

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 116/TT/2017**

**Coram:**

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

**Date of Order: 16.11.2022**

**In the matter of:**

Reconsideration of the order dated 20.7.2018 in Petition No. 116/TT/2017 pursuant to the directions of Appellate Tribunal for Electricity in judgment dated 26.10.2021 in Appeal No. 182 of 2020.

**And in the matter of:**

Power Grid Corporation of India Limited,  
"Saudamini", Plot No. 2,  
Sector 29, Gurgaon-122001  
Haryana.

**....Petitioner**

**Vs.**

1. Ajmer Vidyut Vitran Nigam Limited,  
Corporate Office, Vidyut Bhawan,  
Panchsheel Nagar, Makarwali Road,  
Ajmer-305004 (Rajasthan).
2. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhavan, Janpath, Jyoti Nagar,  
Jaipur-302005 (Rajasthan).
3. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur-342003 (Rajasthan).
4. Himachal Pradesh Power Corporation Limited,  
HIMFED Building BCS, New Shimla,  
Shimla-171009 (Himachal Pradesh).
5. Punjab State Power Corporation Limited,  
The Mall, PSEB Head Office,  
Patiala-147001 (Punjab).



6. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula- 134109 (Haryana).
7. Jammu Kashmir Power Corporation Limited,  
220/66/33 kV Gladni SS SLDC Building,  
Narwal, Jammu.
8. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow - 226001 (Uttar Pradesh).
9. BSES Yamuna Power Limited (BYPL),  
B-Block, Shakti Kiran, Bldg. (Near Karkadooma Court),  
Karkadooma 2<sup>nd</sup> Floor,  
New Delhi-110092 (Delhi).
10. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110019 (Delhi).
11. Tata Power Delhi Distribution Limited,  
33 kV Substation, Building, Hudson Lane, Kingsway Camp  
North Delhi – 110009 (Delhi).
12. Chandigarh Administration,  
Sector -9, Chandigarh
13. Uttarakhand Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun (Uttarakhand).
14. North Central Railway,  
Allahabad  
(Uttar Pradesh).
15. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110002 (Delhi).
16. Uttar Pradesh Power Transmission Corporation Limited,  
11<sup>th</sup> Floor, Shakti Bhawan, 14 Ashok Marg,  
Lucknow-226001 (Uttar Pradesh).
17. Himachal Pradesh Power Transmission Corporation Limited,  
HIMFED Bhawan, Panjari,  
Shimla-171005 (Himachal Pradesh).
18. Central Transmission Utility of India Limited,



First Floor, Saudamini, Plot No-2, Sector-29,  
Near IFFCO Chowk Metro Station,  
Gurgaon-122001 (Haryana).

19. Everest Power Private Limited,  
Plot No-13, SY. No.64 Part, Block-D,  
Third Floor, Hitech City Layout, Madhapur Village,  
Hyderabad-500081.
20. AD Hydro Power Limited,  
Bhilwara Towers, A-12, Sector-1,  
NOIDA-201301 (NCR Delhi).

...Respondents

**For Petitioner** : Shri Sitesh Mukherjee, Advocate, PGCIL  
Ms. Abiha Zaidi, Advocate, PGCIL  
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

**For Respondents** : Shri Anand K. Ganeshan, 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 Bajpeyi, BRPL  
Shri Kashsih Bhambhani, CTUIL  
Shri Swapnil Verma, CTUIL  
Shri Siddhart Verma, CTUIL  
Shri Ranjeet Singh Rajput, CTUIL  
Shri Lashit Sharma, CTUIL

### **ORDER**

The Appellate Tribunal for Electricity (hereinafter referred to as 'the APTEL) has remitted back order dated 20.7.2018 of the Commission passed in Petition No. 116/TT/2017 vide judgment dated 26.10.2021 in Appeal No. 182 of 2020 for re-consideration and fresh decision regarding the liability of payment of transmission



charges with respect to Asset-V: Extension of GIS Parbati Pooling station with 7X105 MVA ICT along with associated bays and 2 Nos. 220 kV bays under “Northern Region System Strengthening Scheme-XXXII” (hereinafter referred to as “transmission project”). The relevant portion of the said judgment is as follows:

*“The respondent PGCIL has submitted written submission alongwith which it has submitted copy of a communication dated 20.10.2021 received from the Manager, Business Post Centre, at Gurgaon-122016, Department of Posts, India. The said communication has confirmed that certain postal article was booked against the Speed Post No. EH720806007IN dated 10.09.2017 for Shimla–171005. The record being old, and having been weeded out, the said office is unable to confirm the delivery status thereof. Though the learned counsel for PGCIL would insist that the postal article regarding the communication from PGCIL was despatched and in this respect he would rely on internal office records maintained in regular course of business, we are not inclined to accept the submission that there is sufficient material to infer due service on the appellant. For this, we may again mention two prime facts. It is conceded that the Commission did not issue any notice to the appellant of its own. The issuance of notice was left to the 19th respondent (PGCIL), which submitted an affidavit of service but without the proof of service, such affidavit being accompanied only by proof of despatch. The proof of despatch, as already observed, in the shape of postal receipt, does not contain the full particulars of the appellant. In the face of the further fact that another entity was mapped on the portal of the Commission in the wake of earlier orders, we are not inclined to accept mere production of the postal receipt as proof of due service. In the above facts and circumstances, the impugned order dated 20.07.2018 passed by the CERC in Petition No.166/TT/2017 to the extent thereby liability of paying transmission charges for Asset-V of the transmission system of 19th respondent was fastened on the appellant is set aside. The matter in said respect is remitted to the Commission for reconsideration and fresh decision after hearing the appellant as well.*

*In the above facts and circumstances, the impugned order dated 20.7.2018 passed by the CERC in Petition No. 166/TT/2017 to the extent thereby liability of paying transmission charges for Asset-V of the transmission system of 19<sup>th</sup> respondent was fastened on the appellant is set aside. The matter in said respect is remitted to the Commission for reconsideration and fresh decision after hearing the appellant as well.”*

2. Accordingly, Petition No. 116/TT/2017 was re-opened, as per the directions of APTEL, for the limited purpose of re-consideration and fresh decision on the liability of payment of transmission charges of Asset-V.



## **Background**

3. The Petitioner, Power Grid Corporation of India Limited (PGCIL) has filed the present Petition for determination of transmission tariff under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”) from COD to 31.3.2019 in respect of the following assets under the transmission project:

Asset-I: 400 kV Lucknow- Kanpur (New) D/C transmission line alongwith associated bays at both end,

Asset-II: Augmentation of Transformation Capacity at 400/220 kV Ballabgarh Sub-station by installing 500 MVA ICT-III,

Asset-III: Augmentation of Transformation Capacity at 400/220 kV Ballabgarh Sub-station by installing 500 MVA ICT-IV,

Asset-IV: Augmentation of Transformation Capacity by 500 MVA ICT (3rd) at 400/220 kV GIS Gurgaon and

Asset-V: Extension of GIS Parbati Pooling Station with 7X105 MVA ICT along with associated bays and 2 Nos. 220 kV bays.

4. The Commission vide order dated 20.7.2018 in Petition No. 116/TT/2017 allowed tariff for the transmission assets from the date of commercial operation (COD) to 31.3.2019 under the 2014 Tariff Regulations. The Commission in order dated 20.7.2018 observed that the Petitioner was not able to put the transmission asset into use owing to delay in COD of 220 kV Charor-Banala transmission line (i.e. downstream asset) being executed by Himachal Pradesh Power Transmission Corporation Limited (HPPTCL) and as such approved its COD as 31.12.2017 under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations. Resultantly, the Commission vide order dated 20.7.2018 held that the transmission charges of Asset-V from the date of deemed COD i.e. 31.12.2017 to the COD of downstream asset of HPPTCL shall be



borne by HPPTCL. The relevant portion of the order dated 20.7.2018 is extracted hereunder:

*“14. As per the said provision, if a transmission asset is prevented from being put into regular service for reasons not attributable to a transmission licensee, but due to delay in COD of upstream or downstream assets, the transmission licensee can approach the Commission for approval of COD of the transmission asset. In the instant case, the petitioner has submitted that it was ready with Asset-V on 31.12.2017 and in support has submitted the Energisation Certificate dated 17.7.2017 issued by CEA under Regulation 43 of the CEA (Measures relating to safety and Electric Supply) Regulations, 2010. The petitioner has further submitted the letter dated 2.2.2018 of NRLDC regarding the first time charging of Extension of GIS Parbati Pooling Station with 7x105 MVA ICT alongwith associated bays and 2 Nos. 220 kV bays. The petitioner has also submitted the certificate from its CMD certifying that the asset conforms to the relevant Grid Standard and Grid Code and are capable of operation to their full capacity with effect from 31.12.2017 as required under Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. The petitioner has submitted that it is ready with Asset-V but is prevented from being put into regular use as the downstream assets under the scope of HPPTCL were not ready. Accordingly, the petitioner has approached the Commission under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations for approval of COD of the Asset-V. Taking into consideration energisation certificate issued by CEA, the RLDC certificate and its CMD certificate, we approve the COD of Asset-V as 31.12.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the petitioner was ready but was prevented from putting into use regular use as HPPTCL was not ready with the downstream assets under its scope. Accordingly, the transmission charges from the COD of Asset-V, i.e. 31.12.2017 to the COD of the downstream assets of HPPTCL shall be borne by HPPTCL. Thereafter it will be included in the PoC charges. We further direct that it shall be responsibility of the petitioner to ensure safety and insurance of the transmission assets.”*

5. HPPTCL filed Appeal No. 182 of 2020 before the APTEL against the Commission's order dated 20.7.2018 in Petition No. 116/TT/2017 wherein it was contended that HPPTCL was not duly served and impleaded in terms of Commission's directions given vide order dated 22.8.2017 in Petition No. 116/TT/2017. The APTEL vide its judgment dated 26.10.2021 in Appeal No. 182 of 2020, set aside the order of the Commission dated 20.7.2018 to the extent liability of payment of transmission charges for Asset-V of the transmission system of the Petitioner was fastened on HPPTCL. The APTEL further directed the parties to appear before the Commission for further proceedings on 1.12.2021 with liberty to submit their Written Submissions in advance of the date fixed by the APTEL.



6. The matter in issue before us on remand for fresh consideration is whether HPPTCL, whose downstream asset is said to be connected to Asset-V of the Petitioner, is liable to pay the transmission charges in respect of Asset-V from its COD i.e. 31.12.2017 to the COD of the downstream asset of HPPTCL.

7. The submissions of HPPTCL and the Petitioner on the issue of non-impleadment and service are not being dealt with here as the same have already been addressed by the APTEL in its judgment dated 20.10.2021 in Appeal No. 182 of 2020. Further, on receipt of the matter on remand from APTEL, the Commission issued notices to all the parties including HPPTCL. Therefore, we are confining the submissions of the parties limited to the extent of payment of transmission charges with respect to Asset-V of the Petitioner.

8. There is no dispute over the fact that the Commission approved the COD of Asset-V as 31.12.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations taking into consideration the energisation certificate issued by CEA, RLDC certificate and CMD certificate.

### **Submissions of HPPTCL**

9. HPPTCL in its Written Submissions dated 17.12.2021 has mainly made the following submissions:

- a) There exists no liability on the part of HPPTCL to pay transmission charges for Asset-V on account of there being no contractual liability of HPPTCL towards PGCIL. The principle directed to be followed is that upstream or downstream entity can at best be imposed in an equitable manner and in no event for compensating the transmission licensee for the entire transmission charges till



the time the downstream asset is executed. Further, *force majeure* events are also required to be considered as claimed by the upstream or downstream entity.

b) The downstream line of HPPTCL i.e. Charor-Banala line cannot be aligned with upstream Asset-V in the absence of any specific contractual obligation giving rise to such an arrangement. HPPTCL, which is developing the downstream asset (220 kV Charor-Banala transmission line), is a third party for all intents and purposes.

c) The Charor-Banala line was envisaged to improve reliability and redundancy of the system to evacuate power in case of outage of any transmission line because of unforeseen conditions. It is not that Charor-Banala line was specifically set-up under a contractual arrangement to be worked in tandem with Asset-V of the Petitioner.

d) The issue that HPPTCL can be directed to pay either the transmission charges or IDC to the Petitioner in the absence of any law of contract has already been decided by APTEL in its recent judgment dated 14.9.2020 in Appeal No. 17 of 2019 – NRSS XXXI (B) Transmission Ltd v CERC & Ors.

e) The 2020 Sharing Regulations provides the principle that the party who has not put up the upstream or downstream asset ought to pay for the transmission asset that has been built by the transmission licensee while prior to promulgation of 2020 Sharing Regulations, the mechanism for sharing of the transmission charges was only under PoC and no provision was there either in contract or in the regulations.





f) Government of India has issued statutory directions dated 15.1.2021 to the Central Commission under Section 107 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), inter alia, directing that entities without a contractual relationship cannot be imposed transmission charges for a transmission system, merely because the upstream or downstream system was not constructed at the time of executing the transmission system.

g) In the facts and circumstances, the financial burden of paying transmission charges for Asset-V on HPPTCL till the COD of Charor-Banala line cannot fall upon HPPTCL as the same is not supported by any contractual obligation or statutory obligation.

h) Referring to Himachal Pradesh Electricity Regulatory Commission's (HPERC) order dated 12.8.2021 in Petition No. 97 of 2020, it is averred that downstream asset i.e. Charor-Banala transmission line of HPPTCL was delayed due to *force majeure* reasons.

i) A meeting was held between AD Hydro Power Limited, EPPL and HPPTCL on 27.4.2019 wherein it was discussed that the transmission line was nearing completion and preparations for shifting of Malana-II HEP needed to be planned accordingly. EPPL was informed to apply for LTA for HPPTCL system. HPSLDC was informed through letter dated 29.5.2019 regarding execution of transmission asset. Non-availability of shut-down for removal of LILO of 220 kV ADHPL transmission line and shifting of connectivity of Charor Sub-station to 220 kV Charor-Banala transmission line, both circuits were energized from the



Petitioner's Sub-station at Banala while keeping an open circuit at Charor end on 24.7.2019.

j) HPPTCL requested the State Commission to consider the COD of Charor-Banala line as 24.7.2019 owing to technical constraints which were beyond the control of HPPTCL due to which actual energization of the transmission line was delayed.

k) In the absence of Implementation Agreement of HPPTCL in support of its claim of COD as 24.7.2019 and absence of any LTA with beneficiaries, the date as confirmed by HPPTCL during TCC and NRPC meetings i.e. 30.9.2019 was considered the date of execution of the line and, therefore, COD of Charor-Banala transmission line was considered by the State Commission as 1.10.2019.

l) The project was planned to be completed in 18 months as per the contract awarded by HPPTCL. Actual time taken was over four years (from the date of award of contract) which is significantly higher. The State Commission opined that it would be unreasonable to consider that each individual activity led to the overall delay of more than two and half years in project execution. The State Commission was further of the view that other activities could have been undertaken in parallel and the delay could have been shortened by proper planning and follow up by HPPTCL. Thus, sharing of IDC and DC (Departmental Charges) between HPPTCL and beneficiaries was to be done in equal ratio of 50:50.



## **Submissions of the Petitioner**

10. The Petitioner in its Written Submissions dated 4.1.2021 has made the following submissions:

- a) Approval of the deemed COD of Asset V is not the subject-matter of present proceedings.
- b) The APTEL in its judgement dated 26.10.2021 has remanded the matter on the limited issue of adjudicating the issue of liability of payment of transmission charges from the date of execution of Asset V, i.e. 31.12.2017 till the execution of associated downstream asset of HPPTCL.
- c) Actual power flow on Asset-V commenced on 5.12.2019 and from this day, the asset has been included in PoC mechanism. COD of 220 kV D/C Charor-Banala transmission line of HPPTCL was approved as 1.10.2019 by HPERC in Petition No. 97 of 2020 filed by HPPTCL.
- d) HPPTCL in its Written Submissions dated 17.12.2021 did not contest/object to the approval of deemed COD and APTEL did not set aside the approval of COD of Asset-V in its remand.
- e) There is no contractual obligation between the Petitioner and HPPTCL for recovery of transmission charges in the event of mismatch.
- f) The Petitioner denied that HPPTCL is not liable to bear any transmission charges for Asset-V in view of the judgment of APTEL in Appeal No. 17 of 2019 titled as NRSS-XXXI (B) Transmission Limited v. CERC as the State



Commission/HPERC has partially condoned time over-run in implementing the Charor-Banala 220 kV transmission line of HPPTCL.

g) The proposal for planning and execution of Asset V under the NRSS Transmission Scheme was discussed and agreed in the 30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup>, 36<sup>th</sup> and 39<sup>th</sup> Standing Committee Meetings on Power System Planning for Northern Region (“SCM-NR”). The said SCMs also discussed about planning and execution of 220 kV D/C Charor-Banala line to be executed by HPPTCL as the downstream asset of Asset-V.

11. The Petitioner has submitted, vide affidavits dated 10.4.2017 and 10.1.2018, that the time over-run in case of Asset-V is mainly due to matching with the upcoming downstream asset of HPPTCL i.e. 220 kV D/C Charor-Banala transmission line.

12. Central Transmission Utility of India Limited (CTUIL) vide its affidavit dated 25.7.2022, has referred to 30<sup>th</sup>, 31<sup>st</sup> and 32<sup>nd</sup> Standing Committee Meeting on Power System Planning of NR for creation of Asset-V. Besides this, CTUIL has also referred to 3<sup>rd</sup> Northern Region Standing Committee on Transmission (NRSCT) meeting dated 24.5.2019, and submitted that in the said meeting technical details of the proposal of shifting of the connectivity of Malana-II HEP from the interim arrangement i.e. LILO of one circuit of AD HEP-Nalagarh 220 kV D/C line (of AD Hydro) at 220/132 kV Charor Sub-station to the final arrangement i.e. Charor-Banala 220 kV D/C HPPTCL transmission line was agreed.

13. BSES did not file any Written Submissions in the matter and relied on its submissions made earlier. However, no significant issue was raised by BSES with



regard to Asset-V except the averment that the correspondence between the Petitioner and HPPTCL shows that the expected completion of downstream asset of HPPTCL was in February, 2017 and that no material was placed on record by the Petitioner when the downstream asset was completed by it.

14. We have heard the parties on 21.12.2021, 7.7.2022 and 17.8.2022 and have also gone through the record carefully. It is relevant to mention here that the Commission vide Record of Proceedings dated 7.7.2022 directed the Petitioner to implead CTUIL and generators as parties to the present petition and the same was done by the Petitioner vide affidavit dated 18.7.2022. However, none of the generators have filed any reply. HPPTCL entered appearance before the Commission on 21.12.2021, 7.7.2022 and 17.8.2022 and has also filed its Written Submissions.

15. We have considered the submissions made by HPPTCL, the Petitioner and CUTIL. HPPTCL has contended that it is not liable to bear the transmission charges of Asset-V from its COD to the COD of the Charor-Banala transmission line executed by it because of the following reasons:

- a. There is no contractual liability between HPPTCL and the Petitioner to pay the transmission charges of Asset-V.
- b. The Charor-Banala transmission line was envisaged for improving the reliability and redundancy of the transmission system and there is no arrangement to execute it in tandem with Asset-V of the Petitioner.
- c. There is no provision in the Commission's regulations to hold HPPTCL liable for the transmission charges for the period of mismatch.



d. The time over-run in case of Charor-Banala transmission line of HPPTCL was due to *force majeure* as held by HPERC.

e. As per Government of India's directions under section 107 of the Electricity Act, 2003 dated 15.1.2021, in case there is no contract or direct relationship between the defaulting party and the aggrieved, it is not proper to require a third entity not party to a contract to compensate either party to a contract.

### **Analysis and Decision**

16. Before we deal with the contentions of HPPTCL, we feel it is essential to understand the reasons for execution of Asset-V by the Petitioner and the Charor-Banala transmission line by HPPTCL and the relationship between the two to address the contentions of HPPTCL.

### **Genesis of Asset-V**

17. The Petitioner has made the following submissions in support of its contention that Asset-V is linked to the Charor-Banala transmission line executed by HPPTCL:

- a) The proposal for implementation of Asset-V was discussed and deliberated in the 30<sup>th</sup> Meeting of the Standing Committee on Power System Planning for Northern Region (SCM-NR) held on 19.12.2011.
- b) In the said meeting, Director (SP&PA), CEA informed that evacuation of power from Malana-II HEP was evacuated by LILO of one circuit of AD HEP-Nalagarh 220 kV D/C line of AD Hydro at 220/132 kV Charor Sub-station of Everest Power Private Limited (EPPL) and power from generation project was injected at Charor by a 132 kV D/C line. The Director (SP &PA), CEA also mentioned that for reliable evacuation of power from both the projects (300 MW), it was



proposed to construct a 220 kV D/C line from Charor to Parbati Pooling Station so that power can be injected from Malana-II HEP at Parbati Pooling Station (ISTS) and from there power can be evacuated over ISTS system.

- c) In the said meeting, Director, CEA stated that a 400/220 kV ICT alongwith its bays would also be required as 220 kV level was not planned at Parbati Pooling Station earlier. The representative of HPPTCL informed that 220 kV bays were required by HPPTCL at Parbati Pooling Station. After detailed discussions, it was decided that 2 number of 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 number of 220 kV line bays (2 bays for EPPL and 2 bays for HPPTCL) were required. The Petitioner informed that space was available at Parbati Pooling Station switchyard for accommodating only 2 number of 400/220 kV ICTs and 4 number of 220 kV line bays. It was also proposed and decided in the said SCM that Charor-Parbati Pooling Station 220 kV D/C line would be implemented by Everest Power at its cost.
- d) In the 31<sup>st</sup> SCM-NR held on 2.1.2013, HPPTCL informed that only one 220 kV line could be constructed from Charor to Parbati Pooling Station due to RoW constraints. It was also informed in the said meeting that HPPTCL intends to inject about 170 MW power from small HEPs at Charor Sub-station for further transfer to Parbati Pooling Station. Therefore, HPPTCL proposed that it would construct 220 kV D/C line from Charor Sub-station to Parbati Pooling Station with the funding of ADB. It was discussed in the said meeting that HPPTCL would also take up the ownership of 132/220 kV Charor Sub-station from EPPL and would make it a part of STU system of HPPTCL.



- e) HPPTCL in the said meeting informed CEA that execution of 220 kV D/C line from Charor Sub-station to Parbati Pooling Station would be complete by 2015. It was decided in the said meeting that 400/220 kV, 2x315 MVA ICTs (7x105 MVA single-phase units) alongwith the associated bays and 2 number of 220 kV line bays would be provided at Parbati Pooling Station (PG) under ISTS scheme by the Petitioner as it was augmentation work in the existing switchyard of PGCIL Sub-station.
- f) Accordingly, the Petitioner was granted Investment Approval dated 14.2.2014 by its Board of Directors which also included Asset-V for which SCOD was fixed as 13.6.2016 i.e. after the original SCOD of HPPTCL for execution of downstream transmission system as agreed in 31st SCM-NR.
- g) In the 36th SCM-NR dated 13.7.2015, the Petitioner informed HPPTCL that 2 number of 400/220 kV, 315 MVA ICTs (7x105 MVA single phase units) at Parbati Pooling Station along with 2 number of 220 kV line bays [Asset-V] were expected to be executed by June, 2016 (as planned in the 30<sup>th</sup> & 31<sup>st</sup> SCM-NR). In the said meeting HPPTCL acknowledged that for utilizing Asset-V, downstream asset i.e. 220 kV D/C line from 220/132 kV Chhaur to Parbati Pooling Station will be executed by October, 2016.
- h) HPPTCL through its letter dated 25.5.2016 informed the Petitioner that letter of award had already been issued on 22.2.2015 for supplying the wheeling infrastructure and the 220 kV Charor-Banala transmission line, downstream system of HPPTCL was scheduled to be executed by 4.2.2017.
- i) The Petitioner through its letter dated 27.2.2017 informed HPPTCL that execution of Asset-V was scheduled to be executed by April, 2017 and sought





the status of HPPTCL's ongoing construction activities of 220 kV transmission line and expected completion schedule vis-à-vis termination at 400/220 kV GIS Parbati Pooling Station, Banala. However, no response to the said letter was given by HPPTCL.

- j) In the 39 SCM-NR dated 29/30.5.2017, HPPTCL informed that 220 kV Charor-Banala transmission line was under construction and the same would be completed by 31.10.2017. Thereafter, vide letter dated 29.7.2017, HPPTCL further deferred the SCOD of 220 kV Charor-Banala D/C transmission line under construction by HPPTCL and confirmed that the same shall be completed by 31.12.2017. After 29.7.2017, no information was given by HPPTCL with regard to execution of its downstream asset and the Petitioner could not defer the COD of Asset-V beyond December, 2017. Therefore, the Petitioner invoked the provisions of Regulation 4(3) of the 2014 Tariff Regulations on 31.12.2017.

18. On perusal of above submissions of the Petitioner and CTUIL, minutes of meetings of 30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup> and 39<sup>th</sup> SCM-NR, correspondences exchanged between the Petitioner and HPPTCL and excerpts of 3<sup>rd</sup> NRSCT meeting dated 24.5.2019, the following facts are established:

- a) Minutes of 30<sup>th</sup> SCM of NR dated 19.12.2011, reveal that power from Malana-II HEP was evacuated by LILO of one circuit of AD HEP-Nalagarh at 220/132 kV Charor Sub-station of Everest Power Pvt. Ltd. (EPPL). Power from generation project was injected at Charor by a 132 kV D/C transmission line. According to Director, CEA for reliable evacuation of 300 MW power from both the projects, 220 kV D/C line from Charor to Parbati Pooling Station was proposed with



injection of power from Malana-II HEP at Parbati Pooling Station (ISTS). It was also proposed that a 400/220 kV ICT alongwith bays would be needed as 220 kV level was not earlier planned at Parbati Pooling Station. HPPTCL informed that it required 220 kV line bays at Parbati Pooling Station. Based on this discussion, 2 number of 315 MVA ICTs (7x 105 MVA single phase units) alongwith 4 number of 220 kV line bays (2 bays for Everest Power and 2 bays for HPPTCL) were proposed and Charor-Parbati Pooling Station 220 kV line was decided to be implemented by EPPL. However, the Petitioner confirmed availability of space for 2 number of 400/220 kV ICTs and 4 number of 220 kV line bays only.

b) Minutes of 31<sup>st</sup> SCM of NR show that HPPTCL intended to inject 170 MW of power from small HEPs at Charor Sub-station for its further transfer to Parbati Pooling Station, therefore, HPPTCL proposed that it would construct a 220 kV D/C line from Charor Sub-station to Parbati Pooling Station with ADB funding by 2015. Further, HPPTCL would also take up the ownership of 132/220 kV Charor Sub-station from EPPL to make it a part of its STU system. Accordingly, it was finalized that 400/220 kV, 2x315 MVA ICTs (7x105 MVA single phase units) with associated bays and 220 kV bays (i.e. Asset-V) would be provided at Parbati Pooling Station by Powergrid/Petitioner as it was augmentation work in the existing switchyard of Powergrid sub-station. Accordingly, Investment Approval was granted to the Petitioner on 14.2.2014 for Asset-V.

c) Minutes of 32<sup>nd</sup> SCM-NR confirmed the arrangement that in view of execution of generation projects of AD Hydro and Malana-II HEP, Malana-II power to be



evacuated through LILO of one Ckt. of 220 kV D/C Allain Duhangan-Nalagarh Line. As AD HEP–Nalagarh 220 kV D/C line was not adequate for reliable evacuation of power, 220 kV D/C line was proposed to be constructed from Charor Sub-station to Parbati Pooling Station by HPPTCL and that evacuation of power of Malana-II HEP will be de-linked from the 220 kV D/C AD Hydro-Nalagarh line to provide reliability of power evacuation of both the above mentioned HEPs.

- d) Minutes of 3rd NRSCT meeting dated 24.5.2019 show that in terms of arrangement as chalked out in 30th and 31st SCM-NR, technical details of proposal of shifting of the connectivity of Malana-II HEP from the interim arrangement i.e. LILO of one circuit of AD HEP-Nalagarh 220 kV D/C line (of AD Hydro) at 220/132 kV Charor Sub-station to the final arrangement i.e. Charor-Banala 220 kV D/C HPPTCL line was agreed.
- e) Perusal of HPPTCL's letter dated 25.5.2016 in response to the Petitioner's letter dated 23.5.2016, reveals that HPPTCL had issued LoA for termination of 220 kV D/C Charor-Banala transmission line based on which completion of the contract work was worked out as 4.2.2017.
- f) Perusal of the Petitioner's letter 27.7.2017 written to HPPTCL shows that the Petitioner informed HPPTCL that its construction activities for execution of 2 number of 315 MVA ICTs associated with construction of 220 kV GIS bays under extension package, i.e. Asset-V, was awarded to L&T and Hyosung Corporation at 400 kV GIS Parbati Pooling Station, Banala which was expected to be executed by April, 2017. Through this letter, the Petitioner requested HPPTCL to apprise it the then status of ongoing construction activities of 220 kV



transmission line i.e. downstream asset of HPPTCL vis-à-vis termination at 400/220 kV GIS Parbati Pooling Station, Banala. The Petitioner in this letter further informed that it had awarded contract for construction of Asset-V to L&T and Hyosung and wanted to know the status of linked downstream asset i.e. 220 kV D/C transmission line of HPPTCL.

- g) Perusal of 39 SCM-NR dated 29/30.5.2017, shows that HPPTCL informed that the 220 KV Charor-Banala D/C line would be completed by 31.10.2017.
- h) Perusal of letter dated 29.7.2017 of HPPTCL written in response to the Petitioner's letter dated 15.7.2017, shows that HPPTCL confirmed that Charor-Banala D/C line/downstream asset being constructed by HPPTCL would be completed by 31.12.2017.

19. In view of the above discussions, record of minutes of 30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup> and 39<sup>th</sup> SCM-NR, letters dated 15.5.2016, 27.2.2017 and 29.7.2017 exchanged between the Petitioner and HPPTCL and minutes of 3<sup>rd</sup> NRSTM show that Asset-V was planned and executed for termination of connect 220 kV D/C Charor-Banala transmission line of HPPTCL.

**No contract between the Petitioner and HPPTCL for payment of transmission charges for Asset-V**

20. HPPTCL has contended that there is no contractual liability between HPPTCL and the Petitioner to pay the transmission charges of Asset-V. HPPTCL has further contended that the Petitioner cannot assert that Asset-V could not be put into use on account of delay in Charor-Banala line as there is no contract between the Petitioner and HPPTCL whereby HPPTCL has legal and binding statutory obligation to pay the transmission charges to the Petitioner for the period of mismatch. HPPTCL has also



contended that in view of the judgment of APTEL in Appeal No. 17 of 2019 in the matter of NRSS XXXI (B) Transmission Limited v. CERC & Ors. [NRSS Judgment], in the absence of any contract entered into between HPPTCL and the Petitioner even though there is mismatch, the entity which committed mismatch is not even liable to make payment of IDC and IEDC as it amounts to imposing damages without there being any contract which is violative of the provisions of Indian Contract Act, 1872.

21. Per contra, learned counsel for the Petitioner has contended that it was HPPTCL which failed to plan, predict and adhere to the timeframe for completion of the execution of 220 kV Charor-Banala transmission line and due to this, the Petitioner invoked the provisions of proviso (ii) to Regulation 4 (3) of the 2014 Tariff Regulations. The Petitioner has placed reliance on the judgment APTEL dated 27.3.2018 in Appeal No. 390 of 2017 in the matter of Punjab State Power Corporation Limited (PSPCL) v. Patran Transmission Company Limited (PTCL) [Patran Judgment] to assert that in this case, the transmission system could not be put to use as the downstream system was not ready by SCOD and the Central Commission relying on its earlier orders in similar situations held that PSPCL/Appellant was responsible to pay the transmission charges to PTCL until the downstream system is executed. The Petitioner has contended that the statutory basis for assigning liability on PSPCL for payment of transmission charges in the said Patran Judgment was based on the judgment of Hon'ble Supreme Court in the matter of PTC India Limited vs CERC (2010) 4 SCC 603 which laid emphasis on the fact that the Central Commission is the decision making Authority under Section 79(1) of the Act and this power of the Central Commission is not dependent upon making of regulations under Section 178 of the Act. It has been contended by the Petitioner that in the absence of specific provision in the Sharing



Regulations and/or 2014 Tariff Regulations to deal with the situation of mismatch, the Central Commission by exercise of regulatory power has prescribed a principle for sharing of transmission charges of transmission system of PTCL by a judicial order.

22. The Petitioner has also relied on the judgment of APTEL dated 18.1.2019 in Appeal No. 332 of 2016 in the matter of Nuclear Power Corporation of India Limited (NPCIL) v. Central Electricity Regulatory Commission (RAAP Judgment) wherein the Appellant/NPCIL did not have any contractual relationship with the transmission licensee RAVP Transmission Company Limited (RTCL) and APTEL relied on the decision of Standing Committee on Power System Planning (a statutory body) to observe that it was only the Appellant/NPCIL which was responsible to arrange downstream system for connection to transmission system by SCOD so that it could be put to use. APTEL in the said judgment further observed that the said arrangement was irrespective of any relation between the NPCIL and RTCL, and that the principle of payment of transmission charges by the defaulting entity/NPCIL in this case was based on the Central Commission's order dated 21.9.2016 in Petition No. 43/MP/2016 as NPCIL was responsible to arrange the downstream system for connection to transmission system by SCOD so that it could be put to use.

23. The Petitioner has further placed reliance on the judgment dated 14.9.2020 in Appeal No. 17 of 2019 in the matter of NRXXI (B) Transmission Limited vs Central Electricity Regulatory Commission & Ors. (NRSS Judgment) to assert that APTEL in this judgment in para 8.13 upheld the four principles of the Commission in the context of mismatch in execution of transmission systems by different licensees. In this judgment, one of the principles laid down by the Commission and upheld by the APTEL for the cases of mismatch somewhat resembling with the nature of present case was



that the transmission licensee implementing transmission system through TBCB route shall enter into an Implementation Agreement (IA) with the entity responsible for the implementation of the upstream/downstream system clearly stating the liability to pay transmission charges in case of delay, and that in case there is no IA, the liability to pay transmission charges will fall on the entity on whose account the transmission system could not be put to use.

24. We have carefully considered the above contentions of HPPTCL and the Petitioner and have also perused the record carefully. From the contentions of HPPTCL and the Petitioner, we find that there is no written contract entered into between the Petitioner and HPPTCL for execution and utilization of Asset-V of the Petitioner by HPPTCL for its downstream asset i.e. 220 kV D/C Charor-Banala transmission line. As mentioned above in detail in paragraph nos. 17-19 of this order, we have already concluded that Asset-V of the Petitioner and its connecting downstream asset i.e. 220 kV D/C Charor-Banala transmission line executed by HPPTCL are inter-linked with each other and this fact is evident from the minutes of 30<sup>th</sup>, 31<sup>st</sup> and 32<sup>nd</sup> SCM of NR which were conducted on different dates. The minutes of 31<sup>st</sup> SCM of NR held on 2.1.2013, confirms that it was HPPTCL that proposed that it would construct the 220 kV D/C transmission line from Charor Sub-station with funding of ADB and it was finalized that 400/220 kV, 2x315 MVA ICTs (7x 105 MVA Single Phase Units) with 220 kV line bays would be provided at Parbati Pooling Station (PG) under ISTS scheme by Powergrid in the existing switchyard sub-station. The proposal of 31<sup>st</sup> SCM of NR was agreed by the Members which was attended by both the Petitioner and HPPTCL. Thereafter, the matter of co-ordination and execution of Asset-V with downstream asset i.e 220 kV D/C Charor-Banala transmission line was



discussed in subsequent 32<sup>nd</sup>, 36<sup>th</sup> and 39<sup>th</sup> SCM of NR and certain correspondences were also exchanged in this regard between the Petitioner and HPPTCL, the details of which have already been given above in this order while concluding the link between Asset-V and 220 kV Charor-Banala line of HPPTCL in paragraph nos. 17-19 of this order. We would like to mention here that the Standing Committee Meeting on Power System Planning is a statutory Committee constituted under the auspices of Central Electricity Authority and a decision unanimously taken and agreed in it has a binding obligation and legal sanctity. Merely because no formal contract was entered into between the Petitioner and HPPTCL for execution and utilization of Asset-V, HPPTCL cannot escape from its obligation of making payment of transmission charges for the mismatch period from the COD of Asset-V of the Petitioner and COD of the downstream asset i.e. 220 kV D/C Charor-Banala transmission line of HPPTCL on the ground that there was no contract.

25. The issue of absence of contractual arrangement has also been examined by the APTEL in Appeal No. 332 of 2016, Nuclear Power Corporation of India Limited Vs. CERC (RAPP Judgment). In RAPP Judgement, the Appellant NPCIL did not have any contractual relationship with the transmission licensee RAVP Transmission Company Limited (RTCL). However, the APTEL relied on the decision of the Standing Committee on Power System Planning (a statutory committee) to hold NPCIL as the defaulting entity as it was only NPCIL who was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. The relevant extract of the RAPP Judgment is as follows:

*“From the decision of the Standing Committee on Power System Planning (a statutory committee), it is clear that it was only the Appellant who was responsible to arrange the downstream system for connection to Transmission System by SCOD so that it could be put to use. This is irrespective of any relation between the Appellant and Respondent*





*No.2. Accordingly, as per the principles laid down by the Central Commission vide its Order dated 21.9.2016 which are judicial in nature the defaulting entity in the present case is the Appellant.”*

26. We have also considered the contention of HPPTCL that in view of the judgment of APTEL dated 14.9.2019 in Appeal No. 17 of 2019 (NRSS Judgement), in the cases of mismatch, the entity which has committed mismatch is not liable to make payment of even IDC and IEDC as it amounts to damages without contract. The Commission vide order dated 26.4.2022 in Petition No. 60/TT/2017 after considering the directions of APTEL in NRSS Judgment has observed that Petition No. 195/MP/2017 was filed by NTL for reliefs under TSA that included extension of SCOD on account of *force majeure* events. The Commission, based on the submissions of the parties therein, extended SCOD of the associated transmission lines in terms of provisions of Article 11 of TSA and observed that it cannot be a case of NTL that once SCOD of the associated transmission lines is extended, it is exonerated from all other liabilities whatsoever arising under applicable regulations or orders of the Commission or orders of the Hon'ble Supreme Court. In other words, extension of SCOD of the associated transmission lines of NTL by the Commission, being only in respect of TSA, protects NTL from liabilities under TSA and, in no way, protects it from payment such as IDC and IEDC of the transmission assets of the Petitioner/ PGCIL arising due to matching of the COD. The Commission in the said order further opined that irrespective of extension of SCOD of the associated transmission lines by the Commission, NTL is required to continue to discharge other liabilities viz. related to financial institutions, implications of taxation such as GST and various obligations including contractual obligations.



27. In the present circumstances, it is opportune to say that the statutory basis for the decision by the Central Commission to assign liability on HPPTCL for payment of transmission charges for the mismatch period is based on the Hon'ble Supreme Court's judgement dated 15.3.2010 in SLP (C) No. 22080/2005 in case of PTC India Ltd. v. CERC (2010) 4 SCC 603. In the said judgement, Hon'ble Supreme Court has held that the Central Commission is the decision-making Authority under Section 79(1) of the Act and such decision making or taking steps/measures under the said Section of the Act is not dependent upon making of regulations under section 178 of the Act. It is further stated in the judgement that if any regulations are framed by the Central Commission under section 178 of the Act, then the decision of the Central Commission has to be in accordance with the said regulations.

28. We would further like to add here that the Hon'ble Supreme Court in its judgement dated 3.3.2016 in Civil Appeal No. 9302 of 2012 in case of PGCIL v. PSPCL and Ors. has upheld the view of APTEL taken in the judgement dated 2.7.2012 in Appeal No. 123 of 2011 that the LTTCs are liable to pay the transmission charges only when the transmission system is made operational/ put to use. The APTEL in its judgement dated 14.9.2020 in Appeal No. 17 of 2019 (NRSS Judgment) has endorsed the above principle. Accordingly, to deal with the cases of mismatch, the consistent approach of the Commission is payment of transmission charges by the defaulting entity due to whose default the transmission system of the other transmission licensee could not be put to use. The Commission in such cases, by exercising its regulatory power under section 79(1) of the Act, by way of judicial order(s) has laid down the principles of payment of transmission charges in such an eventuality. Thus, reliance



placed by HPPTCL on NRSS Judgment (supra) is misconceived and it does not come to its rescue.

29. In view of above discussions, we are of the view that absence of contractual relationship of the Petitioner with respect to execution of Asset-V by the Petitioner and its utilization by HPPTCL by connecting it to downstream asset i.e. 220 kV D/C Charor-Banala transmission line is not fatal to the case of the Petitioner in view of the observations of APTEL in Appeal No. 332 of 2016 NPCIL v. CERC (RAAP Judgment) as the arrangement between the Petitioner for Asset-V and downstream system of HPPTCL is backed by various SCMs on Power System Planning of NR (as discussed above in detail) and the same has also been relied on by APTEL in RAAP Judgment.

**Charor-Banala Transmission Line executed for reliability and redundancy, no Agreement to execute it simultaneously with Asset-V**

30. HPPTCL has contended that Charor-Banala transmission line was envisaged for improving the reliability and redundancy of the transmission system to evacuate power in case of outage of any transmission line because of unforeseen conditions. It is further contended that Charor-Banala line executed by HPPTCL was not specifically set up under contractual arrangement to be worked out in tandem with Asset-V.

31. We have considered the above contentions of HPPTCL in the light of minutes of 30<sup>th</sup>, 31<sup>st</sup> and 32<sup>nd</sup> SCM of NR. We, therefore, re-produce the relevant extracts of minutes of said SCMs and they are as follows:

**30<sup>th</sup> SCM-NR**

***“17. Evacuation of Power from Malana-II***

*Director (SP&PA), CEA informed that the evacuation of power from Malana- II HEP was evacuated by LILO of one ckt of AD HEP – Nalagarh 220 kV D/c line of M/s*



AD Hydro at 220/132 kV, Chhaur substation of M/s Everest Power Pvt. Ltd. and power from generation project was injected at Chhaur by a 132 kV D/c line. He mentioned that for reliable evacuation of power from both the projects (300 MW), it was proposed to construct a 220 kV D/c line from Chhaur to Parbati Pooling station enabling injection of power from the Malana-II HEP at Parbati Pooling Station (ISTS). From Parbati Pooling Station, power can be evacuated over ISTS system. He further proposed that a 400/220 kV ICT along with its bays would also be needed as 220 kV level has not been planned at Parbati Pooling Station earlier.

HPPTCL representative informed that 2 nos. 220 kV line bays were required by them at Parbati Pooling Station.

After detailed deliberation, it was decided to provide 2 nos. of 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 nos. of 220 kV line bays (2 bays for Everest power and 2 bays for HPPTCL). PGCIL representative informed that space was available at Parbati Pooling Station switchyard for accommodating 2 nos 400/220 kV ICTs and 4 nos 220 kV line bays only. Regarding cost sharing of the above works, following was proposed:

- Chhaur-Parbati pooling station 220 kV D/c line – to be implemented by M/s Everest Power at their cost.
- The cost of switchyard extension including 2 nos. of 400 kV ICT bays and complete 220 kV switchyard with 4 nos of 220 kV line bays, 1 bus coupler bay and 2 nos. ICT bays-50% cost to be borne by Everest Power and 50% cost as ISTS scheme.
- 400/220 kV ICTs- 4 x 105 MVA single phase ICTs to be provided under ISTS and 3 x 105 MVA single phase ICTs to be provided at the cost of M/s Everest Power

Members agreed to the above proposal.”

### **31<sup>st</sup> SCM-NR**

#### **“6. Evacuation of Power from Malana-II**

Director (SP&PA), CEA stated that the evacuation of power from Malana-II HEP was planned by LILO of one circuit of AD HEP – Nalagarh 220 kV D/c line of M/s AD Hydro at 220/132kV Charor substation of M/s Everest Power Pvt. Ltd.(EPPL) and power from generation project was to be injected at Charor S/s through a 132 kV D/c line. Further, AD HEP– Nalagarh 220 kV D/c line is not adequate for reliable evacuation of power from both the projects especially under contingency condition. In the 30th Standing Committee Meeting of Northern Region, it was agreed to construct a 220 kV D/c line from 220/132kV Charor to Parbati Pooling Station enabling injection of power from Malana-II HEP at Parbati Pooling Station (ISTS). From Parbati Pooling Station, power can be evacuated over ISTS system. It was also decided to provide 2 nos. of 400/220 kV, 315 MVA ICTs (7x105 MVA single phase units) alongwith 4 nos. of 220 kV line bays (2 bays for M/s EPPL and 2 bays for HPPTCL).

He further mentioned that HPPTCL had informed that only one 220 kV line could be constructed from Charor to Parbati Pooling Station due to ROW constraints and HPPTCL also intends to inject about 170 MW power from Small HEPs at Charor substation for its further transfer to Parbati Pooling station. As such, HPPTCL



proposed that they would construct the 220kV D/c line from Charor substation to Parbati Pooling station for which funds are also being tied up with ADB. Further, HPPTCL would also take up the ownership of 132/220 kV Charor S/s from M/s EPPL to make it a part of their STU system.

Member (PS), CEA enquired HPPTCL about the expected commissioning schedule of the above 220kV line. HPPTCL informed that the same would be ready by 2015.

POWERGRID stated that Malana-II generation is directly connected to ISTS grid, for which Long Term Open Access has been processed and granted by CTU. In case this line is constructed by HPPTCL (STU), the direct connectivity of Malana-II with ISTS would be lost and M/s EPPL would have to bear STU charges in addition to PoC charges.

Member (PS) stated that under proposed proposal Malana-II would be treated as state-embedded generator and would have to pay applicable charges accordingly. He enquired M/s EPPL for their consent to the above proposal.

M/s EPPL informed that they are agreeable to the proposal and they would sort out all commercial issues with HP.

While finalizing the proposal it was also decided that 400/220 kV, 2x315 MVA ICTs (7x105 MVA single- phase units) along with the associated bays and 2 nos. of 220 kV line bays would be provided at Parbati pooling station (PG) under ISTS scheme and since it is augmentation work in existing switchyard of POWERGRID S/s, the same would be carried out by POWERGRID.

Members agreed to the above proposal.”

### **32<sup>nd</sup> SCM-NR**

“20.4. Subsequently, while discussing the evacuation arrangement for Malana-II HEP, it was suggested to M/s. AD Hydro to upgrade the conductor of the line, so as the power from both the projects i.e. Malana-II and Allain Duhangan can be evacuated through the 220 kV D/C line. In the recommendation letter of CEA to MoP on grant of sec-68 to M/s AD Hydro it was mentioned that out of the total 400 MW transmission capacity of the 220 kV D/C AD Hydro line, 192 MW would be utilized for evacuation of Allain Duhangan HEP and balance capacity would be made available to other projects of Parbati/Beas valley. It was suggested to M/s AD Hydro to upgrade the conductor of the line, so as the power from both the projects i.e. Malana-II and Allain Duhangan can be evacuated through the 220 kV D/C line. However, AD HEP expressed their reservation for the changes in the conductor of this line as 80% of single zebra conductor was already delivered. So there was no option left other than to go ahead with the single zebra conductor line. Further considering the commissioning schedule of generator of Allain Duhangan as well as for Malana-II HEPs and scenario prevailing at that time, it was decided that Malana-II may be evacuated through LILO of one ckt. of Allain Duhangan-Nalagarh 220 kV D/C line. In the meeting taken by Chairperson, CEA wherein M/s AD Hydro and M/s EPPL was present it was decided that both parties would mutually decide on sharing of the cost and M/s AD Hydro would take up the issue with CERC regarding sharing of their line cost.

20.5 Considering that AD HEP-Nalagarh 220 kV D/C line is not adequate for reliable evacuation of power from both the projects, the issue was again discussed in 30<sup>th</sup> and 31<sup>st</sup> Standing Committee Meeting on Power System Planning of



*Northern Region. During these meetings it has been decided that a 220 kV D/C line shall be constructed from Chhaur Sub-station to Parbati Pooling Station by HPPTCL and evacuation of power of Malana-II shall be delinked from AD Hydro-Nalagarh 220 kV D/C line to provide the reliability of power evacuation of both HEPs.*

*20.6. In view of the urgency of implementation of the 220 kV Chhaur-Parbati Pooling Station D/C line, Member (PS) asked about the present status of this line from HPPTCL.*

*20.7. HPPTCL informed that they have finalized the funding of this line and the proposal for Forest clearance has also been submitted to Forest Department. He informed that the line is targeted for commissioning by April, 2016.*

*Members noted the same.”*

32. On perusal of above minutes of SCMs, we observe that need of a new 220 kV D/C transmission line from Charor to Parbati Pooling Station at Banala was felt to enable injection of power from Malana-II HEP at Parbati Pooling Station (ISTS), from there the power can be evacuated over ISTS system. Minutes of 30<sup>th</sup> SCM of NR further show that Charor-Banala 220 kV D/C line was proposed to be implemented by EPPL and the Petitioner was to provide 2 number of 315 MVA ICTs (7x 105 MVA Single Phase Units) alongwith 4 number of 220 kV line bays (2 bays for Everest Power and 2 bays for HPPTCL) for which the Petitioner confirmed the availability of space. Thus, 220 kV D/C transmission line from Charor-Banala (Parbati Pooling Station) was planned together with Asset-V is apparent from the minutes above.

33. However, in the 31<sup>st</sup> SCM of NR, HPPTCL informed that only one number of 220 kV line could be constructed from Charor to Parbati Pooling Station due to RoW constraints and as it intended to inject about 170 MW power from small HEPs at Charor Sub-station for onward transmission to Parbati Pooling Station, HPPTCL would construct the 220 kV D/C line from Charor-Banala. Thus, HPPTCL was in need of a 220 kV D/C transmission line from Charor-Banala at Charor Sub-station of EPPL so that it could evacuate its power through this line. In the given circumstances, to accept



the contentions of HPPTCL that 220 kV D/C Charor-Banala transmission line was not specifically set up under a contractual arrangement to be worked out in tandem with Asset-V would, in our opinion, be unfair as simultaneous activities of space and technical requirements for setting up of Asset-V at the other end at Parbati Pooling Station, Banala for termination of the downstream asset were decided in the said 30<sup>th</sup> and 31<sup>st</sup> SCMs of NR. As we have already observed above in this order that having no agreement between the Petitioner and HPPTCL to execute Asset-V and its utilization by HPPTCL, does not, in any way, impair the legal sanctity of Standing Committee Meetings as the arrangement of planning, co-ordination and execution is supported by SCMs of NR. Further, it is noted from 32<sup>nd</sup> SCM wherein the Petitioner informed that upon execution of 220 kV D/C Charor-Banala line by HPPTCL, Malana-II would lose LTOA granted to it by CTU and EPPL would have to bear STU charges in addition to PoC charges. Member (PS) CEA informed that Malana-II would be treated as State-embedded generator and it would have to pay applicable charges accordingly. Further, it was noted that EPPL agreed to the above proposal and informed to sort out all the commercial issues with HP. Thus, the entire discussion leads to the conclusion that Charor-Banala transmission line was planned along with Asset-V to evacuate Malana II power reliably and to cater to the needs of HPPTCL to inject 170 MW power from small HEPs at Charor Sub-station for further transfer to Parbati Pooling Station at Banala and this arrangement is supported by SCMs and non-execution of formal Agreement between the Petitioner and HPPTCL does not vitiate the sanctity of SCMs.



**No Provision in the Commission's Regulations to hold HPPTCL liable for payment of transmission charges for the mismatch period**

34. HPPTCL has contended that the 2020 Sharing Regulations recognizes the principle that a party who has not put up the upstream or downstream asset ought to pay the transmission charges of the stranded asset while there was no such mechanism in earlier regulations or contracts, therefore, HPPTCL is not liable to pay any transmission charges for the period of mismatch.

35. We have considered the above contentions of HPPTCL. Clause 12 to Regulation 13 of the 2020 Sharing Regulations provides for the mechanism to deal with different situations of mismatch where a party who has not put up the upstream or downstream asset ought to pay the transmission charges. However, no regulation has been put in place by the Commission prior to the 2020 Sharing Regulations to deal with the situation of mismatch where a party has not put up the upstream or downstream asset and to make a defaulting entity responsible for payment of transmission charges for the mismatch period. The Commission is empowered under Section 79(1)(d) read with Section 62(1)(b) of the Act to determine the tariff for inter-State transmission of electricity under Regulated Tariff Mechanism route and under Section 79(1)(d) read with Section 63 of the Act to adopt the tariff under TBCB route. There is statutory relationship between the transmission licensees and the beneficiaries/LTTCs as regards determination of tariff and its sharing is concerned. In our opinion, the Commission is empowered to apportion the liability for delay in achieving the COD because inter-State transmission systems are developed through co-ordinated transmission planning and implemented through Regulated Tariff Mechanism route or TBCB route. The tariff is determined or adopted by the





Commission and the progress of the inter-connected transmission systems are co-ordinated and monitored through Joint Co-ordination Meeting of CTUIL or Standing Committee Meeting of CEA. In the absence of any specific provisions in the Sharing Regulations or the applicable Tariff Regulations, the Commission has placed the liability for payment of transmission charges for the period of mismatch on the entity who is responsible for the delay through exercise of its regulatory powers under Section 79(1) of the Act. The power of the Commission to issue order in the absence of any regulations by exercising its regulatory powers has been recognised by the Hon'ble Supreme Court in its judgment of PTC India Ltd. Vs. CERC (2010) 4 SCC 603 wherein the Apex Court has held that decision-making authority of the Commission under Section 79(1) of the Act is not dependent upon making of regulations under Section 178 of the Act. Thus, the contention of HPPTCL that in the absence of any provision in the regulations, the Commission cannot impose the liability for payment of transmission charges for the mismatch period is rejected.

**Observation of HPERC that Charor-Banala Transmission Line of HPPTCL partly delayed due to *force majeure***

36. HPPTCL has contended that no liability for payment of transmission charges with respect to Asset-V for the mismatch period can be fastened to it as HPERC vide order dated 12.8.2021 in Petition No. 97 of 2020 has observed that delay in achieving COD of Charor-Banala transmission line was partly for the reasons beyond its control. Accordingly, HPERC condoned the partial delay in implementing 220 kV Charor-Banala transmission line with the observation to bear the liability of 50% of IDC by HPPTCL due to its failure to plan and execute the implementation activities in an efficient manner. HPPTCL has relied on the judgment of APTEL dated 14.9.2020 in Appeal No. 17 of 2019 (NRSS Judgment) to contend that once *force majeure* event is



acknowledged by the Commission and there is no contract between the parties, levy of transmission charges on the defaulting party in the absence of contract are more in the nature of damages and the same cannot be qualified as sharing of transmission charges, and that breach of contract is a pre-condition to claim 'damages'.

37. The Petitioner has contended that HPPTCL has failed to plan and envisage the timeframe for completion of the implementation and execution activities of the 220 kV Charor-Banala transmission line. The Petitioner has further contended that it was for the reasons beyond the control of the Petitioner that the provisions of deemed execution under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations had to be invoked by it. The said regulation provides for approval of COD when the asset is prevented from regular service due to delay/default of a third party.

38. We have considered the contentions of HPPTCL and the Petitioner and have perused the record. Before making any observation, we feel it appropriate to refer to HPERC's order dated 12.8.2021 in Petition No. 97 of 2020 with regard to time over-run and the same is as follows:

"3.7.6. While the project was envisaged to be completed in 18 months as per the contract awarded by the Peitioner, the actual time taken was over 4 years (from the date of award of contract) which is significantly higher. The details provided with respect to time over-runs only mentioned various dates when issues emerged or activities were completed. However, it could not be established that how each activity had impacted the overall timeline of the project and whether other activities could have been planned in a manner where they delay could have been avoided.

3.7.7. Based on reasons stated by the Petitioner, part of the delay could be considered under force majeure or delay not attributable to the Petitioner, however, it would be unreasonable to consider that each individual activity led to the overall delay of more than two and half years in project execution. The Commission is of the view that other activities could be undertaken in parallel and the delay could have been shortened/averted by proper planning and follow up at the Petitioner end. Accordngly, the Commission feels it appropriate to allow sharing of excess amount of IDC and DC between the Petitionr and beneficiaries in equal ratio (50:50). "



On perusal of above, we find that the State Commission has observed that delay occurred in COD of Charor-Banala transmission line was partly for the reasons beyond the control of HPPTCL and acknowledging this fact, the State Commission has condoned the partial delay in implementing 220 kV Charor-Banala transmission line with the observation to bear the liability of 50% of IDC by HPPTCL due to its failure to plan and execute the implementation activities in an efficient manner. On perusal of letters exchanged between the Petitioner and HPPTCL, namely, 25.5.2016, 27.2.2017 and 29.7.2017, we do not find any evidence that HPPTCL at any point of time informed the Petitioner to defer the execution of Asset-V as it was experiencing and facing *force majeure* in execution of 220 kV D/C Charor-Banala transmission line nor has anything of this nature was recorded in the 30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup>, 34<sup>th</sup>, 36<sup>th</sup> and 39<sup>th</sup> SCM of NR except for the 31<sup>st</sup> SCM of NR wherein HPPTCL informed that instead of two 220 kV D/C lines, the construction of only one number of 220 kV D/C line was possible due to RoW issues. Rather, the Petitioner has placed on record letter of HPPTCL dated 29.7.2017 (Annexure-P7) alongwith its Written Submissions to contend that the Petitioner accordingly declared COD of Asset-V on 31.12.2017. The relevant excerpt of the said letter is as follows:

*“Subject: Transmission of 220 kV line from Chhaur to POWERGRID Pooling Station, Banala.*

*Sir,*

*Please refer your letter No. N2PTS/SS/2017/HPPTCL/501 dated 15.7.2017 concerning the subject matter. In this context, it is to intimate that 220 kV Chhaur-Banala (Twin MOOSE) D/C line under construction by HPPTCL shall be completed by 31.12.2017.”*

No evidence in rebuttal is placed on record by HPPTCL that it informed the Petitioner to defer the COD of Asset-V beyond 31.12.2017 nor HPPTCL has raised any



aspersion on its letter dated 29.7.2017. In the absence of any other cogent evidence, we have no other option but to accept the contention of the Petitioner that acting on HPPTCL's letter dated 29.7.2017, the Petitioner executed Asset-V on 31.12.2017.

The Commission in its recent order dated 26.4.2022 in Petition No. 60/TT/2017 with regard to mismatch arising out of *force majeure* observed as follows:

*“67. Hence, the principle has been followed consistently that even if under Force majeure, delay is condoned or SCOD is extended by the Commission, the liability of upstream/downstream system remains on such delayed transmission licensee.”*

39. The Commission is of the consistent view that even if the time over-run is condoned due to *force majeure* events, the entity responsible for the delay in implementation of the associated upstream/downstream elements is liable to bear the transmission charges for the period of mismatch. Accordingly, the Commission did not provide for any exemption from payment of transmission charges even in case of *force majeure* conditions in the 2020 Sharing Regulations. In view of the above, we are of the view that HPPTCL is liable to bear the transmission charges for the period of mismatch in the COD of Asset-V even though the transmission assets are affected by *force majeure* conditions.

**No imposition of transmission charges without contractual relationship as per Government of India's directions under Section 107 of the Act**

40. HPPTCL has contended that Government of India has issued statutory directions dated 15.1.2021 to the Commission under Section 107 of the Act, inter alia, directing that entities without a contractual relationship cannot be imposed with the transmission charges for a transmission system, merely because the upstream or



downstream system was not constructed at the time of execution of the transmission system.

41. The Petitioner has contended that directions under Section 107 of the Act issued by Government of India has been examined by APTEL in Nabha Power Limited Vs. Punjab State Electricity Corporation Ltd., in Appeal No. 29 of 2013. The APTEL in the said Appeal while interpreting the applicability of directives of the Ministry of Power under Section 107 of the Act observed that the term 'law' includes only the statutory laws, notification, regulations, ordinances, codes and rules etc. and not a decision of the Indian Government Instrumentality.

42. We have considered the contentions of the Petitioner and HPPTCL with reference to directions of the Government of India under Section 107 of the Act. However, we would like to cite here the APTEL's judgment dated 31.10.2022 in Appeal Nos. 189 of 2022, 369 of 2022 and 4 of 2021 in the matter of Steel City Furnace Association v. Punjab State Electricity Regulatory Commission and Ors. wherein the APTEL after examining Section 108 of the Act observed as follows:

*"6. It was argued that the Commission was bound by the order issued by the State Government 'in public interest' in exercise of powers vested in it by Section 108 of the Electricity Act. We may quote the statutory provision, it reading thus:-*

*"108. Directions by State Government. – (1) in the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.*

*(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final."*

*7. We must observe that it is not even an issue before us whether the order was promulgated by the State Government in a matter of policy involving 'public interest'. Given the conditions created by the pandemic, there can be no doubt that the concerns of public interest impelled some palliative measures to be adopted. We cannot, however, subscribe to the view being propagated that the directions of the State Government*



under Section 108 of the Electricity Act would bind the State Commission. That is not the mandate of the statute. The law only says that the State Commission 'shall be guided' by such directions as may be issued by the State Government in matters of public interest.

8. To buttress the above view, we may contrast the provision contained in Section 108 with the provision in Section 11 of the Electricity Act, 2003 wherein an appropriate government is vested with the power 'in extraordinary circumstances' to specify that the generating companies shall operate and maintain their generating stations 'in accordance with the directions' of the government. The expression "extraordinary circumstances" is defined by the explanation to mean such circumstances as may arise out of threat to the security of the State, public order or a natural calamity or "such other circumstances arising in the public interest". Given the language employed in Section 11, there can be no debate that the generating companies are bound to act 'in accordance with' the directions of the government issued to deal with the situation arising out of such extraordinary circumstances as mentioned above, the caution, of course, being – as provided by sub-section (2) – for such measures also to be adopted as would "offset the adverse financial impact of the directions" for the generating companies. In contrast, Section 108 of the Electricity Act only expects the State Commission to "be guided by" the directions of the State Government.

43. Section 108 of the Act is on equivalent footing with Section 107 of the Act with only one lean difference that Section 108 deals with 'Direction by the State Government' to the 'State Commission' while Section 107 deals with 'Direction by the Central Government' to the 'Central Commission' except this there is no variation in the language applied in both the Sections. In view of above judgement of APTEL, we are of the view that the directions given by the Central Government under Section 107 of the Act are not binding in nature. However, the Central Commission shall be guided by such directions in the matters of public interest. We would like to add here that the Commission's Regulations do not provide that where there is no contractual relationship, the Commission cannot impose transmission charges for a transmission system, merely because the upstream or downstream system was not constructed at the time of execution of the transmission system. The approach of the Commission in the cases of mismatch is consistent that the defaulting upstream/downstream entity is liable for payment of charges on whose account the associated asset is stranded.



44. The limited scope before us in remand proceedings is with regard to the liability of transmission charges of Asset-V from its deemed to COD to the COD of the downstream transmission line under the scope of HPPTCL. Accordingly, we now proceed to decide the case in the light of submissions of the parties.

45. The Commission *vide* order dated 20.7.2018 in the present petition with regard to COD and sharing of transmission charges of Asset-V, observed as follows:

*“(i) The delay in COD of Asset-V was mainly due to matching with the upcoming downstream system of HPPTCL i.e. 220 kV D/C Charor-Banala transmission line. Correspondence was made with HPPTCL regarding the downstream asset under its scope. HPPTCL vide letter dated 29.7.2017 confirmed that 220 kV Charor-Banala line shall be completed by 31.12.2017 and accordingly, Asset-V was charged on 29.12.2017 and HPPTCL was informed regarding connectivity of downstream line vide letter dated 29.12.2017. However, HPPTCL line was charged at a very later date. Accordingly, the Petitioner had prayed to approve the COD of Asset-V in accordance with proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations as the delay was beyond the control of the Petitioner.*

*(ii) The Petitioner has submitted necessary certificate/documents, required under relevant clause of the 2010 Grid Code, from CEA, RLDC and its CMD to establish the readiness of Asset-V as on 31.12.2017. Accordingly, the COD of Asset-V had been approved by the Commission as 31.12.2017 under Regulation 4(3)(ii) of the 2014 Tariff Regulations.*

*(iii) As the Petitioner’s asset was ready but was prevented from putting into regular use as HPPTCL was not ready with the downstream asset under its scope. Accordingly, the transmission charges from the COD of Asset-V, i.e. 31.12.2017 to the COD of the downstream assets of HPPTCL shall be borne by HPPTCL. Thereafter, it will be included in the PoC charges. We further directed that it shall be responsibility of the Petitioner to ensure safety and insurance of the transmission assets.”*

46. Learned counsel for HPPTCL has contended that HPPTCL is not liable for payment of transmission charges of Asset-V for the mismatch period while learned counsel for the Petitioner contended that appropriate directions may be issued by the Commission for payment of transmission charges of Asset-V by HPPTCL for the period of mismatch. HPPTCL relied on its Written Submissions filed in the original petition and



submitted that it is not liable to make payment of transmission charges for the mismatch period.

47. We have considered the contentions of the Petitioner and HPPTCL and perused the judgment of APTEL dated 26.10.2021 in Appeal No. 182 of 2020 whereby Commission's order dated 20.7.2018 in Petition No. 116/TT/2017 to the extent of payment of transmission charges of Asset-V of the transmission system of Petitioner imposed on HPPTCL has been set aside. Based on the aforesaid directions of APTEL, we now decide the issue of payment of transmission charges of Asset-V for the mismatch period in the subsequent paragraphs.

48. The contentions of HPPTCL and rival contentions of the Petitioner with regard to absence of contractual agreement between the Petitioner and HPPTCL, Charor-Banala line was envisaged for improving reliability and redundancy and no arrangement to execute it in tandem with Asset-V of the Petitioner, no provision in the Commission's regulations to hold HPPTCL liable for the transmission charges for the mismatch period, time over-run in case of Charor-Banala transmission line of HPPTCL was due to *force majeure* and directions of Government of India under Section 107 of the Act to the Central Commission have already been answered in detail in the foregoing paragraphs of this order.

49. The Petitioner has contended that COD approved by HPERC of the connecting downstream asset of HPPTCL is 1.10.2019. However, actual power flow in Asset-V of the Petitioner commenced from 5.12.2019. Therefore, Asset-V has been included in POC from 5.12.2019 onwards. The Petitioner has further contended that HPPTCL has failed to plan and envisage the timeframe for completion of the implementation and





execution activities of the 220 kV Charor-Banala transmission line. It was for the reasons beyond the control of the Petitioner that the provisions of deemed execution under proviso (ii) to Regulation 4(3) of the 2014 Tariff Regulations had to be invoked by it. The said regulation provides for approval of COD when the asset is prevented from regular service due to delay/default of a third party.

50. We have given our thoughtful consideration to the contentions of HPPTCL and the Petitioner and have perused the record.

51. Asset-V of the Petitioner could not be put to use because of delay in completion of the downstream asset to be executed by HPPTCL, the only fair solution in the present case is to fasten the liability of transmission charges on HPPTCL for the mismatch period. It shall be in line with the observations and decision of APTEL in its judgement dated 27.3.2018 in Appeal No.390 of 2017 (the Patran Case) and judgement dated 18.1.2019 in Appeal No. 332 of 2016 (the RAPP Case) wherein the principles enunciated by the Commission have been duly upheld by the APTEL.

52. The Commission in the present petition vide order dated 20.7.2018 approved the COD of Asset-V as 31.12.2017 and decided that the transmission charges from COD of Asset-V i.e. 31.12.2017 to the COD of the downstream asset of HPPTCL shall be borne by HPPTCL. Thereafter, it will be included in the PoC charges. The Petitioner has now submitted that Asset-V was put into commercial operation on 1.10.2019 however, Asset-V is included in PoC w.e.f. 5.12.2019 as the actual power flow was from 5.12.2019.

53. Both circuits of Charor-Banala line were charged on 'no load basis' on 24.7.2019 from Banala Sub-station end. HPERC approved the COD of 220 kV Charor-Banala



transmission line w.e.f. 1.10.2019 on the basis of approval of shut-down for shifting of connectivity of the line from interim to permanent arrangement, taken in the 43<sup>rd</sup> TCC/46<sup>th</sup> NRPC meetings dated 23.9.2019/ 24.9.2019, respectively and Electrical Inspectorate Certificate vide letter dated 1.10.2019 regarding approval to energise installations. Subsequently, EPPL vide e-mail dated 21.11.2019, intimated establishment of telemetry and ADHPL vide e-mail dated 22.11.2019 also conveyed its consent for taking shut-down on ADHPL transmission line on 3.12.2019. Finally, power flow through transmission line started on 5.12.2019. In these circumstances, we are of the view that mis-match period continued up to 5.12.2019 as power flow in the transmission line commenced only on 5.12.2019. Accordingly, the transmission charges from the COD of Asset-V, i.e. 31.12.2017 to the actual power flow in the downstream asset of HPPTCL i.e. 5.12.2019 shall be borne by HPPTCL. Thereafter, it will be included in the PoC charges.

54. As the line bays of the Petitioner at Banala Sub-station and associated downstream transmission line of HPPTCL are inter-linked and dependant on each other, the Petitioner is entitled to recover transmission charges from HPPTCL for the period of mismatch. Accordingly, we modify paragraph 14 of our order dated 20.7.2018 in the present petition with the following:

*“14. As per the said provision, if a transmission asset is prevented from being put into regular service for reasons not attributable to a transmission licensee, but due to delay in COD of upstream or downstream assets, the transmission licensee can approach the Commission for approval of COD of the transmission asset. In the instant case, the petitioner has submitted that it was ready with Asset-V on 31.12.2017 and in support has submitted the Energisation Certificate dated 17.7.2017 issued by CEA under Regulation 43 of the CEA (Measures relating to safety and Electric Supply) Regulations, 2010. The petitioner has further submitted the letter dated 2.2.2018 of NRLDC regarding the first time charging of Extension of GIS Parbati Pooling Station with 7x105 MVA ICT alongwith associated bays and 2 Nos. 220 kV bays. The petitioner has also submitted the certificate from its CMD certifying that the asset conforms to the relevant Grid Standard and Grid*



Code and are capable of operation to their full capacity with effect from 31.12.2017 as required under Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. The petitioner has submitted that it is ready with Asset-V but is prevented from being put into regular use as the downstream assets under the scope of HPPTCL were not ready. Accordingly, the petitioner has approached the Commission under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations for approval of COD of the Asset-V. Taking into consideration energisation certificate issued by CEA, the RLDC certificate and its CMD certificate we approve the COD of Asset-V as 31.12.2017 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations as the petitioner was ready but was prevented from putting into use regular use as HPPTCL was not ready with the downstream assets under its scope. **Failure to achieve the COD in time by HPPTCL has resulted in the transmission assets of the Petitioner/ PGCIL not being put to use. In the light of Appellate Tribunal's judgments in the matter of PATRAN, and RAAP, where the principle enunciated by us was duly upheld by APTEL, we are of the considered view that liability of transmission charges for Asset-V for the mismatch period shall be borne by HPPTCL. The COD of the downstream assets of HPPTCL has been approved by the State Commission w.e.f. 1.10.2019. However, power flow commenced on 5.12.2019. Therefore, Asset-V was included in the PoC charges on 5.12.2019. Accordingly, the transmission charges from the COD of Asset-V, i.e. 31.12.2017 to the actual power flow in the downstream asset of HPPTCL on 5.12.2019, shall be borne by HPPTCL. Thereafter it will be included in the PoC charges. We further direct that it shall be responsibility of the petitioner to ensure safety and insurance of the transmission assets."**

55. Further, we also modify paragraph 77 of our order dated 20.7.2018 in the present petition with the following:

**"77. The transmission charges of Asset-I to V shall be recovered on monthly basis in accordance with Regulation 43 of the 2014 Tariff Regulations and shall be shared by the beneficiaries and long term transmission customers in Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The transmission charges from the COD of Asset-V i.e. 31.12.2017 to the actual power flow in the downstream asset of HPPTCL i.e. 5.12.2019 shall be borne by HPPTCL."**

56. This order disposes of Petition No. 116/TT/2017 (on remand) in terms of the above discussions and findings.

sd/-  
(P.K. Singh)  
Member

sd/-  
(Arun Goyal)  
Member

sd/-  
(I.S. Jha)  
Member

