

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 126/MP/2017**

**Coram:**

**Shri I. S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri P.K. Singh, Member**

**Date of Order: 30<sup>th</sup> July, 2022**

**In the matter of:**

Petition for declaration and direction as to the status of the 400 kV D/C Transmission Line from India Gandhi Super Thermal Power Station (Aravalli Power Station) to Daulatabad owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited (HVPNL).

**And**

**In the matter of:**

1. Uttar Haryana Bijli Vitran Nigam Limited,  
C-6, Vidyut Sadan, Sector-6,  
Panchkula, Haryana

2. Dakshin Haryana Bijli Vitran Nigam Limited Vidyut Sadan,  
Vidyut Nagar, Hissar

Both represented by Haryana Power Purchase Centre.  
A joint forum set up by Uttar Haryana Bijli Vitran Nigam and  
Dakshin Haryana Bijli Vitran Nigam  
Room No. UH 305, 2nd floor,  
Shakti Bhawan, Sector 6  
Panchkula

3. Haryana Vidyut Prasaran Nigam Limited,  
Shakti Bhawan, Sector-6,  
Panchkula.

**.... Petitioners**

Versus

1. Power System Operation Corporation Limited,  
B-9, First Floor, Qutab Industrial Area,  
Katwaria Sarai, New Delhi – 110 016

2. Central Transmission Utility of India Limited,  
"Saudamini", Plot No. 2,  
Sector-29, Gurgaon-122001, Haryana

3. Aravalli Power Company Pvt Limited,  
NTPC Bhawan, Scope Complex, 7,



**Parties Present:**

Shri Shubham Arya, Advocate, Haryana Utilities  
Ms. Poorva Saigal, Advocate, Haryana Utilities  
Shri Ravi Nair, Advocate, Haryana Utilities  
Shri Nipun Dave, Advocate, Haryana Utilities  
Ms. Reeha Singh, Advocate, Haryana Utilities  
Ms. Suparna Srivastava, Advocate, CTU  
Ms. Soumya Singh, Advocate, CTU  
Shri Tushar Mathur, Advocate, CTU  
Shri Sitesh Mukherjee, Advocate, POSOCO  
Shri Abhishek Kumar, Advocate, POSOCO  
Shri Karan Arora, Advocate, POSOCO  
Shri Ashok Rajan, POSOCO  
Shri Alok Mishra, POSOCO

**ORDER**

The Petitioners, Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Haryana Vidyut Prasaran Nigam Limited (hereinafter jointly referred to as “ the Petitioners”) had filed the present Petition seeking a declaration that the 400 kV D/C transmission line from Indira Gandhi Super Thermal Power Station (IGSPTS) to Daulatabad is outside the scope of the jurisdiction of the Power System Operation Corporation Limited (POSOCO) and Central Transmission Utility [now Central Transmission Utility of India Limited (CTUIL)] as well as the Central Electricity Regulatory Commission (Sharing of inter-State transmission charges and losses) Regulations, 2010 (hereinafter “Sharing Regulations”).

2. The Commission by order dated 4.5.2018 had disposed of this Petition. Aggrieved by the said order dated 4.5.2018, the Petitioners filed Appeal No. 240 of 2018 before the Appellate Tribunal for Electricity (in short, ‘APTEL’) which was disposed of by APTEL vide order dated 4.2.2020 remanding the matter to this Commission with regard to last sentence of prospective application and to examine



whether such benefit could be granted with retrospective effect. This order is being issued in compliance with the terms of the remand by APTEL vide order dated 4.2.2020

### **Background**

3. The Petitioner No. 1 and Petitioner No. 2 are distribution licensees in the State of Haryana and are engaged in the distribution and retail supply of electricity to the consumers within the State in their respective areas of operation. The Petitioners have established Haryana Power Purchase Centre as their joint forum to undertake the procurement of electricity and trading of electricity on their behalf as per Haryana Government's Notification dated 11.4.2008. The Petitioner No. 3 is the State Transmission Utility of Haryana and is undertaking the functions provided in Section 39(2) of the Electricity Act, 2003 ("the Act"). The Petitioners own, operate and maintain the intra-State Transmission System in the State of Haryana which includes the 400 kV D/C transmission line from IGSPTS to Daulatabad sub-station of Petitioner No. 3.

4. The Petitioners, in the instant Petition had sought directions to set aside the bills raised by CTUIL from the month of July, 2011 to the extent the claim related to ISTS charges and losses for 400 KV IGSPTS-Daulatabad transmission line. POSOCO and CTUIL were raising the bills on the basis of the premise that the subject transmission line is connected to ISGS and therefore, Haryana is a deemed LTA holder corresponding to its share in IGSPTS. After considering the hardship faced by Haryana and in light of the decision of the Commission in Petition No.20/MP/2017, the Petitioners were granted relief exempting them from payment of ISTS charges and losses vide order dated 4.5.2018 in the instant Petition.



5. The Commission, however, in its order dated 4.5.2018 had decided the matters on merits/principle in favour of the Petitioners by holding that the above transmission line is owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited, it is an intra-State line and not an inter-State Transmission System as decided by POSOCO and CTUIL. However, in regard to the direction sought for by the Petitioners for refund of the transmission charges recovered on the erroneous basis of the said transmission line being treated as an ISTS line w.e.f 1.7.2011, the Commission held that its decision shall operate prospectively only and shall not apply for the period prior to 4.5.2018.

6. Aggrieved by this limited observation of the Commission, the Petitioners had filed Appeal No. 240 of 2018 before APTEL wherein the APTEL vide order dated 4.2.2020, remanded the matter for consideration on the prospective nature of the order dated 4.5.2018 on the basis that the said decision is not supported by any reason thereof. Relevant extract of the order is as under:

*“In that view of the matter, we are of the opinion that the Appeal deserves to be remanded to CERC with regard to only the last sentence of prospective application of decision of CERC. Therefore, we direct CERC to look into the matter and hear both the parties in accordance with law whether such benefit could be granted with retrospective effect. Both the parties are at liberty to argue before CERC on this aspect. The said exercise shall be completed within three months from the date of copy of this order.”*

### **Remand Proceedings before the Commission**

7. Pursuant to the remand, Petitioners have filed an additional affidavit dated 9.6.2020 placing on record the order of APTEL dated 4.2.2020 along with the copies of pleadings of the parties in Appeal No. 240 of 2019. The Petitioners have, *inter alia*, submitted that consequent upon the decision of the Commission dated 4.5.2018, the 400 kV D/C transmission line from Aravali Generating Station to Daulatabad was treated as an intra-State Transmission System of HVPNL and not inter-State transmission system and accordingly, the transmission charges under the



Sharing Regulations will not be applicable to the said line. However, the transmission charges levied by the Respondents No. 1 and 2 in respect of the said line for the period from 1<sup>st</sup> July, 2011 till 4<sup>th</sup> May, 2018 is required to be considered by the Commission and accordingly, the Commission may initiate the proceedings for considering the above outstanding issue on the refund of the transmission charges along with interest as claimed by the Petitioner in pursuance to the decision of APTEL dated 4.2.2020 in Appeal No. 240 of 2018. The Petitioners have also submitted they have proceeded on the basis that except for the transmission charges billed for the relevant period, by wrongly treating the above line as part of ISTS system, there are no implications on other aspects such as adjustment of losses or any other monetary implication on the Petitioners at this stage in the absence of details being made available and that the Respondents should disclose the details in regard to any other implications, monetary or otherwise to the Petitioner beside the transmission charges, as being billed during the relevant period.

#### **Hearing dated 11.6.2020**

8. The matter was thereafter heard through video conferencing on 11.6.2020. During the course of the hearing, learned senior counsel of the Petitioners *inter alia* prayed to refund the Point of Connection (PoC) charges/transmission charges collected from the Petitioners wrongly by treating 400 kV D/C transmission line from Indira Gandhi Super Thermal Power Station to Daulatabad, as an inter-State line when it is only an intra-State line. It was further submitted that the Petitioners have paid Rs. 1236 crore (principal amount) as PoC charges for 400 kV transmission line from 1.7.2011 till 4.5.2018 even though the same was not a part of the ISTS network.



9. Learned counsel appearing on behalf of POSOCO submitted that APTEL in its order dated 4.2.2020 has not set aside the decision of the Commission granting the relief to the Petitioner prospectively, but only observed that such decision is not supported by any reason. Learned counsel further added that the claims of the Petitioners for previous period are time barred.

10. Based on the request of learned counsels for CTUIL and POSOCO, the Commission directed CTUIL and POSOCO to file their respective written submissions with copy to the Petitioners who may file their response, if any. In terms of above directions, CTUIL, POSOCO as well as the Petitioners have filed their respective written submissions as detailed in the subsequent paragraphs of this order.

#### **Submissions of Respondent No. 1, POSOCO**

11. POSOCO, vide written submissions dated 26.6.2020, has mainly submitted as under:

a) 400 kV D/C IGSTPS-Daulatabad line (the transmission line in question under the instant Petition) is an intra-State line of Haryana (STU line) and is not a part of PoC mechanism as there is no approved tariff of the said line by the Commission. Further, one end of the transmission line is connected to the Indira Gandhi Super Thermal Power Station (IGSTPS) and the other end is connected to the Daulatabad sub-station. During the planning of the transmission scheme for evacuation of IGSTPS power, the IGSTPS-Daulatabad line was conceived and planned for the purposes of supplying power to both Haryana and Delhi. However, due to unavailability of any tariff determined by the Commission, no cost of the said transmission line was loaded on the ISTS beneficiaries.

b) The Petitioners, namely, UHBVNL and DHBVNL fall under the ambit of the “*long-term consumer*” as defined under Regulation 2(1)(m) of the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and



Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter called as 'Connectivity Regulations').

c) IGSTPS is an inter-State generating station connected with the ISTS transmission network and is treated as a regional entity under the Northern Region Pool (NRP). The allocation of share of power from IGSTPS to different beneficiaries is (i) 693 MW (46.2 %) to Haryana; (ii) 693 MW (46.2 %) to Delhi; and (iii) balance quantum to other states.

d) The power allocated to the State of Haryana was shared between UHBVNL and DHBVNL in accordance with the directions issued by the Ministry of Power, Government of India (MoP) on account of the generating station being a Central Government generating station. Such allocation of power is treated as deemed Long-Term Access (LTA) for the purposes of sharing of ISTS charges under the POC mechanism. Accordingly, the deemed LTA of 693 MW to Haryana from IGSTPS was considered for the purposes of computing POC charges for the State of Haryana under the prevailing regulatory regime.

e) The approved injection from IGSTPS was being calculated under the prevailing regulatory regime as per the Sharing Regulations. In terms of second proviso of Regulation 2(1)(c) of the Sharing Regulations, the approved injection from IGSTPS was being computed on account of corresponding allocations which were accordingly added to the withdrawal quantum of beneficiaries. Regulation 3 of the Sharing Regulations provides for computation of "*Yearly Transmission Charges (YTC)*".

f) IGSTPS-Daulatabad transmission line although a STU line which forms part of the all-India composite load flow for the validated base case of the ISTS transmission systems. The participation factors of various Designated ISTS Customers ("DICs") for IGSTPS-Daulatabad transmission line have no monetary significance.

g) Pursuant to the third amendment to the Sharing Regulations, the Commission amended the existing provisions to incorporate the procedure for certification of non-ISTS lines which were carrying inter-State power. Such



certifications were to be done based on the load flow studies by Regional Power Committees (RPCs) in consultation with Regional Load Despatch Centers (RLDCs).

h) The Petitioner, HVPNL had submitted a proposal to the Northern Regional Power Committee (NRPC) for certifying the 400 kV IGSTPS-Daulatabad line as a deemed ISTS line. Though the subject line was approved as deemed ISTS based on study results as per the methodology provided for by the extant regulations, HVPNL eventually withdrew its proposal, and therefore, was not taken into account for computation of PoC charges in the 35<sup>th</sup> Technical Coordination Sub-committee ("TCC") and 39<sup>th</sup>NRPC Meeting dated 14.7.2017. From the minutes of the meeting of the 35<sup>th</sup> Technical Coordination Sub-committee ("TCC") and 39<sup>th</sup> NRPC Meeting dated 14.07.2017, it is abundantly clear that the Petitioners, after orders were passed in Petition No. 291/MP/2015, chose to approach this Commission to seek the same benefit as provided to the State of Andhra Pradesh.

i) As per the provisions of the Sharing Regulations, a STU line carrying ISTS power can be declared as an ISTS line provided it is certified by the concerned RPC and tariff for such a deemed ISTS line is determined by the Commission. However, there has been no provision under the prevailing Sharing Regulations allowing for exclusion of Haryana from the PoC mechanism, where STU line is directly connected to an ISGS.

j) The Petitioner had approached the Commission through the instant Petition pursuant to the Commission's directions dated 30.3.2017 in Petition No. 291/MP/2015 in which the Commission had altered the provisions of the Sharing Regulations to exclude such quantum of power from the definition of approved injection which is being generated within the State by an ISGS and also consumed within the State through STU networks.

k) The Commission while deciding the issues in the instant Petition had relied on its earlier decisions in Petition No.291/MP/2015, Petition No. 211/MP/2011 and Petition No. 20/MP/2017 to grant relief to the Petitioners by exempting them from further payments of ISTS charges and losses prospectively.



l) The courts may grant reliefs which may relate back to the date of the injury caused to the party. In the instant case, the Commission has held that the Petitioner was required to pay the charges till such date as the law was not changed or amended. Further, the law was settled only after the directions of the Commission in Petition No. 291/MP/2015 (order dated 30.3.2017). The Petitioners never approached the Commission for such reliefs until the orders were passed by the Commission on the exact same issue in another Petition filed by similarly aggrieved beneficiary. Accordingly, the Petitioners cannot claim retrospective recovery of the bills.

m) The PoC charges and losses are computed based on forecasted generation and demand of DICs for each application period (quarter year) that is validated by the Validation Committee. The computation process also requires total Monthly Transmission Charges (MTC) provided by the ISTS licensee to be duly recovered and paid to such licensee, the approved injection and approved withdrawal for the said application period, new generating units to be commissioned, new transmission lines to be commissioned, line length and conductor types of these transmission lines, indicative cost level for each conductor type (provided by CTUIL) etc.

n) If the retrospective revision of PoC charges as prayed for, is allowed, the computational exercise would require review of 24 application periods starting from quarter II of 2011-12 to Quarter-I of 2018-19 which would result in revision of LTA slab rates of 50 to 80 entities for each of the 24 application periods. The settled commercial transactions are to be re-opened and the resettlement of old transactions for past 8 years (2011-2018) would additionally change the tax liability of the parties. Therefore, all such affected parties must be impleaded as respondents in the instant Petition.

(o) Each RPC secretariat issues RTAs based on approved withdrawal of entities in each month. Transmission charges are computed by each RPC for their regional entities monthly using the PoC slab rates published by CERC. Therefore, retrospective revision of PoC charges for 24 application periods would result in revision of  $24 \times 3 = 72$  months RTA of each RPC. This would amount to  $5 \times 72 = 360$  revised RTAs of the five RPCs. Therefore, all the five

RPCs (NRPC/ WRPC/ SRPC/ ERPC/ NERPC), being necessary parties, ought to be heard before any direction to effect retrospective revision is passed. The Commission in Petition No. 189/MP/2012 in the case of Lanco Anpara Power Ltd. vs. U.P. Power Transmission Corporation Ltd. has also made the order passed therein prospective by observing that as the energy corresponding to losses had already accounted for in the schedule and drawl of all users, it is not prudent to revise all energy accounts.

(p) The retrospective revision of PoC charges in fact might increase the PoC slab rates (Rs/MW/month) in the State of Haryana as LTA capacity for Haryana would be reduced with the exemption of IGSTPS share, making such a revision contrary to public interest.

(q) Monthly Regional Transmission Deviation Account (RTDA) of all regional entities of all the regions shall have to be revised. This will lead to revision of 83 monthly RTDA accounts in each of the 5 regions i.e. a total of  $83 \times 5 = 415$  monthly RTDA accounts, billing and adjustment.

(r) Various operational constraints listed in above paragraph indicate the impossibility involved in revising various categories of all accounts for Northern Region retrospectively.

### **Submissions of the Petitioners**

12. The Petitioners, vide affidavit dated 5.8.2020, have mainly submitted as follows:

(a) POSOCO is attempting to reopen the case on merits which is not permissible under the scope of remand. POSOCO had treated an intra-State Transmission System of the State of Haryana, as an inter-State transmission system only because the said system being connected to a generating station belonging to a company owned or controlled by the Central Government. POSOCO has assumed that any system connected to Inter-State Generating Station ('ISGS') will *ipso-facto*, be an inter-State transmission system. This is particularly, when no part of the electricity for supply to any State other than Haryana is through the said line and the said line is used for evacuation of power exclusively for Haryana

and the tariff for the said line is decided by the Haryana Electricity Regulatory Commission. Therefore, no case for treating the said line as deemed ISTS line under the Regulations of the Commission at any time;

(b) The legal status of the line being an intra-State transmission line had been the same since inception and there has been no change either in July 2011 or at any time thereafter either by any amendment in the provisions of the Act or by any Regulations or any order or directions of this Commission. The plenary Act being specific and categorical in regard to the scope of inter State Transmission System in Section 2(36) of the Act, there cannot be any subordinate legislation to the contrary. The STU / Intra-State line can be treated as deemed ISTS line only if it is used for inter-State purposes and not otherwise.

(c) POSOCO and CTUIL had acted in a fundamentally wrongful manner in treating the intra-State transmission line which has no incident of deemed ISTS use as an ISTS line without any justification and has burdened Haryana in the energy accounting with the sharing of transmission charges and losses. When the above wrongful treatment was realized by Haryana Utilities, the same was raised in the Technical Coordination Committee Meeting and thereafter, the Petition No. 126/MP/2017 was filed before the Commission.

(d) With regard to stand of POSOCO that computation of the amount is complex, an amount of Rs. 1236 crore as PoC charges has been accounted for in the energy account for Haryana Utilities for 400 kV transmission line from 1.7.2011 till 4.5.2018 even though the same was not a part of the ISTS network.

(e) Tariff setting and tariff adjustments are continuous process and there are number of occasions where tariff relating to a control period is required to be adjusted in a subsequent/later control period. The legitimate claim arising out of the subsequent orders cannot be denied by pleading that the computation relating to the past period needs to be undertaken. The claim needs to be apportioned amongst the current users of the regional grid under the Sharing Regulations, as in the case of any other refund to be made to a Utility by virtue of any order passed by various courts.

(f) POSOCO is mixing up the issues of (i) The liability of the procurer from a Central Sector Generating Units where the quantum of power is allocated by the Central Government and therefore, the procurer is entitled to LTA (open access) to ISTS as a matter of right and is liable to pay the LTA charges for use of the ISTS line; and (ii) a situation where such procurer of electricity from the Central Sector Generating Units (in pursuance of the allocation of power by the Central Government) is not using any part of the ISTS but has an intra-State STU line for evacuation. The use of the ISTS cannot be deemed because of the allocation of power in the Central Sector Generating Units. There has to be an inter-State power flow on such line.

(g) POSOCO/CTUIL is erroneously relying upon the definition of 'Long Term customers' under the Connectivity Regulations to claim that Aravalli Power Station, being a Central Generating Station, whose power has been allocated by the Ministry of Power, the beneficiaries thereof are deemed LTA customers under the Sharing Regulations. The utilities are not using any part of the ISTS system for delivery of its share of power from the Aravalli Power Station. POSOCO is, however proceeding on the basis that once the generating station of a Central Sector Undertaking, the evacuation of power should *ipso facto* be treated as inter-State irrespective of the system used, contrary to the provisions of the Act.

(h) The contention sought to be raised by POSOCO, that the 'extant' Sharing Regulations, had no provision to exempt a STU line directly connected to an Inter State Generating Station, from the levy of PoC charges is contrary to law as well as the record of the case. Haryana Utilities are being charged PoC charges with respect to the STU line from 1.7.2011 as per the proviso to the definition of 'Approved Injection', which is sought to be relied upon by POSOCO.

(i) Approved injection does not mean that the transmission charges will have to be paid for such injection in cases where total injection of power in the integrated power system is coordinated by the POSOCO in discharge of its functions as RLDC. The RLDC functions in coordination with the SLDC in terms of Section 28, Section 29, Section 32 and Section 33, etc. of the Act. It is, therefore, perverse on the part of POSOCO to selectively rely on the above proviso to claim that a line which is clearly an Intra-State Transmission line and not an ISTS in terms of Section 2(36) and 2(37) of the Act can be treated as an ISTS line when there is no

power flow of inter-State nature. In any event, there is no explanation by POSOCO as to why it had been wrongly billing the Petitioner for the period from 1.7.2011 till 1.6.2015 when, even according to POSOCO, there being no provision to the same effect.

(j) The liability to pay the transmission charges under the Sharing Regulations is conditional upon the use of ISTS line and cannot possibly be applicable when only an intra State Transmission line is used and no part of ISTS is used in terms of Sharing Regulations which deals with DICs, LTOA and ISTS line. POC charges are required to be computed only for the DICs and LTOA customers with reference to ISTS , whereas the Petitioners, in so far as the Aravalli Power Station is concerned, are neither a DIC nor an LTOA customer and also the evacuation of power is through an Intra-State line.

(k) The contention of POSOCO is contrary to Section 28 of the Act in terms whereof POSOCO is required to undertake scheduling and despatch in terms of the contracts entered into between the parties. Accordingly, POSOCO cannot create a contract between the Haryana Utilities and Aravalli Power Station in a manner that the evacuation of power will be deemed to be through the ISTS system when admittedly, the parties had envisaged the use of the STU system for evacuation of power.

(l) The order dated 4.5.2018 passed by the Commission in exercise of its regulatory powers under Section 79(1) (c) and (d) of the Act is against the statutory body's action i.e. POSOCO and CTUIL in discharge of their statutory functions and is not on adjudication of dispute or difference between a generating company and/or licensee. Accordingly, the bar of the three-year limitation prescribed under the Limitation Act, 1963 has no application to the said proceedings.

(m) It has already been settled by the Hon'ble Supreme Court that there is no bar of limitation in respect of the regulatory function of the Commission. In this regard reliance has been placed on the decision of the Hon'ble Supreme Court in the case of A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd. [(2016) 3 SCC 468] wherein it was held that the provisions of the Limitation

Act,1963 applies only in respect of the adjudicatory power of the Regulatory Commissions and the decision of the Hon'ble Supreme Court in the case of Tamil Nadu Generation and Distribution Corporation Limited v PPN Power Generating Company Pvt Limited [(2014) 11 SCC 53] and Ganeshan v. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments [ 2019 SCC Online SC 651]. Therefore, the relief sought by the Petitioners in respect of the wrongful levy of PoC Charges by POSOCO and CTUIL w.e.f 1.07.2011 onwards cannot be said to be barred by limitation.

(n) The contention that giving retrospective effect to the order dated 4.5.2018 would lead to substantial adjustments and re-opening of already settled PoC accounts, cannot be a ground for denying the Petitioners their legitimate dues. The legitimate financial claims of the Petitioners of substantial amount cannot be set at naught merely because certain adjustments may be required to be carried out.

(o) The settled principle as expressed in the legal maxim – '*Ubi jus ibi remedium*' – is where there is a right, there is a remedy. It has been expressly held in favour of the Haryana Utilities that the said STU line was not an ISTS line, there should not be any PoC charges levied on the Haryana Utilities in respect thereof from 1.7.2011 to 4.5.2018. Since, the Petitioners have paid the PoC charges for the STU lines, it is entitled to a refund in respect thereof. In view of the above, to deny the Petitioners their legitimate dues, would be depriving it of its accrued rights when there is remedy available i.e. and adjustment in the PoC charges. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Shiv Shankar Dal Mills v State of Haryana and Ors: (1980) 2 SCC 437) and in the case of STO v. Kanhaiya Lal Makund Lal Saraf: [ 1959 SCR 1350].

(p) POSOCO/NRLDC and CTUIL which are statutory body constituted under Section 28 of the Act cannot be allowed to raise issues of inability or the extent of time involved, to undertake energy accounting or changes in PoC accounts to implement the relief with effect from 1.7.2011. POSOCO/NRLDC should be obligated to adjust the energy accounting, on account of the decisions taken by



this Commission or APTEL or by the Hon'ble Supreme Court or other courts which adjudicates upon the rights and obligations of the parties.

(q) The tariff applicable for any period is bound to be revised from time to time on account of various aspects including on account of fresh determination of tariff, true-up/review of tariff or decision by the Appellate Authority and, therefore, the revised tariff gets implemented under many circumstances, after the relevant period is over. This Commission itself has determined the tariff for different utilities relating to the control period after the expiry of the control period. The revised tariff is always given effect to by providing for recovery of the amount for the past period in a prospective manner by increasing or decreasing the amount of recovery from the persons availing the services in future.

(r) APTEL in its judgment dated 1.7.2014 in Appeal No. 232 of 2013 in the case of M.P Power Management Company vs Central Electricity Regulatory Commission and Ors, has re-iterated the principle that tariff is a continuous process and can be retrospectively implemented.

(s) The Commission, by its several orders has revised the PoC charges for the control period that already stands concluded and has given retrospective effect to its own orders. In cases relating to the inclusion of certain transmission lines owned and operated by the Rajasthan and Madhya Pradesh State Transmission Utilities, as ISTS lines, the Commission has re-determined/revised the PoC charges for the previous control period 2009-14. In this regard, reliance has been placed on the Commission's orders dated 18.7.2018 in Review Petition 47/RP/2017 in the case of Rajasthan Rajya Vidyut Prasaran Nigam Limited v Power Grid Corporation of India Limited and Ors., order dated 16.7.2018 in Review Petition 2/RP/2017 in the case of Madhya Pradesh Power Transmission Company Limited v Power Grid Corporation of India Limited and Ors, order dated 9.4.2020 in Petition No. 310/GT/2018 in the case of SJVN Limited vs. Punjab State Power Corporation Ltd. and ors; and order dated 4.4.2019 in Petition No. 15/RP/2018 in the case of Power Grid Corporation of India Limited vs. Karnataka Power Transmission Corporation Ltd. and Ors

(t) As short-term open access charges are not envisaged to be revised, which are the input for Regional Transmission Deviation Account ('RTDA') and all other inputs for the RTDA remains the same; there is no requirement to revise the RTDA. In any event, there have been a number of instances wherein this Commission has issued revised PoC rates on account of the error by POSOCO which necessitated revision in LTA charges. In this regard, reliance has been placed on orders of the Commission:(i) Corrigendum dated 19.9.2018 in L-1/44/2010 in the matter of Approval of slab rates for POC Charges and losses for the period July to September 2018; and(ii) Corrigendum dated 3.2.2016 in L-1/44/2010 in the matter of Approval of slab rates for POC Charges and losses for the period May and June 2015.

(u) As regards the submissions of POSOCO and CTUIL that retrospective revision of PoC might increase the PoC slab rates (Rs/MW/month) in State of Haryana, the PoC charges paid by any DIC is based on "Hybrid Methodology" which is purely based on load flow study, as the network & Nodal load generation are not changing, hence PoC Charges would remain the same.

### **Submissions of Respondent No. 2, CTUIL**

13. CTUIL, vide written submissions dated 10.9.2020, has submitted as follows:

(a) The bills had been raised by POSOCO as per the prevailing regulatory regime and the Commission by way of interpretation of various provisions of the regulations has exempted the Petitioners from payment of transmission charges and losses in light of decision in cases (pending amendment in Sharing Regulations as directed in Petition No.211/MP/2011), the relief in the present case should also be granted prospectively. Accordingly, the Commission has not been inclined to set aside the transmission charges bills raised on the Petitioners since July, 2011 in respect of IGSTPS-Daulatabad line.

(b) The decision for prospective application of the order dated 4.5.2018 are based on the following two fundamental considerations: (i) the bills for transmission charges have already been raised on the Petitioners from July, 2011 onwards as per the prevailing regulatory regime, and (ii) the pending amendments in the Sharing Regulations, the Commission, through its orders



passed in litigations brought before it, has laid down the principles for allocation of transmission charges and losses under PoC mechanism in case of STU lines used exclusively to evacuate power from inter-State generating station (ISGS) by a State.

(c) Under the Sharing Regulations, generating stations which are regional entities as defined in the Indian Electricity Grid Code (IEGC) are required to share Yearly Transmission Charges computed under Sharing Regulations. As per 3<sup>rd</sup> Amendment to the Sharing Regulations notified in 2015, generating stations having long-term/medium-term access to ISTS and are connected either to STU or ISTS or both, are also required to share the said YTC.

(d) There is no provision in the Sharing Regulations under which STU line delivering the State's share of power from a Central Sector Generating Station situated within that State can be excluded from the ISTS transmission charges and losses allocations.

(e) 400 kV IGSTPS-Daulatabad line has accordingly been considered for computation of ISTS transmission charges and losses allocations and PoC bills have been raised on the Petitioners based on the Regional Transmission Accounts (RTAs) prepared by Northern Region Power Committee (NRPC). The said bills have been duly paid by Petitioners without any objection/protest till the filing of the present Petition on 2.6.2017. This fact has been noted by the Commission in its order dated 4.5.2018.

(f) The Petitioners' own conduct right from the raising of transmission charges bills from July, 2011 has shown that they have construed the provisions in the Sharing Regulations as they have existed on the statute book and have accordingly paid transmission charges billed on them by CTUIL. Rather, after coming into force of the 3<sup>rd</sup> Amendment to the Sharing Regulations, the Petitioners have themselves sought certification for inclusion of IGSTPS-Daulatabad line as a deemed ISTS line. There is thus a *consensus ad idem* that till the passing of the order dated 4.5.2018, the ISTS transmission charges bills have been raised on the Petitioner No. 1 and Petitioner No. 2 as per the existing provisions in the Sharing Regulations.

(g) On various occasions, issues for adjudication have arisen before the Commission in respect of which provisions in the existing Regulations are not found to exist. In such situations, the Commission, while exercising its powers has filled the lacunae existing in the Regulations. Hon`ble Supreme Court in the case of PTC India Ltd. Vs. Central Electricity Regulatory Commission [(2010) 4 SCC 603] has observed that the legislative power of the Commission can be exercised while performing its adjudicatory functions by an Order under Section 79(1)(j) of 2003 Act. The position laid down by the Hon`ble Supreme Court has been reiterated by the APTEL in its judgment dated 27.3.2018 passed in Appeal No.390/2017: Punjab State Power Corporation Ltd. Vs. Patran Transmission Co. Ltd

(h) By exercise of regulatory powers through its judicial orders, the Commission has prescribed for exclusion of STU lines from the computation of ISTS transmission charges and losses allocations while carrying a State's share of power from central sector generating stations. This position has also been acknowledged by the Petitioners who have approached the Commission by citing the very same judicial orders and seeking a similar dispensation in their case as well. The said orders are (i) Petition No.211/MP/2011: Steel Authority of India Limited Vs. Western Regional Load Despatch Centre decided vide Order dated 5.10.2017, (ii) Petition No.291/MP/2015: Transmission Corporation of Andhra Pradesh Ltd. & Ors. v. Southern Region Load Despatch Centre &Anr. decided vide Order dated 30.3.2017, and (iii) Petition No. 20/MP/2017: Kanti Bijlee Utpadan Nigam Limited v. Central Transmission Utility & Ors. decided vide Order dated 9.3.2018

(i) In absence of any regulatory provisions with regard to drawal of power by a deemed LTA customer embedded in a State drawing power from the bus-bar of an inter-State generating station through the transmission systems of STU without utilizing the ISTS, the Commission has exercised its regulatory powers by way of judicial orders and has laid down the principles of payment of transmission charges in such an eventuality. As per Hon`ble Supreme Court, law comes into existence not only through legislation but also by regulation, the treatment of STU lines carrying State's share of power from central sector generating stations is to be done for the purpose of computing ISTS charges and losses allocations in accordance with the principles laid down in the above orders of the Commission.

(j) It is a cardinal principle that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption of prospectively articulated in the legal maxim “*nova constitution futiris formam imponere debet non praeteritis*” i.e. new law ought to regulate what is to follow, not the past’ and this presumption operates unless shown to be contrary by express provisions in the statute or is otherwise discernible by necessary implication. This rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations.

(k) The Constitution Bench of the Hon’ble Supreme Court in the case of Commissioner of Income Tax, New Delhi vs. Vatika Township Private Limited & Ors. [(2015)1SCC1], *inter alia* has held that, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, is presumed to be intended not to have a retrospective effect and therefore, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

(l) The Sharing Regulations have crystallized a “pooled” system in the entire meshed network of ISTS across all regions in the country where the rights and liabilities of all the DICs in the PoC pool and that of the ISTS licensees are inter-linked with one another. There are *inter-se* rights and obligations under the PoC sharing mechanism and since the mandate is for recovery of YTC fully and exactly, any relief from payment of transmission charges to a DIC is bound to result in corresponding burden on the other DICs or an under-recovery for the ISTS transmission licensees, as the case may be. In such a situation, if the principles laid down by the Hon’ble Supreme Court in the matter of Commissioner of Income Tax, New Delhi Vs. Vatika Township Private Limited & Ors. are applied, the exemption of transmission element from the computation for ISTS transmission charges and losses allocations can only be prospective since such exclusion, though conferring the relief from payment of ISTS transmission charges upon a DIC, impairs the rights of other DICs/transmission licensees

acquired under the then existing Sharing Regulations and attaches additional obligation to pay transmission charges for the past YTC computations. That being so, the order dated 4.5.2018 can only be applied prospectively as has rightly been done by the Commission.

(m) The retrospective calculation process is a cumbersome and time-consuming process. The differential billing against the DICs who are not even a party to the present Petition, it is highly likely that the said bills may get disputed by the DICs and the same may further complicate the process of recovery; the customers who have relinquished the LTA for the relevant billing period may also have objections to the differential billing. As such, retrospective operation of the order dated 4.5.2018, which otherwise is also not permissible as set out above, would lead to unwarranted administrative chaos.

(n) Tariff for distribution licensees in the State of Haryana is determined under Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Generation, Transmission, Wheeling and Distribution & Retail Supply under Multi-Year Tariff Framework) Regulations, 2012. Under Part VII of the said Regulations, the principles for determination of tariff and norms of operation for distribution business have been laid down wherein, provision for power purchase cost has been made. All ISTS charges payable by Petitioner No. 1 and Petitioner No. 2 are recoverable by them under their respective ARRAs as approved by the Haryana State Electricity Regulatory Commission. It can therefore, never be the case of Petitioner No. 1 and Petitioner No. 2 that having already recovered the ISTS charges under the ARRAs for different tariff years, they would seek refund of the said charges at a subsequent stage.

(o) The Petitioners have admitted that ISTS charges, of which they are seeking refund, have been recovered by them under the approved ARRAs for the relevant years. If the plea is for consumer interest, then the principles against retrospectively once again come into play as there is a conferment of benefit on the said consumers by imposing a corresponding burden of the DICs/ISTS licensees. The Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. & Ors. Vs. Union of India and Ors. [(1997) 5 SCC 536] has held that where the burden of duty (or charges paid under a statute) has already been passed on to third parties, the claim of refund of said duty is not sustainable. As in the present

case, the ISTS charges paid by Petitioner No. 1 and Petitioner No. 2 for the period since July, 2011 till the passing of the impugned order have been disbursed by Respondent No. 2 in the PoC pool and have also been recovered by Petitioner No. 1 and Petitioner No. 2 from their consumers as power purchase cost under their approved ARRs.

### **Submissions of the Petitioners**

14. The Petitioners, vide affidavit dated 24.12.2020, have reiterated the submissions made earlier and have submitted additional points as follows:

(a) There is no other beneficiary, apart from the Haryana Utilities that are availing the power from the Aravalli Power Station through the 400 kV Daulatabad line. In any event, there is no explanation by CTUIL as to why it had been wrongly billing the Petitioners for the period from 1.7.2011 till 1.6.2015 when, even according to CTUIL, there was no provision to the same effect since the same was introduced by way of the third amendment Sharing Regulations.

(b) Clause 2.1 of the Billing, Collection and Disbursement Procedure (BCD procedure) issued by CTUIL under the Sharing Regulations provides that ‘the CTU on behalf of the ISTS Licensees shall be responsible for raising the Bills pertaining to the usage of the ISTS for all the DICs.’

(c) The Petitioners thus do not qualify as a Designated ISTS Customer (DIC) under the above provision for sharing of power drawn from the Aravalli Power Station since no element/segment of the ISTS system is utilized. Accordingly, CTUIL could not have billed the Petitioners to the extent of the power contracted with Aravalli Power Station.

(d) As regards implications of the 35<sup>th</sup> Technical Co-ordination Committee Meeting/39<sup>th</sup> Northern Regional Power Committee Meeting held on 1.5.2017/2.5.2017, the Petitioner No. 3 was in fact proposing that STU line be certified/treated as an ISTS line. The Petitioner No. 1 and Petitioner No. 2 had clearly objected to any change to deemed ISTS line.

(e) The Central Commission exercises various powers, namely, administrative, supervisory, legislative and adjudicatory, as laid down by the Hon`ble Supreme



court in the case of PTC India Limited v Central Electricity Regulatory Commission [(2010) 4 SCC 603]. Though the Commission has various powers, it cannot be said that while exercising one power it can assume another jurisdiction as held by the APTEL vide judgment dated 1.3.2012 of the APTEL in Review Petition No. 03 of 2011 in the matter of Madhya Pradesh Generating Company vs Madhya Pradesh Electricity Regulatory Commission;

(f) Action of CTUIL in levying PoC charges on the Petitioners for the period from 1.7.2011 to 4.5.2018 to the extent of the power allocated from the Aravalli Power Station is *ex-facie* illegal and contrary to the prevailing Regulations. The Petitioners should not be made to suffer by reason of such illegal and arbitrary action of POSOCO and CTUIL. The contention that giving retrospective effect to the order dated 4.5.2018 would lead to substantial adjustments and re-opening of already settled PoC accounts, cannot be a ground for denying the Petitioners their legitimate dues. The legitimate financial claims of the Petitioners of substantial amount cannot be set at naught merely because certain adjustments may be required to be carried out.

(g) Reliance placed by CTUIL on the judgment of the Hon`ble Supreme court in the case of Mafatlal Industries [(1997) 5 SCC 536] is misconceived. The Petitioners have a duty of service to their consumers who had to bear the ISTS charges from 1.7.2011 on account of default on the part of the Implementing Agencies i.e. POSOCO and CTUIL. The refund of approximately Rs. 1236 crore shall be adjusted in the ARR of the Petitioners and shall lead to a reduction in tariff payable by the consumers in the State of Haryana. The Petitioners cannot be denied its legitimate entitlement when POSOCO and CTUIL have not acted in accordance with the provisions of the Act and the applicable Regulations and had sought to collect charges in respect of intra-State line when the same was not permissible. It is not then open to CTUIL to take such a stand of collection of the tariff from the consumers.

15. The present Petition was heard on 21.5.2021, and the Commission, after hearing the learned counsels for the parties, reserved order in the matter. However, as the Petition could not be disposed of, prior to the earlier Chairperson demitting office, the Petition was re-heard on 12.7.2022. During the course of hearing, learned



counsel for the parties submitted that the parties have already made their respective submissions in the matter, which may be considered and accordingly, the Commission reserved order in the matter thereafter.

### **Analysis and Decision**

16. The Commission is considering the present case on remand from the APTEL. Relevant extract of the order of APTEL in Appeal No. 240 of 2018 dated 4.2.2020 is as follows:

*“In the impugned order, CERC after analysing and concluding the opinion at Para 32 (b) states that the decision of CERC dated 04.05.2018 shall operate prospectively. Para 32 (b) reads as under:*

*“(b) The Petitioner, in the Second prayer, has sought direction to set aside the bills raised by CTU since the month of July, 2011 to the extent the claim related to ISTS Charges and Losses for the 400 KV IGSPTS-Daulatabad Transmission Line. In our view, POSOCO and CTU were raising the bills on the basis of the premise that the subject transmission line is connected to ISGS and therefore, Haryana is a deemed LTA holder corresponding to its share in IGSPTS. After considering the hardship faced by Haryana and in the light of the decision of the Commission in Petition No.20/MP/2017, relief is being granted to the Petitioners exempting them from payment of ISTS charges and losses. In our view, the decision shall operate prospectively.”*

*Though the contention of the Appellant-Discom was appreciated, considering the hardship faced by Haryana especially in light of the earlier decision of CERC in Petition No. 20/MP/2017, it holds that the said decision would apply prospectively. But this opinion that the decision shall operate prospectively is not supported by any reasoning.*

*In that view of the matter, we are of the opinion that the Appeal deserves to be remanded to CERC with regard to only the last sentence of prospective application of decision of CERC. Therefore, we direct CERC to look into the matter and hear both the parties in accordance with law whether such benefit could be granted with retrospective effect. Both the parties are at liberty to argue before CERC on this aspect. The said exercise shall be completed within three months from the date of copy of this order.”*

As per the above judgment of APTEL, the scope of the remand is limited only to the extent as to whether retrospective benefit of the order of the Commission dated 4.5.2018 in Petition No. 126/MP/2017 could be granted or not with reasoning.



### **Issue of Limitation and Impleadment of Parties**

17. At the outset, it is noticed that POSOCO has also raised objection on the limitation and has submitted that majority of the Petitioners' claim is barred by limitation. POSOCO has also submitted that if the retrospective revision of PoC charges as prayed for is allowed, the consequential exercise would require review of 24 application periods starting from Quarter II of 2011-12 to Quarter I of 2018-19, leading to revision of LTA slabs rates of 50 to 80 entities for each 24 application periods. It would also require reopening of settled transaction and re-settlement of old transactions for past 8 years, which would additionally change the tax liabilities of the parties and therefore all such affected parties must be impleaded in the present Petition. It has been also submitted that retrospective revision of PoC charges for 24 application periods would result in revision of 72 months' RTA of each RPC and therefore, all five RPCs, being the necessary parties, ought to be heard before any direction is passed.

18. We have considered the aforesaid submissions of POSOCO and find them to be misplaced. It is noticed that the matter had already been heard and came to be decided by the Commission vide order dated 4.5.2018. However, none of these issues were raised by the POSOCO at that time. In any case, the scope of the present proceedings is limited in terms of the order of APTEL dated 4.2.2020 and as such the Commission cannot enlarge the scope of the present remand proceedings by impleading the parties which were not originally impleaded in the present Petition. As regards the ground of limitation, the Hon'ble Supreme Court in its judgment dated 16.10.2015 in A.P. Power Co-ordination Committee v. Lanco Kondapalli Power Ltd. [(2016) 3 SCC 468] has held as under





***“31. ...Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.”***

19. In light of the above judgment of the Hon'ble Supreme Court, the APTEL in its judgment dated 2.11.2020 in Appeal No 10 of 2020 (Batch matters) had observed as under:

***“127. ....We, however, need not go into the question whether ruling of Lanco (supra) is not binding on account of the doctrine of stare decisis. Pertinently, even in Lanco, the Supreme Court qualified the conclusion by observing that “such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory”. We have already held that the issue of LPSC is one of enforcement of Regulations and not a contractual dispute leading to claim for recovery”***

20. In view of the above, the issue under consideration being of interpretation and applicability of Sharing Regulations of the Commission, the plea of applicability of Limitation is devoid of merit.

### **Issue on merits**

21. The Petitioners have mainly submitted that the bills raised by Respondent No. 2 from the month of July, 2011 to be set aside to the extent the claim therein related to sharing of inter-State transmission charges and losses for 400 KV IGSTPS-Daulatabad transmission line.

22. CTUIL, has submitted that the bills for ISTS transmission charges have been raised on the Petitioners from July, 2011 onwards as per the prevailing regulatory



regime. CTUIL has submitted that in case a transmission element, which has been included in the computation for ISTS transmission charges and losses, is to be excluded from the computation with retrospective effect and the ISTS charges having been paid till then are to be refunded to DICs, the same would result in a retrospective deficit in the PoC pool. Opposing retrospective revision, CTUIL has relied on the principles laid down by the Hon'ble Supreme Court in the case of Commissioner of Income Tax, New Delhi vs. Vatika Township Pvt. Ltd. [(2015) 1 SCC1], where exemption of transmission element from the computation for ISTS charges and losses can only be prospective since such exclusion, though conferring the relief from payment of ISTS transmission charges upon a DIC, impairs the right of other DICs/transmission licensees acquired under the then applicable 2010 Sharing Regulations.

23. CTUIL has further submitted that in the event, the order dated 4.5.2018 is allowed to be applied retrospectively, the same would entail the revision of the PoC rates by NLDC after carrying out the load flow studies for the period between July, 2011 to May, 2018, which further requires approval of the revised PoC rates by the Commission, revision of Regional Transmission Accounts by Regional Power Committees and subsequent revision in billing by PGCIL/ CTUIL to all the DICs. This will lead to numerous unwarranted administrative difficulties. The ISTS charges payable by the Petitioner No. 1 and Petitioner No. 2 are to be recovered by them under their respective ARRs approved by the State Commission. It can, therefore, never be the case of the Petitioners that having already recovered the ISTS charges under the ARRs for different years, they would seek refund of the said charges at a subsequent stage. The plea of the Petitioners for seeking a refund and passing the benefits to consumers is not valid in light of the ratio laid down by the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. and Ors. v. Union of India and



Ors.[(1997) 5 SCC 536], wherein it has been held that where the burden of duty (or charges paid under a statute) has already been passed on to the third parties, the claim of refund of the said duty is not sustainable.

24. POSOCO has submitted that power allocated from IGSTS to the State of Haryana was shared between UHBVNL and DHBVNL in accordance with the directions issued by Ministry of Power, Government of India on account of the generating station being a Central Government generating station. Such allocation of power is treated as deemed LTA for the purposes of sharing of ISTS charges under the POC mechanism in terms with current regulatory provisions in vogue. Accordingly, the deemed LTA of 693 MW to Haryana from IGSTPS was considered for the purposes of computing POC charges for the State of Haryana under the prevailing regulatory regime. Moreover, the approved Injection from IGSTPS being calculated under the prevailing regulatory regime, particular, as per second proviso of Regulation 2(1)(c) the sharing Regulations. Based on the second proviso, the approved injection from IGSTPS was being computed by POSOCO on account of corresponding allocations which were accordingly added to the withdrawal quantum of beneficiaries.

25. POSOCO has further submitted that in case the retrospective revision of PoC charges as prayed for, is allowed by the Commission, the computational exercise would lead to review of 24 application periods starting from Quarter II of 2011-12 to Quarter-I of 2018-19 which would result in revision of LTA slab rates of 50 to 80 entities for each of the 24 application periods. Each RPC secretariat issues RTAs based on approved withdrawal of entities in each month. Transmission charges are computed by each RPC for their regional entities monthly using the PoC slab rates published by CERC. As such, retrospective revision of PoC charges for 24



application periods would result in revision of  $24 \times 3 = 72$  months RTA of each RPC, which would amount to  $5 \times 72 = 360$  revised RTAs of the five RPCs. All the five RPCs (NRPC/ WRPC/ SRPC/ ERPC/ NERPC), being necessary parties, ought to be heard before any direction to effect retrospective revision is passed. Moreover, the five RLDCs facilitate STOA transactions of different products, namely day-ahead, First-cum-First-Serve, Advance and contingency applications. The total number of STOA bilateral transactions done during the period of dispute is 22825 with a total energy scheduled as 79768 Mus. The settled commercial transactions are to be re-opened and the resettlement of old transactions for past 8 years (2011-2018) would additionally change the tax liability of the parties. Therefore, all such affected parties must be impleaded as respondents in the instant Petition.

26. We have considered the submissions of Petitioners and the Respondents. As regards, observation of APTEL regarding prospective application of the decision of the Commission and the direction of APTEL to look into the matter if such benefit could be granted with retrospective effect, we note that the Commission had dealt with both the issues in the order dated 4.5.2018 as under:

“31. It is noticed that the Petitioners have been paying the transmission charges and losses since July 2011 when the Sharing Regulations came into effect. However, the Petitioners have approached Commission for relief only in 2017 and have claimed relief in the light of the decision in order dated 30.3.2017 in Petition No. 291/MP/2015. In other words, the Petitioners did not have any objection to the 400 KV IGSTPS-Daulatabad Transmission Line being included under PoC mechanism. POSOCO has brought to our notice the regulatory provisions under which Long term Access for IGSTPS was being considered and the bills for POC charges and losses were being raised on the Petitioners. In the light of the decisions in Petition No.291/MP/2015, 211/MP/2011 and 20/MP/2017, the Commission has decided in this order to exempt the 400 KV IGSTPS-Daulatabad Transmission Line from payment of transmission charges and losses under PoC mechanism. In other words, the relief has been granted to the Petitioners by virtue of interpretation of various provisions of the regulations which makes a departure from the prevailing regulatory regime. The Commission in its order dated 5.10.2017 in Petition No. 211/MP/2011 granted relief to the Petitioner therein prospectively from date of issue of the order. In the said order, the Commission also directed the staff to examine the matter and propose suitable amendment for the purpose of clarity. In PTC India

Limited & Others Vs. Central Electricity Regulatory Commission, the Hon'ble Supreme Court has observed as under:

“37. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding...”

In the light of the above, law can be laid down by the Commission through its decisions in the litigations brought before it. In the present case as also in the previous cases quoted in this order, the Commission has laid down the principles for allocation of transmission charges and losses under the PoC mechanism in case of STU lines used exclusively to evacuate power from ISGS by a State for which there was no clarity in the Sharing Regulations. The Commission is of the view that relief in the present case should also be granted prospectively keeping in view the fact that the bills were raised by POSOCO as per the prevailing regulatory regime and the Commission by way of interpretation of various provisions of the regulations has exempted the Petitioners from payment of PoC charges and losses in this order in the light of the decisions in the earlier cases, pending amendment of Sharing Regulations as directed in Petition No.211/MP/2011. We direct that the relief granted in this order shall be applicable prospectively from date of issue of this order. **Therefore, we are not inclined to set aside the bills raised on the Petitioners since July 2011 in respect of 400 KV IGSTPS-Daulatabad Transmission Line as prayed for by the Petitioners.**”

27. Thus, in the order dated 4.5.2018, the Commission *inter alia* held as under:
- (a) The bills raised by CTUIL since July 2011 were in compliance with then prevailing regulatory regime which were duly paid by the Petitioners without raising any objection in this regard.
  - (b) The Commission decided to exempt the 400 KV IGSTPS-Daulatabad transmission line from payment of transmission charges and losses under PoC mechanism in light of the pleadings made by the Petitioners and decisions in Petition No.291/MP/2015, Petition No. 211/MP/2011 and Petition No. 20/MP/2017. Apparently, the relief has been granted to the Petitioners by virtue of interpretation of various provisions of the regulations departing from prevailing procedure being followed.

(c) Thus, the Commission laid down the law through its decisions in the aforesaid litigations brought before it regarding principles for allocation of transmission charges and losses under the PoC mechanism in specific circumstances brought before commission where adequate transmission system has been constructed by STU to evacuate for the State from ISGS whose treatment was not clear under the prevailing 2010 Sharing Regulations. Hon`ble Supreme Court in the case of PTC India Limited & Others Vs. Central Electricity Regulatory Commission, has observed that the law comes into existence not only through legislation but also by regulation and litigation.

(d) The Commission opined that relief should be granted prospectively keeping in view the fact that the bills were raised by POSOCO as per the prevailing regulatory regime and the Commission by way of interpretation of various provisions of the regulations had exempted the Petitioners from payment of PoC charges and losses in the order dated 4.5.2018 in light of the decisions in the earlier cases, pending amendment of Sharing Regulations as directed in Petition No.211/MP/2011.

28. Accordingly, the Commission directed that the relief granted in the order dated 4.5.2018 shall be applicable prospectively from the date of issue of the order. Therefore, the Commission declined to set aside the bills raised on the Petitioners since July 2011 in respect of 400 kV IGSTPS-Daulatabad transmission line as prayed for by the Petitioners.

29. In this regard, it would be pertinent to consider that the decision of Hon'ble Supreme Court in the case of *Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602* whereby it has been held that a statute which affects substantive rights is prospective in operation.



*“26.....(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.”*

30. Further, in the case of Baburam v. C.C. Jacob and Ors., [ (1999) 3 SCC 362], the Hon’ble Supreme Court invoked and adopted a device for avoiding reopening of settled issues, multiplicity of proceedings and avoidable litigation as under:

*“5. The prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law...”*

31. In light of the above, we do not find any reason to allow the Petitioner’s request for quashing of the bills raised by the Respondents retrospectively considering that the same were issued under the then prevailing regulatory regime.

32. The Petition No. 126/MP/2017 is disposed of in terms of the above. With this, the directions of APTEL in its judgment dated 4.2.2018 in Appeal No. 240 of 2018 stands implemented.

Sd/-  
**(Pravas Kumar Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I. S. Jha)**  
Member

