

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 91/TT/2012

Coram:

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

Date of order: 05.02.2020

In the matter of:

Reconsideration of the order dated 21.7.2016 in Petition No.91/TT/2012 pursuant to the directions of Appellate Tribunal for Electricity in judgment dated 16.7.2018 in Appeal No. 281 of 2016 and 81 of 2017.

And in the matter of:

Power Grid Corporation of India Limited
"Saudamini", Plot No.2,
Sector-29, Gurgaon -122 001

.....Petitioner

Vs

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Vidyut Marg,
Jaipur- 302005.
2. Ajmer Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
3. Jaipur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
4. Jodhpur Vidyut Vitran Nigam Limited,
400 kV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur.
5. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171004.
6. Punjab State Electricity Board,
The Mall, Patiala-147001.



7. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6,
Panchkula (Haryana)-134109.
8. Power Development Department,
Government of Jammu and Kashmir,
Mini Secretariat, Jammu.
9. Uttar Pradesh Power Corporation Limited,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001.
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002.
11. BSES Yamuna Power Limited,
BSES Bhawan, Nehru Place
New Delhi.
12. BSES Rajdhani Power Limited,
BSES Bhawan, Nehru Place,
New Delhi.
13. North Delhi Power Limited,
Power Trading & Load Dispatch Group,
Cennet Building, Adjacent to 66/11kV Pitampura-3,
Grid Building, Near PP Jewellers,
Pitampura, New Delhi-110034.
14. Chandigarh Administration,
Sector-9, Chandigarh.
15. Uttarakhand Power Corporation Limited,
Urja Bhawan, Kanwali Road,
Dehradun.
16. North Central Railway,
Allahabad.
17. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002.
18. NHPC Limited,
N.H.P.C Office Complex,
Faridabad, (Haryana)-121003.
19. NTPC Limited NTPC Bhawan,



Core 7, Scope Complex, Institutional Area,
Lodhi Road, New Delhi-110003.

20. PKTCL Building No.10 B,
12th Floor DLF Cyber City,
Shankar Chauk Haryana.

... Respondents

For Petitioner: Ms. Ranjitha Ramachandran, Advocate, PGCIL
Ms. Poorva Saigal, Advocate, PGCIL
Shri S.S. Raju, PGCIL
Shri V. P. Rastogi, PGCIL
Shri A. K. Verma, PGCIL

For Respondents: Shri R. B. Sharma, Advocate, BRPL & BYPL
Shri Mohit Mudgal, Advocate, BRPL & BYPL
Ms. Sanya Sood, Advocate, BRPL & BYPL
Ms. Aparajita Upadhyay, Advocate, BRPL & BYPL
Shri Piyush Kumar, NHPC
Shri A. K. Pandey, NHPC
Shri Sanjay Srivastav, BRPL

ORDER

The Appellate Tribunal for Electricity (hereinafter referred to as "the Tribunal") has remitted Petition No.91/TT/2012 vide judgment dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017 for reconsideration of the order dated 21.7.2016 in Petition No.91/TT/2012. The relevant portion of the order dated 16.7.2018 is as follows:

"The matter stands remitted back to the Central Commission with the direction for fresh consideration in accordance with law after affording reasonable opportunity to both the parties and dispose of as expeditiously as possible....."

Accordingly, Petition No.91/TT/2012 was reopened and heard.

Background

2. PGCIL filed Petition No. 91/TT/2012 for approval of transmission charges for Asset-I: 400 kV D/C Parbati-Amritsar transmission line along with associated bays at both ends, Asset-II: LILO of 2nd Ckt of Parbati-II- Koldam transmission line at Pooling



Station along with associated bays and LILO at Parbati-III, Asset-III:400 kV 80 MVAR Bus Reactor at Parbati Pooling Station along with associated bays and Asset IV: LILO of Parbati-II Koldam Ckt-I at Parbati Pooling Point along with associated bays for Transmission System associated with Parbati-III-HEP (hereinafter referred to as “transmission assets”) in Northern Region for the 2009-14 tariff period based on Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “the 2009 Tariff Regulations”).

3. As per Investment Approval dated 31.7.2006, the instant assets were scheduled to be put into commercial operation within 42 months from the date of Investment Approval. Accordingly, the scheduled date of commercial operation was 1.2.2010. The Petitioner claimed COD of Assets I, II and III as 1.8.2013 and Asset IV as 1.4.2014. As Asset-IV achieved COD on 1.4.2014, during 2014-19 tariff period, the Petitioner claimed its tariff separately in Petition No. 411/TT/2014 in terms of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”).

4. There was a time over-run of 42 months in case of Assets-I, II and III and it was mainly due to forest clearance, land acquisition and time taken for obtaining tree cutting permission. The said time over-run of 42 months was found to be beyond the control of the Petitioner and, therefore, it was condoned. As regards Assets-I and III, the Petitioner submitted that in view of the requirement of NHPC, as conveyed to them by NHPC vide letter dated 12.6.2013, the Petitioner put them into commercial operation on 1.8.2013. Taking into consideration the submissions of the petitioner, the Commission approved the COD of Assets I and III as 1.8.2013 and granted tariff for Assets-I and III in this Petition in order dated 26.5.2015. However, the tariff for



Asset-II was not allowed as a portion of LILO of circuits of Asset-II was not being utilized since the Koldam switchyard was not ready and part of LILO could not be put to trial operation. The relevant portion of the order dated 26.5.2015 is extracted hereunder:-

“6. A portion of the LILO circuits of Asset-II is not utilized as the Koldam switchyard has not been commissioned and the part of LILO cannot be put to trial operation without the line getting connected at the other end as per the APTEL order dated 2.7.2012 in Appeal No. 123 of 2011. Further, the Petitioner has neither prayed for declaration of date of commercial operation under Regulation 3(12)(C) of the 2009 Tariff Regulations nor disclosed the information that the portion of LILO are not in use. Punjab State Power Corporation Limited (PSPCL), Respondent No. 6, has also raised this issue in their submission. Since the Koldam Switchyard has not been commissioned, we are not inclined to grant tariff for Asset-II in this petition. The Petitioner is at liberty to file the tariff of this asset when complete LILO is put into regular service after test charge and trial operation.”

7. Asset-IV has been commissioned in the 20014-19 tariff period and the Petitioner has already claimed tariff as per the 2014 Tariff Regulations for this asset in Petition No. 411/TT/2014. Accordingly, the transmission charges are allowed for only Asset-I and Asset-III in the instant petition. The Petitioner was directed to file separate capital cost of Assets-I and III as the Petitioner had submitted combined capital cost of all three assets. However, the Petitioner again vide affidavit dated 5.1.2015, submitted the combined capital costs of all the three assets.”

5. As regards sharing of transmission charges, the Commission in order dated 26.5.2015 held that since the assets were put into commercial operation on 1.8.2013 on the request of NHPC, the transmission charges of Assets-I and III from their COD, i.e. 1.8.2013 to the commissioning of the generation by NHPC on 23.3.2014 would be borne by NHPC. The relevant portion of the order is as under: -

“23. The Commission vide RoP dated 9.10.2014 directed the Petitioner to submit on affidavit the status of actual usage of the asset. The Petitioner vide affidavit dated 3.12.2014 has submitted that in view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the Petitioner has commissioned the asset with effect from 1.8.2013. It is observed that unit # 1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC. Our decision is in conformity with Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010 as amended from time to time which provides as under:-

“(6) For Long Term Customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply



shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after "commercial operation" of the generator. Till then, it shall be the responsibility of generator to pay these charges."

6. The Commission vide order dated 26.5.2015, allowed recovery of transmission charges from NHPC for pre-commissioning period of Parbati-III Project. Based on the above order, PGCIL raised bill amounting to ₹74.78 crore on NHPC.

Review Petition No. 25/RP/2015 in Petition No. 91/TT/2012 by NHPC

7. Aggrieved by the order of the Commission dated 26.5.2015 in Petition No. 91/TT/2012, NHPC filed Review Petition No.25/RP/2015 contending that the Commission did not take cognizance of the Implementation Agreement between NHPC and PGCIL and the whole system was not put into commercial operation with effect from 1.8.2013 as claimed by PGCIL. It further contended that the liability of the transmission charges should not be fastened on NHPC alone and it should also be shared by others. The main contention of NHPC was that it was not a party to the proceedings in Petition No. 91/TT/2012. The Commission vide order dated 29.12.2015 allowed the Review Petition No. 25/RP/2015 of NHPC and directed to reopen the Petition No. 91/TT/2012. The relevant portion of the order is as under: -

"11. Coming to the merit of review, we find that NHPC in its letter dated 12.6.2013 had requested PGCIL to commission the transmission line by 1.8.2013. Since PGCIL has acted on the request of NHPC, the transmission charges for the date of commission till the date of commercial operation was directed to be paid to NHPC. NHPC has submitted in the review petition that they have an indemnification agreement with PGCIL to take care of the delay and further that there are other generators which are linked to the transmission line. These facts were not brought by PGCIL to the notice of the Commission. Moreover, NHPC was also not made a party to the Petitioner by PGCIL as a result of which NHPC did not have the opportunity to present its case. Keeping in view this factor, we are of the view that there is sufficient reason to allow the review petition. Accordingly, we recall para 23 of the impugned order and direct that the original petition shall be set down for hearing on the limited aspect of sharing of the transmission charges of the transmission line. PGCIL is directed to serve the necessary material in this respect on NHPC and any other generator which is affected by this transmission line."

Review Petition No. 19/RP/2015 in Petition No.91/TT/2012 by PGCIL



8. PGCIL filed Review Petition No.19/RP/2015 against order dated 26.5.2015 praying for approval of COD of Asset-II and grant of tariff. The Commission allowed the Review Petition No. 19/RP/2015 of PGCIL vide order dated 7.9.2016 observing that the tariff for Asset-II would be allowed after receipt of information from PGCIL. The relevant portion of the order is as under:

“15. It is observed that Asset-II was completed on the request of NHPC and part of the asset (c-d-e-f) ready for use to evacuate power from Parbati III HEP which was commissioned on 24.3.2014. Although PGCIL has claimed COD of Asset-II as 1.8.2013, it is further noticed that the metering arrangement was installed at NHPC end portion of the Asset-II. The Petitioner requested NHPC to file the date when bays associated with the (b-c-d) were ready at Parbati-III Switchyard. However, NHPC did not furnish the same, keeping in view that the meters were installed on 28.8.2013 we conclude that bays at NHPC end were ready on 28.8.2013. Hence, we grant COD of asset c-d-e-f as 1.9.2013 as per the 2009 Tariff Regulations. Therefore, we direct that NHPC should be liable to pay the charges from 1.9.2013 till 23.4.2014. With effect from 23.4.2014, the transmission charges of (c-d-e-f) portion of Asset-II shall be included in the PoC charges as provided under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010. As regards, (b-c) and (f-g), these elements will be declared under commercial operation with effect from the date of commercial operation of line a-b and g-h respectively. The Petitioner is directed to submit the details of the cost of the portion of the transmission line represented by (c-d-e-f) of Asset-II as on 1.9.2013 for determination of tariff within 15 days from the issue of this order.

16. The instant review petition is allowed to the extent directed above and accordingly, the staff of the Commission is directed to work out the transmission tariff for (c-d-e-f) portion of Asset-II in Petition No.91/TT/2012 on receipt of required information from the review petitioner.”

9. Petition No. 91/TT/2012 was re-opened in terms of order dated 29.12.2015 in Review Petition No. 25/RP/2015. After hearing the parties, the Commission vide its order dated 21.7.2016 in Petition No. 91/TT/2012 made the following observations: -

“5. In our order dated 29.12.2015 in Petition No. 25/RP/2015, we have recalled para 23 of the order dated 26.5.2015 in Petition No. 91/TT/2012 and set down the hearing of the petition on the limited aspect of the transmission charges of the transmission line. In the light of the discussion in the preceding paragraphs, paragraph 23 of the order dated 26.5.2015 shall be read as under:-

“23. In view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the Petitioner has commissioned the asset with effect from 1.8.2013. Unit#1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC in terms of Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of



Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The CTU is directed to examine whether these transmission assets were used by other generators during the period in question, and if so, the transmission charges paid by them shall be utilised to reduce the liability of NHPC."

Appeal Nos. 281 of 2016 and 81 of 2017 before Appellate Tribunal for Electricity

10. Against the Commission's orders in Petition No. 91/TT/2012 and Review Petition No. 19/RP/2015, NHPC filed Appeal Nos. 281 of 2016 and 81 of 2017 before the Tribunal mainly on the issues viz (a) Implementation Agreement between NHPC and PGCIL, (b) approval of COD of the assets without commissioning of the associated communication system and (c) comprehensive adjudication of issues related to liability of generating company in case of delay in commissioning of generating station.

11. The details of the other related petitions pertaining to the instant transmission system are given in the following paragraphs.

Petition No. 411/TT/2014

12. PGCIL filed Petition No. 411/TT/2014 for determination of transmission tariff for 2014-19 tariff period for LILO of 1st ckt. of 400 kV D/C Parbati II-Koldam Transmission Line at Parbati Pooling Station. The Commission vide its order dated 30.7.2016 observed that the loop-out portion of the instant asset was put into use only on 10.10.2014 and the loop-in portion was put into use on 3.11.2015 after the commissioning of the connecting transmission lines by PKTCL and as such approved that the COD of the loop-in and loop-out portions shall be reckoned as 3.11.2015 and 10.10.2014 respectively. The Commission in the said order observed that the IDC and IEDC from the scheduled COD of 30.6.2014 as per the Annexure No.4 to the Implementation Agreement till the date of usage of the loop-in and loop-out portion



i.e. 3.11.2015 and 9.10.2014 respectively would be borne by PKTCL. The Commission disposed of Petition No.411/TT/2014 with directions to furnish the details of capital cost of LILO portions and IDC and IEDC as specified in order dated 30.7.2016 in a fresh petition and tariff was not allowed for the said loop-in and loop-out portions.

Review Petition No. 52/RP/2017 in Petition No. 411/TT/2014 by PKTCL

13. PKTCL filed Review Petition No.52/RP/2017 against the order dated 30.7.2016 in Petition No. 411/TT/2014 on the issue of time over-run in case of loop-in and loop-out portions of 1st ckt. of 400 kV D/C Parbati II-Koldam Transmission Line at Parbati Pooling Station and fixing the liability on PKTCL to pay IDC and IEDC. The Commission vide order dated 20.7.2018 disposed of the said Review Petition observing that PGCIL in Petition No. 411/TT/2014 did not disclose the fact of signing of amendments to the Implementation Agreement dated 10.2.2016 whereby PGCIL and PKTCL mutually agreed to revise COD of LILO as 3.11.2015. Accordingly, the Commission allowed COD of the loop-out portion from 10.10.2014 and loop-in portion from 3.11.2015 with direction to PGCIL to file a fresh petition with amended capital cost considering the COD loop-in and loop-out portions as 3.11.2015 and 10.10.2014 respectively.

Petition No. 136/TT/2017

14. In terms of Commission's direction vide order dated 30.7.2016 in Petition No. 411/TT/2014, PGCIL filed this petition claiming the COD of loop out and loop in portions of the 1st Ckt of 400 kV D/C Parbati-II-Koldam Transmission Line at Banala as 10.10.2014 and 3.11.2015. The Commission vide order dated



20.7.2018 in Review Petition No.52/RP/2017 observed that Petition No.136/TT/2017 shall be heard again on the limited issue of COD of loop-out portion. The matter shall be taken up in the due course of time.

Petition No. 156/TT/2015 by PKTCL

15. PKTCL filed Petition No.156/TT/2015 for determination of transmission tariff for Asset-I: 400 kV (Quad) 2 x S/C Parbati-Koldam transmission line, portion starting from Parbati-II HEP to LILO point of Parbati (Banala) Pooling Station to Koldam HEP (Ckt.-I) and Asset-II: Portion starting from Parbati-II HEP LILO point of Parbati-III HEP (Ckt.-II) in Northern Region for tariff block 2014-19. The Commission vide order dated 29.12.2016, held that PKTCL was not able to put into use its transmission line due to delay on the part of NHPC and held that NHPC would bear the IDC and IEDC charges for the period of mismatch. The relevant extract of the said order is as under:

“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 IDEC borne by NHPC shall not be capitalized by NHPC in its books of accounts for the purposes of claiming tariff for its generation from Parbati HEPs as well as for transmission services by the petitioner.”

Review Petition No. 4/RP/2017 by PKTCL and Review Petition No. 15/RP/2017 by NHPC in Petition No. 156/TT/2015

16. Against the Commission's order dated 29.12.2016 in Petition No. 156/TT/2015, PKTCL filed Review Petition No. 4/RP/2017 and NHPC filed Review Petition No. 15/RP/2017. In Review Petition No. 4/RP/2017, PKTCL sought review mainly on the ground of curtailment of IEDC to 5% instead of 10% and to allow full payment of transmission charges from 30.6.2015 to 2.11.2015 of Parbati Koldam



line. NHPC in Review Petition No. 15/RP/2017 sought review of the impugned order on the issue of allowing recovery of IDC and IDEC charges from it for the period from 30.6.2015 to 2.11.2015 due to non-commissioning of 400 kV bay of Prabati-II of NHPC. Both the Review Petitions were allowed vide order dated 12.12.2018 with the direction to relist Petition No.156/TT/2015 for reconsideration in terms of the Tribunal judgement dated 16.7.2018 on the issue of COD and sharing of transmission charges. The observations made by the Commission in order dated 12.12.2018 is as under.

“26. Taking into consideration the directions of APTEL in judgment 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 ParbatiKoldam 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.”

Petition No.156/TT/2015 is pending adjudication by the Commission and a separate order will be issued in that Petition.

Petition No. 107/TT/2017

17. PGCIL filed Petition No. 107/TT/2017 for truing up the transmission tariff for 2009-14 period determined in Petition No. 91/TT/2012 and determination of tariff for 2014-19 period in respect of combined assets, Asset-1: 400 kV D/C Parbati Pooling Point-Amritsar line alongwith associates bays, Asset-2: 80 MVAR bus reactor at Parbati Pooling Point along with associated bays, Asset-3: LILO of 2nd Ckt of Parbati-II-Koldam T/L at Pooling station and LILO at Parbati-III (Portion c-d), Asset-4 : LILO of 2nd Ckt. of Parbati-II-Koldam Transmission at Pooling Station along with associated bays and LILO of Parbati-III (Portion e-f) under transmission system associated with Parbati-III-HEP in Northern Region. Pursuant to the judgment of the Tribunal dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017, the



Commission vide RoP of hearing dated 20.9.2018 directed to list the Petition No. 107/TT/2017 for final hearing after the disposal of the Petition No. 91/TT/2012.

18. The Tribunal set aside the orders dated 21.7.2016 and 7.9.2016 in Petition No. 91/TT/2012 and 19/RP/2015 respectively vide judgment dated 16.7.2018 and remitted back the matter to Commission for consideration. The relevant extract of the judgment dated 16.7.2018 is extracted hereunder:

"The Appeals filed by the Appellant are allowed.

The impugned order passed by Central Electricity Regulatory Commission dated 21.7.2016 in Petition No. 91/TT/2012 and the order dated 7.9.2016 in Review Petition No.19/RP/2015 are hereby set aside. The matter stands remitted back to the Central Commission with the direction for fresh consideration in accordance with law after affording reasonable opportunity to both the parties and dispose off as expeditiously as possible at any rate within a period of six months from the date of appearance of the parties.

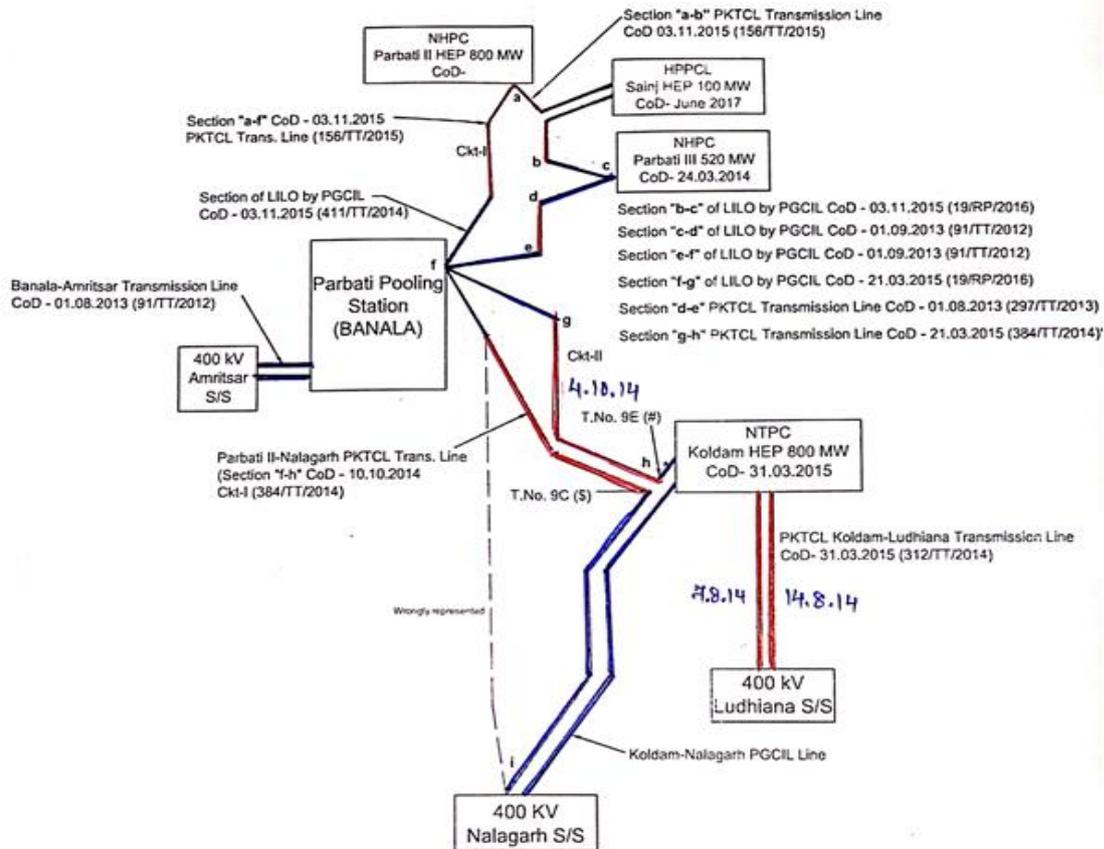
It is further noted that a Review Petition in respect of the said Petition No. 156/TT/2015 is pending before the CERC and the entire issue, as such needs comprehensive adjudication."

19. Accordingly, the instant petition is reopened as per the Tribunal's direction in judgment dated 16.7.2018 for consideration of the issue afresh. Accordingly, Review Petition No.4/RP/2017 filed by PKTCL and Review Petition No.15/RP/2017 filed by NHPC against the orders dated 29.12.2016 in Petition No.156/TT/2015 were listed together as per the directions of the Tribunal. The Commission after hearing the parties reserved the order in the petition on 11.7.2019.

20. The schematic diagram of the instant transmission system is under.



The schematic diagram describing transmission system



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.

Submissions of PGCIL

21. PGCIL vide affidavit dated 17.9.2018 has made the following submissions: -

- (a) The Tribunal has remanded the matter to the Commission on the following specific issues, (a) applicability of Implementation Agreement, (b) readiness of the communication system and (c) comprehensive adjudication of issues related to liability of generating company in case of delay in



commissioning of generating station.

(b) Once the transmission assets are put into commercial operation, the Petitioner is entitled to transmission charges and the same cannot be denied. The Petitioner has completed and executed the transmission assets and accordingly it is entitled to transmission charges from the date of COD.

(c) The transmission system was developed on the request of NHPC vide letter dated 12.6.2013 to provide for the connectivity to the switchyard of Parbati-III so as to enable power flow from Parbati-III Switchyard. Pursuant to the letter dated 12.6.2013, the assets were completed in all respects and COD of Assets-I and III was declared as 1.8.2013 and COD of Asset II was declared as 1.9.2013. NHPC in its letter stated that it was ready for commissioning in June 2013 but its generation was commissioned in March 2014.

(d) The transmission assets were available to Parbati-III generating station to get the start-up power, commissioning power for pre-commissioning activities, undertake performance test, injection of infirm power etc. to enable declaration of COD of Parbati-III generating station on 24.3.2014. NHPC itself admitted that it required the transmission assets for pre-commissioning activities and that it also required the transmission line for 10 months prior to commissioning. Thus, NHPC's stand that it does not need the 400 kV transmission line for start-up power is contrary to its own letter dated 12.6.2013. The 400 kV transmission line was the only line intended which provided the start-up power requirements of the NHPC Parbati-III generating station.

(e) As per provisions of Regulation 8(7)(b) of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter referred to as the "2009 Connectivity Regulations"), NHPC is liable to pay the transmission charges for the transmission assets. NHPC has used the line to draw start up power and it is liable for payment of transmission charges until 24.3.2014.

(f) The liability to pay the transmission charges for the use of line is to be



borne by the generator as provided in Regulation 8(8) of 2009 Connectivity Regulations and Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (hereinafter referred to as the “2010 Sharing Regulations”) notwithstanding anything contained to the contrary in any contract between the Petitioner and NHPC. Thus, for the period between the declaration of commercial operation of the transmission line i.e. 1.8.2013/1.9.2013 till the declaration of the commercial operation of the generating units i.e. 24.3.2014, the transmission charges is payable by the generator, NHPC and thereafter by the procurers/ beneficiaries of power from Parbati-III.

(g) The Implementation Agreement between the Petitioner and NHPC was executed in July 2005 prior to promulgation of the 2009 Connectivity Regulations and the 2010 Sharing Regulations. Even if the Implementation Agreement had provided otherwise, the 2009 Connectivity Regulations and the 2010 Sharing Regulations would override the Agreement and the transmission charges would be payable by NHPC. Regulation 14 of the 2010 Sharing Regulations states that the existing contract shall stand realigned to the Regulations and the Transmission Service Agreement. The decision of the Constitution Bench of the Hon’ble Supreme Court in PTC India Limited vs. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held that the Regulations framed by the Central Commission would override the existing contracts. Therefore, the reliance placed by NHPC on the Implementation Agreement is contrary to the provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations.

(h) The reliance on indemnity clause is irrelevant in the present case as Implementation Agreement relates to construction period and does not apply after commissioning of the transmission assets. The indemnity clause relates to Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) to be paid in case of delays. Both these elements relate to period prior to commissioning of the respective project i.e. in case the commissioning of the transmission assets of the Petitioner is delayed due to the delay attributable to NHPC, NHPC would be liable to indemnify the petitioner.



This clause is not applicable in the present case as transmission assets have been duly put into commercial operation. Once the transmission asset is commissioned, the transmission licensee is entitled to payment of transmission charges. The transmission charges have been held to be payable by the associated generating station until the commissioning of the generating station and thereafter by the beneficiaries of the generating station.

(i) The issues in Petition Nos. 411/TT/2014 and 156/TT/2015 are different from the issues in the present case and therefore the two cases have to be considered differently. Both the above Petitions relate to the 2014 Tariff Regulations and not to the 2009 Tariff Regulations. Further, the facts in the said Petitions were completely different. In the above petitions, the transmission assets could not be put into commercial operation due to delays by the generating station or another transmission licensee. However, in the instant case, the transmission line being c-d-e-f was connected at both ends i.e. 'c' at the NHPC switchyard and 'f' at Parbati Pooling Station. All the transmission assets in issue have been put into commercial operation on 1.8.2013/1.9.2013 in contrast to the case in Petition Nos. 411/TT/2014 and 156/TT/2015 wherein assets were not put into commercial operation. Accordingly, the liability for payment differs in the case where the transmission assets are put into commercial operation and in the case where they are not put into commercial operation. In such circumstances, the Implementation Agreement providing for payment of IDC and IEDC is applicable. Once the transmission asset is put into commercial operation, there is no question of payment of IDC and IEDC. The Petitioner in the present case is entitled to transmission charges as the assets have been put into commercial operation.

(j) On the issue of readiness of the communication system, the Tribunal has already acknowledged that there is no concept of commissioning of the communication system under the 2009 Tariff Regulations. In the 2009 Tariff Regulations, there is no provision of separate commercial operation for the communication system but only for elements of transmission system which were recognized as transmission lines or sub-stations. However, there is a provision for commercial operation date for communication system i.e.



Regulation 4(4) under the 2014 Tariff Regulations separate from the elements of Transmission System i.e. Regulation 4(3) in the 2014 Tariff Regulations. Therefore, the contention of NHPC is erroneous.

(k) The issue is only that the communication system was ready as on 1.8.2013 and 1.9.2013. The cost for the PLCC was incurred and the same was ready as on the above dates. The reference to Form 5B at Sl. No. 6.5 regarding PLCC, with the original petition as well as Form 11 filed in 2015 clearly show that the communication system was specified in regard to the capital cost incurred by the Petitioner within the sub-station. The entire capital cost have been incurred and capitalized prior to COD. The PLCC System was, therefore, installed prior to the commissioning of the transmission assets on 1.8.2013 and 1.9.2013.

(l) NHPC has selectively produced Form-2 as per the 2014 Tariff Regulations from a subsequent filing of the petitioner without the forms filed in the original petition. Form 2 of the 2014 Tariff Regulations provides a separate column for communication system. Form 2 of the 2014 Tariff Regulations was filed by the Petitioner vide affidavit dated 23.3.2015 in response to Commission's queries as at that time the 2014 Tariff Regulations had become effective. The asset in the present case relates to the 2009 Tariff Regulations. The Petitioner has clarified that communication systems were not separately identified as an asset and the same were part of the sub-station or line as per the 2009 Tariff Regulations. That is why, the capital cost of the communication system etc. were included as part of the transmission line/ sub-station itself as specified in Form 2 of the 2009 Tariff Regulations.

(m) The letters relied upon by NHPC were written subsequent to the declaration of COD. By the time, NHPC was entitled to draw power through the transmission assets for its activities.

(n) In the NRPC Meeting held on 12th and 13th September when NHPC stated that one unit of Parbati-III was expected to be commissioned in September 2013, no issue of communication system was raised at that stage. If the communication system was not there as alleged by NHPC and it is an



essential part of the transmission assets as required by NHPC, then NHPC could not have expected to commission the generating station in September 2013.

(o) NHPC's reliance on the Minutes of Meeting dated 12.10.2013 relates to Asset-II i.e. Parbati-III HEP to Banala/ Parbati Pooling Station. The said document does not refer to the other assets.

(p) With regard to Asset-II, the PLCC equipment/ communication system was installed prior to the COD of the transmission line declared by the petitioner. NHPC sought relocation of equipment and necessary testing to be conducted after it was ready. There was no delay on part of the Petitioner as it installed all equipment within time and had put into commercial operation the line. NHPC cannot rely on its action in seeking relocation as a reason for disputing the commissioning of the petitioner's transmission asset.

(q) NHPC itself on 2.9.2013 after the declaration of COD by the Petitioner informed the Petitioner that its generating station was likely to be commissioned soon and NHPC acknowledged that various equipment such as wave trap, networking panel and associated equipment like router, gateway etc. had been installed in the control room. Thus, the PLCC equipment was already installed. NHPC sought for commissioning of PLCC system, which was not envisaged in the then prevalent Tariff Regulations as already recognized by the Tribunal.

(r) After the installation and declaration of COD by the Petitioner, NHPC sought a relocation of the wave traps at the Petitioner's end which was not possible and it was made clear that the modification would have to be done at NHPC end. NHPC vide letter dated 24.9.2013 informed the Petitioner that the wave traps had been relocated.

(s) After the pot-head yard of NHPC was completed and the wave traps were relocated by NHPC, the engineers' visits to the site for carrying out various testing and checking of the equipment in October, 2013 was routine activity that is done from time to time and this checking does not affect the COD of the transmission line.



(t) The PLCC system for Asset-I, Banala-Amritsar D/C Line was also ready prior to 1.8.2013. Minutes of Meeting dated 26.7.2013 shows that meeting was held between the petitioner, Siemens and BPL Telecom for various activities in relation to communication system for Banala-Amritsar D/C Line. This clearly shows that the communication system was installed prior to 1.8.2013, the COD declared by the petitioner.

(u) The issue of part commissioning of transmission element raised by BRPL is outside the scope of remand proceedings.

Submissions of PKTCL

22. PKTCL filed its written submissions on 25.9.2018. The main submissions of PKTCL are as under: -

(a) The disputes before the Tribunal in Appeal Nos. 281 of 2016 and 81 of 2017 was imposition of full transmission charges in respect of the said assets on NHPC. The judgment is specific to the contractual relations of PGCIL and NHPC. PKTCL has no role to play in the dispute raised by NHPC against PGCIL.

(b) PKTCL transmission assets under consideration in Review Petition No. 4/RP/2017 and the transmission assets of PGCIL in Petition No. 91/TT/2012 were constructed solely for evacuation of power from NHPC Parbati-II HEP.

(c) The Tribunal has nowhere in the said judgment held that full transmission charges for the period of delay in commissioning the asset cannot be allowed by this Commission. The Tribunal in its judgment dated 16.7.2018 has not returned any adverse findings against PKTCL.

(d) PKTCL is a joint venture company of PGCIL and R-Infra. It entered into an Implementation Agreement with PGCIL on 23.11.2007, for completion of 400 kV D/C Koldam Ludhiana Transmission Line and 2 X 400 kV S/C Parbati Koldam Transmission Lines along with D/C portion and is governed by the provisions as set out in the said Implementation Agreement. Appeal No. 281 of



2016 filed by NHPC for Assets-I and II of PGCIL did not contain any contentions against the transmission assets of PKTCL. Hence, no reply was filed by PKTCL. In Appeal No. 81 of 2017 filed by NHPC regarding Asset-II of PGCIL, NHPC raised contentions regarding the differential treatment being meted out by the Commission to PKTCL and NHPC and therefore, PKTCL filed its reply in the said matter.

(e) NHPC's submission that the transmission system has been constructed for evacuation of power from all the generating stations in the area is incorrect. PKTCL's transmission assets in Petition Nos. 4/RP/2017 and assets included in Petition No.91/TT/2012 were constructed solely for evacuation of power from NHPC's Parbati-II HEP which is evident from PKTCL's transmission license dated 24.9.2008 granted by the Commission.

(f) Dealing with NHPC's contention that the commissioning schedule of PKTCL's lines was extended without involving any other parties, the stand of PKTCL is that NHPC was present at all the meetings and was aware of the changes in the commissioning schedule of PKTCL's transmission lines. Any changes in the agreed schedule for commissioning provided in the Implementation Agreement are outcome of the discussions held in various Standing Committee meetings/ NRPC meetings.

(g) In Appeal No. 81 of 2017, NHPC challenged the commissioning of portion 'c-d-e-f' of Asset-II of PGCIL which was completed on 1.9.2013. The Commission vide order dated 7.9.2016 declared the COD of the said portion of Asset-II 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. COD of an element of a transmission system can be declared in terms of Regulation 3(12)(c) of the 2009 Tariff Regulations even if it is capable of being put to use. However, if the transmission system cannot be put to regular use due to delay on the part of the generating company, the generating company is liable to pay transmission charges. Portion 'c-d-e-f' 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



only on 24.3.2014. As such 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.

(h) The contention of NHPC is that only a part of Asset-II was completed by PGCIL at the time of COD of Parbati-III HEP and Circuit-II of Asset-II was not available until 3.11.2015 is incorrect as the Implementation Agreement dated 23.11.2007 executed between PKTCL and PGCIL provided that Circuit-II of Asset-II, being constructed by PKTCL was never envisaged to be used for evacuation of Power from Parbati-III HEP. The transmission license granted to PKTCL required to construct two Single Circuit lines from Parbati-II HEP to Koldam and one Double Circuit Line from Koldam to Ludhiana.

(i) In the 26th Standing Committee meeting held on 13.10.2008, 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. Accordingly, Amendment No.2 (para 4.0) to the Implementation Agreement, PKTCL was required to construct this small section of Parbati-II to Koldam Transmission Line (Circuit-II) from LILO point of Parbati-III HEP to LILO point of Banala Pooling Station matching with the commissioning of Parbati-III HEP.

(j) During the Long term Access meeting held along with the 32nd Standing Committee meeting on 31.8.2013, it was suggested that section of Parbati-Koldam Transmission Lines (both Circuit-I and Circuit-II) starting from Parbati-II to LILO point of Banala Pooling Station (Circuit-I) and from Parbati-II to LILO point of Parbati-III HEP (Circuit-II) can be used for evacuation of Power from Sainj HEP as well as an N-1 condition in case the section being used for evacuation of power from Parbati-III HEP is not available. However, in the said meeting, it was also decided that these sections were required only by December 2014, i.e. matching with the commissioning of Sainj HEP. There was no requirement of Circuit-II for Parbati-III and Circuit-II was required to be completed by December 2014 matching with the commissioning of Sainj HEP. Therefore, PKTCL was never asked to provide any other section of Parbati-



Koldam transmission line for evacuation of Parbati-III HEP apart from what was provided for in Amendment Nos. 1 and 2 to the Implementation Agreement i.e. section from LILO point of Parbati-III HEP to LILO point of Banala Pooling Station.

(k) NHPC was well aware of the commissioning schedule of PKTCL's transmission line as is evident from the 32nd Standing Committee meeting. NHPC was unable to complete its bays for connection of PKTCL's transmission line which were under the scope of NHPC. NHPC attempted to evade responsibility of commissioning its bays by writing letter dated 18.8.2015 to PGCIL informing that though the transmission line from Parbati-III HEP to Parbati Pooling Point via Parbati-II had been commissioned, the same shall not be put into operation until September 2018 due to the non-readiness of NHPC's Parbati-II HEP which was already delayed from its original commissioning schedule. The said letter was written by NHPC after PKTCL's transmission line was ready and available for commissioning. This shows the attempt of NHPC to hide its failure to complete the associated bays and that the NHPC did not require the balance section of the Transmission Line.

(l) The delay in commissioning of PKTCL's transmission line was attributable to NHPC as it failed to make ready the bays in its Switchyard to be used for connecting to PKTCL's transmission line. The Commission in order dated 29.12.2016 in Petition No. 156/TT/2015 also observed that PKTCL was not able to put into use its transmission line due to delay on the part of NHPC.

(m) As regards contention of NHPC that differential treatment was accorded to PKTCL by allowing transmission charges for Asset-II, PKTCL has submitted that part assets of Asset-II (c-d-e-f) which is connected to NHPC's Parbati-III Power Station, was put under commercial operation and recovery of transmission charges from NHPC was ordered. Part of Asset-II ('b-c' and 'f-g'), which is connected to PKTCL has not been put into commercial operation and the same shall be put under commercial operation on commissioning of PKTCL system portion 'a-b' and 'g-h'.

(n) The Commission vide order dated 30.7.2016 in Petition



No.411/TT/2014 directed PKTCL to pay IDC and IEDC to PGCIL for the period from 30.6.2014 till COD of LILO. The conclusion of the Commission in order dated 30.6.2014 was premised on the provisions of the Implementation Agreement executed between PKTCL and PGCIL which had a categorical provision that PKTCL's transmission line was to be commissioned by 30.6.2014. The facts of the present case differ from the above case of PKTCL. In the present case, NHPC specifically requested PGCIL for commissioning of Asset-II by June 2013 and the same is evident from its letter dated 12.6.2013.

(o) PKTCL filed Review Petition No. 52/RP/2016 for review of the order dated 30.7.2016 in Petition No. 411/TT/2014 on the issue of payment of IDC and IEDC by PKTCL taking into consideration the Amendment No. V and VI to the Implementation Agreement between PKTCL and PGCIL. The Commission vide order dated 20.7.2018 in Review Petition No. 52/RP/2016 absolved PKTCL from making any payment of charges to PGCIL in view of amendments to the Implementation Agreement.

Submissions of NHPC

23. NHPC filed its written submissions on 11.10.2018. The main submissions of NHPC are as under: -

(a) The complete scope of work as per Investment Approval [i.e. Amritsar-Banala line, Loop-in and Loop-out (f-e, f-g, c-d, b-c)] is integrated transmission system intended for evacuation of power generated from all power stations (Parbati-III HEP and Parbati-II HEP of NHPC, Koldam HEP of NTPC and Sainj HEP of HPPCL) situated in that vicinity. The system was commissioned in piecemeal manner keeping in mind the basic interests as the individual assets are not useful for evacuation of power from that region.

(b) The full scope of work was not commissioned as claimed by PGCIL and approved by Commission as on 1.8.2013 and 1.9.2013. The complete scheme was ready for use only by 3.11.2015 with the commissioning of "b-c" portion which was supposed to have been commissioned before COD of units of Parbati-III Power station i.e. 24.3.2014.



(c) The line segment “f-g” is also part of Investment Approval and the same is also being used for evacuation of power generated from Koldam of NTPC.

(d) The Sainj HEP of HPPCL is also connected between “a-b” for evacuation of power. The levy of idle charge on Parbati-III Power Station for partly commissioned scheme in the name of Investment Approval is incorrect.

(e) The transmission line between Amritsar-Banala and Banala-Parbati-III was put under commercial operation from date of completion by way of back-charging as claimed by PGCIL while portions “f-g” and “b-c” have been put under commercial operation from the date of actual flow of power. This contradictory approach is incorrect.

(f) Form-2 meant for providing information on communication system as per Tariff Regulations was left blank is indicative that the communication system was not ready on claimed date of commercial operation. COD of transmission line without communication system is not technically in order.

(g) PLCC system/ communication system was not commissioned till 7.10.2013 is evident by NHPC letter dated 7.10.2013. PGCIL is required to prove the commissioning date of PLCC system.

(h) The generating station does not need 400 kV transmission line for its internal consumption as start-up power. The availability of charged 400 kV transmission line is a technical requirement for testing purposes including high voltage test, protection test etc. and commissioning (synchronization with grid) of generating station. Ten months prior availability of charged line was considered by both PGCIL and NHPC in their Agreement and indemnification clause was added to protect their mutual commercial liability. As such, the levy of transmissions charge for idle period is incorrect.

(i) As there is technical requirement of commissioning of hydro power station and transmission line with a gap of 10 months, the generating station was not supposed to pay any idle charges.



(j) The Commission in the order dated 30.7.2016 in Petition No. 411/TT/2014 in respect of segments “b-c” and “f-g” considered the Agreement entered into between PGCIL and PKTCL and accordingly ordered for payment of IDC and IEDC by PKTCL to PGCIL. The Commission should adopt the same approach in the present case as line segments “b-c” and “f-g” is part of full scheme as per Investment Approval as well as the Agreement signed between NHPC and PGCIL.

(k) The Commission in order dated 29.12.2016 in Petition No. 156/TT/2015 directed NHPC to pay the IDC and IEDC to PKTCL in respect of line segment “b-c” between NHPC and PKTCL for the pre-commissioning period, which negates the theory of transmission charges.

(l) The complete scope of work as per Investment Approval includes Amritsar-Banala line, Loop in and loop out (f-e, f-g, c-d, b-c) which is integrated transmission system for evacuation of power generated from all Power Stations, namely, Parbati-III HEP, Parbati-II HEP of NHPC, Koldam HEP of NTPC and Sainj HEP of HPPCL situated in that vicinity. The Amritsar-Banala line is meant for all Power Stations. However, the Commission ordered for payment of idle charge by Parbati-III Power station of NHPC.

(m) If the generator is made to pay the charge for idle period, then the charges need to be shared based on allocated capacity in the associated transmission system. Further, if the transmission assets are intended to be used by other generators, then the idle charge should also be borne by all of the generators in the ratio of their installed capacity.

(n) The provision of regulation for approval of COD of transmission assets is true for dedicated line used for particular single generating station but the same is inappropriate for integrated system which is for evacuation of power generated from Parbati-III HEP, Parbati-II HEP of NHPC, Koldam HEP of NTPC and Sainj HEP of HPPCL situated in that vicinity.

(o) The approach of the Commission is discriminatory and the same is apparent from the fact that in the case of Amritsar-Banala and Banala-Parbati-



III, the provisions of 2009 Tariff Regulations were applied for COD from the date of completion of line as claimed by PGCIL as 1.8.2013 and 1.9.2013 while on the same system for other segments “f-g” and “b-c”, provisions of 2014 Tariff Regulations were applied.

(p) The NHPC letter dated 12.6.2013 was construed wrongly contrary to the provisions of 2010 Sharing Regulations. The imposition of full idle charge on NHPC is erroneous. The said letter of NHPC dated 12.6.2013 was required to be interpreted that a gap of 10 months was required between commissioning of transmission line and generating station meaning thereby that there cannot be any idle charge for at least 10 months. The availability of transmission system being the basic technical requirement for commissioning of power station, the said letter was forwarded to PGCIL to ensure the availability of transmission line by June 2013 which was not achieved by PGCIL. PGCIL informed NHPC only after back-charging the line, resulted in shut down of Power Station.

PGCIL’s rejoinder to the reply of NHPC

24. In response to NHPC’s submissions, PGCIL filed additional submissions dated 15.10.2018 as under: -

(a) NHPC’s contention that the transmission system was meant for evacuation of power from all powers stations situated in the area is incorrect as the Tribunal in judgment dated 16.7.2018 observed that the transmission assets in question are related only to Parbati-III Project of NHPC and not for other projects. The present proceedings arise out of the remand made by the Tribunal wherein NHPC cannot raise an issue before the Commission which has already been held against it by the Tribunal.

(b) The Assets-I and III were completed and put into commercial operation on 1.8.2013 and the scheme relevant to Parbati-III project being “c-d-e-f” portion was also completed by 1.9.2013. However, according to the Petitioner, it was 1.8.2013. The line between Parbati-III project and Banala Pooling Station is capable of being used and was in fact admittedly used by NHPC prior to commissioning and for evacuation of power after the commissioning of the



hydro power project on 24.3.2014. If the commercial operation for Asset-II is considered as November 2015 as claimed by NHPC though the asset was capable of being used from 1.9.2013 and was actually being used by NHPC itself from 24.3.2014, then this would mean that the power is being injected by NHPC and being transmitted to its beneficiaries through Asset-II, prior to the commercial operation of the Asset-II which is not correct.

(c) The transmission assets have achieved COD and are capable of being used for evacuation of power from Parbati-III which is the intended use. Parbati-III Hydro Power Project was delayed and commissioned on 24.3.2014. The transmission assets were used by Parbati-III prior to commissioning and after commissioning of the hydro power project.

(d) NHPC cannot claim that it requires the transmission assets for 10 months prior to commissioning and at the same time contend that the transmission assets cannot be commissioned until there is actual flow of power. It cannot be that Petitioner completes the transmission assets but is not permitted to commission them or receive transmission charges for such time.

(e) There is no inconsistency in the approach of Commission as assets “f-g” and “b-c” achieved COD during 2014-19 period (under the 2014 Tariff Regulations) and the instant assets during 2009-14 period (under the 2009 Tariff Regulations). Segments “f-g” and “b-c” were not connected on one end which was the reason for non-commissioning of the said assets. However in the present case, the assets are all connected at both ends and are capable of being used and were in fact used.

(f) NHPC has relied on Form-2 which was filed at a later stage with affidavit dated 23.3.2015 and not the Form filed at the time of filing of the original tariff petition. As the affidavit was filed in March 2015, after coming into force of 2014 Tariff Regulations, the forms have been taken from 2014 Tariff Regulations though the assets relate to 2009 Tariff Regulations.

(g) NHPC has selectively relied on Form-2 from a subsequent filing. Since there was no separate column in the Form prescribed along with the 2009 Tariff



Regulations, the capital cost of the communication system etc. were included as part of the transmission line/ sub-station itself which were specified in the two columns provided for in the Form-2. The details of the communication system expenditure were given in the other Forms. This was the consistent practice at that time and the same was accepted by the Commission.

(h) There is no concept of commissioning of the PLCC/Communication system, the only issue is if they were installed at the time of COD. The cost for the PLCC was incurred and the same was ready as on the above dates. The capital cost have been incurred and capitalised prior to the COD.

(i) The issues and letters relied upon by NHPC refer to Asset-II and not to other Assets. In any case, even for Asset-I, the PLCC system had been installed prior to COD as is clear from the expenditure already incurred.

(j) The provision for approval of COD is not for a dedicated line used for a generating station. The COD is applicable to all transmission elements.

Submissions of BRPL

25. BRPL vide affidavit dated 16.8.2018 filed its reply submitting that Regulation 4(1) of the 2009 Tariff Regulations and Regulation 6(1) of the 2014 Tariff Regulations do not provide for determination of tariff for part of the transmission line and as such the same can be included in the POC mechanism only when the line is completed. In case of any arrangement made by the transmission licensee at the instance of any utility, the payment for such arrangement has to be made by such utility to the transmission licensee. In response, the Petitioner vide affidavit dated 25.7.2019 filed its written submissions submitting that there is no remand of the matter on the issue of commissioning of the transmission line/ part of transmission line. The issue which was not considered in the Appeal cannot be the subject matter of the remand.



Analysis and Decision

26. From the submissions of the parties, the following issues arise for our consideration: -

- (i) **Whether Indemnification Agreement dated 22.7.2005 executed between NHPC and PGCIL is applicable?**
- (ii) **Whether tariff can be granted for a part of any transmission system?**
- (iii) **Whether COD of the assets/ elements in the present case was declared without putting in place the associated Communication System?**
- (iv) **Whether the approach of the Commission is inconsistent in similar cases for allowing recovery of transmission charges?**
- (v) **Whether the transmission charges in the present case should be shared by the other generators using the transmission system?**

Issue No. (i): Whether Indemnification Agreement dated 22.7.2005 executed between NHPC and PGCIL is applicable?

27. The Tribunal in its judgment dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017 observed that the Indemnification Agreement incorporates the reciprocal obligations between the parties, namely, NHPC and the Petitioner, in case of delay in completion of their respective assets i.e. transmission system of the Petitioner and generating units of NHPC. The Tribunal directed the Commission to take full cognizance of the Indemnification Agreement dated 22.7.2005 and its applicability to the present case. Accordingly, we proceed to examine the submissions of the parties in terms of the covenants of Indemnification Agreement dated 22.7.2005. The relevant portion of the judgement of the Tribunal dated 16.7.2018 is as follows:

"It is a general practice that a time margin is provided in the commissioning of transmission system and generating units so as to enable completion of pre-commissioning tests of generating units prior to the final synchronisation of the generating plants with the grid. In the present case too, as per the Indemnification



Agreement, a gap of ten months was envisaged between the commissioning of the transmission system and the generating units of Parbati-III HE Project. Indemnification Agreement further incorporates the reciprocal obligations between the parties (NHPC & Powergrid) in case of delay in completion of their respective assets i.e. transmission system of Powergrid and generating units of NHPC. We have considered the contentions of the learned counsel appearing for the Appellant and the Respondents and find that the Central Commission has considered only a limited provision of the Indemnification Agreement namely the gap in commissioning of transmission system and generating units (10 months) but has not analysed the same in their impugned order, as being generally done by the Central Commission in similar cases. It is accordingly necessary to take full cognisance of the indemnification agreement and its applicability in the present case in the interest of justice and equity.”

28. The Petitioner has contended that the Indemnification Agreement between the Petitioner and NHPC was executed in July 2005 prior to promulgation of the 2009 Connectivity Regulations and the 2010 Sharing Regulations. The Petitioner has contended that even if the Indemnification Agreement had provided otherwise, provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations would override the Agreement and the transmission charges would be payable by NHPC. The Regulation 14 of the 2010 Sharing Regulations requires that the existing contract shall stand re-aligned to the Regulations and the Transmission Service Agreement. The decision of the Constitution Bench of the Hon'ble Supreme Court in PTC India Limited vs. Central Electricity Regulatory Commission (2010) 4 SCC 603 observed that the Regulations framed by the Central Commission would override the existing contracts. The Petitioner has contended that reliance placed by NHPC on the Indemnification Agreement is contrary to the provisions of the 2009 Connectivity Regulations and the 2010 Sharing Regulations. The indemnity clause relates to the construction period and it does not apply after execution of the transmission assets. The indemnity clause relates to payment of IDC and IEDC in case of delay and they are applicable to the period prior to commissioning of the respective project. It states that in case execution of the transmission assets of the Petitioner is delayed due to the delay attributable to NHPC, NHPC would be liable to indemnify the Petitioner.



The Petitioner has emphasized that this clause is not applicable in the present case as the transmission assets have been duly put into commercial operation and the Petitioner is entitled for payment of transmission charges. The Petitioner has contended that the transmission charges has been held to be payable by the associated generating station until the commissioning of the generating station and thereafter by the beneficiaries of the generating station.

29. As against this, NHPC has contended that both PGCIL and NHPC signed Indemnification Agreement to protect their mutual interests which covered the entire scope of work as envisaged under Investment Approval. NHPC has further contended that the generating station does not need 400 kV transmission line for its internal consumption as start-up power. The availability of charged 400 kV transmission line is a technical requirement for testing purposes including high voltage test, protection test etc. and commissioning (synchronization with grid) of generating station. Hence, the generating station was not supposed to pay the any idle charges. NHPC has further contended that ten months prior availability of charged line was agreed by both PGCIL and NHPC in their Agreement and indemnification clause was added to protect their mutual commercial liability.

30. We have considered the submissions of the Petitioner and NHPC and have perused the Indemnification Agreement dated 22.7.2005 between them and the Commission's order dated 21.7.2016. The Tribunal has observed that it is necessary to take full cognizance of the Indemnification Agreement and its applicability in the present case. Accordingly, we consider the Indemnification Agreement between the



Petitioner and NHPC afresh as per the directions of the Tribunal without taking into consideration the observations made by the Commission in order dated 21.7.2016.

31. The Commission, in order dated 21.7.2016 in Petition No. 91/TT/2012, had observed as under:-

“11. NHPC has submitted that as per the Indemnification Agreement between NHPC and PGCIL, there is a gap of 10 months between the commissioning of the transmission and the commissioning of the power project. PGCIL has concealed this fact from the Commission. The Petitioner has submitted that even assuming but not admitting that NHPC was to take 10 months’ time for commissioning activities, the Petitioner would be entitled to transmission charges for such period. We have considered the submission of the parties. The gap of 10 months between the commissioning of the transmission system and the generating station has been provided as the generating station would require the transmission line for drawal of start up power and evacuation of power during testing and commissioning prior to the commercial operation of the generating station. Since the transmission line was to be put into use during this period by the generating station, NHPC would be liable to pay the transmission charges from the date of commissioning of the transmission assets till the commissioning of the generating station.”

32. The Indemnification Agreement dated 22.7.2005 executed between NHPC and PGCIL provides as under:-

“1. SCHEDULE OF COMMISSIONING

a) The Schedule of Commissioning of generating units alongwith the ATS (the zero date from which the indemnification mechanism shall be applicable) shall be worked out for each generating units vis-a-vis ATS and mutually agreed in the Quarterly Director level coordination meeting between Powergrid and NHPC within 3 months of investment approval which will form an integral part of this Agreement. The above schedule for the generating units and the ATS shall be regularly reviewed in the Quarterly Director level coordination meeting between NHPC and Powergrid and 2(two) officials of Powergrid shall be constituted within 2 weeks of signing of this Agreement, which shall regularly monitor the progress of the system on quarterly basis.”

33. Annexure to the said Indemnification Agreement detailing the commissioning schedule of the generating station and ATS is as under:-

“Schedule Agreed for the purpose of Indemnification

PROJECT : PARBATI-III (4 *130 MW)

- | | | |
|----|--|-----------------------|
| 1. | Commissioning Schedule of Power Project | <u>November, 2010</u> |
| 2. | Commissioning Schedule of Associated Transmission System (ATS) | <u>January, 2010</u> |



List of Associated Transmission System

- Loop- in- Loop- out (LILO) of Parbati-II Koldam/Nalagarh 400 KV lines at Parbati Pooling Point.
- Loop-in- Loop- out (LILO) of one 400 kV circuit of Parbati -II-Parbati Pooling Point at Parbati-III
- Parbati Pooling Point -Amritsar 400 kV Double Circuit (D/C) line

3. For the purpose of Indemnification, the zero date would be November, 2010.

Note: In case the list of ATS mentioned at Sl. No.2 above is revised/ modified, the same shall be intimated separately.”

34. As per the Indemnification Agreement, the commissioning schedule of the generating station and the ATS was to be worked out for each generating units vis-à-vis ATS and should be mutually agreed in the quarterly Director level coordination meeting between PGCIL and NHPC within three months of Investment Approval. The Indemnification Agreement further provides that the said commissioning schedule for the generating units and ATS shall be regularly reviewed in the quarterly Director level coordinating meeting of NHPC and PGCIL. The Indemnification Agreement also requires deployment of two officials of PGCIL to regularly monitor the progress of the system on quarterly basis. As per the provision of the Indemnification Agreement, the Petitioner and NHPC mutually agreed on 11.6.2017 that the commissioning schedule of the power project of NHPC and the ATS of the Petitioner as November 2010 and January 2010 respectively and the zero date for indemnification purposes was November 2010. The above schedule contemplates a time gap of 10 months between the commissioning of the PGCIL's ATS and NHPC's Parbati-III HEP Project Stage-III. The Indemnification Agreement also provides that in case of delay in commissioning of the generating units vis-à-vis the ATS, the defaulting party is liable to pay the other party the IDC, FERV and Government Guarantee fee, if any, for generating units and ATS calculated as lower of the two for a period of six months from the zero date.



35. The main contentions of NHPC is that as per the Indemnification Agreement there must be a gap of 10 months between the commissioning of the ATS and the generating units and in case of delay in commissioning of its generating units, it is liable to bear the IDC only for a period of six months from the zero date and it is not liable to bear the transmission charges.

36. As regards the contention of NHPC that there should be a gap of 10 months between the commissioning of the ATS and the generating units, we are of the view that gap has been derived from the commissioning schedules of ATS and generating station agreed on 11.6.2007. It is nowhere agreed that in all circumstance, such gap will be maintained. The parties may agree to a shorter or longer gap between the dates of scheduling. It is observed that though both the ATS and the generating stations were delayed, the parties have neither revised the scheduled commissioning dates nor the zero date. Therefore, both NHPC and PGCIL through their conduct have repudiated the scheduled commissioning date of ATS and the generating station as January, 2010 and November, 2010.

37. After a period of three and half years from the scheduled commissioning of ATS, NHPC vide its letter dated 12.6.2013 requested the Petitioner to commission the Associated Transmission System by 30.6.2013. NHPC's letter dated 12.6.2013 is reproduced hereunder:-

"Ref. No. NH/PMSG/PB-III/663

Date: 12.06.2013

*The Chairman and Managing Director,
Powergrid Corporation of India Ltd.
Gurgaon*



Subject: Associated transmission lines for Parbati-III Project, Distt. Kullu, H. P.

Sir,

The first unit of the project has been successfully spun at rated RPM on 31st May, 13 and 2nd Unit is also ready for spinning. For back charging (Soak test of 400 kV XLPE cable) and routine pre-commissioning test, supply of 400 kV power is required preferably by 30th June '13.

Keeping in view of the current status of work, there seems to be some delay in completion of associated transmission system of Parbati-III project. For ensuring readiness of above Line of Project and making available 400 kV power at switchyard by 30th June '13, your personal intervention is requested please.

Regards,

Yours faithfully,

(J. K. Sharma)
Director (Projects)

CC:

- 1) The CMD, NHPC Ltd.
- 2) The Member (Power System), CEA,
R K Puram, New Delhi"

38. The above letter dated 12.6.2013 of NHPC addressed to CMD, Powergrid, NHPC in unequivocal terms informed the Petitioner that its first unit of the project successfully spun at rated RPM on 31.5.2013 and second unit was also ready for spinning. It further states that for back charging (soak test of 400 kV XLPE cable) and routine pre-commissioning test, supply of 400 kV was required preferably by 30.6.2013. NHPC in the said letter clearly stated that there appeared some delay in completion of ATS of Parbati-III project and requested for ensuring readiness of above line of Project and make available 400 kV power at switchyard by 30.6 2013. We are of the view that NHPC by requesting the Petitioner, through its letter dated 12.6.2013, to make the ATS ready by 30.6.2013, for evacuation of power has waived the earlier agreed date of scheduling of ATS as January, 2010. Further, NHPC has sought the 400 kV power for back charging (soak test of 400 kV XLPE cable) for pre-



commissioning test and has not indicated the revised scheduling date of the units of the generating station. Consequently, the revised zero date has not been decided. In the light of subsequent developments and the conduct of the parties, the Indemnification Agreement ceases to be applicable to deal with the mismatch between ATS and the units of generating station. Therefore, the contention of NHPC to decide the liability inter se between NHPC and PGCIL on the basis of 10 months gap between the dates of scheduling of ATS and the generating station and the six months IDC etc. cannot be sustained.

39. The other contention of NHPC is that as per the Indemnification Agreement it is liable to bear only IDC only for a period of only 6 months in case of delay in commissioning of the generating station and not the transmission charges as held by the Commission. As stated above, the ATS of the Petitioner and NHPC's generating station were scheduled to be commissioned in January, 2010 and November, 2010 respectively. It is observed that neither ATS of the Petitioner nor the generating units of NHPC were commissioned in November, 2010 and January, 2010 respectively as mutually agreed by them. Both the Petitioner and NHPC have not adhered to the timeline mutually agreed between them and no documents have been placed on record to show that the zero date was ever revised.

40. We are of the view that since the Petitioner and NHPC have not adhered to the timeline originally agreed between them and the scheduled commissioning date of ATS, units of the generating station as well as the zero date have not been revised, the Indemnification Agreement on the issue of compensation between the Petitioner and NHPC ceases to be applicable for delayed commissioning of the ATS and units of the generating station.



41. Accordingly, we are unable to agree with NHPC that NHPC at the most can be held liable for payment of IDC for a period of six months as per the Indemnification Agreement.

42. As we have held that Indemnification Agreement is no more applicable to deal with the mismatch in commissioning of the ATS and units of generating station, the consequence of mismatch such as the dates of COD of the ATS and the liability for charges for the period of mismatch shall be levied in accordance with the extant regulations. In the present case, we notice that on the basis of NHPC's letter dated 12.6.2013, the Petitioner executed the assets, namely, i.e. 400 kV D/C Amritsar-Parbati P.S, 80 MVAr Bus Reactor at Parbati P.S and part of Ckt-II of Parbati-II-Koldam, whose COD was declared on 1.8.2013 and 1.9.2013 as per 2009 Tariff Regulations. Accordingly, we are of the opinion that once the transmission assets are executed, the Petitioner is entitled for reimbursement for payment of transmission charges for its assets as per Regulation 8(6) of 2010 Sharing Regulations. Regulation 8(6) of 2010 Sharing Regulations provides as under:-

“(6) For Long Term Customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after “commercial operation” of the generator. Till then, it shall be the responsibility of generator to pay these charges.”

In view of the above discussion, we are of the view that Indemnification Agreement between the Petitioner and NHPC dated 22.7.2005 is not valid and applicable in the instant case.

Issue No. (ii): Whether the tariff can be granted for a part of any transmission system?



43. NHPC has submitted that the ATS of Parbati-III generating station includes other assets besides instant Assets-I, II and III. NHPC has contended that the ATS as a whole should be put into commercial operation and part commissioning of the ATS is of no use for Parbati-III Power Station of NHPC. In this background, NHPC contended that the Commission has wrongly considered NHPC's letter for grant of tariff of part system, namely, Assets-I, II and III in the present case.

44. BRPL has contended that Regulation 4(1) of the 2009 Tariff Regulations and Regulation 6(1) of the 2014 Tariff Regulations do not provide for determination of tariff for part of the transmission line and as such the same can be included in the POC mechanism only when the line is completed. In case any arrangement is made by the transmission licensee at the instance of any utility, then the payment for such arrangement should be made by the concerned utility to the transmission licensee.

45. The Petitioner has contended that there is no remand on the issue of part commissioning of the transmission line. The issue which was not considered in the Appeal cannot be the subject-matter of the remand.

46. We have considered the above submissions of the petitioner, NHPC and BRPL and have perused the record. We agree with the contention of the Petitioner that there is no remand on the issue of part commissioning of the transmission line. We also agree with the contention of the Petitioner that the issue which was not considered in the Appeal cannot be the subject-matter of the remand. However, the present issue has a direct bearing on the related petition whose description is given in the latter part of this order. Therefore, we take up the present issue.

47. Regulations 4 and 5 of the 2009 Tariff Regulations state as under:-



“4. Tariff determination

(1) Tariff in respect of a generating station may be determined for the whole of the generating station or a stage or unit or block of the generating station, and tariff for the transmission system may be determined for the whole of the transmission system or the transmission line or sub-station.

(2) For the purpose of determination of tariff, the capital cost of the project may be broken up into stages and distinct units or blocks, transmission lines and sub-systems forming part of the project, if required:

xxxxx
xxxxx”

“5. Application for determination of tariff

(1) The generating company or the transmission licensee, as the case may be, may make an application for determination of tariff in accordance with Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of the application and other related matters) Regulations, 2004, as amended from time to time or any statutory re-enactment thereof, in respect of the units of the generating station or the transmission lines or sub-stations of the transmission system, completed or projected to be completed within six months from the date of application.

xxxxx
xxxxx”

48. As per Regulation 4(1) of the 2009 Tariff Regulations, a generating company or a transmission licensee can claim transmission tariff for the whole of a transmission system or elements like the transmission line or sub-station or sub-system forming part of a project or a part of transmission system. Further, Regulation 5(1) of the 2009 Tariff Regulations also provide for a transmission licensee to file an application for determination of tariff for a transmission line or a sub-station of the transmission system. Accordingly, the Petitioner has claimed tariff for Assets-I, II and III and the Commission has rightly allowed the tariff for the individual assets.

Issue No. (iii): Whether COD of the assets/ elements in the present case can be declared without putting in place the associated Communication System?

49. The Tribunal in its judgment dated 16.7.2018 observed that though there was no specific requirement for declaration of COD of communication system separately



as per the 2009 Tariff Regulations, the communication system being the intrinsic part of transmission system has to be put in place before COD of the transmission assets. The Tribunal further observed that the matter needs to be re-examined afresh for arriving at the actual COD of the transmission assets taking into consideration the actual date of completion of associated communication system. The relevant portion of the Tribunal's judgement dated 16.7.2018 is as follows:

“The claim of the Appellant, NHPC that the communication system associated with the reference transmission lines was not commissioned as on 1.8.2013/1.9.2013 is primarily based on the contents of their letters addressed to Powergrid for expediting the completion of communication system and also, the joint minutes of meeting dated 12.10.2013 between the representative of PGCIL, NHPC, SIEMENS, Banala & BPL Telecom for expediting the completion of communication system. NHPC has reiterated that during October, 2013, all the associated parties have reviewed the progress of work and identified various balance works for completion of the communication system. Then, the claim of Powergrid to have completed communication system along with Assets I-III on 1.8.2013/1.9.2013 does not appear to be logical and factual. It is relevant to note that as per Regulation, 2009, there was no specific requirement for declaration of COD of communication system separately. However, it is an established fact that the communication system being the intrinsic part of transmission system has to be put in place before COD of the transmission assets. Therefore, as per the documents placed on record by the rival parties, the matter needs to be re-examined afresh for arriving at the actual COD of transmission assets taking into consideration the actual date of completion of associated communication system.”

50. Before we deliberate on the issue of communication system, it is necessary to look at the assets covered in the present petition. These Assets are (a) Asset-I: 400 kV D/C Parbati Pooling Point-Amritsar line alongwith associated bays, (b) Asset-II: LILO of 400 kV Parbati-II-Koldam line Ckt-II at Parbati-III alongwith associated bays and LILO of 400 kV Parbati-III-Koldam at Parbati Pooling Point alongwith associated bays and (c) Asset-III: 80 MVAR bus reactor at Parbati Pooling Point alongwith associated bays.

51. NHPC in support of its contention that the PLCC/communication system pertaining to Asset-I and Asset-III and Asset-II was not made ready by the Petitioner on 1.8.2013 and 1.9.2013 respectively, has made two sets of submissions. In one set



of submissions, NHPC has placed reliance on Form-2 filed by the Petitioner as per 2014 Tariff Regulations, while another set of submissions deal with the letters written by NHPC to the Petitioner dated 8.8.2013, 24.9.2013 and 7.10.2013 including the Minutes of the Meeting dated 12.10.2013 of Powergrid Banala, NHPC, Siemens and BPL Telecome at held at Banala. The Petitioner in its counter submissions has dealt with the Tariff Forms, letters and Minutes of the Meeting dated 12.10.2013 of NHPC. In addition to above, the Petitioner has relied on Minutes of the Meeting dated 26.7.2013 held among Siemens, BPL Telecom and PGCIL at 400 kV Banala.

52. NHPC has contended that the Petitioner did not fill the information pertaining to PLCC/communication system in Form-2 filed alongwith the affidavit dated 23.3.2015 and it shows that the communication system was not ready on claimed date of commercial operation. In response, the Petitioner has contended that there is no provision for commercial operation of the communication system in 2009 Tariff Regulations, while in 2014 Tariff Regulations there is provision for commercial operation date for communication system separate from elements of the transmission system. Accordingly, there is no provision to fill the details of the capital cost of the communication system in Form-2 specified in the 2009 Tariff Regulations. However, there is a requirement to fill the details of the capital cost of the communication system in Form-2 specified in the 2014 Tariff Regulations. The Petitioner has contended that NHPC has erroneously relied on the Form-2 submitted by the Petitioner alongwith the affidavit dated 23.2.2015. The Petitioner has submitted that they inadvertently filed Form-2 specified in the 2014 Tariff Regulations on 23.2.2015 for the assets that were commissioned during the 2009-14 period. The Petitioner has submitted that communication system were not separately identified as an asset and the same were part of the sub-station or line as the case may be which is apparent



from the expenditure incurred by the Petitioner that shows expenditure incurred prior to COD is inclusive of PLCC. The Petitioner has clarified that reference to Form 5B at Sl. No. 6.5 PLCC in the original petition at Page Nos. 1247, 1251, 1259 and Form 11 filed in the year 2015 at Sl. No. 5 of Page No. 1313 and 1328 clearly show that the communication system was specified in regard to the capital cost incurred by the Petitioner within the sub-station. The Petitioner has submitted that the claim in the year 2013-14 was in regard to the retention money which was withheld from the contractor and was subsequently paid in accordance with the usual contractual agreements. The Petitioner has, thus, contended that the cost of PLCC/communication system was incurred and it was ready as on 1.8.2013 and 1.9.2013.

53. We have considered the above contentions of the parties and have gone through the tariff Forms filed by the Petitioner at the time of filing of the petition and the submissions made by the parties at the stage of hearing the petition after remand. It is observed that the Petitioner in the main petition claimed the tariff for all the assets (Asset-I: Parbati-Amritsar Transmission Line; Asset-II LILO of 1st and 2nd Circuit of Parbati II to Koldam Transmission Line; and Asset-III bus reactor at Parbati Pooling Station) associated with the Transmission System associated with Parbati-III HEP as a whole on the basis of the anticipated COD of 1.9.2012 and accordingly filed one set of tariff forms as per the 2009 Tariff Regulations.

54. Later, the Petitioner vide affidavit dated 20.9.2013, submitted that the Parbati-Amritsar Transmission Line, LILO of 2nd Circuit of Parbati II to Koldam Transmission Line and the bus reactor at Parbati Pooling Station were put into commercial operation on 1.8.2013 and claimed tariff for all the three said assets as a whole and



filed one set of forms as specified in the 2009 Tariff Regulations. It was further stated that the LILO of the 1st Circuit of Parbati II to Koldam Transmission Line would be put into commercial operation on 1.4.2014.

55. Thereafter, vide affidavit dated 23.3.2015, the Petitioner has submitted that the Parbati-Amritsar Transmission Line, LILO of 2nd Circuit of Parbati II to Koldam Transmission Line and the bus reactor at Parbati Pooling Station were put into commercial operation on 1.8.2013 and claimed tariff separately for the said assets and filed tariff forms as specified in the 2014 Tariff Regulations. Further, vide affidavit dated 20.9.2013, has claimed the tariff for the Parbati-Amritsar Transmission Line, LILO of 2nd Circuit of Parbati II to Koldam Transmission Line and the bus reactor at Parbati Pooling Station separately on the basis of the actual commercial operation on 1.8.2013 on the basis of the RCE as per the tariff forms specified in the 2009 Tariff Regulations.

56. It is observed that the Form- 2 specified in the 2009 Tariff Regulations provides for furnishing information pertaining to the transmission lines and sub-station and it does not provide for furnishing information pertaining to the communication system ostensibly because the 2009 Tariff Regulations does not provide for separate commercial operation for communication system. However, in the 2014 Tariff Regulations there is provision for commercial operation date for communication system separate from elements of the transmission system.

57. NHPC has contended that the Petitioner has not submitted the details of the capital cost of the communication system in Form-2 submitted alongwith the affidavit dated 23.3.2015 and it shows that the communication system was not commissioned



on the COD claimed. It is observed that the Form-2 filed by the Petitioner in March, 2015 is as per 2014 Tariff Regulations and the Petitioner has not submitted the details of the capital cost of the communication system as the Petitioner has claimed the capital cost of the communication system as a part of the capital cost of the transmission asset and there is no provision for furnishing the capital cost of the communication system in the tariff forms specified under the 2009 Tariff Regulations. The Petitioner in its written submissions filed on 16.10.2018 has candidly admitted that they inadvertently filed the Tariff Forms as specified in the 2014 Tariff Regulations in March, 2015 for the assets that were commissioned as per 2009 Tariff Regulations. It is observed that the Petitioner has submitted the capital cost of the communication system of the instant transmission assets a whole in Form 11 and 9 as specified in the 2009 Tariff Regulations, filed alongwith the affidavit dated 30.1.2016. We are convinced that the Petitioner has inadvertently filed Form-2 as specified in the 2014 Tariff Regulations instead of the 2009 Tariff Regulations alongwith the affidavit dated 23.3.2015. Thus, taking into consideration that the Petitioner has filed the details of the capital cost of the PLCC equipment in the Forms filed alongwith the other affidavits, we are unable to agree with the contention of NHPC that the Petitioner has since not filed the capital cost of the communication system in one of the Forms, the instant assets have not achieved the COD on 1.8.2013 and 1.9.2013

58. The next contention of NHPC is that the communication system was not in place for the assets as on the dates of COD i.e. 1.8.2013/1.9.2013 and in this regard it has taken resort to the letters written by it to PGCIL on 8.8.2013, 24.9.2013 and 7.10.2013. In addition to this, NHPC has also relied on Minutes of the Meeting dated



12.10.2013. The Petitioner has countered the contentions of NHPC and contended that the cost of PLCC/communication system was incurred and it was ready as on 1.8.2013/1.9.2013 when COD of Assets-I and II was declared.

59. To ascertain the nexus of NHPC's letters dated 8.8.2013, 24.9.2013, 7.10.2013 and Minutes of Meeting dated 12.10.2013 with the declaration of COD of Asset-I and to re-examine whether or not PLCC/communication system was commissioned as on 1.8.2013, we perused the aforesaid documents. For the sake of convenience, we are first examining the relevance of above letters and Minutes of the Meeting dated 12.10.2013 in the context of commissioning of PLCC/communication system with reference to declaration of COD of Asset-I as on 1.8.2013. On perusal of Minutes of the Meeting dated 12.10.2013, we notice that the same refers to Asset-II of the present case. Hence the said Minutes of Meeting has been considered by us with reference to Asset-II in the subsequent para of this order.

60. On careful study of the letter dated 8.8.2013 written by NHPC to the Petitioner, we notice that it was regarding commissioning of PLCC system at Parbati HE Project Stage-III. In this letter NHPC has stated that the commissioning of the Parbati HE Project stage-III is in a very advanced stage and requested the Petitioner to commission the associated PLCC system at both ends (Project end as well as sub-station end) and install the SEMs at the earliest. In another letter dated 7.10.2013, NHPC has referred to its earlier letter no. NHPC NH/PP-III/E & M/T-09/13/3065-66 dated 24.9.2013 and requested the Petitioner to commission PLCC line between Parbati-III and Banala Sub-station as generation of Parbati HE Project stage-III was



likely to commence from 20.10.2013 onwards. In this letter, NHPC has also requested PGCIL to take up the matter with BPL for early commissioning of PLCC system and also requested to complete the jumpering works at dead end tower of Parbati stage-III. Through the above letters NHPC has informed the Petitioner to commission the PLCC/communication system and these letters, according to the NHPC, indicate that that till 7.10.2013, the PLCC/communication system was not commissioned and thus approval of the COD of Asset-I as 1.8.2013 and Asset-II as 1.9.2013 is improper.

61. The Petitioner has contended that the PLCC system for Asset-I Banala-Amritsar D/C Line was also ready prior to 1.8.2013. The Petitioner has contended that Minutes of Meeting dated 26.7.2013 held amongst the Petitioner, Siemens and BPL Telecom for various activities in relation to communication system for Banala-Amritsar D/C Line which shows that the communication system was commissioned prior to the COD of the instant assets. We, therefore, feel it appropriate to extract the Minutes of the Meeting dated 26.7.2013 as under:-

“MOM

MOM held between, M/s Siemens, M/s BPL telecom & M/s PGCIL Banala at 400kVBanala for Amritsar D/C line for carrier communication on dated 26/07/13.

Member present:

FOR PGCIL FOR SIEMENS
Mr. Amit Kumar
Kumar
Mr. Suresh Ramrotra

FOR BPL Telecom
Mr. Harvir Singh Mr. Kailash



BPL Engg. visited in site from 23/07/13 to 26/07/13 carried out following works as below.

1. 23/07/13:

- CVT to LMU done but the Cable needs proper dressing for its healthiness, action pending Siemens end.
- Check cards for all 6 Nos. panels for Amritsar line and 95 AMP card found faulty during commissioning need replacement.
- Check 48 DC supply, however leakage observed in 48 V battery bank need rectification for the healthiness for PLCC system.
- Adjust all Tax levels for all panels.

2. 24/07/13:

- Check and adjust all Rx levels, (line were ground, Rx signal level has lots of loss)
- + Ve and - Ve battery source cable from Relay to PLCC found wrong and corrected for Amritsar-2 Channel-2.
- Communication done.

3. 25/07/13:

- Adjust all Tax Levels for Koldam and Parbatl-3,
- Local Relay to PLCC checked for Koldam and Parbatl-3
- End to End Tripping done from PLCC to PLCC. (line were ground, Rx signal level has lots of loss)
- Waiting for Line Clearance.

4. 26/07/13:

- Panel Card (Modem, PLF, LINT, Amp) changed in Channel-1 and Channel-2 due to wrong communication between Relay and PLCC."

62. To resolve the controversy of commissioning of PLCC/communication system on the date of COD of Asset-I and Asset-III as on 1.8.2013, we feel it appropriate to discuss the background reasons of our earlier order dated 21.7.2016. The Commission vide order dated 21.7.2016 has concluded COD of Asset-I and Asset-III as 1.8.2013. We have observed in the said order that the Petitioner proceeded for



the commissioning of the transmission assets covered in the present petition on the basis of NHPC letter dated 12.6.2013 wherein NHPC clearly informed the Petitioner for ensuring readiness of the line of project and making available 400 kV power at switchyard by 30.6.2013. NHPC in its communication dated 12.6.2013 also commented that there appears to be some delay in completion of ATS of Parbati-III Project. The Petitioner considered the said letter dated 12.6.2013 of NHPC and through its letter dated 18.7.2013 informed NHPC about the commissioning of the transmission system and its readiness for evacuation of power for Parbati-III HEP. The Petitioner back charged the transmission system from Amritsar end to Parbati-III the dead end tower since the generating station of NHPC was not ready and the petitioner had specifically requested NHPC to convey its readiness to facilitate the power evacuation from Parbati-III HEP. It was under these circumstances that the COD of Assets-I and III was approved as 1.8.2013.

63. The above chronology of events from 12.6.2013 to 1.8.2013 reveal that the Petitioner, through its letter 18.7.2013, informed NHPC about the commissioning of the transmission system and its readiness for evacuation of power for Parbati-III HEP. However, no communication is placed on record by NHPC for the duration between 12.6.2013 to 1.8.2013 showing that the PLCC/communication system was not commissioned. NHPC after 12.6.2013 wrote letters dated 8.8.2013, 24.9.2013 and 7.10.2013 informing the Petitioner to commission the PLCC system at Parbati HE Project Stage-III especially when the Petitioner declared the COD of Asset-I and Asset-III on 1.8.2013. NHPC relied on Minutes of the Meeting dated 12.10.2013 for non-commissioning of the PLCC/communication system on the dates of commercial



operation of the assets. We are not considering the said Minutes of the Meeting here as its relevance is with reference to the COD of Asset-II

64. The Petitioner has placed on record the Minutes of the Meeting dated 26.7.2013 regarding 400 kV Banala for Amritsar D/C line for carrier communication which shows that BPL Engineers visited from 23.7.2013 to 26.7.2013 and carried out various works as mentioned above under para 61. The said Minutes of the Meeting dated 26.7.2013 is the document that shows that the Petitioner, before declaration of COD of Asset-I and Asset-III on 1.8.2013, was in the process of completing the works of PLCC/communication system. NHPC has not disputed that the said works were not done by the petitioner, Siemens and BPL Telecom from 23.7.2013 to 26.7.2013 relating to PLCC/communication system of Assets-I. Further, no evidence is placed on record by NHPC to show that communication system was not commissioned by the Petitioner on 400 kV D/C Parbati Pooling Point-Amritsar line alongwith associated bays prior to declaration of COD of Asset-I on 1.8.2013. NHPC's claim that PLCC/communication system was not commissioned prior to declaration of COD of Asset-I on 1.8.2013 is only a bald assertion and is not substantiated by any documentary evidence.

65. NHPC has also contended that full scope of work was not commissioned by the Petitioner by 1.8.2013 and 1.9.2013. The complete scheme was ready for use only by 3.11.2015 with the commissioning of 'b-c' portion which should have been commissioned before the COD of units of Parbati-III Power Station i.e. on 24.3.2014. The COD of transmission line without communication system is technically not in order and that PLCC/communication system was not commissioned till 7.10.2013 is



evident from the NHPC letter dated 7.10.2013. PGCIL is required to prove the commissioning date of PLCC system.

66. In response, the Petitioner has on the issue of readiness of communication system contended that the Tribunal has already acknowledged that there is no concept of commissioning of the communication system under the 2009 Tariff Regulations.

67. We have considered the above contentions of the parties and conclude that there is no concept of commissioning of the communication system under the 2009 Tariff Regulations. As there is no dispute over charging of Asset-I and Asset-III before the declaration of COD on 1.8.2013, nor is the same the subject matter of remand, we, therefore, refrain from making any observations in this regard in this order.

68. From the above discussion, we conclude that the PLCC/communication system was commissioned by the Petitioner before declaration of COD of Assets-I and III on 1.8.2013 firstly in the light of Minutes of the Meeting dated 26.7.2013 as it went unrebutted and secondly for the reason that no material is brought on record by NHPC for the period between 12.6.2013 to 30.6.2013, i.e. prior to 1.8.2013 when the Petitioner declared the COD of Assets-I and III, to testify that PLCC/communication system was not ready as on 1.8.2013.

69. We now take up Asset-II to examine whether the PLCC/communication system was commissioned by the Petitioner before its COD on 1.9.2013. Referring to the letters dated 8.8.2013, 2.9.2013, 24.9.2013, 7.10.2013 and Minutes of Meeting dated 12.10.2013, NHPC has contended that the PLCC/communication system was not



commissioned by the Petitioner before the COD of Assets-I, III and Asset-II as on 1.8.2013 and 1.9.2013 respectively. NHPC has placed reliance on the the Minutes of Meeting dated 12.10.2013 to contend that the communication/PLCC system was not commissioned by the Petitioner. The Petitioner has contended that the Minutes of Meeting dated 12.10.2013 relates to Asset-II i.e. Parbati-III HEP to Banala/Parbati Pooling Station and that the said document does not refer to other assets.

70. PKTCL has contended that the issue of commissioning of the communication system is between NHPC and PGCIL and PKTCL has no role to pay in the dispute raised by NHPC against the PGCIL. PKTCL, however, has contended that their case is distinct from the present case. PKTCL in its submissions corroborated the version of the Petitioner almost on all material points.

71. Before we examine other contentions of the parties, we think it proper to refer to the Minutes of the Meeting dated 12.10.2013. The said Minutes of the Meeting dated 12.10.2013 is extracted as under:-

“MOM

MOM HELD BETWEEN M/S POWER GRID BANALA, M/S NHPC PARBATI-3, M/S SIEMENS Banala & M/s BPL TELECOM AT POWER GRID BANALA 400 kV S/S D/S LINE FOR LINE COMMUNICATION ON DATED 12/10/2013.

BPL Engineers visited site from 09/10/2013 to 12/10/2013 carried out following works:-

1. Check all cards for all three panels at Power Grid Banala End & NHPC Parbati-3 End found one MODEM card faulty at Parbati-3 end.
2. Check and adjust all Transmit and Receive level Power Grid Banala & NHPC Parbati-3.
3. End to End testing done between PLCC to PLCC & Relay to Relay.
4. FOREX phone connection has been done. Communication with hot line connection done.
5. LMU to PLCC connection done at Parbati-3 End.



7. Modem required at NHPC Parbati-3 and Power Grid Amristar end for data communication.

7. 2 nos. hot line phone, 2 nos. jack phone hand over to NHPC Parbati-3.

8. As per Power Grid DT is coming to relay through PLCC but counter is not rise in SCADA. Siemens have to rectify the same.

FOR POWERGRID
Amit Kumar

FOR NHPC
S R Naidu

FOR SIEMENS FOR BPL
Harvir Singh Kailash Kumar”

72. On perusal of above Minutes of the Meeting dated 12.10.2013, we find that the said Minutes of the Meeting relates to LILO of 400 kV Parbati-II-Koldam Line Ckt.-II at Parbati-III alongwith associated bays and LILO of 400 kV Parbati-III-Koldam at Parbati Pooling Point alongwith associated bays. We shall in the subsequent para of this order discuss its relevance with reference to the commissioning of the PLCC/communication system before the declaration of COD of Asset-II on 1.9.2013.

73. The Petitioner has contended that PLCC equipment/communication system for Asset-II was commissioned before the COD of the transmission line was declared by the Petitioner on 1.9.2013. The Petitioner has contended that it was NHPC who sought relocation of equipment and necessary testing was required to be conducted after NHPC was ready. The Petitioner has contended that no delay was there on its part.

74. NHPC has contended that vide letter dated 2.9.2013, the Petitioner was informed to commission the PLCC/communication system at its end. The said letter of NHPC dated 2.9.2013 is extracted as under:-

Dated: 02.09.2013

DGM,
Powergrid Corporation Ltd.



Sub-station, Banala

Kind Attn:-Sh. Ashok Kumar

Sub: Parbati HE Project stage-III: commissioning regarding.

Sir,

This is to state that Parbati HE Project stage-III is likely to be commissioned soon. The pot head yard equipments have been installed. The wave trap of line-1 has been installed at pot head yard in Phase-R and phase-B.

Also, networking panel & associated equipment like router/gateway etc has been installed in the control room. It is requested to depute the engineer for commissioning of the PLCC system at our end.

An early action is requested please.

Thanking you.

Yours faithfully.

Chief Engineer (E&M)

PHEP-III, Behali.

Copy for kind information to:

Internal:

General Manager, PHEP-III, Behali"

75. On going through the said letter of NHPC dated 2.9.2013, we find that it clearly mentions that Parbati HE Project stage-III was likely to be commissioned soon and that the pot head yard equipment has been installed. The wave trap of line-1 has been installed at pot head yard in Phase-R and phase-B. It was also mentioned in the said letter that networking panel and associated equipment like router/gateway etc. had been installed in the control room. It was requested in the said letter to depute an Engineer for commissioning of the PLCC system at NHPC's end.



76. The In addition to above, there is another letter dated 24.9.2013 written by NHPC to the Petitioner regarding the communication system. The said letter is extracted hereunder:-

"No. NH/PP-III/E & M/T-09/13/3065-66

Dated 24.9.2013

The DGM
Powergrid Corporation Limited,
Sub-station, Banala

Kind Attn: Sh. Ashok Kumar

Sub: Parbti HE Project stage-III: commissioning of the PLCC system.
Ref: N2BNL/PTS/NHPC/04/474 dated 18.09.2013

Sir,

Please refer above cited letter wherein it was intimated by you that wave traps could not be interchanged at your end however, the same are required for matching of the PLCC system.

The wave traps at Parbati HE Project end had been relocated at phase-Y and phase-B. You are requested to immediately arrange commissioning of the PLCC system at the both ends as the commissioning of the Project is likely to be carried out by the end of this month.

An early action is requested please.

Thanking you.

Yours faithfully.

Chief Engineer (E&M)
PHEP-III, Behali.

Copy for kind information to:
Internal:

1. General Manager, PHEP-III, Behali

77. The contents of the above said letter of NHPC reveal that the Petitioner vide letter dated 18.9.2013 informed NHPC that wave traps could not be interchanged at



their end for matching of PLCC system. NHPC in the said letter dated 24.9.2013 informed the Petitioner that the wave traps at Parbati HE Project end were relocated at Phase Y and Phase-B. NHPC in the said letter further requested the Petitioner to immediately arrange for commissioning of the PLCC system at the both ends as the commissioning of the Project was likely to be carried out by the end of the month.

78. On examination of the said letter dated 2.9.2013 written by NHPC to the Petitioner, there is categorical mention by NHPC that "The wave trap of line-1 has been installed at pothead yard in Phase-R and Phase-B." which leads us to infer that PLCC/communication system was commissioned by the Petitioner prior to declaration of COD of Asset-II as on 1.9.2013. The version of the Petitioner is further fortified by NHPC letter dated 24.9.2013 confirming that wave traps at Parbati HE Project end were relocated at Phase-Y and Phase-B and requested the Petitioner to immediately arrange the commissioning of the PLCC system at the both ends as the commissioning of the project is likely to be carried out by the end of the month. The said letter of NHPC was in response to the letter no. N2BNL/PTS/NHPC/04/474 dated 18.9.2013 of the Petitioner informing NHPC that wave traps could not be interchanged at the Petitioner's end and that the same are required for matching of the PLCC system.

79. As regards the Minutes of the Meeting dated 12.10.2013 placed on record by NHPC to contend that the PLCC/communication system was not commissioned before declaration of COD of the assets by the Petitioner, we observe that the said Minutes of the Meeting relate to Asset-II. The said Minutes of the Meeting dated



12.10.2013 shows that BPL Engineers visited the site from 9.10.2013 to 12.10.2013 to carry out the various works as detailed in the said MOM. The said Meeting was attended by Powergrid, NHPC, Siemens and BPL. On close scrutiny of the contents reveals that the issues highlighted in the said MOM were required to be rectified at NHPC end and they do not go the root of the matter in issue that PLCC/communication system was not commissioned as on COD of Asset-II on 1.9.2013. The said MOM nowhere suggests that PLCC/communication system was not commissioned by the Petitioner before declaration of COD of Asset-II on 1.9.2013.

80. NHPC has next contended that without proper COD, the Petitioner back charged its line which resulted in shut-down of the line from 6.9.2013 to 22.10.2013 on the request of NHPC for the purpose of making connections/testing etc. The Petitioner has submitted that the contention of NHPC regarding the PLCC/communication system not being commissioned prior to COD of Asset-II on 1.9.2013 is based on letters only has no substance in them.

81. We have considered the above contentions of the parties carefully. Admittedly, the Petitioner back charged its line which resulted in shut-down of the line from 6.9.2013 to 22.10.2013 on the request of NHPC for the purpose of making connections/testing etc. The above assertion of NHPC confirms the fact that the line was charged and on the request of NHPC, shut down of the line was taken from 6.9.2013 to 22.10.2013. No documentary evidence is placed on record by NHPC to show that the line was charged by the Petitioner without commissioning the PLCC/communication system. Regarding the contention of NHPC that during charging of the transmission line, the communication system was not in place as per



Regulation 4(3) of 2014 Tariff Regulations, we observe that the same is not applicable in the present case as the assets involved in the present case were commissioned during 2009-14 tariff period as per 2009 Tariff Regulations where there is no separate provision of COD for communication system.

82. The upshot of the above discussions leads us to unambiguous presumption that prior to declaration of COD of Asset-II on 1.9.2013, the PLCC/communication system was commissioned by the Petitioner.

83. From the submissions of the parties, it is apparent that there is no dispute on the availability of the communication system for Asset-I 400 kV D/C Amritsar-Parbati Pooling Station and Asset-II 80 MVar Bus Reactor. From the minutes of the meeting dated 12.10.2013 placed on record by the petitioner, we find that for Asset-II LILO of 400 kV Parbati-II-Koldam line Ckt-II at Parbati-III alongwith associated bays and LILO of 400 kV Parbati-III-Koldam at Parbati Pooling Point alongwith associated bays PLCC system at Parbati-III HEP was commissioned. Therefore, we uphold COD of Assets-I and III as 1.8.2013 and Asset-II as 1.9.2013.

Issue No. (iv): Whether the approach of the Commission is inconsistent in similar cases for allowing recovery of transmission charges?

84. NHPC has contended that the Commission vide order dated 30.7.2016 in Petition No. 411/TT/2014 in respect of segments b-c and f-g considered the Indemnification Agreement entered into between PGCIL and PKTCL and accordingly ordered for payment of IDC and IDEC by PKTCL to PGCIL. It has contended that the Commission should adopt the same approach to the present case in respect of line segments b-c and f-g, as it is part of full scheme as per Investment Approval as well as the Indemnification Agreement has been signed between NHPC and PGCIL. NHPC has contended that the Commission vide order dated 29.12.2016 in Petition



No. 156/TT/2015 in respect of line segment connected with b-c, between NHPC and PKTCL, directed NHPC for payment of IDC and IEDC to PKTCL for pre-commissioning period. It is contended that this order is contrary to the Commission's first order dated 26.5.2015 in Petition No. 91/TT/2012.

85. In rebuttal, the Petitioner has contended that the issues in Petition Nos. 411/TT/2014 and 156/TT/2015 are different than the issues of the present case. Therefore, the treatment to be meted out for both the above cases has to be different. The Petitioner has contended that both the above petitions are of 2014-19 tariff block. The Petitioner also contended that the facts in the said petitions were completely different. In the above petitions, the transmission assets could not be commissioned due to delays by the generating station or another transmission licensee. However, in the instant case, the transmission line being c-d-e-f was connected at both ends i.e. "c" at the NHPC switchyard and "f" at Parbati Pooling Station. All the transmission assets in issue have been put into commercial operation on 1.8.2013/1.9.2013 in contrast to the case in Petition Nos. 411/TT/2014 and 156/TT/2015 wherein assets were not commissioned. Accordingly, the liability for payment differs in the case where the transmission assets are commissioned and in the cases where they are not commissioned. The Petitioner contended that in such circumstances, the Indemnification Agreement providing for payment of IDC and IEDC could be applicable. Once the transmission asset is commissioned, there is no question of payment of IDC and IEDC. The Petitioner has contended that in the present case, it is entitled for transmission charges as the assets have been commissioned.



86. We have considered the above contentions of the parties and have gone through the record. NHPC has contended that in order dated 30.7.2016 in Petition No. 411/TT/2014, PKTCL was made liable for payment of IDC and IEDC for the period of mismatch and in Petition No. 156/TT/2015 filed by PGCIL, NHPC was made liable for payment of IDC and IEDC for the period of mismatch. However, in the Petition No. 91/TT/2012 filed by PGCIL, NHPC has been made liable to bear the transmission charges. In order to examine the above contentions of the parties, we feel it proper to reproduce the relevant portions of the order dated 30.7.2016 in Petition No. 411/TT/2014 as under: -

“15. It is observed that the Loop-in and Loop-out portion of the instant asset were put into use only on 3.11.2015 and 10.10.2014 as against the scheduled COD on 30.1.2010 because of the delay in commissioning of the transmission lines by PKTCL. Accordingly, the COD of the Loop-in and Loop-out portions shall be reckoned as 3.11.2015 and 10.10.2014, respectively. We are of the view that the IDC and IEDC from 30.6.2014 till the date of usage of the Loop-in and Loop-out portion i.e.3.11.2015 and 9.10.2014 respectively would be borne by PKTCL. The Petitioner is directed to submit the capital cost of Loop-in and Loop out portions of the instant asset as on 10.10.2014 and 3.11.2015, respectively, along with the Auditor’s Certificate, RLDC certificate as required under Regulation 5(2) of the 2014 Tariff Regulations, details of IDC and IEDC on cash basis for both the Loop-in and Loop-out portions within 30 days of the date of this order.”

87. On perusal of record, we find that PGCIL filed Petition No. 411/TT/2014 for determination of transmission tariff for 2014-19 tariff period for LILO of 1st ckt. of 400 kV D/C Parbati II-Koldam Transmission Line at Parbati Pooling Station. The Commission vide its order dated 30.7.2016 concluded that the loop out portion of the instant asset was put into use only on 10.10.2014 and the loop in portion was put into use on 3.11.2015 after the commissioning of the connecting transmission lines by PKTCL and therefore ordered that the COD of the loop in and loop out portions shall be reckoned as 3.11.2015 and 10.10.2014, respectively. The Commission in the said order observed that the IDC and IEDC from 30.6.2014 till the date of usage of the loop in and loop out portion i.e. 3.11.2015 and 9.10.2014 respectively would be borne



by PKTCL. The Commission in the said order directed the Petitioner to furnish the details of capital cost of LILO portions, IDC and IEDC as specified in the order dated 30.7.2016 in a fresh petition.

88. However, against the order dated 30.7.2016 in Petition No. 411/TT/2014, PKTCL filed Review Petition No. 52/RP/2017 on the issue of delay in commissioning of the asset and fixing the liability on PKTCL to pay IDC and IEDC as the Commission in the impugned order failed to take into consideration the amendments to the Implementation Agreement. The Commission in Petition No. 52/RP/2017 observed that PGCIL in Petition No. 411/TT/2014 did not disclose the fact of signing of amendments to the Implementation Agreement dated 10.2.2016 whereby PGCIL and PKTCL mutually agreed for revised COD of LILO as 3.11.2015. Accordingly, the Commission allowed COD of the loop out portion from 10.10.2014 and loop in portion from 3.11.2015 with direction to PGCIL to file a fresh petition with amended capital cost considering the COD of loop in and loop out portions as 3.11.2015 and 10.10.2014 respectively. The Commission vide order dated 20.7.2018 in Review Petition No.52/RP/2017 observed that Petition No.136/TT/2017 shall be heard again on the limited issue of COD of loop out portion. The relevant portion of the order dated 20.7.2018 is as under:-

“12. In our view, PGCIL having agreed to the revised SCOD of the LILO as 3.11.2015 in Amendment to the Implementation Agreement dated 10.2.2016 was under obligation to bring the said fact to the notice of the Commission. Had the said fact been brought to the notice of the Commission, PGCIL could not have been granted COD prior to the date of revised SCOD. We therefore find sufficient reasons to review our earlier decision to grant COD of the Loop-out portion from 10.10.2014 and Loop-in portion from 3.11.2015.

13. Accordingly, the review of the impugned order has been allowed to this extent. It is pertinent to mention that the Commission directed PGCIL to file a fresh petition with amended capital cost considering the COD Loop-in and Loop-out as on 3.11.2015 and 10.10.2014. PGCIL has filed Petition No.136/TT/2017 as per the directions in the



impugned order dated 30.7.2016. It is observed that in Petition No. 136/TT/2017 PGCIL has claimed the COD of Loop-out and Loop-in of the 1st Ckt of 400 kV D/C Parbati-II-Koldam Transmission Line at Banala as 10.10.2014 and 3.11.2015.”

89. In view of the above directions in order dated 20.7.2018, PKTCL is not liable to bear any IDC and IEDC for the period of mismatch. Accordingly, the contention of NHPC that PKTCL was made for liable for only IDC and IEDC in Petition No. 411/TT/2014 is incorrect. Further, Petition No. 136/TT/2017 is listed before the Commission and a separate order will be issued in Petition No.136/TT/2017.

90. NHPC has further submitted that PKTCL filed Petition No.156/TT/2015 for determination of transmission tariff for the assets in Northern Region for tariff block 2014-19 and the Commission vide order dated 29.12.2016, held that PKTCL was not able to put into use its transmission line due to delay on the part of NHPC and held that NHPC would bear the IDC and IEDC charges for the period of mismatch.

91. Against the Commission's order dated 29.12.2016 in Petition No. 156/TT/2015, two Review Petitions were filed – one by PKTCL being Review Petition No. 4/RP/2017, and another by NHPC being Review Petition No. 15/RP/2017. In Review Petition No. 4/RP/2017, PKTCL sought review mainly on the ground of curtailment of IEDC to 5% instead of 10% and to allow full payment of transmission charges from 30.6.2015 to 2.11.2015 of Parbati Koldam line. NHPC in Review Petition No. 15/RP/2017 sought review of the impugned order on the issue of allowing recovery of IDC and IDEC charges from it for the period 30.6.2015 to 2.11.2015 due to non-commissioning of 400 kV bay of Prabati-II of NHPC. Both the Review Petitions were allowed vide order dated 12.12.2018 with the direction to relist Petition No.156/TT/2015 for reconsideration in terms of the Tribunal judgement dated



16.7.2018 on the issue of COD and sharing of transmission charges. The observations made by the Commission in order dated 12.12.2018 is as under:

“26. Taking into consideration the directions of APTEL in judgment 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 ParbatiKoldam 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.”

Petition No.156/TT/2015 is listed before the Commission and a separate order will be issued in that Petition.

92. As regards the contention of NHPC regarding adoption of discriminatory approach by the Commission, the Commission is already reconsidering the order dated 29.12.2016 in Petition No.156/TT/2015 and reconsidering the COD of the loop-out portion of the of 400 kV D/C Parbati-II-Koldam Transmission Line at Banala in Petition No.136/TT/2017 in the light of the observations made by the Tribunal in its judgement dated 16.7.2018 in Appeal Nos. 281 of 2016 and 81 of 2017.

93. NHPC has contended that the Commission in some of the cases has imposed the liability of transmission charges and in some cases the IDC and IEDC in case of mismatch between the commissioning of the transmission assets and the upstream or downstream assets. We would like to state that the Commission is of the consistent view that if the COD of the transmission asset is approved the defaulting entity is held liable to pay the transmission charges and if the COD of the transmission asset is not approved, the defaulting entity is held liable for only IDC and IEDC.



Issue No. (v): Whether the transmission charges in the present case should be shared by the other generators using the transmission system?

94. NHPC has submitted that the Commission in order dated 26.5.2015 held that NHPC is liable to bear the transmission charges of Assets-I and III from 1.8.2013 to 23.3.2014 on the premise that the said assets are exclusively used by NHPC. However, the assets are also meant for Parbati-II, Sainj and Koldam etc., besides NHPC and hence NHPC cannot be held liable for the transmission charges for the said period. It is observed that this issues was raised by NHPC before the Tribunal in the Appeal No. 281 of 2016 and 81 of 2017 and the Tribunal has already given a clear finding that the assets covered in Petition No.91/TT/2012 were developed exclusively for NHPC. The relevant portion of the Tribunal's judgement dated 16.7.2018 is extracted hereunder.

“15.3The transmission charges payable by each generating project are decided accordingly considering the extent of use of the common facilities. In the instant case, the transmission assets in question have been developed exclusively for Parbati-III Hydro Project of NHPC and other Hydro Projects namely Parbati-II, Sainj, Koldam etc. have their own evacuation system and admittedly not the transmission assets of Parbati-III HE Project. Powergrid has categorically submitted the above contentions before the Central Commission during its proceedings which has also been recorded by CERC in the impugned order. We, thus, find no legal infirmity or error in the impugned order of the Central Commission to this account.”

As such, we are of the view that the transmission charges for Assets-I, II and III should be borne exclusively by NHPC for the period of mismatch.

95. In view of the above discussion, we are of the view that there is no error in the Commission's order dated 21.7.2016. Accordingly, Petition No. 91/TT/2012 is disposed of.

Sd/-

(Dr. M. K. Iyer)
Member

Sd/-

(P.K. Pujari)
Chairperson

