

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 246/MP/2018

Coram:

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

Date of Order: 21.4.2022

In the matter of

In the matter of declaration and consequent direction for determination of transmission charges for the 220 kV D/C Bhilangana-III - Ghansali line in terms of the order dated 10.05.2018 passed by the Hon'ble Supreme Court in Civil Appeals No. 2368-70 of 2015.

And in the matter of

M/s. Bhilangana Hydro Power Limited,
B – 37, IIIrd Floor, Sector 1,
Noida – 201301,
Gautam Budh Nagar (U.P.)

....Petitioner

Vs

1. Power Transmission Corporation of Uttarakhand Limited,
Vidyut Bhawan, near ISBT crossing, Saharanpur road, Majra,
Dehradun -248002, (Uttarakhand)
2. State Load Dispatch Centre,
Vidyut Bhawan, near ISBT crossing,
Saharanpur road, Majra,
Dehradun-248002 (Uttarakhand)
3. Northern Regional Load Dispatch Centre,
18-A, Shaheed Jeet Singh Sansanwal Marg,
Katwaria Sarai, New Delh-110016
4. Power Grid Corporation of India Ltd.
Central Transmission Utility
Saudamini, Plot No.2, Sector 29, Near IFFCO Chowk,
Gurgaon (Haryana) – 122001



5. Tata Power Trading Company Limited,
Shatabdi Bhawan, B 12 & B 13, Sector 4,
Noida, Uttar Pradesh - 201301

....Respondents

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

ORDER

The instant petition has been filed by the Petitioner Bhilangana Hydro Power Limited (herein after referred as "BHPL") which has set up a 24 MW hydroelectric power project (herein after referred as Bhilangana-III or B-III) on River Bhilangana near Village, Ghuttu, Tehsil Ghansali, District Tehri Garhwal, Uttarakhand. The aforesaid 24 MW hydroelectric power project was allocated under the competitive bidding process by the Government of Uttarakhand in the year 2003 and was commissioned on 20.12.2011. The entire power from Bhilangana-III project is being evacuated through:

- a. 220 kV D/C Bhilangana-III - Ghansali line;
- b. 220 kV S/C Chamba - Ghansali line;
- c. 01 Number 220 kV bay at 220 kV Chamba S/s.



2. The Petitioner has made the following prayers:

- “
- a. *Declare that for the period from 01.05.2012 till 02.04.2015, the 220 kV D/C Bhilangana-III- Ghansali line was part of Inter-State Transmission System;*
 - b. *Determine transmission charges for the 220 kV D/C Bhilangana-III - Ghansali line as per the PoC mechanism in accordance with the CERC (Sharing of Inter-state Transmission charges & losses) Regulations, 2010 and pass all consequential directions to Respondent No. 1 to enable such determination;*
 - c. *Pass such other and further order(s) as this Hon'ble Commission may deem fit.*
- ”

Submissions of the Petitioner

3. The Petitioner vide affidavit dated 1.8.2018 has submitted as follows:

- a. The Petitioner entered into a Power Purchase Agreement (PPA) with Tata Power Trading Company Limited (herein after referred as “TPTCL”) for sale of power from Bhilangana-III in December 2007 and subsequently, filed the necessary Open Access application seeking sale of power outside the State in February 2008. The Petitioner also executed a Transmission Services Agreement (TSA) with Power Transmission Corporation of Uttarakhand Limited (herein after referred as “PTCUL”) on 25.10.2008.
- b. During the period from 1.5.2012 till 2.4.2015, the Petitioner sold the entire electricity generated from its project outside the State of Uttarakhand through a PPA with TPTCL. In other words, the entire power carried on the 220 kV D/C Bhilangana-III - Ghansali line was inter-State during the said period.
- c. The Uttarakhand Electricity Regulatory Commission (hereinafter referred as the “UERC”) by an order dated 29.04.2013 declared that the 220 kV D/C Bhilangana-III - Ghansali line is a deemed ISTS system to be included in the PoC mechanism for recovery of transmission charges in accordance with CERC (Sharing of Inter-state Transmission charges & losses) Regulations, 2010 (hereinafter called as ‘2010 Sharing Regulations’). However, in the meanwhile to obviate the financial difficulty of PTCUL, UERC determined provisional transmission charges for the said line, recoverable by PTCUL only till December 2013. UERC further directed PTCUL to approach the Central Electricity Regulatory Commission (herein after referred as “CERC”) for determination of



transmission charges under the PoC mechanism. Relevant extracts of the order dated 29.04.2013 are reproduced hereunder:

“15. With regard to 220 kV D/C Bhilangana-III - Ghansali line, the Petitioner has submitted that presently this line is being utilised for evacuation of power from Bhilangana-III SHP which shall in future be used for evacuation of power from UJVN Ltd.’s proposed plant namely Bhilangana–II HEP.

16. Based on the above, the Commission is of the view that except for 220 kV D/C Bhilangana-III- Ghansali line other projects namely 220 kV GIS substation at Ghansali, 220 kV S/C Chamba -Ghansali line and 01 No. bay at 220 kV substation Chamba need be considered as system strengthening works of the transmission licensee and cost of these works, therefore will be included in the overall ARR of Transmission Licensee (Petitioner in the matter) to be recovered from distribution licensee of the State.

17. With regard to 220 kV D/C Bhilangana-III- Ghansali line, the Commission considers this as a transmission line which will be primarily used for evacuation of power from existing and proposed hydro generating stations in the area. The Commission has taken note of the fact that as of now while one circuit of this double circuit line is strung upto 220 kV S/s at Chamba and is being used for evacuation of power from the existing generating station namely Bhilangana-III (24 MW) the other circuit is strung upto Ghansali and is proposed to be connected to upcoming 220 kV S/s at Ghansali. It is apparent that only one circuit has been energised and put to use. Taking cognizance of the provisions of the Tariff regulations that any capital expenditure towards creation of an asset is deem fit for capitalization only if that asset is put to use, therefore, the Commission has decided to allow cost of servicing/ARR on only 50% of the capital cost incurred by the Petitioner towards the construction of the 220 kV D/C Bhilangana –III- Ghansali line which shall be recovered from the generator namely Bhilangana-III SHP, the only beneficiary as of now, subject to pro-rata recovery of this cost from other generators as and when they are commissioned and connected with this line. As far as the recovery of the balance capital cost of the line, disallowed as above, the Commission will take a view as and when the second circuit of the line is energised and put to use. Notwithstanding to what has been stated above, the Commission is also of the view that this line needs to be included by the Petitioner in the PoC mechanism for recovery of transmission charges as deemed ISTS system in accordance with CERC (Sharing of Inter-state Transmission charges & losses) Regulations, 2010, then the Petitioner shall accordingly recover the charges applicable thereof from the Generator. However, to obviate the financial difficulties being faced by the Petitioner due to non-servicing of the asset, a purely provisional determination is being made which will be subject to adjustment on determination of transmission charges for this line as deemed ISTS line by CERC.

...

30. Based on the above, the Commission decides as under:

...

The Commission has decided that the transmission charges payable by the Generator towards 220 kV D/C Bhilangana-III-Ghansali line shall be determined in



the proposed Tariff Order for PTCUL for the 1st control period (FY14 to FY16) on principles mentioned in Para 17 of this Order. These charges are provisional and will be replaced by the charges determined under the PoC mechanism by CERC. The Commission allows the Petitioner to recover these charges till December 2013 or till charges under PoC mechanism are determined. In case charges under PoC mechanism are not determined till December 2013, Petitioner should come up for further continuance of these charges furnishing details of efforts made/actions taken in this regard. The Commission may consider further continuance of these charges after satisfying itself of the due diligence of the Petitioner.”

- d. UERC vide its Multi Year Tariff order dated 6.5.2013, inter alia, directed PTCUL to ensure the compliance of paragraph 17 of order dated 29.04.2013.
- e. Aggrieved by the aforesaid orders dated 29.4.2013 and 6.5.2013, the Petitioner filed Appeal No. 128 and Appeal No. 129 of 2013, respectively before the Appellate Tribunal for Electricity (herein after referred as “APTEL”). The Petitioner raised the issue of jurisdiction in the aforesaid appeals and contended that under no circumstances a 24 MW renewable energy power plant can be burdened with the entire cost of single circuit of the 220 kV D/C Bhilangana-III – Ghansali line, capable of carrying around 200 MW on each circuit. According to the Petitioner, its liability to pay transmission charges was on proportionate basis only. On the other hand, PTCUL instead of approaching the CERC in terms of the directions of the UERC, filed a cross-appeal being Appeal No. 163 of 2013 before APTEL contending that the 220 kV D/C Bhilangana–III- Ghansali line is an intra-State line and that the Petitioner herein ought to be made liable to bear the entire cost of the 220 kV S/C Chamba-Ghansali line as well.
- f. The APTEL, after hearing the parties, passed a common order on 29.11.2014 in Appeal No. 128, Appeal No. 129 and Appeal No. 163 of 2013, dismissing the appeals and upholding the order passed by the UERC. Relevant extracts of the order dated 29.11.2014 are reproduced hereunder:

“26. Summary of our findings:

a) BHPL is liable to pay entire transmission charges for one circuit of the line as determined by the Commission which is as per the Regulations.

b) PTCUL is entitled to recover charges for only one circuit of the line from the Appellant.

27. With above discussions, all the three Appeals are dismissed. However, there is no order as to costs.”



- g. The Petitioner challenged the aforesaid common order before Hon'ble Supreme Court in Civil Appeal No. 2368, Civil Appeal No. 2369 and Civil Appeal No. 2370 of 2015. As the issue of the jurisdiction was not decided by the APTEL in its order dated 29.11.2014, the Petitioner challenged the same in these Civil Appeals. The Petitioner, inter alia, raised the following ground in the civil appeals:

“Further, the Hon'ble Tribunal erred in failing to decide the issue that the Ld. State Commission (Uttarakhand Electricity Regulatory Commission) after itself holding that it does not have jurisdiction to levy the charge because the subject line needs to be included in the POC mechanism for recovery of transmission charges as deemed ISTS system in accordance with the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2010 could not have proceeded to hold that in order to obviate the financial difficulties faced by Respondent No. 1 due to non-servicing of the asset, the determination is made on a provisional basis and subject to final determination of transmission charges by CERC. This issue regarding jurisdiction of the appropriate commission has not been dealt with in the impugned judgment.”

- h. PTCUL also filed a review petition, being Review Petition No. 2 of 2015 in Appeal No. 163 of 2015 before the APTEL, inter alia, on the issue of jurisdiction. PTCUL sought a declaration that the 220 kV Bhilangana - Ghansali line is an intra-State line and the UERC has jurisdiction to determine the transmission charges for this line. The APTEL by an order dated 15.05.2015 held that the review is not maintainable on the issue of jurisdiction as the same was pending before the Hon'ble Supreme Court in Civil Appeal No. 2368, Civil Appeal No. 2369 and Civil Appeal No. 2370 of 2015.
- i. The Supreme Court while disposing of the aforesaid Civil Appeals, held as follows vide Order dated 10.05.2018:

“Heard learned counsel for the parties and perused the record.

We do not find any merit in these appeals. The same are, accordingly, dismissed. This order will be subject to the liberty to the appellant to move the Central Commission to establish that for any particular period the transmission was inter-state and on this being established, the Central Commission will be at liberty to modify the charges which will be treated to be provisional till then. If no such application is filed within three months, the impugned order will be treated as final.



It will be open to the respondents to show that the charges have already been recovered from the buyers or that transmission was not inter-state and no modification was required.”

- j. The Hon'ble Supreme Court recognized that the issue of jurisdiction needs to be decided for which liberty was given to the Petitioner to move to CERC to establish that for a particular period the transmission was inter-State and transmission charges for such period are to be determined by the CERC.
- k. The Petitioner has submitted that UERC vide its orders dated 24.11.2011, 29.04.2013 and 06.05.2013 decided that the Bhilangana-III - Ghansali line is a deemed ISTS system and has to be included in the PoC mechanism for recovery of transmission charges in accordance with 2010 Sharing Regulations. The order dated 24.11.2011 was never challenged by PTCUL and the orders dated 29.04.2013 and 06.05.2013 have been upheld by the Hon'ble APTEL and now the Hon'ble Supreme Court. Accordingly, the provisional transmission charges determined by the UERC ought to be replaced by the PoC charges determined in terms of the 2010 Sharing Regulations.
- l. For the period from 1.5.2012 till 2.4.2015, the entire power transmitted on the Bhilangana-III - Ghansali line has been for Inter-State sale. In terms of Section 2(36)(ii), a transmission system used for conveyance of electricity within the State, which is incidental to inter-State transmission of electricity, also qualifies as inter-State transmission system.
- m. In terms of para 2.1.3 of Annexure-I to 2010 Sharing Regulations, STU lines used for carrying inter-State power can be considered for inclusion in the PoC charges if it is certified by RPC.
- n. In the present case, admittedly the entire power carried through the 220kV Bhilangana-III - Ghansali line was being transmitted outside the State. However, PTCUL failed to comply with the aforesaid procedure and did not get the line certified by RPC, in compliance of the directives of the UERC in its orders dated 24.11.2011, 29.4.2013 and 6.5.2013. Even after dismissal of its Appeal No. 163 of 2013 by the Hon'ble APTEL, PTCUL failed to apply to CERC for inclusion of the said line in the PoC mechanism. Petitioner's right to have the line included in the PoC mechanism and the classification of the line as an Inter-State



Transmission System (ISTS), cannot be held hostage to the whims and fancies of the STU.

- o. Even though the Petitioner had envisaged the project for sale of power outside the State of Uttarakhand, aggrieved by the excessive transmission charges and the common judgment and order dated 29.11.2014, passed by the Hon'ble APTEL in Appeal No. 128, Appeal No. 129 and Appeal No. 163 of 2013, the Petitioner was compelled to supply power from Bhilangana-III project within the State only to UPCL (through Tata Power Trading Company Ltd.) w.e.f. 3.4.2015.

Hearing dated 17.1.2019

4. During the hearing on 17.1.2019, the Petitioner submitted that pursuant to the direction of the Hon'ble Supreme Court dated 10.05.2018 in Civil Appeal No. 2368, Civil Appeal No. 2369 and Civil Appeal No. 2370 of 2015, the Petitioner has filed the present petition for determination of transmission charges for the 220 kV D/C Bhilangana-III – Ghansali line. The Commission, after hearing the Petitioner, admitted the Petition.

Reply of Respondent Northern Regional Load Despatch Centre (NRLDC)

5. Respondent NRLDC vide affidavit dated 28.2.2019 has submitted as follows:
- a. Bhilangana – III hydroelectric project is a State embedded generating station under the state control area of Uttarakhand. Therefore, its metering, scheduling and accounting is coordinated by SLDC Uttarakhand as being under jurisdiction of SLDC Uttarakhand, as per extant regulations.
 - b. The 220 kV D/C Bhilangana-III – Ghansali line and 220 kV Ghansali substation are owned and operated by the State Transmission Utility (STU) i.e. PTCUL and the transmission system beyond Ghansali S/S upto 400 kV Roorkee (PG)/ 400 kV Nehtaur (UPPTCL)/ Kashipur (PTCUL) is also owned and operated by the STU i.e. PTCUL and the generating stations is deep embedded into the state transmission system and hence the said line is an intra-State line.



- c. As per section 86(1) (a) of the Electricity Act, 2003, determination of tariff for transmission and wheeling of electricity within the state is under the jurisdiction of the State Commission.
- d. As per the details submitted by the Petitioner, BHPL has sold its entire power in Short term Open Access (through bilateral transactions as well as collective transactions) for the period from 1.5.12 to 2.4.15. However, as Bhilangana–III is a state embedded intra-state generator, its scheduling, metering and accounting is done by SLDC, Uttarakhand and therefore SLDC only can verify this claim. It is possible that part of power, such as free power may have been supplied to UPCL.
- e. As per the information available at NRLDC, for the purpose of inter-state STOA transactions, PTCUL had considered Bhilangana-III project as internal to the State Transmission System. Therefore, the Uttarakhand State Transmission Charges were neither levied nor collected and disbursed by the nodal RLDC, in this case the NRLDC for these inter-state STOA transactions. The charges for these transactions also stand reconciled with no dispute. From these available facts, it is evident that all the parties involved were clear that generator was a State-embedded generator using State Transmission system for the inter-state STOA transactions.
- f. Further, the argument of the Petitioner for considering 220 kV D/C Bhilangana III – Ghansali line as inter-state line merely because Bhilangana-III was transacting through inter-state STOA also seems to be out of place. In this respect following need to be considered:
- The CERC (Open Access in Inter-State Transmission) Regulations 2008 as amended from time to time for Inter-State Open Access, allow availing of open access to embedded entities for which they need to pay the transmission charges for state transmission network (as determined by the respective state commissions or even in the absence of state commission determined charges) as mentioned in the above regulations of the CERC.
 - The Short Term transactions by nature are for short duration of time and these can change at any time. An inter-state STOA on one day could become intra-state on other day. Therefore, merely inter-state STOA transactions should not be reason for declaring a line/transmission system as inter-state one.
 - There is also a need to distinguish between inter-state transaction and inter-state transmission of power.
- g. The connectivity of Bhilangana–III project is embedded deep inside the State Transmission Network. The transmission line in question is connected to the intra-



state network before its connection to the ISTS system and therefore, cannot be considered as an ISTS line.

- h. UERC vide paragraph 16 of its order dated 29.4.2013 in Petition No. 11 and Petition No. 20 of 2012, has considered 220kV GIS substation at Ghansali, 220 kV S/C Chamba – Ghansali line and 01 Number bay at 220kV substation Chamba as system strengthening works of the transmission licensee excluding 220kV Bhilangana III – Ghansali D/C line and has directed PTCUL in paragraph 17 of the said order to get the 220 kV D/C Bhilangana III – Ghansali line included in the inter-state POC mechanism for recovery of its transmission charges. If the logic for considering 220kV Bhilangana III – Ghansali D/C line under inter-state POC mechanism is extended, then the last mile connections (be it of STU network or distribution licensee's network) of all the inter-state open access (LTA, MTOA and STOA) transactions, would qualify as ISTS and be considered under inter-state POC mechanism.
- i. Based on the physical power flow pattern at 400/220 kV ICTs at PTCUL, Rishikesh, it is evident that the entire power generation at Bhilangana-III generating station is consumed by Uttarakhand and there is in general no physical power flow outside the state of Uttarakhand. Therefore, the participation factor or percentage usage of the line in question would almost be zero for other than the home state of Uttarakhand as required under 2010 Sharing Regulations for considering non-ISTS lines as carrying inter-state power.
- j. Further, CERC has devised a methodology for certification of an intra-State line as a Non-ISTS line carrying inter-state power and to be considered under inter-state POC mechanism for recovery of its transmission charges. However, PTCUL has not approached Northern Regional Power Committee (NRPC) for certification of this line as a Non-ISTS line carrying inter-state power. Therefore, all along the aforesaid transmission line has been considered as an intra-state line.

Reply of Respondent PTCUL

6. PTCUL vide affidavit dated 28.3.2019 has filed its reply and has submitted as follows:
 - a. A Memorandum of Understanding vide dated 25.01.2017 was executed between the Petitioner and PTCUL, wherein it was stated that PTCUL would arrange to evacuate



power from the switchyard of Project, to the proposed 220/33 kV substation at Ghansali.

- b. Subsequently, a Transmission Services Agreement dated 25.10.2008 was executed between the Petitioner and PTCUL (“TSA”) for construction of transmission network for evacuation of power from the Project wherein the obligations of PTCUL were specified as a state transmission utility. Further, the transmission network to be developed by PTCUL was envisaged to be within the State of Uttarakhand for the Project and other upcoming generators i.e an intra-state transmission network. PTCUL’s obligations are clearly defined under Article 4.1 of the TSA, which is reproduced below for convenient perusal:

“ 4.1

Subject to the terms and conditions of this Agreement, PTCUL at its own cost and expense shall observe, comply with, perform, undertake and be responsible:

...

*(b) for financing, building, owning and commissioning each of the elements of the PTCUL/UPCL Power Network in accordance with applicable standards, SEGC and IEGC, so as to facilitate Evacuation System available from the interconnection point upto pooling points **within the state.***

To make available the transmission capacity of the PTCUL/UPCL power network prior to Scheduled or Revised Scheduled COD to the Company for safe transmission of power as per this Agreement adhering to the applicable provisions in-force by UERC Regulations/Grid Code.”

- c. As per the relevant provisions of UERC (Conduct of Business) Regulations, 2004, PTCUL was required to approach the UERC for Investment Approval of the transmission network being developed for evacuation of power from the Project. Therefore, PTCUL filed a petition for Investment Approval of the said network on 03.07.2009 comprising of the following elements:
1. 220kV D/C Bhilangana-III-Ghansali line
 2. One No. 220kV Bay at 220kV Chamba sub-station
 3. 220kV Chamba-Ghansali line
 4. 220kV AIS Ghansali sub-station
- d. UERC, vide its order dated 24.11.2011, excluded the aforesaid elements from the REC-IV Investment proposal of the PTCUL as UERC considered these transmission elements as dedicated transmission system through which the power of Bhilangana-



III shall be transmitted outside the state, accordingly transmission/ wheeling charges for these elements shall be borne by the beneficiary generators.

- e. PTCUL implemented the 220 kV D/C Ghuttu-Ghansali Line (herein after “Ghuttu” is referred as “Bhilangana-III”) for evacuation of power from the Project as per the terms and conditions of TSA on 21.10.2011, and the same was energised on 4.11.2011. Pertinently, thereafter, the Petitioner signed PPA with UPCL on 26.12.2011, for sale of its power and commenced supplying power w.e.f 20.12.2011 up to 30.04.2012 to UPCL.
- f. UERC in its order dated 29.04.2013 had misinterpreted certain paragraphs of the ARR filed by PTCUL for the Associated Transmission Network of the Petitioner’s Project and considering a part of it as an augmentation of intra-state transmission network and the other part i.e. 220 kV D/C Bhilangana-III -Ghansali Line as a network utilised solely for evacuation of power from the Project whose charges were determined provisionally until the said line comes under the ambit of 2010 Sharing Regulations .
- g. Further, UERC determined the ARR of 220KV S/C Bhilangana-III -Ghansali Line vide its tariff order dated 06.05.2013 provisionally and also directed the Petitioner to clear the backlog of transmission charges within 30 days of the date of issue of the above said order. Therefore, it is clearly established that the line in issue is a state embedded network whose investment approval was accorded by UERC and the ARR for the said network was also determined by UERC.
- h. The 220 kV D/C Bhilangana-III-Ghansali Line, which is from the Project till Chamba, was required to be undertaken and constructed in its entirety in order to provide the transmission services to the Petitioner. Pertinently, the 220 kV D/C Bhilangana-III - Ghansali Line is at present a dedicatedly used line and its sole use is by the Petitioner and the transmission charges for such dedicated system ought to be borne entirely by Petitioner.
- i. The entire 220kV D/C Bhilangana-III-Ghansali Line of high voltage was established much before the commissioning of the Ghansali sub-station, considering the general load growth and coming into operation of other generating stations, at the instance of



and exclusively for the Petitioner. As such the Petitioner is under an obligation to bear the entire transmission charges for the same.

- j. In terms of relevant clauses of the Regulations regarding Commercial Operation Date (“COD”) read together with the TSA signed between the parties, the Petitioner is obliged to pay the transmission charges to PTCUL as determined by the Appropriate Commission. It has always been PTCUL's case that as the 220 kV D/C Bhilangana-III-Ghansali Line is part of the intra-state transmission system, the appropriate commission in the present case is the UERC, which has the authority to determine the tariff in terms of its applicable regulations. As per Regulation 21 of the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2010 (herein after referred as “Open Access Regulations, 2010”) which provides for payment of transmission and wheeling charges, the open access customer using the transmission system is liable to bear the entire transmission charges for the transmission system, if such transmission system has been constructed for exclusive use of such open access customer or is being exclusively used by such open access customer.
- k. There is no dispute that the Petitioner in the present case is exclusively using the 220 kV D/C Bhilangana-III -Ghansali Line and is responsible to bear the transmission charges for the entire system till the time any new entity raises a contention that it is utilizing only part of the capacity of the line and accordingly it is liable to pay transmission charges only on proportionate basis to the extent of its usage in line with the relevant provisions of UERC, Open Access Regulations, 2010 and 2015.
- l. The transmission line between the Petitioner’s Project and Ghansali i.e., 220 kV D/C Bhilangana-III-Ghansali Line as well as the Ghansali - Chamba transmission line which connects to Chamba sub-station cannot be construed as an ISTS line or a deemed ISTS line merely because the Petitioner is exporting power generated at its Project on short term basis outside the state of Uttarakhand through the said transmission system/lines. This is not sufficient for a line to be declared ISTS or be deemed ISTS in terms of Section 2(36) (ii) of the Act.
- m. The definition of Deemed Inter State Transmission System (Deemed ISTS) means such transmission system which has regulatory approval of the Commission as being



used for interstate transmission of power and qualified as ISTS for the purpose of these Regulations under otherwise specified.

- n. As per the definition of inter-state transmission system under Section 2(36) of the Electricity Act 2003, the conveyance of electricity within the territory of a state can be said to be a part of inter-state transmission system in two circumstances. Firstly, such conveyance of electricity within the state should be incidental to inter-state transmission of electricity. The transmission line between Bhilangana-III-Ghansali as well as the Ghansali-Chamba transmission line which connects to Chamba sub-station clearly do not fall within the categories envisaged under regulation 2(36) (i) and 2(36)(iii) because the 220 kV D/C Bhilangana-III-Ghansali Line is connected with Ghansali-Chamba line which in turn connects to the Chamba sub-station. The said line forms part of intra state transmission System which is owned and operated by the PTCUL and is not connected to ISTS either at Bhilangana or at Chamba sub-station.
- o. The Chamba sub-station is not connected to any interstate transmission system of the CTU/ PGCIL or with any other interstate transmission licensee. The Chamba sub-station is connected to a 220 KV sub-station at Rishikesh, which is further connected to a 220 KV substation Haridwar where there is an interstate transmission line at 400/220KV substation (Roorkee) owned by PGCIL.
- p. The electricity from Chamba S/S to the aforementioned substations is transmitted not only for the Petitioner's Project but is also used for others who produce electricity for use within the State. Therefore, the Chamba substation cannot be treated as an ISTS line/ system and accordingly the electricity evacuated from the Petitioner's Project to the substation at Chamba through Bhilangana-III-Ghansali and Bhilangana-III-Chamba transmission lines cannot be treated as deemed ISTS as alleged by the Petitioner.
- q. In the present circumstances, neither the said transmission system falls within the Section 2(36)(ii) nor the present Sharing Regulations will apply for determination of charges as the subject transmission line is not incidental to Inter-state transmission system and is a state embedded network, therefore is a part of intra- state transmission system. The Removal of Difficulty Order dated 04.04.2011 issued by the CERC clearly provided that a non-ISTS line will only be deemed to be used for



interstate transmission once the process of load flow study has been conducted and that such a study conclusively displays that more than 50% of the total power transmitted through the line is inter-state power. Relevant extracts of the removal of difficulty order is reproduced below for ready reference:

"26(d) In case of RPC certified non-ISIS lines whose tariff has not been separately approved by SERCs, the tariff would be determined on the basis of the average YTC computed by NLDC for the relevant voltage and conductor configuration. All non-ISTS lines which had been certified by the RPCs for carrying inter-State power would continue to be considered ipso facto. The new non-ISTS lines inter-state power would be determined through the process of load flow studies and based on its results, if the lines are found on an annual average basis, to carry more than 50% of total power as inter-state power, as vetted by NLDC".

- r. In view of the aforementioned Sharing Regulations, the 220 kV D/C Bhilangana-III - Ghansali Line and Ghansali-Chamba transmission lines cannot be presumed to be used for inter-state transmission of power till the time a load flow study in accordance with the Sharing Regulations is conducted and the results of which establish that 50% of the total power transmitted through the said line is interstate power. Since no study has been carried out for the transmission system comprising the aforesaid transmission lines to check the actual load flow, the said system cannot be deemed to be construed as ISTS within the meaning of Sharing Regulations.
- s. Even though the APTEL did not give an explicit finding on the issue vide its order dated 29.11.2014, it is evident from the order that 220 kV D/C Bhilangana-Ghansali Line was planned and constructed by PTCUL as a state transmission system for evacuation of power from all the generating Stations – small and major, including the Petitioner's Project, and therefore is an intra-state line.
- t. As per the details submitted by the Petitioner, it has sold its entire power in Short Term Open Access (through bilateral transactions as well as collective transactions) for the period from 01.05.12 to 02.04.15.
- u. CERC (Open Access in Inter-State Transmission) Regulations, 2008 allow availing of inter-state open access to embedded entities for which they need to pay the transmission charges for state transmission network (as determined by the respective state commissions or even in the absence of state commission determined charges) as mentioned in the above regulations of the CERC. The Short Term transactions by



nature are for short durations of time, very flexible and non-permanent in nature. Therefore, merely inter-state STOA transactions cannot be a reason for declaring a line/transmission system as ISTS.

- v. In view of the above, the Petitioner's claim has no basis in law or in fact. The 220 kV D/C Bhilangana-III -Ghansali Line is an intra-state transmission line and its nature cannot be altered as deemed ISTS merely because the Petitioner engaged in STOA transactions for a certain brief period.
- w. There is a need to draw a clear difference between an inter-state transaction and inter-state transmission system. If 220 kV D/C Bhilangana-III -Ghansali Line can be declared as deemed ISTS line only on the basis of the fact that it carried inter-state transaction during a certain period of time then it would mean that all the intra-state network of both PTCUL as well as UPCL which are being utilised for inter-state open access transaction are eligible to be ISTS which is not the case in terms of the CERC Regulations.
- x. PTCUL never approached the Regional Power Committee for certification of this line as a Non-ISTS line since the line in issue was developed and maintained as an intra state transmission network since the beginning and was never construed to be ISTS or deemed ISTS network.

Rejoinder of the Petitioner to the reply of NRLDC

7. The Petitioner vide affidavit dated 28.11.2019 has filed rejoinder to the reply of NRLDC and has reiterated its submissions. However, the additional information submitted by the Petitioner is as follows:

- a. The Petitioner sold the entire electricity generated from its project outside the State for the period from 01.05.2012 to 02.04.2015. No free power was supplied by the Petitioner to UPCL. In other words, the entire power carried on the 220 kV D/C Bhilangana-III - Ghansali line was inter-State. UERC vide order dated 24.11.2011 had decided that if more than 50% of the total power carried through such system is inter-state power and the system is duly certified by RPC, then the line shall be non ISTS or deemed inter-state lines in accordance with the provisions of the Electricity Act,



2003 and 2010 Sharing Regulations read with various Removal of Difficulty Orders of the CERC issued under the aforesaid Regulations.

- b. The reliance placed by NRLDC upon the sample graphs of power flow on the 400/220kV ICTs at 400kV PTCUL Rishikesh is entirely misplaced. The Petitioner has already clarified in the petition that Bhilangana-III project was envisaged for sale of power outside the State of Uttarakhand. However, aggrieved by the excessive transmission charges and the common judgment and order dated 29.11.2014, passed by the Hon'ble Tribunal in Appeal Nos. 128, 129 and 163 of 2013, the Petitioner was compelled to supply power from Bhilangana-III project within the State only to UPCL (through Tata Power Trading Company Limited) w.e.f. 03.04.2015.

Hearing dated 21.1.2020

8. During the hearing dated 21.1.2020, on the request of the Petitioner, the Petitioner was allowed to implead Tata Power Trading Company Limited (TPTCL).

Reply of Tata Power Trading Company Ltd (TPTCL)

9. TPTCL has filed its reply vide affidavit dated 14.2.2020 where it has submitted that it has executed a PPA with the Petitioner vide dated 27.12.2007 and for the period from 1.5.2012 till 2.4.2015, the entire power generated by the Petitioner's 24 MW hydro project Bhilangana-III was sold outside the state of Uttarakhand.

Hearing dated 30.7.2021

10. PTCUL submitted that the Petitioner executed Power Purchase Agreement (PPA) dated 27.12.2007 with TPTCL and as per the PPA, the Petitioner was responsible for delivery of power only up to the State boundary and sale of power through Short term Open Access (STOA) was within the State. Accordingly, transaction was intra-State and not inter-State.



11. TPTCL submitted that a distinction is required to be made between trading of electricity and transmission of electricity. The transmission of electricity is not dependant on sale or purchase of the electricity rather on conveyance of electricity as per Section 2(36) of the Act. The delivery point in the PPA is at CTU point, which also reflects that power was deemed to flow outside the State of Uttarakhand.

12. NRLDC submitted that short-term transactions by nature are for short duration of time and keep changing over time. Therefore, inter-State STOA transactions should not be the basis for declaring a line or transmission system as inter-State. NRLDC further submitted that the power flow study was conducted for 400/220 kV transformers at PTCUL, Rishikesh which showed that all the power was consumed within the State of Uttarakhand. As power flow outside the State of Uttarakhand was not more than 50%, the line cannot be treated as an ISTS line, as per the prevalent regulations. Neither is there a RPC certificate for the said period for considering the transmission line as ISTS line.

13. During the hearing, the Commission directed the Petitioner to clarify if the transmission tariff is being claimed for 220kV S/C Bhilangana-III - Ghansali Transmission Line or for 220kV D/C Bhilangana-III - Ghansali Transmission Line. The Commission directed PTCUL to submit the commissioning dates of Ghansali GIS Sub-station, Ckt-1 and Ckt-2 of 220 kV D/C Bhilangana-III – Ghansali Transmission line.

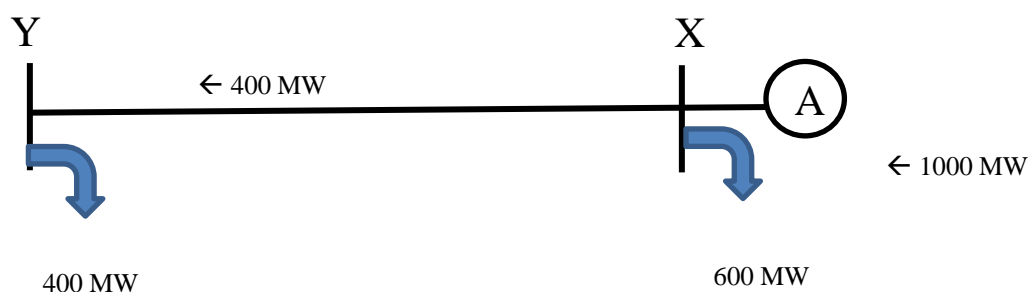
Additional submissions by the Petitioner in compliance of hearing dated 30.7.2021

14. The Petitioner vide affidavit dated 18.8.2021 has submitted following additional information:

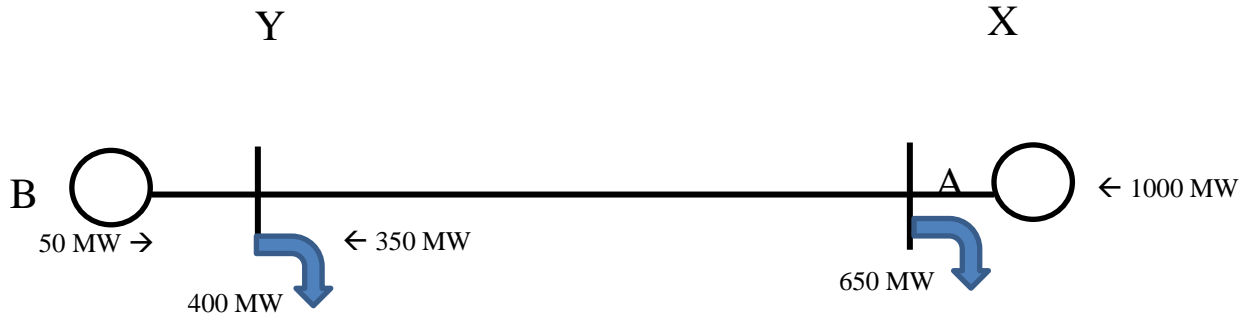


- a. The issue raised in the present petition is with regard to the transmission charges payable for the 220 kV S/C Bhilangana-III- Ghansali line.
- b. Even a non-ISTS transmission line can be included in the PoC mechanism if it satisfies certain criteria i.e. more than 50% of power flow over this line is Inter-State power on annual basis. It is not necessary that same electrical power generated in one State has to be consumed in another State to qualify as inter-state power. In an integrated network the electrical power is transmitted from one place to another by way of displacement. This concept can be explained by following example:

Example I: let us try to explain this concept in power sector. State 'X' (rest of NR) has Generator A of 1000 MW and load of 600 MW. Generator A of State X entered in to PPA with State Y (UK) to supply 400 MW (UK's Share in CSGS). This transaction is graphically represented as below:



Another Generator B of 50 MW has been commissioned in State Y and has entered in to a PPA with a consumer in State X to supply 50 MW of power. Total load of State X would become 650 MW. Power from new generator B in State Y will be consumed in State Y itself and import from State X will be reduced by 50 MW to 350 MW and released 50 MW generated by generator A will be consumed in State X to meet additional load of 50 MW. There will not be any physical transfer of 50 MW from generator B in State Y to State X. The revised transaction is represented below:



The above example is most appropriate to explain what has happened in the State of Uttarakhand and why power generated by Bhilagana-III and exported outside the State had not been reflected at Rishikesh ICT. It is to be noted that Uttarakhand has about 675 MW of Share in CSGS in the Northern Region located outside the State and about 300 MW as share in HEPs located within the State. It is but obvious that the generation within the State, despite the fact that such generators have entered into PPA with utilities outside the State, would first be consumed within the State and States share from CSGS would be adjusted in Regional Energy Accounts.

Power from Bhilangana-III would be consumed within the State and Uttarakhand's share from CSGS outside the State would be supplied to the beneficiary utility under PPA or DAM. Accordingly, power generated by Bhilangana-III and sold outside the State of Uttarakhand qualifies to be inter-state power and line would qualify to be an ISTS under Section 2(36)(ii) of the 2003 Act.

- c. In accordance with the PPA signed between BHPL and TPTCL, the delivery point would be the nearest CTU S/s and open access to PTCUL will be obtained by BHPL and Open Access to ISTS beyond delivery point will be responsibility of TPTCL. TPTCL had been obtaining short term open access from the nodal agency in accordance with CERC's Open Access Regulations and had paid transmission charges for the use of ISTS beyond the delivery point in Uttarakhand to point of drawal of drawing State.
- d. Invoices dated 01.10.2012, 09.06.2013 and 12.03.2014 raised by NRLDC upon TPTCL for use of inter-state transmission charges and NRLDC charges on short term is submitted. A bare perusal of the invoices would reveal that it is for transfer of



energy to be injected at Uttarakhand and withdrawn at Punjab or Uttar Pradesh bus. In case the claim of NRLDC is correct that power from Bhilangana-III was consumed within the State of Uttarakhand and to be precise around Chamba and Rishikesh, then how and why NRLDC had been raising invoices for Inter-State transfer of power for the period.

- e. In the present case, after claiming inter-state transmission charges under PoC mechanism, it is not open to the Respondents to contend that there was no inter-state power flow.
- f. NRLDC ought to have carried out the requisite load flow studies before concluding that the power from Bhilangana-III did not go outside the State of Uttarakhand or it is not inter-state power.
- g. CERC by its Order dated 01.06.2011 passed in Petition No. 259 of 2010 has held that 220 kV D/C line from Allain Dungan to Nalagarh is an Inter-State line only on the basis that power from AD Hydro would be sold to utility outside the State of Himachal Pradesh i.e. Inter-State transaction. Both terminal ends of line i.e., Allain Dungan and Nalagarh are in the State of Himachal Pradesh. In this case NRLDC did not object and verify from the flows of ICT at Nalagarh to ensure that power from AD Hydro injected at 220 kV level at Nalagarh is stepped up to 400 kV and exported out of State of Himachal Pradesh. In fact, in that case, the Petitioner, AD Hydro had been contesting that the line is his dedicated transmission system and the CERC does not have any jurisdiction over this line. The only difference between the two cases is that in AD Hydro case line is directly connected to CTU system and in Bhilangana case the Bhilangana-III – Ghansali line is connected to CTU system through the STU system.
- h. Furthermore, CERC in the case of Rajasthan Rajya Vidyut Prasaran Nigam Limited vs. Power Grid Corporation of India Ltd. & Ors. (Petition No. 26/TT/2017), by an order dated 19.09.2019 retrospectively revised PoC charges.
- i. Government of Uttarakhand (GoU) has exempted the Bhilangana-III project from free power for 15 years from CoD (Under para 4.2.1 of Implementation Agreement executed between the GoU and Bhilangana).



- j. CERC vide order dated 31.05.2021 in Petition No. 351/MP/2018 (Coastal Energen Private Limited vs. Tamil Nadu Generation and Distribution Corporation Limited & Anr.), CERC took into consideration the short-term transactions carried out through an inter-state trader for the purpose of ascertaining whether the CERC has jurisdiction to adjudicate the petition under Section 79 or not. Pursuant to taking into account the short-term transactions carried out through an inter-state trader, it was held that CERC has jurisdiction during the period when power was supplied outside the state even if such supply was under short term transactions carried out through an inter-state trader.

Additional submissions by PTCUL in compliance of hearing dated 30.7.2021

15. PTCUL vide affidavit dated 16.9.2021 has submitted as follows:
- a. The work of construction of Ghansali sub-station has not yet started. The 220 kV S/C Bhilangana-III –Ghansali Line(ckt-1) was commissioned on 4.11.2011 and the second circuit of the said line is completed but yet to be commissioned.
 - b. The transmission line in question is a 220 kV D/C Transmission Line which is emanating from the Petitioner's 24 MW Hydroelectric Power Project at Bhilangana-III to Chamba S/S. Electricity is evacuated from the Petitioner's Project at Bhilangana-III to the PTCUL's Chamba S/S through the Bhilangana-III-Chamba transmission line. It is clarified that there is no actual bifurcation of the line at Ghansali and it is a single circuit line from Bhilangana-III-Chamba. One of the circuit emanates from the gantry of the Bhilangana-III and terminates at 220 kV Chamba sub-station of PTCUL, whereas the second circuit terminates at Ghansali where the 220/33 kV sub-station is proposed. The entire line i.e. from Bhilangana-III to Chamba, forms part of an Intra-State Transmission System, which is owned and operated by PTCUL and is admittedly not connected to any ISTS either at Bhilangana or at the Chamba sub-station.
 - c. The said transmission line from Bhilangana-III to Chamba is at present a dedicatedly used line and is used solely by the Petitioner and the transmission charges for such dedicated use of the transmission line ought to be borne only by the Petitioner as per the relevant Regulations.

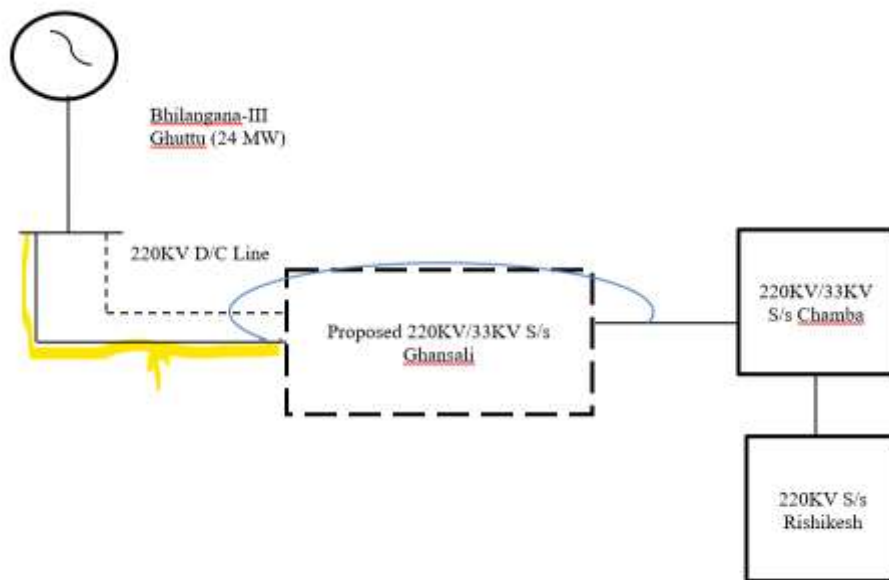


- d. UERC has considered deemed bifurcation of the 220 kV Bhilangana-III-Chamba Line as Bhilangana-III-Ghansali and Ghansali-Chamba and treated Bhilangana-III - Ghansali segment as interstate (deemed ISTS) and Ghansali-Chamba as intrastate, the transmission charges for which are being recovered from the State Discom through approved ARR (Annual Revenue Requirement) of PTCUL. UERC vide its order dated 06.05.2013 misinterpreted certain paras of the tariff petition/ARR dated 29.11.2011 filed by PTCUL for the Associated transmission Network of the Petitioner's Project,
- e. The Petitioner vide Affidavit dated 18.08.2021 has submitted that vide the above tariff petition dated 29.11.2011, PTCUL has sought provisional ARR for the said network, is factually incorrect. It is stated that no such prayer was made by the PTCUL in its petition and the tariff was required to be determined by the UERC as per the relevant provisions of the Tariff Regulations. UERC vide order dated 6.05.2013 determined the transmission charges on provisional basis.
- f. It is pertinent to highlight that UERC accorded investment approval for the said transmission network as per the UERC (Conduct of Business) Regulations, 2004 considering a part of it as an augmentation of intra-state transmission network and the other part i.e 220kV Bhilangana-Ghansali line (hypothetical bifurcation by UERC) as a network utilized solely for evacuation of power from the Project whose charges were determined provisionally. PTCUL had challenged the order dated 06.05.2013 of the UERC before Hon'ble APTEL, wherein one of the issues raised was that the 220 kV Bhilangana-Chamba Line is an intra-state line deeply embedded within the state of Uttarakhand and that UERC is the appropriate authority to determine the transmission charges of the said network. Although UERC has stipulated in its order dated 29.04.2013 that CERC should determine the transmission charges under the 'PoC' Regulations, 2010, but it continued to approve annual transmission charges of the said Network as per the Tariff/ARR filed by PTCUL every financial year and even till date.
- g. The decision of CERC in Petition No. 351/MP/2018 (Coastal Energen pvt. Ltd. Vs Tamil Nadu Generation and Distribution Corporation Limited & Anr.) referred to by the Petitioner is not applicable to the issues in its present case.



Analysis and Decision

16. We have considered the submissions of Petitioner and Respondents on record. The issue in the instant Petition pertains to treatment of one circuit of Bhilangana-III to Ghansali D/C Line for the period from 1.5.2012 to 2.4.2015, when the Petitioner sold the entire electricity generated from its project outside the State. The Single Line diagram for the instant case is reproduced below and line highlighted in yellow is under adjudication:



17. The brief facts and submissions made in the instant case are as follows:

- a) The Petitioner BHPL has set up a 24 MW HEP (Bhilangana-II or B-III) on river Bhilangana, Uttarakhand. This 24 MW HEP project was commissioned on 20.12.2011 and the entire power from this project is being evacuated through the transmission system constructed by PTCUL (State Transmission Utility).
- b) Petitioner BHPL has entered into a PPA with TPTCL for sale of power from B-III in December 2007 and subsequently Petitioner also executed a TSA with PTCUL on 25.10.2008.
- c) Petitioner BHPL has submitted that



(i) During the period from 1.5.2012 to 2.4.2015, the Petitioner sold the entire electricity generated from its project outside the State i.e. the entire power carried on the 220 kV D/C Bhilangana-III - Ghansali line was inter-State. Therefore, the said line should be treated as an ISTS transmission line and its transmission charges shall be determined by CERC as per 2010 Sharing Regulations

(ii) UERC vide order dated 24.11.2011 approved the Capital Investment plan of PTCUL. While approving such capital investment plan, UERC excluded the transmission system comprising inter-alia 220 kV D/C Bhilangana-III-Ghansali line from the investment proposal of PTCUL as UERC considered these transmission assets were developed to evacuate power from the generators for sale of power outside the state of Uttarakhand and therefore could not be considered under system strengthening schemes. UERC also directed that transmission/ wheeling charges for the aforementioned excluded transmission assets shall be recovered through beneficiary generators.

(iii) UERC vide order dated 29.04.2013 declared 220 kV D/C Bhilangana-III - Ghansali line a deemed ISTS system which is to be included in the PoC mechanism for recovery of its transmission charges in accordance with 2010 Sharing Regulations. However, in the meanwhile to obviate the financial difficulty of PTCUL, UERC determined provisional transmission charges for the said line, recoverable by PTCUL only till December 2013. UERC further directed PTCUL to approach the CERC for determination of transmission charges under the PoC mechanism.

(iv) UERC vide order dated 6.5.2013 determined the provisional Annual Revenue Requirement for the Associated Transmission System for Bhilangana-III Power Station for FY 2011-12 and FY 2012-13 and the Multi Year Tariff of PTCUL for the first Control Period from FY 2013-14 to FY 2015-16.

(v) Aggrieved by the aforesaid orders of UERC dated 29.4.2013 and 6.5.2013, the Petitioner filed Appeal No. 128 and Appeal No. 129 of 2013, respectively before APTEL. The Petitioner raised the issue of jurisdiction in the aforesaid appeals and contended that under no circumstances a 24 MW renewable energy power plant can be burdened with the entire cost of single circuit of the 220kV D/C Bhilangana-



III – Ghansali line, capable of carrying around 200MW on each circuit. On the other hand, PTCUL instead of approaching the CERC in terms of the directions of the UERC, filed a cross-appeal being Appeal No. 163 of 2013 before the APTEL contending that the 220 kV D/C Bhilangana–III- Ghansali line is an intra-State line and that the Petitioner herein ought to be made liable to bear the entire cost of the 220 kV S/C Chamba-Ghansali line as well.

(vi) APTEL passed a common order on 29.11.2014 in Appeal No. 128, Appeal No. 129 and Appeal No. 163 of 2013, dismissing the appeals and upholding the order passed by the UERC. Relevant extracts of the order dated 29.11.2014 are reproduced hereunder:

“26. Summary of our findings:

a) BHPL is liable to pay entire transmission charges for one circuit of the line as determined by the Commission which is as per the Regulations.

b) PTCUL is entitled to recover charges for only one circuit of the line from the Appellant.

27. With above discussions, all the three Appeals are dismissed. However, there is no order as to costs.”

(vii) The Petitioner challenged the aforesaid common order before Supreme Court in Civil Appeal Nos. 2368-70 of 2015. As the issue of the jurisdiction was not decided by the APTEL in its order dated 29.11.2014, the Petitioner challenged the same in its Civil Appeals.

(viii) The Supreme Court while disposing of the aforesaid Civil Appeals, held as follows:

“Heard learned counsel for the parties and perused the record.

We do not find any merit in these appeals. The same are, accordingly, dismissed. This order will be subject to the liberty to the appellant to move the Central Commission to establish that for any particular period the transmission was interstate and on this being established, the Central Commission will be at liberty to modify the charges which will be treated to be provisional till then.

If no such application is filed within three months, the impugned order will be treated as final.

It will be open to the respondents to show that the charges have already been recovered from the buyers or that transmission was not interstate and no modification was required.”



(ix) As per the above observation of the Hon'ble Supreme Court, liberty was granted to the Petitioner to move to CERC to establish if the line in question i.e. 220 kV D/C Bhilangana-III – Ghansali line is an inter-state line for any particular period and if yes, CERC shall modify the transmission charges which are provisional till then. Accordingly, the Petitioner has filed the instant Petition to get the status of the line in question for period 1.5.2012 to 2.4.2015.

(x) For the period from 1.5.2012 till 2.4.2015, the entire power transmitted on the Bhilangana-III - Ghansali line has been for inter-State sale. In terms of Section 2(36)(ii) of the Act, a transmission system used for conveyance of electricity within the State, which is incidental to inter-State transmission of electricity, also qualifies as inter-State transmission system.

(xi) PTCUL failed to comply with the paragraph 2.1.3 of Annexure-I to 2010 Sharing Regulations procedure and did not get the line certified by RPC, in compliance of the directives of the UERC in its orders dated 24.11.2011, 29.4.2013 and 6.5.2013.

d) NRLDC has submitted that

(i) Bhilangana – III HEP project is a State embedded generating station under the state control area of Uttarakhand. Therefore, its metering, scheduling and accounting is coordinated by SLDC Uttarakhand as being under jurisdiction of SLDC Uttarakhand, as per extant regulations.

(ii) The line in question i.e. 220kV D/C Bhilangana-III – Ghansali line is owned and operated by PTCUL and the transmission system beyond Ghansali S/S up to 400 kV Roorkee (PG)/ 400 kV Nehtaur (UPPTCL)/ Kashipur (PTCUL) is also owned and operated by the STU i.e. PTCUL and the aforesaid generating station is deep embedded into the state transmission system and hence the said line is an intra-State line.

(iii) BHPL has sold its entire power in Short term Open Access (through bilateral transactions as well as collective transactions) for the period from 1.5.12 to 2.4.15. The Short Term transactions by nature are for short duration of time and these can change at any time. An inter-state STOA on one day could become intra-state on other day. Therefore, merely inter-state STOA transactions should not be reason for declaring a line/ transmission system as inter-state one.



(iv) If the logic for considering 220kV Bhilangana III – Ghansali D/C line under inter-state POC mechanism is extended, then the last mile connections (be it of STU network or distribution licensee's network) of all the inter-state open access (LTA, MTOA and STOA) transactions, would qualify as ISTS and be considered under inter-state POC mechanism.

e) PTCUL has submitted that

(i) UERC determined the ARR of 220 KV S/C Bhilangana-III -Ghansali Line vide its tariff order dated 06.05.2013 provisionally. Therefore, it is clearly established that the line in issue is a state embedded network whose investment approval was accorded by UERC and the ARR for the said network was also determined by UERC.

(ii) PTCUL constructed the transmission system from Bhilangana-III to Chamba S/S in entirety including the line in question i.e. 220 kV D/C Bhilangana-III-Ghansali Line, in order to provide the transmission services to the Petitioner. Pertinently, at present the 220 kV D/C Bhilangana-III -Ghansali line is a dedicatedly used line and its sole use done by the Petitioner and accordingly, the transmission charges for such dedicated system ought to be borne entirely by Petitioner.

(iii) PTCUL stated that the Petitioner's sale of power outside the state is on short term basis and only through a trader. This is not sufficient for a line to be declared ISTS or be deemed ISTS in terms of Section 2(36) (ii) of the Act. The transmission line between the Petitioner's Project and Ghansali i.e., 220 kV D/C Bhilangana-III-Ghansali Line as well as the Ghansali - Chamba transmission line which connects to Chamba sub-station cannot be construed as an ISTS line or a deemed ISTS line merely because the Petitioner is exporting power generated at its Project on short term basis outside the state of Uttarakhand through the said transmission system/lines.

(iv) The Removal of Difficulty Order dated 04.04.2011 issued by the CERC clearly provided that a non-ISTS line will only be deemed to be used for interstate transmission once the process of load flow study has been conducted and that such a study conclusively displays that more than 50% of the total power transmitted through the line is inter-state power.



(v) The work of construction of Ghansali sub-station has not yet started and the 220 kV S/C Bhilangana-III –Ghansali Line(ckt-1) was commissioned on 4.11.2011 and the second circuit of the said line is completed but yet to be commissioned.

f) TPTCL has submitted that for period from 1.5.2012 till 2.4.2015 the entire power generated by the Petitioner's 24 MW hydro project was sold outside the state of Uttarakhand.

18. We have considered the submissions of petitioner and respondents. We observe that the transmission line under dispute is developed, owned and operated by Respondent PTCUL which is STU for the state of Uttarakhand and hence is an intra-state transmission system under the Act. However the Petitioner has contended that the instant transmission system should be considered as an inter-state transmission system for the specified period.

19. Section 2(36) of the Electricity Act 2003 is reproduced below:

"2 (36) "inter-State transmission system" includes –

(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;

(ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;

iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility."

20. Accordingly, a transmission line can be considered as an inter-State line in three circumstances as mentioned under Section 2(36) of the Act. We observe that the transmission line in question i.e. one circuit of 220 kV D/C Bhilangana-Ghansali S/S line is not from the territory of one State to another State as required under Section 2(36)(i) of the Act, nor is under the control of CTU as required under Section 2(36)(iii) of the Act. The Petitioner has contended that it falls under Section 2(36)(ii) of the Act as incidental to such inter-State transmission of electricity for the specified duration. NRLDC and PTCUL have



submitted that aforesaid line is deep embedded in intra-state transmission system and cannot be considered as an inter-State transmission line under Section 2(36) of the Electricity Act 2003.

21. It would be worthwhile at this stage to peruse the UERC, APTEL and Supreme Court Orders with respect to the subject transmission line.

22. UERC vide the order dated 29.04.2013 directed as follows:

“15. With regard to 220 kV D/C Bhilangana-III - Ghansali line, the Petitioner has submitted that presently this line is being utilised for evacuation of power from Bhilangana-III SHP which shall in future be used for evacuation of power from UJVN Ltd.'s proposed plant namely Bhilangana-II HEP.

16. Based on the above, the Commission is of the view that except for 220 kV D/C Bhilangana-III- Ghansali line other projects namely 220 kV GIS substation at Ghansali, 220 kV S/C Chamba -Ghansali line and 01 No. bay at 220 kV substation Chamba need be considered as system strengthening works of the transmission licensee and cost of these works, therefore will be included in the overall ARR of Transmission Licensee (Petitioner in the matter) to be recovered from distribution licensee of the State.

17. With regard to 220 kV D/C Bhilangana-III- Ghansali line, the Commission considers this as a transmission line which will be primarily used for evacuation of power from existing and proposed hydro generating stations in the area. The Commission has taken note of the fact that as of now while one circuit of this double circuit line is strung upto 220 kV S/s at Chamba and is being used for evacuation of power from the existing generating station namely Bhilangana-III (24 MW) the other circuit is strung upto Ghansali and is proposed to be connected to upcoming 220 kV S/s at Ghansali. It is apparent that only one circuit has been energised and put to use. Taking cognizance of the provisions of the Tariff regulations that any capital expenditure towards creation of an asset is deem fit for capitalization only if that asset is put to use, therefore, the Commission has decided to allow cost of servicing/ARR on only 50% of the capital cost incurred by the Petitioner towards the construction of the 220 kV D/C Bhilangana –III- Ghansali line which shall be recovered from the generator namely Bhilangana-III SHP, the only beneficiary as of now, subject to pro-rata recovery of this cost from other generators as and when they are commissioned and connected with this line. As far as the recovery of the balance capital cost of the line, disallowed as above, the Commission will take a view as and when the second circuit of the line is energised and put to use. Notwithstanding to what has been stated above, the Commission is also of the view that this line needs to be included by the Petitioner in the PoC mechanism for recovery of transmission charges as deemed ISTS system in accordance with CERC (Sharing of Inter-state Transmission charges & losses) Regulations, 2010, then the Petitioner shall accordingly recover the charges applicable thereof from the Generator. However, to obviate the financial difficulties being faced by the Petitioner due to non-servicing of the asset, a purely provisional determination is being made which will be subject to adjustment on determination of transmission charges for this line as deemed ISTS line by CERC.



...
30. Based on the above, the Commission decides as under:

...
The Commission has decided that the transmission charges payable by the Generator towards 220 kV D/C Bhilangana-III-Ghansali line shall be determined in the proposed Tariff Order for PTCUL for the 1st control period (FY14 to FY16) on principles mentioned in Para 17 of this Order. These charges are provisional and will be replaced by the charges determined under the PoC mechanism by CERC. The Commission allows the Petitioner to recover these charges till December 2013 or till charges under PoC mechanism are determined. In case charges under PoC mechanism are not determined till December 2013, Petitioner should come up for further continuance of these charges furnishing details of efforts made/actions taken in this regard. The Commission may consider further continuance of these charges after satisfying itself of the due diligence of the Petitioner."

Thus, UERC directed that charges for the said line are to be borne by the generator.

UERC also observed that if the said line needs to be included in the PoC mechanism for recovery of transmission charges as deemed ISTS system in accordance with 2010 Sharing Regulations, then the PTCUL shall accordingly recover the charges applicable thereof from the Generator, namely Bhilangana-III.

23. APTEL vide the order dated 29.11.2014 in Appeal No. 128, Appeal No. 129 and Appeal No. 163 of 2013 upheld the order passed by the UERC and directed as under:

"26. Summary of our findings:

a) BHPL is liable to pay entire transmission charges for one circuit of the line as determined by the Commission which is as per the Regulations.

b) PTCUL is entitled to recover charges for only one circuit of the line from the Appellant.

27. With above discussions, all the three Appeals are dismissed. However, there is no order as to costs."

Thus, the APTEL also held that Petitioner BHPL (generator) is liable to pay entire transmission charges for one circuit of the line as determined by the Commission which is as per the Regulations.

24. The Supreme Court upheld the Order of the APTEL with a liberty to the Petitioner BHPL to move the Central Commission to establish that for any particular period the transmission was inter-state.



25. During the period of dispute i.e from 1.5.2012 to 2.4.2015, the 2010 Sharing Regulations was applicable, which has a provision to consider intra-state transmission system as inter-state. The paragraph 2.1.3 of Annexure-I to the regulations extracted below provides as under:

“

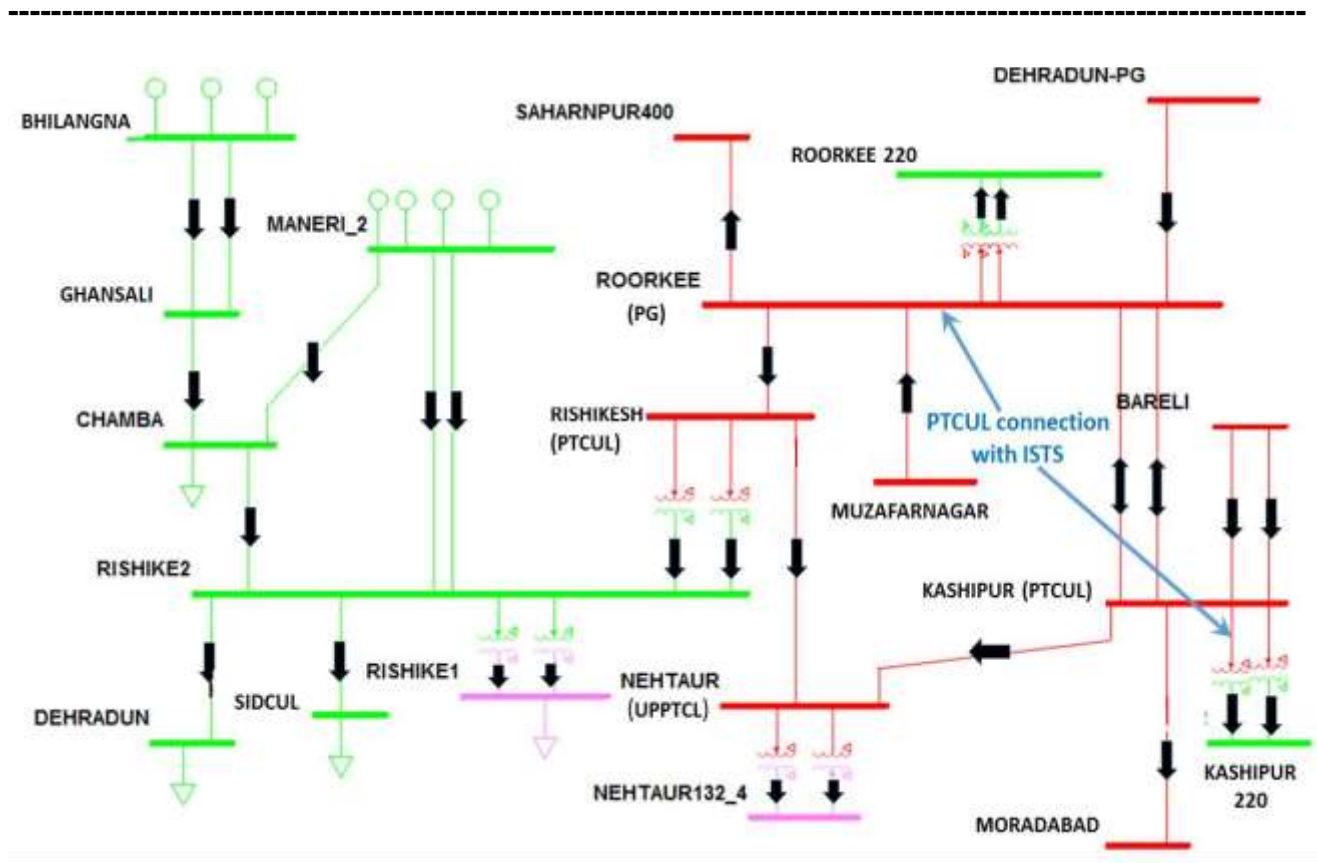
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Certification of non-ISTS lines carrying inter-State power, which were not approved by the RPCs on the date of notification of the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2009, shall be done on the basis of load flow studies. For this purpose, STU shall put up proposal to the respective RPC Secretariat for approval. RPC Secretariat, in consultation with RLDC, using Web Net Software would examine the proposal. The results of the load flow studies and participation factor indicating flow of Inter State power on these lines shall be used to compute the percentage of usage of these lines as inter State transmission. The software in the considered scenario will give percentage of usage of these lines by home State and other than home State. For testing the usage, tariff of similar ISTS line may be used. The tariff of the line will also be allocated by software to the home State and other than home State. Based on percentage usage of ISTS in base case, RPC will approve whether the particular State line is being used as ISTS or not. Concerned STU will submit asset-wise tariff. If asset wise tariff is not available, STU will file petition before the Commission for approval of tariff of such lines. The tariff in respect of these lines shall be computed based on Approved ARR and it shall be allocated to lines of different voltage levels and configurations on the basis of methodology which is being done for ISTS lines.”

26. Thus, in accordance with paragraph 2.1.3 of Annexure-I to the regulations as quoted above, the certification of the non-ISTS lines used for carrying inter-State power shall be done on the basis of load flow studies on lines if STU puts up a proposal to RPC and RPC, based on the percentage of usage of these lines as inter-State transmission, approves the said lines as being used as ISTS. However, in the instant case, we observe that neither the STU (PTCUL) has approached the Northern Regional Power Committee (NRPC) for certification of 220 kV D/C Bhilangana-Ghansali S/S line as a non-ISTS line carrying inter-state power, nor any load flow studies have been carried out by NRPC. Thus, we note that the NRPC has not approved the said lines as being used as ISTS as required under the 2010 Sharing Regulations which was applicable at that time.



27. NRLDC has furnished the load flow for the intra-state transmission system of PTCUL and transformers as under:



28. From the above network diagram it is clear that Bhilangana-III – Ghansali Line is deeply embedded within the intra-state transmission system of PTCUL. The ISTS point in the network diagram is at “Roorkee(PG) and “Kashipur”. NRLDC has submitted that “arrows” shows the power flow through intra-state system and its interconnection with ISTS. NRLDC has submitted that power flows from Bhilangana to drawl points of Uttarakhand and does not flow into ISTS. In support of this contention NRLDC has also furnished actual flow through transformers at Rishikesh which provides that transformers carried power towards load points of Uttarakhand and no power was flowing from Bhilangana-III to ISTS. The Petitioner has agreed with the power flow submitted by NRLDC, but has argued that it is the



transaction of power i.e contract which should determine the inter-state nature and not the actual flow of power.

29. We observe that 2010 Sharing Regulations required load flow studies to prove that non-ISTS (intra-state) lines carry inter-state power and therefore are being used for inter-state transfer of power. In the instant case, as brought out by the NRLDC, the load flow studies does not support the contention that the Bhilangana-III – Ghansali Line, the transmission line under dispute, is being used for inter-state transfer of power, as it is carrying power within the state of Uttarakhand only.

30. The Petitioner has also relied on contract path for the purpose of proving that the instant line is inter-state, as the Bhilangana-III is having inter-state contract. The Petitioner has further submitted that in case power from its project does not use inter-state transmission system, it should not be liable to pay inter-state transmission charges when it carries out inter-state transactions.

31. We do not agree with the contentions of the Petitioner. The inter-state transmission charges under STOA or MTOA or LTA are being paid as per predefined methodology under 2010 Sharing Regulations, re-enacted as 2020 Sharing Regulations. The charges are paid based on the transaction and not on transaction-wise actual use of transmission system.

32. A transmission system which has been developed as intra-state transmission system by STU must be considered as an intra-state system, as otherwise such a transmission system should have been planned, developed and controlled by CTU as provided under the Act. Such intra-state system can be considered as being used for inter-state transfer of power only if it actually carries some significant amount of inter-state power. It cannot be the



case that an intra-state line even when carrying no inter-state power be considered as an inter-state line and included in the ISTS pool and transmission charges of the same levied on beneficiaries of ISTS.

33. In view of above discussions, we observe that the subject transmission line of the present petition, namely, one circuit of 220kV D/C Bhilangana-III – Ghansali line does not satisfy the criteria under which an intra-state line can be considered as being used for inter-state transfer of power under 2010 Sharing Regulations. Accordingly, we find and hold that for the period from 01.05.2012 to 02.04.2015, the said 220KV D/C Bhilangana-III Ghansali line was not part of the inter-state transmission system (ISTS) and shall continue to be an intra-state transmission system. Hence, the transmission charges of the said one circuit of 220kV D/C Bhilangana-III – Ghansali line cannot be decided as per the POC mechanism in accordance with the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 and shall be governed as per Regulations and Orders of the State Commission.

34. Petition No. 246/MP/2018 is disposed of in terms of the above.

Sd/
(P.K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(P.K. Pujari)
Chairperson

