

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.116/TT/2017

Subject : Petition for determination of transmission tariff from COD to 31.3.2019 in respect of five number of assets under NRSS-XXXII in Northern Region.

Date of Hearing : 17.8.2022

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

Petitioner : Power Grid Corporation of India (PGCIL)

Respondents : Rajasthan Rajya Vidyut Prasan Nigam Limited & Ors.

Parties present : Shri Sitesh Mukherjee, Advocate, PGCIL
Ms. Abiha Zaidi, Advocate, PGCIL
Shri Anand K Ganesan, Advocate, HPPTCL
Ms. Swapna Seshadri, Advocate, HPPTCL
Shri Amal Nair, Advocate, HPPTCL
Ms. Sugandh Khanna, Advocate, HPPTCL
Ms. Kritika Khanna, Advocate, HPPTCL
Shri R.B Sharma, Advocate, BRPL
Shri Mohit Mudgal, Advocate, BYPL
Shri Sachin Dubey, Advocate, BYPL
Ms. Megha Bajeypi, BRPL
Shri Kashsih Bhambhani, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddhart Verma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Shri Lashit Sharma, CTUIL
Shri S. S. Raju, PGCIL
Shri Mukesh Khanna, PGCIL
Shri V. Chandrashekhar, PGCIL
Shri B.B. Rath, PGCIL
Shri Amit Yadav, PGCIL
Shri Ved Prakash Rastogi, PGCIL

Record of Proceedings

The matter was called out for virtual hearing.

2. HPPTCL filed Appeal No. 182 of 2020 against the Commission's order dated 20.7.2018 in Petition No.116/TT/2017 before APTEL on the ground that no notice was served on it in the matter and the liability of transmission charges of Asset-V



from its COD till the COD of the downstream assets of HPPTCL was imposed on it without any opportunity of hearing. APTEL vide its judgement dated 26.10.2021 remanded the matter to the Commission for re-consideration and fresh decision after hearing HPPTCL.

3. The matter was earlier heard by the Commission on 7.7.2022.

4. The representative of CTUIL submitted that initially Malana-II HEP was granted 86 MW LTA and it was connected to Prabati Pooling Station. Placing reliance on 30th and 31st Standing Committee Meetings on Power System Planning of Northern Region, he submitted that it was agreed to construct a 220 kV D/C line from 220/132 kV Chhaur to Prabati Pooling Station enabling injection of power from Malana-II HEP at Prabati Pooling Station (ISTS). He further submitted that HPPTCL informed that it intended to inject about 170 MW power from Small HEPs at Chhaur Sub-station for its transfer to Prabati Pooling Station. He submitted that HPPTCL proposed to construct a 220 kV D/C line from Chhaur Sub-station to Prabati Pooling Station. Thus, HPPTCL agreed to construct a 220 kV D/C line from Chhaur Sub-station to Prabati Pooling Station enabling injection of power from Malana-II HEP at Prabati Pooling Station (ISTS). HPPTCL also agreed to take ownership of 132/220 kV Chhaur Sub-station from EPPL to make it a part of its STU system. HPPTCL in the 31st SCM on Power System Planning of NR informed that Scheduled Commercial Operation Date of 220 kV D/C line was 2015.

5. Learned counsel for HPPTCL submitted that Powergrid System was delayed by 566 days and it did not come up in 2015. The 220 kV Chhaur-Banala transmission line under the scope of HPPTCL was delayed due to "*force majeure*" reasons. The preliminary issue which arises for consideration is as to whether HPPTCL can be made liable to make payment of the transmission charges due to delay in achieving the COD of downstream assets without there being any contractual arrangement and regulation put in place. He further submitted that the Petitioner was directed to implead the generators and effect service upon them. Referring to APTEL's judgment dated 9.5.2022 in Appeal No. 343 of 2018 in the matter of HPSEB Vs NTL, he submitted that the Commission's Sharing Regulations clearly provide for a mechanism to be followed for determination of share of each beneficiary i.e. LTTC through PoC mechanism and there is no provision of downstream or upstream network matching condition in the Sharing Regulations whereby any specific LTTC can be penalized. He further submitted that the 2020 Sharing Regulations is not applicable to the facts of the present case.

6. Learned counsel for CTUIL submitted that Malana-II HEP was initially granted an interim connectivity by HPPTCL because there were issues of corridor development. Therefore, evacuation of power from Malana-II HEP was planned through LILO of one circuit of AD Hydro Electric Power-Nalagarh 220 kV D/C line of AD Hydro at Chhaur 220/132 kV Sub-station of Everest Power Pvt. Ltd. (EPPL) and power from the generation project was to be injected at Chhaur by 132 kV D/C line. However, AD HEP-Nalagarh 220 kV D/C line was not adequate for reliable evacuation of power from both the projects, especially during any contingency condition. Thus, Chhaur-Banala 220 kV D/C line was agreed to implemented by HPPTCL and HPPTCL granted final connectivity to Malana-II HEP. Malana-II HEP



is a State granted connectivity and LTA was granted by CTUIL. However, the connectivity remains with the HPPTCL.

7. Learned counsel for the Petitioner made detailed submissions. Gist of the submissions of the Petitioner is as follows:

- a. In the 31st SCM of NR dated 2.1.2013, Powergrid stated that Malana-II HEP generation is directly connected to ISTS grid for which LTOA has been processed and granted by CTU. In case, the line is constructed by HPPTCL (STU), the direct connectivity of Malana-II with ISTS would be lost and EPPL would have to bear STU charges in addition to PoC charges. EPPL agreed to the proposal as well as to sort out all commercial issues with HPPTCL.
- b. Commercial issues arising between HPPTCL and EPPL including any liability for delay in execution of the line which HPPTCL took upon itself for the purpose of these assets built by Powergrid is a part of commercial arrangement that has to be worked out between HPPTCL and generators.
- c. Reliance placed by HPPTCL on APTEL's judgment dated 9.5.2022 in Appeal No. 343 of 2018 titled HPSEB Vs NTL is misplaced as facts of the present case are different from the facts of the case of HPSEB Vs. NTL. The Commission has power to impose liability on defaulting party in case of mismatch between COD of the transmission assets and COD of downstream/upstream system.
- d. The Commission vide order dated 26.4.2022 in Petition No. 60/TT/2017 has extensively dealt with the issues of force majeure and on liability to be imposed on the defaulting party for the period of mismatch between the COD of the transmission assets and COD of the associated transmission lines. He submitted that concept of 'force majeure' is creation of a contract and plea of '*force majeure*' can be taken by a party only when there is a TSA between the parties. However, in the instant case, there was no contractual agreement between HPPTCL and PGCIL. Therefore, no relief can be granted to HPPTCL under '*force majeure*'.
- e. The contention of HPPTCL that imposition of transmission charges, in the absence of a contract, is in the nature of 'damages' for delay in execution of assets is incorrect. Placing reliance on Hon'ble Supreme Court judgment in the matter of VK Ashokan Vs. CCE reported in (2009) 14 SCC 85, he submitted if damages, penalty or liability imposed emanates out of a regulation or statutory framework, then the contractual principles of damages are not applicable.
- f. Reliance placed by HPPTCL on the principle laid down by APTEL in its judgement dated 27.3.2018 in Appeal No 390 of 2017 (PSPCL Vs Patran Transmission Company Limited & Others) ("Patran judgment") is incorrect and misplaced.
- g. COD of Chhaur-Banala transmission line was achieved on 1.10.2019,



however actual power flow started on 5.12.2019. Thus, for a period of approximately 23 months, the Petitioner could not recover transmission charges through PoC mechanism from HPPTCL. Therefore, it is a fit case for imposition of liability of transmission charges on HPPTCL.

8. Learned counsel for HPPTCL refuted the submissions of the Petitioner. He further submitted that in view of the principle laid down by APTEL in Patran judgment, HPPTCL cannot be made liable for payment of transmission charges.

9. Learned counsel for BRPL submitted that reply on behalf of BRPL has already been filed.

10. After hearing the parties, the Commission granted one last and final opportunity to the impleaded generators to file their reply on affidavit by 5.9.2022 and Petitioner/CTUIL and HPPTCL to file their rejoinder and/or written submissions, if any, by 19.9.2022. The Commission directed the parties to comply with the above directions within the specified timelines and observed that no extension of time will be allowed.

11. Subject to above, the Commission reserved order in the matter.

By order of the Commission

sd/-

(V. Sreenivas)
Joint Chief (Legal)

