

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 451/MP/2019 Along with I.A No. 59/2022

- Subject** : Petition under Section 79(1)(f) of the Electricity Act, 2003 in compliance of directions issued by the Commission vide order dated 10.5.2019 in Petition No. 65/RP/2016, Petition No. 66/RP/2016, Petition No.18/RP/2017 and Petition No.19/RP/2017 for payment of transmission charges for the period from 1.11.2011 to 24.5.2012 for power evacuation from Budhil Hydro Electric Project in Himachal Pradesh.
- Date of Hearing** : 17.1.2023
- Coram** : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner** : Power Grid Corporation of India Limited (PGCIL)/CTUIL
- Respondents** : NHPC Limited and Ors.
- Parties present** : Shri Sanjay Sen, Senior Advocate, GBHPPL
Ms. Suparna Srivastava, Advocate, CTUIL
Shri Tushar Mathur, Advocate, CTUIL
Ms. Aastha Jain, Advocate, CTUIL
Shri Hemant Singh, Advocate, GBHPPL
Shri Lakshyajit Singh Bagdwal, Advocate, GBHPPL
Shri Alchi Thapliyal, Advocate, GBHPPL
Shri Venkatesh, Advocate, NHPC
Shri Ashutosh Srivastava, Advocate, NHPC
Shri Siddhart Nigtoa, Advocate, NHPC
Shri Ravi Kishore, Advocate, PTC India
Shri Keshav Singh, Advocate, PTC India
Shri Dhruv Tripathi, Advocate, PTC India
Shri Aman Mahajna, NHPC
Shri Ajay Shrivastava, NHPC
Shri Ajay Upadhyaya, CTUIL
Shri Yogeshwar, CTUIL
Shri S.K Meena, NHPC

Record of Proceedings

The matter was called out for virtual hearing

2. At the outset, learned counsel for the Petitioner sought liberty to upload the rejoinder to the reply filed by Greenko Budhil Hydro Power Pvt. Ltd. (GBHPPL) on e-filing portal of the Commission. The learned counsel further submitted that the limited



question for determination before the Commission in this petition being whether, the liability for payment of transmission charges of the transmission assets imposed on GBHPPL vide order dated 16.11.2012 in Petition No. 92/TT/2011, is required to be shared with NHPC or not in view of the Indemnification Agreement (IA) dated 22.7.2005 entered into between the Petitioner and Respondent No.1/NHPC?. Referring to Indemnification Agreement, she submitted that there was a scheduled and agreed timeline for commissioning of generation of Budhil HEP of LGPPL, Chamera-III HEP of NHPC and associated transmission assets of PGCIL in terms of BPTA dated 18.10.2007. However, neither Budhil HEP of LGPPL nor Chamera-III HEP of NHPC nor the transmission system of PGCIL could achieve the COD as scheduled. Since the timeline agreed in the Indemnification Agreement lost its significance, Indemnification Agreement lost its relevance in the present proceedings. She further submitted that the Commission in its order dated 10.5.2019 in Petition No. 18/RP/2017 has dealt with in detail about the transmission system, rights and obligation of the parties and presently, the matter is *sub-judice* before the APTEL. Therefore, the finding of this Commission in order dated 16.11.2012 in Petition No. 92/TT/2011 remains unaltered.

3. Learned counsel for the Petitioner further submitted that submission of GBHPPL that as per the Commission's order dated 31.5.2018 in Petition No.190/MP/2016, LTTC under the BPTA is PTC India Ltd. and not GBHPPL and thus the Petitioner cannot recover the transmission charges from GBHPPL is misconceived as LTA charges relate to the quantum of LTA when the said LTA is operationalised. The transmission charges, in the present case, pertain to pre-operationalisation period and, therefore, the liability of GBHPPL continues and Indemnification Agreement has no effect on the present controversy. She further submitted that GBHPPL cannot argue the matter *de-novo* as it has already filed Appeal Nos. 69, 70, 71 and 72 of 2020 before the APTEL against the Commission's order dated 10.5.2019 in Petition No. 18/RP/2017 on the issue of exclusive levy of transmission charges on GBHPPL and the same is pending adjudication.

4. Learned senior counsel for GBHPPL made the following submissions:

- (a) By order dated 16.11.2012 in Petition No. 92/TT/2011, the Commission has held that transmission charges shall be shared by the PTC/LANCO in line with the BPTA dated 18.10.2007 signed amongst PTC, LANCO and the Petitioner, till these assets become part of the regional system, i.e. till the commissioning of Chamera-III HEP. Thus, the prayer made by the Petitioner in the instant Petition against GBHPPL is contrary to the Commission's above order.
- (b) Minutes of the Meeting dated 22.4.2012 show that payment of LTA charges by GBHPPL on behalf of PTC was an interim arrangement to facilitate the payment of transmission charges. In the order dated 31.5.2018 in Petition No. 190/MP/2016, the Commission has observed that liability for payment of LTA charges remains with PTC till the time LTA is relinquished in accordance with the provisions of the BPTA. The said order clearly mentions the obligation of PTC.
- (c) BPTA dated 18.10.2007 entered into amongst PGCIL, PTC and LANCO indicates that PTC is a licensee, LANCO is a generating company and PTC



availed LTA from PGCIL. Further, the BPTA clearly mentioned the liability of the transmission charges for transfer of power from Budhil Generation Project, a Pooling Station near Chamera-II along with its connectivity with Chamera-II (which is part of Chamera-III transmission system) till it becomes part of the Regional System is required to be shared/borne by PTC/LANCO. However, the Petitioner has not sought any prayer against PTC which is also party to the Agreement and the same is contrary to the terms of BPTA.

5. In response, learned counsel for the Petitioner placing reliance on letters dated 23.8.2007 and 29.8.2007, submitted that LANCO had agreed to pay the transmission charges from Chamera-III to Chamera-II Pooling Station.

6. Referring to BPTA dated 18.10.2007, learned counsel for PTC submitted that the Petitioner herein had undertaken to prepone the associated transmission system on firm commitment of GBHPPL that GBHPPL will bear the transmission charges till the same becomes part of the regional grid. Thus, the period for which transmission charges are payable by GBHPPL is from 1.11.2011 to 24.5.2012. Placing reliance on the judgement of Hon'ble Supreme Court dated 3.3.2016 in the case of PGCIL v. PSPCL & Ors. in Civil Appeal No. 9193 of 2012 and the judgment of APTEL in the matter of NPCIL v. CERC in Appeal No. 332 of 2016, he submitted that responsibility to pay transmission charges in the case of mismatch of commissioning of linked elements is solely with the defaulting party irrespective of any relation between the parties executing the linked elements.

7. Learned counsel for NHPC referring to Clause 2 of the Indemnification Agreement dated 22.7.2002, submitted that Indemnification Agreement could have been implemented only if zero date was met by the parties. However, in the present case, zero date was not met by any of the parties. He further submitted that as per Clause (2) of the Indemnification Agreement, indemnity was limited to IDC and was not applicable to transmission charges. He submitted that in the BPTA and in various meetings held between the parties, GBHPPL had acknowledged and agreed to pay the transmission charges for the transmission assets till the same becomes part of the regional grid. Further, placing reliance on the judgment of Hon'ble Supreme Court in the matter of Bachhaj Nahar v. Nilima Mandal & Anr. [(2008) 17 SCC 491], he prayed to the Commission to confine its decisions to the prayers and pleadings of the case.

8. Learned counsel for the Petitioner submitted that out of the total payment of Rs. 33 crore, 50% payment has been received by 31.5.2017 which includes a bank guarantee of Rs. 10 crore that has not been encashed.

9. After hearing the parties, the Commission directed the Petitioner to submit the following information on an affidavit by 14.2.2023, with copy of the same to the Respondents:

- (a) Scheduled Commissioning Date of Budhil Hydro Electric Project.
- (b) Date up to which Budhil HEP sought preponement in respect of transmission system required for evacuation of power of Budhil HEP from Powergrid along with supporting letters/minutes of meeting in this regard.



10. The Commission permitted the Petitioner to upload its rejoinder to the reply of GBHPPL on e-filing portal with copy to GBHPPL by 14.2.2023. The Commission further permitted the parties to file their respective Written Submissions by 14.2.2023. The Commission directed the parties to comply with its directions within the specified timeline and observed that no extension of time shall be granted.

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

By the order of the Commission

Sd/
(Rajendra Kumar Tewari)
Bench Officer

