/C transmission line;
- (iii) LGPPL was required to construct a dedicated transmission line to the aforementioned 400/220 kV pooling station;
- (iv) The transmission system for evacuation of power from Chamera-III HEP of NHPC was anticipated to be commissioned by August 2010;
- (v) LGPPL's plant was anticipated to be commissioned by December 2009; and
- (vi) LGPPL was to bear the transmission charges from December 2009 to August 2010 as GBHPPL wanted evacuation from its power plant at an earlier date.

(b) GBPPL's predecessor, LGPPL though impleaded as a Respondent in Petition No. 92/TT/2011 and Petition No. 94/TT/2011 was not served with the notice of hearing as provided in Central Electricity Regulatory Commission (Conduct of



Business) Regulations, 1999 (hereinafter referred to as the “Conduct of Business Regulations”) to enable LGPPL to file its reply in the matter. In Petition No.528/TT/2014 and Petition No. 18/TT/2015, LGPPL was not made a Respondent by PGCIL. Therefore, the impugned orders were passed behind the back of LGPPL and are vitiated by gross violation of principles of natural justice.

(c) PGCIL had entered into an Indemnification Agreement with NHPC on 22.7.2005 and according to this, PGCIL was entitled to recover the transmission charges from NHPC in case of any delay in commissioning of the Chamera-III HEP of NHPC beyond August 2010. This Agreement was a material document and had a bearing on the outcome of the tariff petitions filed by PGCIL. Since the existence of this Indemnification Agreement between PGCIL and NHPC which indemnified PGCIL by NHPC for any delay was concealed by PGCIL, the order is vitiated by misrepresentation of facts. Consequently, GBHPPL (as successor of LGPPL) has no liability to pay the transmission charges.

(d) The above scheme to evacuate power was envisaged as the Budhil HEP of LGPPL and Chamera-III HEP of NHPC were anticipated to be commissioned by December 2009 and August 2010 respectively. LGPPL had agreed to bear the cost of the transmission system from December 2009 to August 2010, provided that the said evacuation system was ready by December 2009 for evacuation of power from Budhil HEP. However, the transmission line was not commissioned in December 2009 as agreed in the agreement dated 18.10.2007 and it was put into commercial operation only on 1.11.2011. Thus,



the conditions of payment of transmission charges by LGPPL as envisaged in the BPTA have not been fulfilled and GBHPPL is not liable to pay the transmission charges for the period as claimed by PGCIL through its invoices.

(e) LGPPL had entered into an arrangement to bear the entire transmission charges of Chamera-III HEP of NHPC before coming into force of the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010 (hereinafter referred to as the “2010 Sharing Regulations”). Post notification of the 2010 Sharing Regulations, the transmission charges for the inter-State Transmission System (ISTS) has to be shared by the regional constituents. Further, it was the duty of PGCIL to modify the existing BPTA and other agreements in line with the mandate of the 2010 Sharing Regulations. PGCIL does not have the power to collect the transmission charges from it de hors the 2010 Sharing Regulations. After the notification of the 2010 Sharing Regulations, the BPTA dated 18.10.2007 is hit by Section 23 of the Indian Contract Act, 1872 and as per the said provision, any arrangement/agreement which is contrary to law is null and void.

(f) GBHPPL received an invoice dated 2.7.2014 from PGCIL for ₹2511.59 lakh based on the Order dated 2.1.2013 in Petition No. 94/TT/2011 and another invoice of the same date for ₹404.01 lakh based on the order dated 16.11.2012 in Petition No.92/TT/2011. However, this liability was not spelt out by its predecessor (LGPPL) at the time of due diligence or subsequently at the time of handing over the management of Budhil HEP. GBHPPL received another invoice on 18.5.2016 for ₹3.87 crore based on the order dated 17.2.2016 in Petition No.528/TT/2014 on account of truing up of the 2009-14



capital expenditure. GBHPPL is diligently and promptly paying the transmission charges post commissioning of the Budhil HEP and it has paid more than ₹45 crore to PGCIL. However, PGCIL has adjusted around ₹4 crore towards the above said invoices, which is unfair and illegal.

13. In response, PGCIL in its reply has made the following submissions:-
- (a) As per Regulation 103 of the Conduct of Business Regulations, a review has to be filed within 45 days of making such order. In the instant case, review has been filed after more than three years of passing of the impugned orders. There is inordinate delay in filing of the review petitions and, therefore, the Review Petitions are liable to be dismissed.
- (b) A review under Order 47 of Rule 1 of Code of Civil Procedure can be exercised for correction of a patent error of law or fact or on discovery of new and important matter of law which after due diligence was not in the review petitioner's knowledge and was not produced at the time of issue of the impugned order or for any other sufficient reason. In the instant case, the review petitioner's predecessor was arrayed as a respondent in the main petitions. However, the review petitioner's predecessor chose not to participate in the proceedings and now the review petitioner cannot claim any error apparent in the impugned orders. The material that is sought to be placed now is neither new nor it was not within the knowledge of the review petitioner's predecessor. Further, no other sufficient cause has been demonstrated for reviewing the impugned orders. The present review petitions do not satisfy the criteria prescribed in Order 47 of Rule 1 of Code of Civil Procedure and hence are liable to be dismissed.



(c) The review petitioner's predecessor (LGPPL) was impleaded as a respondent in the main petitions and copy of the main petitions were served on it. PTC, who was the LTOA applicant for evacuation of power from the review petitioner's generation project (the Budhil HEP), was also impleaded as a respondent and copy of the main petitions were also served on PTC. Further, notice was published in newspapers in terms of Section 64(2) of the Electricity Act, 2003 inviting public comments. As such, apart from the service of tariff petitions, LGPPL had an opportunity to respond to the public notice issued by PGCIL.

(d) As regards GBHPPL's contention that PGCIL did not place on record the Indemnification Agreement signed with NHPC, PGCIL submitted that tariff is claimed for the transmission elements necessary for evacuation of power from the Budhil HEP and does not cover the elements that were to be commissioned matching with Chamera-III HEP of NHPC. Hence, the Indemnification Agreement with NHPC was not relevant in those proceedings. However, the Indemnification Agreement between PGCIL and NHPC was submitted in response to the queries raised by the Commission in the main petitions.

(e) As per the tripartite BPTA between PTC, LGPPL and PGCIL, the GBHPPL is liable to bear the transmission charges till the transmission assets become part of the regional system. LGPPL had agreed to bear the transmission charges for the transmission assets till it became part of the regional system and not with any specific date like December 2009 or



August 2010 as contended by GBHPPL. LGPPL's liability to bear the transmission charges was re-affirmed in the meeting conducted by Member (PS) of CEA on 25.4.2012 which was acknowledged by LGPPL in one of its applications filed before the Commission.

14. In response, GBHPPL in its rejoinder, vide affidavit dated 28.7.2017, has mainly reiterated the submissions made in the Review Petitions. The additional submissions of the GBHPPL are as under:-

(a) There was a scheduled and agreed timeline for commissioning of respective generation of the Budhil HEP of LGPPL, Chamera-III HEP of NHPC and associated transmission assets by PGCIL in terms of BPTA dated 18.10.2007. Those timelines were not adhered to either by LGPPL and/or by PGCIL which was the pre-requisite for making the entire payment of transmission charges by LGPPL.

(b) Indemnification Agreement dated 22.7.2005 between NHPC and PGCIL provided for indemnification of PGCIL in the event of delay in commissioning of NHPC's Chamera-III HEP beyond August 2010. On specific query of the Commission regarding this Indemnification Agreement during hearing dated 16.2.2012 in Petition No. 92/TT/2011, PGCIL submitted that the same could not be implemented as both PGCIL and NHPC missed the zero date. The same principle should be applied by PGCIL in the case of LGPPL too as the scheduled timelines provided for in BPTA dated 18.10.2007 were not met by LGPPL or PGCIL. Hence, GBHPPL must not be held liable for payment of the transmission charges as the BPTA has become ineffective.



- (c) There were reasons beyond control of LGPPL that led to delay in commissioning of the Budhil HEP. In March 2009, HPPTCL revised the evacuation system. In June 2009, CEA asked the LGPPL to develop an additional bay at Chamera-III. In November 2009, CEA further advised LGPPL to enter into a separate MOU with NHPC. The above revisions delayed the project developments and added to the financial burden on the LGPPL.
- (d) As regards payment of transmission charges from December 2009 to August 2010, LGPPL agreed to bear the said charges only if the transmission system of PGCIL was ready by November 2009 and Chamera-III HEP of NHPC was ready by August 2010. Since the said arrangement did not materialize, GBHPPL is not liable to bear the entire transmission charges from 1.11.2011 to 24.5.2012.
- (e) First unit of LGPPL was synchronized on 25.5.2012 and both units of were commissioned by 30.5.2012. LGPPL started using the transmission system for injecting power only since 25.5.2012, and as such it cannot be saddled with liability for the period from 1.11.2011 to 24.5.2012.
- (f) As per the Investment Approval of the Board of PGCIL dated 7.9.2007, the completion schedule for transmission system for evacuation of power from Budhil HEP was 30 months and that for Chamera-III HEP was 36 months. Thus, there is a gap of 6 months between the COD of the transmission system for Budhil HEP and Chamera-III HEP. However, PGCIL completed the transmission system for Budhil HEP and Chamera-III HEP on the same day



on 1.11.2011. In petitions before the Commission, the time over-run in case of the transmission system of PGCIL was attributed to the delay in land acquisition, hindrance on account of inhabitants and forest clearance. Due to these force majeure events, the implementation of transmission system for the Budhil HEP and Chamera-III HEP was not within control of PGCIL and was, therefore, uncertain. It was a mere coincidence that PGCIL's evacuation system was put into commercial operation prior to the Budhil HEP and Chamera-III HEP.

(g) As per the Indemnification Agreement between PGCIL and NHPC, the PGCIL should claim compensation from NHPC in case the transmission system (for LGPPL and NHPC) achieves COD before the commissioning of Chamera-III HEP of NHPC with the zero date being August 2010. The annexure to the Indemnification Agreement shows that transmission system was not built for just NHPC. Thus, PGCIL cannot create a distinction between the transmission system for GBHPPL and NHPC. The transmission system was ready on 1.11.2011 and Chamera-III HEP of NHPC was commissioned in June 2012 and as such PGCIL should claim compensation from NHPC as well instead of claiming the entire transmission charges from 1.1.2011 to 24.05.2012 from LGPPL.

Analysis and decision

15. PGCIL has filed reply in Review Petition No.18/RP/2017 and Petition No. 19/RP/2017 and rejoinder has been filed by GBHPPL to PGCIL's reply. None of the respondents have filed their reply in Review Petition No.65/RP/2016 and Petition No. 66/RP/2016.



16. PGCIL has contended that there is inordinate delay in filing of the instant review petitions and that they have been filed much beyond the time prescribed under Regulation 103 of the Conduct of Business Regulations and, therefore, the review petitions are liable to be dismissed. GBHPPL has submitted that it is a settled principle that law of limitation does not apply to regulatory jurisdiction. GBHPPL has further submitted that the impugned orders were obtained by PGCIL by misrepresenting and concealing material facts which cannot come in the way of GBHPPL seeking justice.

17. We have considered the submissions of GBHPPL and PGCIL. One of the objections taken by PGCIL is that the review petition is time barred. In the present case, GBHPPL had filed the IAs for recall of the orders. Since there is no provision in the Conduct of Business Regulations for filing of the IAs for recall of orders, finding that there was prima facie merit in the submissions of GBHPPL, the Commission converted the IAs into Review Petitions. There is no time bar on the Commission to initiate suo motu review petition. Since the IAs were converted into Review Petitions at the instance of the Commission, we are of the view that the preliminary objection of time bar cannot be sustained. GBHPPL has filed the Review Petitions mainly on three grounds, viz.(a) GBHPPL's predecessor (i.e. LGPPL) was not given sufficient opportunity to make its submissions in the main petitions, (b) PGCIL has concealed the information regarding the Indemnification Agreement between PGCIL and NHPC from the Commission and (c) GBHPPL is not liable to bear the transmission charges from 1.11.2011 as PGCIL has not pre-poned the COD of the transmission assets as agreed in the BPTA between PGCIL and LGPPL.



18. As regards the first contention that though LGPPL was a respondent, it was not given sufficient opportunity to present its case, it is observed that as per the provisions of the Electricity Act, 2003 and the Regulations framed by the Commission under the said Act, PGCIL is required to make all the beneficiaries of a particular transmission scheme as respondents and to publish a notice of filing of such a petition in the newspapers. PGCIL is further required to post the petition on its website. It is observed that PGCIL has made all the beneficiaries as respondents, served notice on them and has also submitted proof of service of petition on all the beneficiaries in Petition No.94/TT/2011 and 92/TT/2011. PGCIL has also complied with other requirements of the Electricity Act, 2003 and the Regulations of the Commission made thereunder. Moreover, notice was also issued by the Registry of the Commission in these cases to the beneficiaries, including LGPPL. Further, the Commission also issued a "Record of Proceedings" of the hearings dated 9.5.2012 and 16.2.2012 in Petition Nos.94/TT/2011 and 92/TT/2011 respectively, to all the beneficiaries, wherein the respondents were directed to file the reply to the petition filed by PGCIL. We are of the view that LGPPL was given due notice about the filing of tariff petitions by PGCIL and it had the opportunity to file reply. It was LGPPL that chose not to file any reply in the matter. LGPPL having failed to file reply and participate in the proceedings, GBHPPL cannot raise the issue after a period of more than three years that its predecessor was not granted enough opportunity to be heard. This contention of GBHPPL is contrary to the facts on record and is, therefore, rejected.

19. The second contention of GBHPPL is that PGCIL has concealed the fact from the Commission that there was an Indemnification Agreement between PGCIL and



NHPC and that had the same been brought to the notice of Commission, the findings would have been different. It is observed that PGCIL has filed the said Indemnification Agreement dated 22.7.2005 in response to a query of the Commission vide affidavit dated 24.4.2012 in Petition No.92/TT/2011. As such, we are of the view that there is no concealment of fact or fraud by PGCIL as contended by GBHPPL.

20. The third contention of GBHPPL is that as per the BPTA between the PTC, LGPPL and PGCIL dated 18.10.2007, LGPPL had agreed to bear the transmission charges for the transmission assets of PGCIL for the period from December 2009 to August 2010 only if PGCIL pre-poned COD of the transmission assets to December 2009. On the other hand, PGCIL has refuted the contention of GBHPPL on the ground that LGPPL had agreed to bear the transmission charges till the said assets became part of the regional system. PGCIL has also submitted that bearing the transmission charges by LGPPL has no relation to any specific date like December 2009 or August 2010. The relevant portion of the BPTA dated 18.10.2007 is as follows:-

“Date from which the open access is required: with effect from commissioning of Budhil Hydro Electric Project subject to availability of the transmission scheme identified below (to be built by Lanco) and availability of part of Chamera-III transmission system required for evacuation of Budhil Power (to be built by POWERGRID).

And whereas in accordance with the system evolved by CEA and POWERGRID, following scheme was agreed to facilitate long term open access:

- i) 220 kV D/C Budhil-Chamera pooling station line on single moose conductor and its associated bays at Chamera pooling station.

This system shall be built, owned, operated and maintained by M/s Lanco Green Private Power Ltd. for evacuation of power from Chamera-III, LILO of this line at Chamera-III shall be carried out by POWERGRID as a regional scheme along with the commissioning of Chamera-III which is expected in August, 2010 as intimated by NHPC.



The sharing of applicable transmission charges of line segment from Chamera-III to Chamera pooling point after the commissioning of Chamera-III HEP shall be discussed in the Standing Committee Meeting of Northern Region and Lanco shall approach CERC for sharing of transmission charges.

- ii) Establishment of 2X315 MVA, 400/220 kV Chamera pooling station with 400 kV inter-connection with Chamera-II HEP (Part of Chamera-III transmission system- to be preponed to facilitate evacuation of power from Budhil HEP (to be constructed by POWERGRID as regional scheme).

Transmission Charges:

For transfer of power from Budhil generation project, a pooling station near Chamera-II alongwith its connectivity with Chamera-II (which is a part of Chamera-III transmission system) is required to be preponed. The system would be built by POWERGRID and the transmission charges for this part, till it becomes part of regional system shall be borne/shared by PTC/ Lanco. In regard to the payment of transmission charges corresponding to the amount of power as given in the Long Term application and for transfer of 12% free power for the first 12 years and 18% free power thereafter from Budhil generation project to Himachal Pradesh (HP), following is agreed:”

21. The instant transmission system was to be built by PGCIL for evacuation of power from GBHPPL’s Budhil HEP and Chamera-II HEP of NHPC. As per the BPTA dated 18.10.2007, the 220 kV D/C Budhil-Chamera Pooling Station and associated bays at Chamera Pooling Station were required to be built by LGPPL. For evacuation of power from Chamera-III HEP, PGCIL was required to LILO the said line as a regional scheme alongwith the commissioning of Chamera-III HEP, which was anticipated to be commissioned in August 2010. The establishment of Chamera-II Pooling Station and the inter-connection upto Chamera-II was to be pre-poned by PGCIL for evacuation of power from Budhil HEP. The transmission charges for the Chamera-II Pooling Station and the transmission line connecting it to Chamera-III was to be borne by LGPPL till it became the part of the regional system. After the commissioning of the Chamera-III HEP the transmission charges were to be shared in the manner decided by the Commission.



22. The evacuation system for Budhil HEP and Chamera-III HEP was under discussion during the period 2005 to 2009 and the final arrangement was arrived at in the 23rd Meeting of the Standing Committee as follows:

- a. Establishment of GIS Pooling Station near Chamera-II by PGCIL
- b. Chamera-II to Chamera-II Pooling Station 400 kV S/C line by PGCIL
- c. Chamera-III to Chamera-II Pooling Station 220 kV line by PGCIL
- d. 220 kV S/C line from Budhil HEP to Chamera-III HEP by LGPPL

23. It is observed that LGPPL had agreed to bear the transmission charges for the above said transmission system from commissioning of Budhil HEP to the anticipated date of commissioning of Chamera-III HEP, which was August 2010 on the condition that transmission system of PGCIL would be ready on the date of commissioning of Budhil HEP which was anticipated to be in December 2009. However, it is observed that none of the projects i.e. Budhil HEP, Chamera-III HEP and the transmission system were ready on the anticipated dates.

24. The instant transmission assets under the scope of PGCIL were constructed for evacuating power from Budhil HEP of LGPPL and Chamera-III HEP of NHPC and they were scheduled to be put into commercial operation on 1.4.2010. On the request of LGPPL, PGCIL agreed to pre-pone the COD of these assets to December 2009 in terms of the BPTA signed with PTC and LGPPL on the agreement that PTC/LGPPL would bear the transmission till they become regional system. Had PGCIL been ready with the transmission assets under its scope in December 2009 (as agreed in the BPTA amongst PTC, LGPPL and PGCIL), LGPPL would have been liable to pay the transmission charges from December 2009. However, the instant assets were put into commercial operation on 1.11.2011. Accordingly, the



Commission in the impugned orders had held that LGPPL is liable to bear the transmission charges from 1.11.2011 to 24.5.2012 taking into consideration the BPTA between LGPPL and PGCIL.

25. However, it is observed that the instant transmission system was constructed for evacuating power from Budhil HEP of LGPPL and Chamera-III HEP of NHPC. It is further observed that there is an Indemnification Agreement between PGCIL and NHPC dated 22.7.2005 and as per the said Agreement, in case of delay in commissioning of generating station or COD of the transmission system, the defaulting party shall compensate the other party. The relevant portion of the Agreement is as under:-

“2. **INDEMNIFICATION**”

- a) In the event of delay in commissioning of generating units vis a vis ATS the defaulting party shall pay the Interest During Construction (IDC) including Foreign Exchange Rate Variation (FERV) and Govt. Guarantee fee, if any, for generating units and ATS calculated as lower of the two, up to a period of six months from the zero date. However, the defaulting party shall pay the indemnification claim only in case of revenue loss or part thereof suffered by the other party due to delay in commissioning by the defaulting party.”

26. The fact that the instant transmission system was to be shared by LGPPL and NHPC and that there is an Implementation Agreement was not considered by the Commission at the time of issue of the impugned orders. Thus, there is sufficient cause for reconsideration of the impugned orders in the light of the said facts regarding the sharing of the transmission charges of the subject transmission assets from 1.11.2011 till 24.5.2012, the day they are treated as part of regional transmission system.

27. However, it is noticed that NHPC was not a party in the Petition Nos.92/TT/2011, 94/TT/2011, 19/TT/2015 and 528/TT/2014. Accordingly, PGCIL is



directed to file a fresh petition for determining the issue of sharing of transmission charges from 1.11.2011 to 24.5.2012, impleading GBHPPL and NHPC, besides the other beneficiaries of the instant transmission assets within 30 days from date of issue of this order. Further, GBHPPL shall keep the BG valid as per the Commission's order dated 29.5.2017 in I.A No.29/IA/2017, till further directions of the Commission.

28. Review Petition Nos. 18/RP/2017, 19/RP/2017, 65/RP/2016 and 66/RP/2016 are disposed of in terms of above.

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

sd/-
(P.K. Pujari)
Chairperson

