

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.** : **246/MP/2018**

**Subject** : In the matter of declaration and consequent direction for determination of transmission charges for the 220 kV D/C Bhilangana-III-Ghansali Transmission Line in terms of the order dated 10.5.2018 passed by the Hon'ble Supreme Court in Civil Appeals No. 2368-70 of 2015

**Date of Hearing** : 30.7.2021

**Coram** : Shri P. K. Pujari, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member

**Petitioner** : Bhilangana Hydro Power Limited (BHPL)

**Respondents** : Power Transmission Corporation of Uttarakhand Ltd.& Ors.

**Parties present** : Mr. Sanjay Sen, Senior Advocate, BHPL  
Ms. Shikha Ohri Advocate , BHPL  
Mr. Samyak Mishra, Advocate, BHPL  
Mr. Rajesh Jindal, Advocate, BHPL  
Mr. Animesh Kumar, Advocate, TPTCL  
Ms. Shweta Singh, Advocate, TPTCL  
Mr. Anand K. Ganesan Advocate, TPTCL  
Mr. Sitesh Mukherjee Advocate, PTCUL  
Mr. A.K. Agarwal, PTCUL  
Mr. S. P. Arya, PTCUL  
Mr. Saima Kamal, PTCUL  
Mr. Ashwin Ramanathan, TPTCL  
Mr. Pramod Arora, BHPL  
Mr. Prasun Kumar, BHPL  
Mr. Amit Kumar, BHPL  
Mr. Prashant Garg, POSOCO  
Mr. Alok Kumar Mishra, POSOCO

**Record of Proceedings**

The matter was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the instant petition has been filed pursuant to the judgement dated 10.5.2018 passed by the Hon'ble Supreme Court in Civil Appeals No. 2368-70 of 2015. Gist of submissions made by the learned senior counsel is as follows:



- a) The instant petition is filed for declaring that the 220 kV D/C Bhilangana-III - Ghansali Transmission Line (“transmission line”) was part of the inter-State transmission system (ISTS) during the period from 1.5.2012 to 2.4.2015. The Hon’ble Supreme Court vide its judgement dated 10.5.2018 in Civil Appeals No. 2368-70 of 2015 gave liberty to the Petitioner to approach this Commission to establish whether for the above-mentioned period, the transmission line was an inter-State line and if it is established, the Commission will be at liberty to modify the transmission charges provisionally determined by Uttarakhand Electricity Regulatory Commission (“UERC”).
- b) In 2011, PTCUL filed an application for approval of proposed capital investment before UERC and UERC vide its order dated 24.11.2011, while approving the investment proposal excluded (i) 220 kV S/C Chambva-Ghansali Transmission Line, (ii) 1 No. 220 kV Bay at 220 kV Sub-station Chamba, and (iii) 220 kV D/C Bhilangana-III-Ghansali Transmission line from REC-IV scheme. UERC observed that if more than 50% of the total power carried through such system is inter-State power and if it is duly certified by RPC, then these lines shall be considered as deemed inter-State lines in accordance with the provisions of the Electricity Act, 2003 (in short, “the Act”).
- c) PTCUL had also filed Petition No.11 of 2012 before UERC on 5.1.2013 for investment approval of 220 kV Ghansali Sub-station and other associated lines and bays. The Petitioner also filed a Petition No. 20 of 2012 before UERC on 24.8.2012 to adjudicate upon dispute between the Petitioner and PTCUL, regarding the obligation to make payment of additional transmission charges for the alleged dedicated transmission network.
- d) UERC vide order dated 29.4.2013 in Petition No.11 of 2012 and 20 of 2012 held that the 220 kV D/C Bhilangana-III-Ghansali transmission line is a deemed ISTS line and that it should be included in computation of PoC charges recoverable in accordance with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission charges and losses) Regulations, 2010 (in short, “the 2010 Sharing Regulations”). However, UERC, to obviate the financial difficulties of PTCUL, allowed provisional transmission charges for the transmission line, recoverable by PTCUL till December 2013 or till charges under POC mechanism are determined by this Commission. It further directed PTCUL to approach this Commission at the earliest for determination of transmission charges under the PoC mechanism.
- e) Aggrieved by the orders dated 29.4.2013 and subsequent order dated 6.5.2013 (wherein multi-year tariff in respect of PTCUL’s assets were approved by UERC), the Petitioner filed Appeal Nos. 128 and 129 of 2013 respectively before the APTEL. PTCUL also filed a cross Appeal No. 163 of 2013 before the APTEL. The Petitioner raised the issue of jurisdiction in the aforesaid appeals and contended that under no circumstances a 24 MW renewable energy power plant can be burdened with the entire cost of single circuit of the transmission line, capable of carrying around 200 MW on each circuit.



- f) The Petitioner is liable to pay only proportionate transmission charges. On the other hand, PTCUL in the cross appeal contended that the transmission line is an intra-State line and that the Petitioner herein is liable to bear the entire cost of the 200 kV S/C Chamba-Ghansali Transmission Line as well as the 220 kV D/C Bhilangana-III-Ghansali Transmission line.
- g) In the meanwhile, PTCUL filed Petition No. 5 of 2013 for determination of multi-year tariff for 2013-16 and UERC vide order dated 6.5.2013 reiterated its earlier order dated 24.11.2011 and PTCUL was directed to get the transmission line declared as deemed ISTS line by the Commission and recover the transmission charges under PoC mechanism.
- h) APTEL dismissed Appeal Nos.128, 129 and 163 of 2013 vide a common judgement on 29.11.2014 and upheld the order passed by UERC that the Petitioner is liable to pay entire transmission charges for one circuit of the transmission line as determined by UERC and that PTCUL is entitled to recover charges for only one circuit of the transmission line from the Petitioner.
- i) The Petitioner challenged the APTEL's judgement dated 29.11.2014 before the Hon'ble Supreme Court stating that the issue of the jurisdiction was not decided by the APTEL in its order dated 29.11.2014. The Hon'ble Supreme Court vide order dated 10.5.2018 dismissed the appeal and observed that the issue of determination of transmission line as inter-State line needs to be determined first by the Central Commission.
- j) During the period from 1.5.2012 to 2.4.2015, the entire power transmitted through the transmission line was sold outside the State in national market through the trading licensee, TPTCL. TPTCL has been impleaded as a party in the instant petition vide affidavit dated 29.1.2020.
- k) No steps were taken by PTCUL towards compliance of the direction given by UERC in its order dated 24.11.2011 and 29.4.2013, which allowed PTCUL to recover the transmission charges provisionally till December 2013 and directed PTCUL to take steps for determination of transmission charges and inclusion of the same in the PoC mechanism. Even after dismissal of its Appeal No. 163 of 2013 by APTEL, PTCUL has not approached this Commission for inclusion of the said line in the PoC mechanism.
- l) The Petitioner cannot be made liable to bear full transmission charges for the double circuit transmission line merely because the Petitioner was the only generator who was commissioned at that point of time. The Petitioner has over-paid the charges for the use of transmission line. The defaulting generators like UVJNL cannot escape its liability to pay the transmission charges.
- m) Merely because the Petitioner has rightfully commissioned the generation, it cannot be fastened with liability to pay full transmission charges. PTCUL has



not challenged the finding of UERC in order dated 29.4.2013 before the APTEL or Hon'ble Supreme Court and accordingly the observation of UERC has attained finality. Therefore, based on findings of UERC, APTEL and Hon'ble Supreme Court, the instant petition for declaration of the transmission line as an ISTS line has been filed.

3. In response to a query of the Commission regarding jurisdiction, the learned senior counsel for the Petitioner submitted that the transmission charges were approved by UERC only on provisional basis and it was applicable only till a final view is taken by the Commission. UERC in its order dated 29.4.2013 has categorically held that the transmission charges are provisional and that the same will be replaced by the charges determined under PoC mechanism by the Commission. As PTCUL was facing financial crunch, provisional order was passed by UERC. PTCUL was under an obligation to move the Commission for determination of the transmission charges under the PoC mechanism. However, no such steps were taken by PTCUL. Further, PTCUL did not approach the Northern Regional Power Committee (NRPC) for certification of the transmission line as a non-ISTS line carrying inter-State power.

4. In response to another query of the Commission regarding the nature of the transmission line, the learned senior counsel for the Petitioner submitted that no order/ observation has been passed by the Commission on the nature of the transmission line till date. He further submitted that the transmission line has not even been certified by RPC as deemed ISTS line.

5. In response to another query of the Commission regarding the present status of the transmission line, the learned senior counsel for the Petitioner submitted that initially power was sold within the State and subsequently power was sold outside the State of Uttarakhand through this line. During the period from 1.5.2012 to 2.4.2015, the entire power transmitted on the transmission line was for inter-State sale. In terms of Section 2(36)(ii) of the Act, a transmission system used for conveyance of electricity within the State, which is incidental to inter-State transmission of electricity, also qualifies as Inter State Transmission System (ISTS). In support of its submissions, the learned counsel for the Petitioner also placed reliance on order dated 4.4.2011 in Petition No. L-1/44/2010 and order dated 18.10.2017 in Petition No. 26/TT/2017.

6. The learned counsel for PTCUL submitted that the Petitioner executed Power Purchase Agreement (PPA) dated 27.12.2007 with TPTCL and as per the PPA, the Petitioner was responsible for delivery of power only upto the State boundary and sale of power through Short term Open Access (STOA) was within the State. Accordingly, transaction was intra-State and not inter-State. He further submitted that as per the 2010 Sharing Regulations, only if 50% or more power was flowing outside the State, a transmission line is regarded as ISTS line. This is question of fact and not law. The load flow study is required to be conducted to determine whether the transmission line is being used for transfer of power from Uttarakhand to other States. He further submitted that there was no dispute that the said transmission line is intra-State line. He also placed reliance on the NRLDC reply



wherein NRLDC has categorically observed that the transmission line is embedded deep inside the State Transmission Network. The transmission line is further connected to the intra-State network before its connection to the ISTS system and, therefore, cannot be considered as an ISTS line. He submitted that the Commission has to examine on merits the nature of the transmission line as per the 2010 Sharing Regulations.

7. The learned counsel for TPTCL submitted that an affidavit dated 14.2.2020 has been filed to show that as per the PPA dated 27.12.2007, the power was flowing outside the State of Uttarakhand during the period from 1.5.2012 to 2.4.2015. He further submitted that a distinction is required to be made between trading of electricity and transmission of electricity. The transmission of electricity is not dependant on sale or purchase of the electricity rather on conveyance of electricity as per Section 2(36) of the Act. The delivery point in the PPA is at CTU point, which also reflects that power was deemed to flow outside the State of Uttarakhand.

8. The representative of NRLDC submitted that the Petitioner is a State-embedded intra-State generator and it's scheduling, metering and accounting is done by SLDC, Uttarakhand. Short-term transactions by nature are for short duration of time and keep changing over time. Therefore, inter-State STOA transactions should not be the basis for declaring a line/ transmission system as inter-State. The representative of NRLDC submitted that there is a need to distinguish between inter-State transaction and inter-State transmission of power. He further submitted that the power flow study was conducted for 400/220 kV transformers at PTCUL, Rishikesh which showed that all the power was consumed within the State of Uttarakhand. As power flow outside the State of Uttarakhand was not more than 50%, the line cannot be treated as an ISTS line, as per the prevalent regulations. Neither is there a RPC certificate for the said period for considering the transmission line as ISTS line.

9. The Commission directed the Petitioner to clarify whether the Petitioner's tariff claim is for 220 kV S/C Bhilangana-III - Ghansali Transmission Line or for 220 kV D/C Bhilangana-III - Ghansali Transmission Line, on affidavit by 18.8.2021 with an advance copy to the Respondent. The Commission also directed PTCUL to submit the following information on affidavit by 18.8.2021 with the advance copy to the Petitioner/Respondents:

- a) Commercial operation dates of Ghansali GIS Sub-station, Ckt-1 and 2 of 220 kV D/C Bhilangana-III – Ghansali Transmission line.

10. Subject to the above, the Commission reserved the order in petition.

**By order of the Commission**

**Sd/-**  
(V. Sreenivas)  
Deputy Chief (Law)

