

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 209/MP/2017

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 19th January 2024

In the matter of:

Approval of transmission charges, transmission losses and other conditions for use of 176.50 km D/C 220 kV Transmission Line of Allain Duhangan Hydro Power Limited (ADHPL) from Prini (generating station of ADHPL) to Nalagarh (Sub-station of CTU) on remand from the Appellate Tribunal for Electricity.

And

In the matter of

A. D. Hydro Power Limited,
Bhilwara Towers,
A-12, Sector 1, Noida
Uttar Pradesh-201301

.... Petitioner

Versus

1. Everest Power Private Ltd.,
1st House, Bhumian Estate,
Navbahar Bhimian Road,
Chhota Shimla, Shimla
Himachal Pradesh-170002 (HP)

2. Central Electricity Authority
Sewa Bhavan, Sector -1,
R. K. Puram, New Delhi-110066.

3. Ministry of Power,
Government of India,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-110001.

4. Power Grid Corporation of India Ltd,
Sector 29, Gurgaon,
Haryana-122001.



5. Northern Regional Load Despatch Centre,
Katwaria Sarai,
New Delhi-110016.

6. Ministry of Power,
Government of Himachal Pradesh,
Shimla, Himachal Pradesh-171002.

7. Himachal Pradesh State Electricity Board,
Khalini, Shimla, Himachal Pradesh-171002.

8. Himachal Pradesh Power Transmission Corporation Ltd.,
Khalini, Shimla, Himachal Pradesh-171002.

9. Department of Forests,
Government of Himachal Pradesh,
Shimla, Himachal Pradesh-171002.

10. CTU of India Ltd.
Plot No 2, Sector 29,
Near IFFCO Chowk,
Gurgaon, Haryana-1220001

11. National Load Dispatch Centre
B-9 (First floor), Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016

...Respondents

Parties Present:

Dr. Seema Jain, Advocate, ADHPL
Shri Vimlesh, Advocate, ADHPL
Shri Sumit Garg, ADHPL
Shri Sanjay Jana, ADHPL
Shri Buddy Ranganadhan, Advocate, KPCL
Shri Hemant Singh, Advocate, KPCL
Shri Lakshyajit Singh Bagadwal, KPCL
Ms. Alchi Thapliyal, Advocate, KPCL
Ms. Swapna Seshadri, Advocate, PSPCL
Shri Amal Nair, Advocate, PSPCL
Shri Gajendra Singh, NRLDC
Shri Sunil Kanaujiya, NRLDC
Shri Prashant Garg, NRLDC
Shri Alok Mishra, NLDC
Shri Sanjay Machal, NLDC
Shri Ranjeet S Rajput, CTUIL
Shri Ishart Ali, CTUIL



ORDER

Background

The Petitioner, Allan Duhangan. Hydro Power Limited (hereinafter referred to as "ADHPL"), is a generating company which established a hydro generating station of 192 MW in the Kulu District of Himachal Pradesh and constructed a 220 kV ADHPL-Nalagarh transmission line of 176.50 km from its generating station to sub-station of Power Grid Corporation of India Limited (PGCIL) at Nalagarh. Another generating company, namely Everest Power Private Ltd. (hereinafter referred to as "EPPL"), established a 2X50 MW Malana-II Hydro Electric Generating Station and intended to use 220 kV ADHPL-Nalagarh transmission line of ADPHL for evacuation of its power outside the State of Himachal Pradesh. Disputes arose between ADPHL and EPPL with regard to the methodology and process of computation and sharing of transmission charges of the 220 kV ADHPL-Nalagarh transmission line of ADPHL. EPPL filed Petition No.259/2009 before this Commission for direction with regard to the methodology and process for computation and sharing of transmission charges and losses, priority of use, scheduling, metering and accounting of power etc., among other prayers.

2. The Commission, vide order dated 1.6.2011 in Petition No.259/2009 held that since the 220 kV Allan Duhangan -Nalagarh Transmission line has been planned to evacuate power from the region for injection into the sub-station of PGCIL at Nalagarh, the transmission line is incidental to inter-State transmission system and the Commission has the jurisdiction under section 79(1)(c) of the Act to regulate transmission on the subject transmission line. The Commission also



directed the Petitioner to provide connectivity to EPPL on the 220 kV Allan Duhangan -Nalagarh Transmission line and laid down detailed procedures to be followed by both parties for coordinated operation and control of the generating stations and transmission assets.

3. The Petitioner filed Appeal No. 81 of 2011 challenging the order of the Commission. APTEL, in its interim order dated 10.6.2011 in IA No. 141 of 2011 directed the Petitioner to allow connectivity to EPPL on the 220 kV Allan Duhangan -Nalagarh Transmission line and issued further directions with regard to the sharing of transmission charges and losses during the interim period. APTEL, vide its final judgement dated 2.1.2013 in Appeal No.81/2011, upheld the jurisdiction of the Commission to regulate the transmission of electricity on 220 kV Allan Duhangan -Nalagarh Transmission line and to adjudicate the dispute between the Petitioner and EPPL under Section 79(1)(f) of the Act. APTEL also issued comprehensive directions with regard to the determination and sharing of transmission charges and losses and other related issues.

4. The Petitioner filed Civil Appeal No.1795 of 2013 before the Hon'ble Supreme Court of India challenging the judgement of APTEL. Hon'ble Supreme Court, in its judgement dated 26.4.2017, decided the Civil Appeal as under:

“5) In view of concurrent finding of fact taking into account Section 2(36)(ii), we find no reason to interfere with the judgement of the Appellate Tribunal and hence the same is upheld. We may only indicate that the said judgement has remanded the matter to the Central Commission to decide the matter on merits having held that it has jurisdiction to proceed further.

6) The appeal is dismissed. Needless to say, the interim order stands vacated.”



The Petitioner filed Review Petition (c) No.1365 of 2017 in Civil Appeal No.1795 of 2013, which was disposed of by the Hon'ble Supreme Court observing that "there is no error apparent in our order dated 26th April 2017". Hon'ble Supreme Court further observed as under:

"However, when the Central Electricity Regulatory Commission decides the matter on merits, it may do so without regard to the observations made by the Appellate Tribunal for Electricity in its order dated 02.01.2013."

5. Pursuant to the direction of the Hon'ble Supreme Court, the Commission directed the Petitioner to file a Petition in respect of 220 kV D/C ADHEP-Nalagarh Transmission Line for the determination of transmission charges, losses and other related issues. Accordingly, the Petitioner filed the instant Petition No. 209/MP/2019. In the Petition, the Petitioner had inter-alia raised the issue of the dedicated nature of its transmission line, treatment of transmission line losses, transmission system availability, its right to use the line first, charges for over injection, sharing of transmission charges and other minor issues. The Respondent, EDPPL, had raised the issue of the nature of the instant transmission line, inflated capital cost of the transmission asset, return on equity, depreciation, availability of transmission line, inflated invoices raised by the Petitioner, sharing of transmission losses and handing over the control of its 220 kV Chhaur Sub-station to the Petitioner. The Respondent, Kanchanjunga Power Company Private Limited (KPCPL), submitted that the Petitioner has not submitted the required details as specified in the Tariff Regulations and the Petitioner's claim for RoE, O&M Expenses and Interest on Working Capital need to be checked prudently.



6. The Commission, after considering the submissions of the parties, vide order dated 17.10.2019, determined the tariff of 220 kV Allan Duhangan - Nalagarh Transmission line. Apart from the determination of the tariff, the Commission decided on the following issues:

(a) As regards the nature of the transmission line and jurisdiction of the Commission, the following was decided:

“42. A combined reading of the judgment dated 26.4.2017 in Civil Appeal No. 1795 of 2013 and judgment dated 12.7.2017 in Review Petition of Hon^{ble} Supreme Court (supra) shows that the Commission’s order dated 1.6.2011 in Petition No. 259 of 2010 and the judgment dated 2.1.2013 in Appeal No. 81 of 2011 of APTEL were upheld and the matter was remanded to the Central Commission to decide it on merits having held that it has jurisdiction to proceed further.”

(b) As regards the availability of the transmission line, the Commission issued the following directions:

“46. We have considered the contentions of Petitioner and EPPL. The formula for calculation of availability and normative availability of individual line is specified in Tariff Regulations. The availability calculations and normative annual availability factor for recovery of transmission charges shall be worked out as per the relevant tariff regulations. Accordingly, we direct NRPC to work out the availability of the instant transmission line.”

(c) As regards the charges for over-injection, the Commission issued the following directions:

“48.....The instant transmission line is catering power of hydro generators which may operate on overload of about 10% of their capacities. In line with Regulation 8(4) of 2010 Sharing Regulations, the methodology to be adopted in the instant case is to impose additional transmission charges for deviation beyond contracted capacities. The rate of charges for such over injection shall be determined per block based on approved Yearly Transmission Charges. The transmission charges towards over injection upto 20% from the contracted capacity in any time block shall be payable at the same rate and beyond this limit, additional transmission charges shall be payable, which shall be 25% higher than the yearly transmission charge calculated pro-rata for the block. The charges collected towards such over injection shall be reduced from total monthly transmission charges for next month while calculating pro-rata liability of each party. Further, to keep a check on over-injection of power from any connected generator, Special



Protection System (SPS) should be installed by EPPL and other connected generators. The modalities of SPS shall be decided at NRPC.'

(d) As regards the caps on maximum power flow on the transmission line, the Commission issued the following directions:

"51. We have considered the contentions of the Petitioner. We are of the view that the maximum cap shall be decided by NRLDC keeping in view of system conditions. As regards the control of Chhaur Sub-station and operation of said transmission line, we direct NRLDC to co-ordinate the operations of the instant transmission line and the said sub-station."

(e) As regards the issue of first right of use in case of transmission constraints, the Commission issued the following directions:

"55. We have examined the submissions of the Petitioner and APTEL's order dated 2.1.2013. We observe that petitioner is evacuating power from its generating station under Short Term Open Access whereas EPPL has obtained Long Term Access. Hence as per 2010 Grid Code, the Petitioner would be curtailed first as Short Term Open Access has lesser priority. Since the Petitioner has built the transmission line, it is not fair to curtail the Petitioner first in case of contingency. Further, the other connected generating stations are proportionately sharing the entire cost of the Petitioner's transmission line i.e. 200 kV D/C Prini-Nalagarh. Therefore, in case of any contingency in the said line, all the connected entities should be curtailed on prorata basis to their scheduled energy."

(f) As regards the transmission losses, the Commission issued the following directions:

"59. As the transmission charges of the instant transmission line are to be shared on a pro-rata basis on the respective installed capacities of the connected generating stations, similar principle of sharing of losses on the basis of weekly average losses in the said line shared in proportion to the scheduled energy on weekly basis shall be adopted. We direct that line losses shall be monitored and coordinated by the concerned RLDC/NRLDC. For the accounts based on average loss for last week for periods prior to issue of this Order, NRLDC/NRPC shall revise the accounts only for entities connected to the transmission line in instant petition. Any shortfall or surplus shall be adjusted from UI /DSM pool for such period."

(g) As regards the date of commercial operation of the 220 kV Allan Duhangan - Nalagarh Transmission line, the Commission issued the following directions:



“60. The Petitioner has claimed the COD of the instant transmission line as 16.9.2010. In support of COD of the asset, the Petitioner has filed RLDC and CEA certificates of trial operation. Taking into consideration the CEA energisation certificate, RLDC charging certificate and CMD certificate, the COD of the instant transmission line is being considered as 16.9.2010. As the nature of the instant transmission line is a dedicated one from 16.9.2010 till the date of start of usage of the line by EPPL, we are of the view that there is no need to determine the transmission tariff for this period. Accordingly, in the instant case, the transmission tariff has been worked out from the month of start of usage of the line by EPPL. HPPTCL/ KPCPL/ HPSEB started injection of 24 MW of power into the instant transmission line during August, 2011. However, the exact date of start of use by EPPL/ HPPTCL/ KPCPL/ HPSEB has not been furnished.”

(h) As regards the sharing of transmission charges, the Commission, after considering the rival submission of the parties, decided as under:

“113. EPPL has submitted that the transmission charges shall be calculated and allocated in terms of the 2009 Tariff Regulations. The Petitioner has also submitted that the instant transmission assets should not be included in the PoC pool. We have considered the submissions of the parties. The instant transmission line was initially conceived as a DTL and it was later decided that the same will be used by EPPL and other generating stations to meet their evacuation requirements and the transmission charges shall be shared by them. The instant line is being used by the Petitioner, EPPL and HPPTCL/ KPCPL/ HPSEB for evacuation of their power from their respective generating stations. On the completion of construction of 220 kV Transmission Line by HPPTCL from Chhaur Sub-station to Parbati Pooling Station, EPPL and HPPTCL/ KPCPL/ HPSEB shall evacuate their generation capacities through the said line and stop using the Petitioner’s transmission line. Accordingly, the instant transmission line is being shared by Petitioner and other generators and hence we are of the view that the instant transmission line should not be included in the PoC calculations and the transmission charges should be shared by the Petitioner and the other generators in proportion to their installed capacities as under:

a. The transmission charges from date of start of utilisation of the asset by EPPL till utilisation of the line is started by HPPTCL/KPCPL/HPSEB shall be shared between EPPL and the Petitioner in proportion to the installed capacities of generating stations;

b. The transmission charges from the date of individual utilisation of DTL by other generators i.e. HPPTCL/KPCPL/HPSEB shall be shared between the Petitioner, EPPL and other generators in proportion to their installed capacities till they stop using the instant transmission line.

114. As regards the payment security and the mechanism of recovery of the transmission charges, the Petitioner and EPPL have already entered



into an IPTA and the same shall be governed as per the provisions of the said IPTA and we are of the view that there is no need to interfere in the existing mechanism.”

7. Being aggrieved by the aforesaid decision of the Commission with regard to the non-inclusion of the transmission charges and losses in the PoC pool under Sharing Regulations, Kanchanjuga Power Company Limited, which was not a Respondent in Petition No.209/MP/2017, filed Appeal No. 450 of 2019 and IA No. 2146 of 2019 and IA No.14 of 2020 before the APTEL for inclusion of the transmission charges and losses of the 220 kV Allan Duhangan -Nalagarh Transmission line in the PoC pool as per the Sharing Regulations. The Petitioner also filed Appeal No.410 of 2019 against the said order dated 17.10.2019 in Petition No.209/MP/2017 challenging the directions of the Commission with regard to the determination of capital cost of the transmission line, and various elements of tariff, priority of usage of the transmission line etc.

8. The APTEL, vide its judgment dated 31.10.2022 in Appeal No. 450 of 2019, framed the following three issues:

- (a) Whether the 220 kV D/c Transmission line constructed by ADHPL is a part of the Inter-State Transmission System (ISTS) or is Dedicated Transmission Line or both?
- (b) Whether, the charges for the same are recoverable in terms of the CERC Sharing Regulations, 2010?
- (c) Whether ADHPL is required to obtain a Transmission licence for the 220 kV D/C transmission line constructed by it?

9. With regard to (a) above, the APTEL has held that the 220 kV D/c Transmission line constructed by ADHPL is part of ISTS. The relevant portion of the APTEL judgment dated 31.10.2022 is extracted as under:



“94. From the above, there cannot be any other interpretation made except that the Hon’ble Supreme Court has categorically recorded that there is no error apparent in its order dated 26.04.2017 and therefore, when there is no error apparent in the findings, it means that the previous order stands, and thus the same would be legal and binding and as such, the findings of the Hon’ble Supreme Court in para 5 of its order dated 26.04.2017 that “In view of the concurrent finding of fact taking into account Section 2(36)(ii), we find no reason to interfere with the judgment of the Appellate Tribunal and hence the same is upheld”, makes it clear that the subject Line is a part of ISTS.

95. It is again to direct that this Tribunal judgment dated 02.01.2013 decided two issues, one is regarding the nature of the subject Line that it is an ISTS, which stands settled now and the issue is on the merits of the case pertaining to determination of tariff of said subject Line and other procedural aspects, which are recorded in para 51 read with para 53 & 54 of the judgment dated 02.01.2013, on which, the Hon’ble Supreme Court directed the Central Commission that such findings on merits may not be taken into consideration during determination of tariff and also the requirement of obtaining a transmission license.

96. In view of the above, we are of the firm opinion that it is the aforesaid observations made in paragraphs 53 and 54 on merits in the earlier judgment of this tribunal, which were to be considered afresh, therefore, we do not find any merit in the reliance and interpretation made by ADHPL on the aforementioned review order of the Hon’ble Supreme Court.

97. We, therefore, declare that the subject Line is part of ISTS as recorded in the findings of this Tribunal judgment dated 02.01.2013 and upheld by the Hon’ble Supreme Court.

98. As concluded above, the submission of the ADHPL that the order of the Hon’ble Supreme Court was only limited to the finding that Central Commission under Sec 79(1)(c) will have the jurisdiction, but the line is dedicated, and not ISTS is rejected as is devoid of any merit.

99. Also, the jurisdiction is vested with Central Commission only in the event Section 79 (1) (c) and (d) of the Act is attracted, wherein it is provided that determination of tariff of a transmission line can only be done by the Central Commission if the said line is undertaking inter-state transmission of power, therefore, we opine that the jurisdiction of the Central Commission is attracted only because the Hon’ble Supreme Court has held the subject Line is part of ISTS in terms of Section 2 (36) (ii) of the Act.

100. We, therefore, decline to accept the argument of the ADHPL that even though jurisdiction was vested with the Central Commission, the subject Line continues to be a dedicated line.



104. Therefore, once a Transmission Line asset becomes a part of ISTS, then the same cannot be treated as dedicated, as in the present case, the subject Line has been declared to be a part of ISTS in terms of Section 2 (36)(ii) of the Electricity Act, 2003 by this Tribunal which is also upheld by Hon'ble Supreme Court, it shall hold the status of that of an ISTS and cannot be termed as dedicated anymore.

105. In view of the conclusions made above, it is directed the subject Line is a part of ISTS, which cannot be simultaneously termed as "dedicated transmission line."

10. With regard to issue (b) and issue (c) above, the APTEL, after referring to the various provisions of the Sharing Regulations, 2010 such as Regulation 2(i) (definition of "basic network"), Regulation 2(k) (definition of "Deemed ISTS), Regulation 2(l) (definition of Designated ISTS Customer or DIC), Regulation 2(y) (definition of "Yearly Transmission Charge"), Regulation 3 (Scope of Sharing Regulations), and Regulation 7(1)(b) (process of determination of basic network) held that the subject transmission line fulfils the criteria to be included in the Yearly Transmission Charges under the Sharing Regulations, 2010. The relevant provisions of Sharing Regulations are extracted as under:

"111. From the above quoted provisions, it is clear that the subject Line fulfils the criteria to be included in the basic network of an ISTS, for the purpose of including the same under the PoC mechanism, also as per Regulation 3(b), the Yearly Transmission Charges under the CERC Sharing Regulations, 2010 are applicable upon the Designated ISTS Customers such as the "State Electricity Boards/State Transmission Utilities connected with ISTS or designated agency in the State (on behalf of distribution companies, generators and other bulk customers connected to the transmission system owned by the SEB/STU/ intra-State transmission licensee)", as such in the present case, the Appellant being connected with the ISTS line i.e. the subject Line, through the HPPTCL, which is an STU, the Appellant is a Designated ISTS Customer.

112. Regarding the submission made by the ADHPL that it is a Generator having a "dedicated transmission line", as such, cannot be forced to take a transmission license, it is under section 15 read with section 14, the Appropriate Commission can grant a Licence to any person to transmit electricity as a transmission licensee only, and as per Regulation 6(C) of CERC's (Terms and Conditions for Grant of Transmission License) Regulations 2009, in respect of the "dedicated transmission lines"



established by the Generators, no person shall be eligible for grant of license unless it is a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system. Therefore, the option to take a license and become a transmission licensee vest with ADHPL and ADHPL cannot be ordered by a court to take a license or forced to convert its private transmission assets to commercially pooled assets in POC mechanism to become a transmission licensee merely because of temporary use of spare capacity of its transmission line for evacuation of power of other generators.

113. We decline to agree to the above as from definition of Deemed Inter-State Transmission System (Deemed ISTS) in terms of Regulation 2(k) of the CERC Sharing Regulations, 2010 referred above, such transmission system which has regulatory approval of the Commission as being used for inter-State transmission of power becomes as Deemed ISTS and once read the regulatory order dated 01.06.2011 of the Central Commission, wherein it was held that the subject Line is being used as a part of ISTS, therefore, ADHPL being the owner of Deemed ISTS, becomes a Deemed ISTS Licensee within the meaning of “Yearly Transmission Charge or YTC” as referred above and accordingly this Tribunal vide its judgment dated 02.01.2013 held that ADHPL is not required to take a license.

114. In view of above, it is held that the transmission tariff for usage of the subject Line has to be determined and levied in accordance with Point of Connection (PoC) mechanism provided under Regulation 3(b) of the CERC Sharing Regulations, 2010, and the PoC mechanism will be applicable for recovery of transmission charges, from the date from which EPPL or any other generator or STU (or State Electricity Board) on behalf of generators gets connected to the transmission line of ADHPL, in terms of the CERC Sharing Regulations, 2010”

11. APTEL issued the following directions in the light of its findings quoted above:

“ORDER

For foregoing reasons as stated supra, we are of the considered view that the Appeal No. 450 of 2019 filed by M/s Kanchenjunga Power Company Private Limited has merit and is allowed, the order dated 17.10.2019 passed by the Central Electricity Regulatory Commission (Central Commission) in Petition No. 209/MP/2017 is set aside to the extent as challenged in the aforesaid Appeal and directed above.

The Central Commission is directed to pass necessary consequential orders in light of the observations and conclusions recorded by us.”



Proceedings before the Commission after remand

12. In terms of the judgment of the APTEL, the Commission undertook the exercise of recovery of the transmission tariff of 220 kV Allan Duhangan - Nalagarh D/c Transmission line in accordance with the Sharing Regulations, 2010 and the Sharing Regulations, 2020.

13. The Commission directed the Petitioner to implead CTUIL and NLDC as parties to the Petition and further directed NLDC to hold a meeting with the parties, including CTUIL, to devise the methodology for implementation of the judgment of the APTEL and suggest the process/calculations to be carried out if the 220 kV Allan Duhangan -Nalagarh D/c Transmission line was to be included in PoC pool retrospectively viz. recalculation transmission charges/losses and deviation accounting, etc. The Commission also directed the Petitioner to submit (i) the current status of the generating stations which are evacuating their power through 220 kV Allan Duhangan-Nalagarh D/c Transmission line along with their capacity; (ii) the dates since when the generating stations/HPPTCL got connected and disconnected with 220 kV Allan Duhangan-Nalagarh D/c Transmission line, as applicable; (iii) legible copy of Single Line Diagram (SLD) of 220 kV Allan Duhangan-Nalagarh D/c Transmission line clearly indicating the other generating stations which are connected with the said line; and (iv) Details of transmission charges already recovered by the Petitioner from KPCPL, EPPL and other entities since they got connected; and (v) a comparative statement with respect to charges due in terms of the Commission's order dated 17.10.2019 for the past period till the date of issue of RoP. The Commission also



directed EPPL and KPCPL to indicate the periods up to they had utilized or would utilize the 220 kV Allan Duhangan -Nalagarh D/c Transmission line.

14. The Petitioner, vide its affidavit dated 1.2.2023, amended the memo of parties to include CTUIL and NLDC as Respondents. The Petitioner, vide another affidavit dated 1.2.2023, filed the other details sought to vide RoP dated 24.1.2023 as under:

(a) The Petitioner submitted the current status of the usage of the 220 kV Allan Duhangan -Nalagarh D/C Transmission line as follows:

S.No.	User of Line	Capacity in MW	Start of use	Status as on Date
1	ADHPL	192	16.9.2010	In use
2	EPPL	100	3.8.2011	Disconnected on 3.12.2019
3	KPCPL (through HPPTCL)	24	05.06.2016	In use
4	HPSEBL (through HPPTCL) for injection and drawal	11.4	30.12.2016	Upto 11.4.2019
5	HPSEBL (through HPPTCL) (initial contracted capacity of 11.40 MW raised to 27 MW w.e/f/ 12.4.2019 against various SHEPs connected to the 33kV HPSEBL system) for injection and drawal.	27	12.4.2019	In use

(b) The Petitioner has placed on record the legible copies of the Single Line Diagram (SLD) of 220 kV Allan Duhangan -Nalagarh D/C Transmission line as Annexures 1, 2 and 3 containing the following details:

Case No.	Description of Single Line Diagram
Case -1	Allain Duhangan HEP and Malana-II HEP (Malana-II HEP was connected by way of LILO at Chauror sub-station of wef 14.7 2021.
Case-2	Allain Duhangan HEP and Malana-II HEP (Malana-II HEP was



	connected by way of LILO at Chauror sub-station) and 220/33 kV Fozal sub-station of HPPTCL (the substation as connected by way of LILO at Phozal wef 5.6.2016 to evacuate the power of KPCPL and power of other SHEPs connected with 33 KV system of HPSEBL for injection and drawal both.
Case-3	Presently Allain Duhangan HEP and 220/33 kV Phozal sub-station of HPPTCL (the sub-station as connected by way of LILO at Phozal wef 5.6.2016 to evacuate the power of KPCPL and power of other SHEPs connected with 33 KV system of HPSEBL for injection and drawal both) are connected after the disconnection of Malana-II HEP on 3.12.2019.

(c) The Petitioner raised the bills and received payments in terms of interim directions of APTEL/CERC up to 17.10.2019 and thereafter in terms of interim directions of APTEL dated 17.1.2020. The Petitioner has submitted that consequent upon the order of the APTEL, the Petitioner has not raised any bill with effect from November 2022. The details of the payments received by the Petitioner are as follows:

Name of Party making payment	Period	Invoice Amount	Net amount to be received (after adjusting rebate etc.)	Amount received	Amount not received
Malana-II	FY 2011-12 to FY 2019-20	2,14,69,91,811	2,13,86,25,520	1,63,33,38,553	50,35,03,261
HPPTCL qua KPCPL	FY 2016-17 to FY 2022-23	29,39,18,269	29,39,18,269	19,68,52,452	9,70,65,817
HPPTCL qua HPSEBL	FY 2016-17 to FY 2022-23	20,94,08,832	20,87,59,423	17,19,23,495	3,68,35,928

15. The Respondent, i.e. KPCPL, vide an affidavit dated 2.2.2023, has submitted that it has been evacuating its power through the Phozal sub-station of HPPTCL, which is further connected to the 220 kV Allan Duhangan -Nalagarh D/c Transmission line by way of a Loop-In-Loop-Out (LILO) circuit w.e.f. 5.6.2016. KPCPL has further clarified that it would continue to utilize the above-stated ISTS Line till such time (i) the transmission system (Phozal sub-station and LILO) of HPPTCL is connected to the 220 kV Allan Duhangan -Nalagarh D/c Transmission line or (ii) till KPCPL's generation facility is connected to the transmission system of HPPTCL; or (iii) till the validity of the Implementation



Agreement dated 12.1.2009 executed between KPCPL and Government of Himachal Pradesh, for a period of 40 years.

16. National Load Despatch Centre (NLDC), in its affidavit dated 15.3.2023, has submitted that in accordance with the RoP for the hearing dated 24.1.2023, NLDC had convened a meeting with the parties, including CTUIL, on 5.2.2023. During the meeting, the timeline for connectivity/LTA of EPPL, KPCPL/HPPTCL/HPSEB with 220 kV Allan Duhangan-Nalagarh D/C Transmission line, its current status and the status of the agreements signed between parties for sharing of transmission charges of the subject transmission line were discussed, but no consensus could be reached between the parties. In compliance with the RoP for the hearing dated 16.2.2023, NLDC has finalised the proposed methodology for recovery of transmission charges of 220 kV Allan Duhangan -Nalagarh D/C Transmission line after rounds of discussion with CTUIL.

17. The submissions of the parties in the meeting called by NLDC are as under:

- (a) The timeline for connectivity/LTA of EPPL, KPCPL/HPPTCL/HPSEB with 220 kV AD Hydro-Nalagarh line and their current status as discussed in the meeting is as follows:

S.No.	Name of entity	Installed Capacity	LTA(MW)	Date of Connectivity	Status of LTA/Connectivity
1	ADHPL	192	168.96	Upto 24.08.2021	LTA relinquished w.e.f. 24.08.2021
2	EPPL	100	86	03.08.2011 to 03.12.2019	Connectivity shifted from the interim 220 kV ADH-Nalagarh line to HP-STU system w.e.f Dec'2019
3	HPPTCL	24	0	05.06.2016	No LTA/Connectivity obtained by HPPTCL/KPCPL (generator). MW capacity intimated by HPPTCL.
4	HPPTCL	35.4	0	31.12.2016	
5	HPPTCL	51	0	12.04.2019	



(b) In the meeting, the Petitioner submitted the following:

(i) The Petitioner had an Interim Power Transmission Agreement (IPTA) with EPPL and an agreement with HPPTCL with reference to power from KPCPL. Transmission charges are being paid by HPPTCL to the Petitioner after receiving the same from KPCPL/other embedded entities.

(ii) The Petitioner had also an agreement with the Government of Himachal Pradesh for delivery of free power at the interconnection point at Nalagarh.

(iii) Initially, the Petitioner had signed an agreement with HPPTCL for 24 MW from KPCPL. Subsequently, an agreement was signed by HPPTCL for 27 MW to be injected at Ponjal with effect from April 2019 onwards. The total injection at Ponjal became 51 MW with effect from April 2019.

(c) EPPL submitted that it got connected with the STU network of HPPTCL from December 2019 onwards.

(d) KPCPL submitted that free power is being delivered to the Government of Himachal Pradesh during the period November to March, and the entire power from KPCPL is sold through the HPPTCL network and is being scheduled under STOA. KPCPL has a back-to-back arrangement with HPPTCL for sharing of transmission charges of 220 kV AD Hydro-Nalagarh line.

(e) HPPTL confirmed that it has back-to-back agreements with KPCPL for 24 MW and with HPSEBL for 27 MW for injection at Phojal S/s of HPPTCL, which is further connected to 220 kV AD Hydro-Nalagarh line.



18. NLDC has suggested the following mechanism for sharing the transmission tariff of 220 kV ADHPL-Nalagarh D/C transmission line in accordance with the directions of APTEL in its judgement dated 31.10.2022:

(a) For the period from 1.8.2011 (i.e. date of connectivity of EPPL with 220kV ADHPL-Nalagarh D/C transmission line to 3.12.2019 (i.e. the date of shifting of connectivity of EPPL to Parbati Polling Point): NLDC has proposed that revision of PoC rates should not be undertaken for the period from 1.8.2011 to 3.12.2019 for two reasons; (i) that retrospective revision for a period of almost 10 years would be a time-consuming process and (ii) the quantum of LTA of the Petitioner and EPPL is very marginal being of 168.96 MW and 86 MW respectively. NLDC has proposed that the liability of DICs for arrears of transmission charges of 220 KV ADHPL-Nalagarh D/C Transmission Line should be computed as per Clause 6 of Regulation 11 of Sharing Regulations, 2010 and all DICs in the POC Pool [which also include ADHPL & EPPL (Punjab)] shall share the transmission charges for the period from 1.8.2011 to 3.12.2019. The arrears from concerned DICs in the Pool towards the reimbursement of transmission charges of the 220 KV ADHPL-Nalagarh line as per the POC mechanism will be determined and recovered by CTU under Bill-2 to be raised as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020.

(b) For the period from 4.12.2019 to 31.10.2020 (i.e. after date of shifting of connectivity of EPPL to Parbati Polling Point till the implementation of Sharing Regulations, 2020): NLDC has proposed that during the period from 4.12.2019 to 31.10.2020, the liability of DICs for



arrears of transmission charges of 220 kV ADHPL-Nalagarh transmission line should be computed as per Clause 6 of Regulation 11 of Sharing Regulations, 2010. All DICs in the POC Pool, including the Petitioner, shall share the charges of the above line for the period from 4.12.2019 to 31.10.2020. The arrears from concerned DICs in the Pool towards the reimbursement of transmission charges of 220kV ADHPL-Nalagarh transmission line as per POC mechanism would be determined and recovered by CTU under Bill-2 to be raised as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020.

(c) From 1.11.2020 to 23.8.2021 (i.e. from the effective date of Sharing Regulations, 2020 to till relinquishment of LTA by ADHPL): NLDC has submitted that during the period from 1.11.2020 to 23.8.2021, the liability of DICs for arrears of transmission charges of 220kV ADHPL-Nalagarh transmission line should be determined as per Clause 2(b) of Regulation 15 of Sharing Regulations, 2020. All DICs in the POC Pool, including ADHPL, would share the transmission charges of the said transmission line for the period from 1.11.2020 to 23.8.2021. The arrears from concerned DICs in the Pool towards the reimbursement of transmission charges of 220kV ADHPL-Nalagarh transmission line as per POC mechanism would be determined and recovered by CTU under Bill-2 to be raised as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020.

(d) From 24.8.2021 onwards (i.e. after Relinquishment of LTA by ADHPL)

NLDC has submitted that as there is no LTA customer of 220kV ADHPL-Nalagarh transmission line and the nature of the said transmission line



being “connectivity line” as per the provisions of the Sharing Regulations, 2020, the billing on the ADHPL would be done as per the provisions of Clause 13(9) of the Sharing Regulations, 2020 and the transmission charges of the said transmission line would not be part of Pool billing as per the Regulations, 2020.

(e) Billing on HPPTCL (back-to-back arrangement with KPCPL & HPSEB)

NLDC has submitted that HPPTCL is connected through LILO of one circuit of 220 KV D/C ADHPL-Nalagarh transmission line at Fojal (HPPTCL). KPCPL and other HPSEB generators are embedded in the HPPTCL network. HPPTCL has a back-to-back arrangement with KPCPL and HPSEB. Since HPPTCL does not have connectivity/ LTA/MTOA, no liability for sharing of transmission charges under Bill-2 would fall on them. Further, KPCPL and HPSEB are selling their power through STOA, for which POC charges from ISTS point, i.e. Nalagarh, were already paid by them.

19. In response to the RoP for the hearing dated 16.2.2023, the Petitioner has submitted the following vide its affidavit dated 30.3.2023 with regard to the transmission charges recovered pursuant to the order dated 7.10.2019:

Name of Generating Station/Discom/any other entity	Capacity in MW	Period	Charges due in terms of order dated 17.10.2019 (in Rs. In lakh)	Amount received (in Rs. In lakh)
Allain Duhangan HEP	192	FY 2011-12 to FY 2022-23	28,615.48	28,615.48
Malana-II	100	FY 2011-12 to FY 2019-20	10,744.33	10,744.33
Baregram HEP (KPCPL through HPPTCL)	24	FY 2016-17 to FY 2022-23	1,901.55	1,901.55
Small HEP (HPSEBL through HPPTCL)		FY 2011-12 to FY 2022-23	3,408.59	3,408.59



20. The Petitioner, in its rejoinder to the reply of NLDC, has submitted as under:
- (a) The proposed mechanism of sharing for the period 1.8.2011 to 3.12.2019 that no revision of PoC rates may be undertaken is not in line with the findings of APTEL in para 111 of the judgement. Further, since the period involved is prior to the date the Sharing Regulations 2020 came into force, the recovery of charges has to be in line with the provisions of Sharing Regulations 2010.
- (b) The proposed mechanism of sharing charges from 4.12.2019 to 31.10.2020 (after shifting the connectivity of EPPL to Parbati Pooling Point) is in line with the judgement of APTEL. However, the recovery of charges has to be in line with the provisions of the Sharing Regulations, 2010.
- (c) The proposed mechanism of sharing of charges from 1.11.2020 to 23.8.2021 (i.e. from the effective date of Sharing Regulations till the relinquishment of LTA by the Petitioner) is in line with the judgement of APTEL.
- (d) The proposed mechanism of sharing of sharing for the period 24.8.2021 onwards (i.e. after the relinquishment of LTA by the Petitioner) is not in line with the judgement of the APTEL. According to APTEL, the transmission system of the Petitioner was to be treated as part of the ISTS network from the date of connectivity given to EPPL or any other generator or STU. Accordingly, the connectivity point of the Petitioner's generating station shall be treated at the outgoing bus of the generating station at Prini instead of CTU Nalagarh. The proposal of NLDC for change of status of 220 KV D/C ADHPL-Nalagarh transmission line by applying Regulation 13(9) of the



Sharing Regulations, 2020 is a clear departure from the directions and findings of APTEL in its judgement dated 31.12.2022 in Appeal No.450/2019.

(e) As regards the recommendation of NLDC that since HPPTCL has no connectivity/LTA/MTOA, HPPTCL would not be required to share the transmission charges, the Petitioner has submitted that since the 220 KV D/C ADHPL-Nalagarh transmission line is an ISTS, all DICs shall share the charges for the said transmission line irrespective of the fact that there is no LTA customer.

21. KPCPL, vide its affidavit dated 11.4.2023, in its response to the mechanism recommended by NLDC, has submitted as under:

(a) In the table given by NLDC, the injection details for the Petitioner and EPPL are shown as 168.96 MW and 86 MW, respectively, whereas the entire capacity of 192 MW and 100 MW need to be considered for calculation of PoC.

(b) The suggestion of NLDC that no revision of PoC rates should be undertaken for the period between 1.8.2011 to 3.12.2019 being a time-consuming process would be in violation of the APTEL's judgement dated 31.10.2022 apart from being an abdication of statutory duties by NLDC/CTUIL. NLDC should be directed to revise the PoC rates from 2011 perform its statutory functions accordingly and allow carrying cost/interest for the excess amounts paid by the entities, including KPCPL, in the past.



(c) KPCPL would have no objection to the methodologies proposed by NLDC for the periods 4.12.2019 to 31.10.2020 and 1.11.2020 to 23.8.2021 if they result in a retrospective revision of PoC charges and allow full recovery of excess transmission charges and losses already paid in the past along with carrying or interest cost.

(d) NLDC cannot at all refer to Regulation 13(9) of Sharing Regulations, 2020, as the 220 KV D/C ADHPL-Nalagarh transmission line is part of ISTS in terms of Section 2(36) of the Act since EPPL started using the transmission line and not a dedicated transmission line. Further, the submission of NLDC regarding the absence of LTA customers 220 KV D/C ADHPL-Nalagarh transmission line is of no relevance since APTEL, in its judgement dated 31.10.2022, has held the transmission line to be a deemed ISTS licensee. As such, the question of LTA does not arise, and the Petitioner is eligible to recover the fixed charges of the said transmission line irrespective of the LTA. CTUIL should continue determining PoC charges for the said line during this period.

(e) NLDC has not proposed any methodology qua excess payments of line losses which have been paid by the entities and need to be refunded to the entities along with interest.

22. KPCPL has suggested the following steps to be followed by NLDC for implementation of the judgement of APTEL dated 31.10.2022:

(a) NLDC should firstly calculate the total transmission charges paid/borne qua ADHPL assets, till date, under non-Poc Mechanism;



(b) Thereafter, NLDC should take into account the PoC rates prevailing at different points of time, starting from the date when EPPL tapped into the AD Line;

(c) NLDC should then make a comparison with respect to the actual payments made by the entities, compared to the PoC rates, and whatever the excess payments made by the entities, the same should be refunded by CTUIL along with interest and the excess line losses also need to be refunded with interest;

(d) To the above extent of overpayment, AD Hydro's payments from CTUIL need to be adjusted till the excess amount is set off with the transmission charges determined for AD Line by the Commission in the order dated 17.10.2019 passed in the present petition;

(e) While doing so, NLDC should also factor in the interest component, which is payable to the entities over and above the refund to which they are entitled (calculated on a compounding basis), and should also adjust the excess line losses paid by the entities by factoring in the interest component;

(f) The parties which are/ wish to transmit power through the above Inter-State AD Line can do so by availing open access (long-term/medium-term or short term as the case may be) in terms of the applicable regulations.

23. The Commission, in the RoP for the hearing dated 13.4.2023, directed the Petitioner to file year-wise actual receipt of charges by it from EPPL, KPCPL and HPSEBL. The Commission further directed NRLDC to file the status of the



revision of DSM accounts in terms of para 59 of the order dated 17.10.2019 in the present petition. In para 59 of the said order, NRLDC was directed to revise the accounts of the entities connected to the 220 KV D/C ADHPL-Nalagarh transmission line based on the average loss for last week for the period prior to 17.10.2019 and adjust the shortfall or surplus from UI/DSM pool for such period. The Commission also directed NLDC to include the transmission charges of 220 KV D/C ADHPL-Nalagarh transmission line in the PoC pool from the month of April 2023, subject to the final outcome of the petition.

24. NRLDC, vide its affidavit dated 2.5.2023, made the following submissions with regard to the status of the revision of DSM accounts prior to 17.10.2019:

(a) The implementation of direction in para 59 of the order dated 17.10.2019 required compilation of the data for the period from the date of connectivity of EPPL (i.e. August-2011) to the date of CERC order (i.e. 17.10.2019) i.e. for almost 9 years (468 weeks) for all the meters installed on the subject transmission line to revise the DSM Accounts of ADHPL, EPPL and HPSEBL. It is a time-consuming and difficult process to compile, validate and process the massive meter data of 96 blocks x 365 days x 9 years from the connectivity of EPPL (in Aug-2011) considering the facts such as changes/updation in data processing software, huge volume of data, changes in DSM/UI regulations, meter replacement etc and the availability of resources both at NRLDC and NRPC. NRLDC was in the process of understanding the work to be carried out, and modalities were being figured out to go forward.

(b) APTEL, in its order dated 17.1.2020 in Appeal No. 410 of 2019 filed by the Petitioner, stayed the Commission's order dated 17.10.2019 for the raising of adjustment bills. Therefore, NRLDC kept the revision of DSM accounts in abeyance for the period prior to the issuance of the order dated 17.10.2019 and implemented it prospectively.

(c) As regards the calculation of line losses, NLDC has submitted that APTEL, in its judgement dated 31.10.2022, has nowhere mentioned about revision of transmission losses retrospectively. Further, since the generating station of KPCPL is not directly connected to the 220 KV D/C ADHPL-Nalagarh transmission line and is connected through the Phojal Substation of HPTCL, the accounts have to be revised by SLDC, Himachal Pradesh, for any settlement of line losses pertaining to KPCPL. Moreover, Regulation 6(3) of Sharing Regulations, 2010 provides that "the applicable transmission losses for the ISTS shall be declared in advance and shall not be revised retrospectively." Therefore, revision of transmission losses has been provided prospectively in order to avoid the reopening of settled issues/accounts, and avoid uncertainty and avoidable litigations in the light of the principle laid down by the Hon'ble Supreme Court.

(d) The transmission losses of the subject line were being apportioned between ADHPL, EPPL and HPSEBL. Now, due to the declaration of the subject line as ISTS, the Point of Injection is to be shifted from Nallagarh S/s to Prini S/s. Therefore, if the methodology of sharing of losses for the subject line is changed retrospectively, then losses of the line have to be incorporated retrospectively in the Northern Regional ISTS Pool till

Nov'2020 and National ISTS Loss Pool after notification of Sharing Regulation 2020. This will result in the change of energy accounts of all the grid connected utilities of Northern Region and All India retrospectively. Accordingly, NLDC has not proposed any methodology for retrospective revisions in its reply dated 15.3.2023 in the instant Petition.

(e) As per Grid Code, NRPC issues the weekly DSM/UI accounts, and for revisions of 12 years of weekly DSM accounts, the views of NRPC may also be important.

(f) NRLDC. vide letter dated 26.04.2023 has also requested the Petitioner to get registered with NRLDC under the category of Inter-State Transmission Licensee. The requirement for installation of additional meters has also been informed to ADHPL, CTUIL and PGCIL. NRLDC has requested the Commission to direct the Petitioner to the signing of a Connectivity Agreement as ISTS Licensee with CTUIL in terms of extant Regulations.

(g) NRLDC has requested that in order to avoid the reopening of all the settled scheduled transactions and accounts, the Commission may pass the order to implement the shifting of losses of the subject line in the ISTS Pool Losses in terms of Sharing Regulation, 2020 prospectively from the accounting week 17.4.2023 to 23.04.2023 which NRLDC has already implemented in terms of the directions vide RoP dated 20.4.2023.

25. The Petitioner, vide its affidavit dated 15.5.2023, has filed the year-wise recovery of charges from EPPL, KPCPL and HPSEBL as under:



Sl.No.	Year	EPPL			KPCPL			HPSEBL		
		TDS	Rebate	Amount Received	TDS	Rebate	Amount Received	TDS	Rebate	Amount Received
1	2011-12	3,617,772	-	177,270,804	-	-	-	-	-	-
2	2012-13	4,019,683	-	114,411,391	-	-	-	-	-	-
3	2013-14	718,836	-	117,776,058	-	-	-	-	-	-
4	2014-15	-	-	-	-	-	-	-	-	-
5	2015-16	-	1,783,706	653,679,136	-	-	-	-	-	-
6	2016-17	-	-	140,902,297	-	-	34,867,534	-	-	2,436,273
7	2017-18	-	-	279,025,298	-	-	29,530,426	-	-	27,788,736
8	2018-19	-	-	128,320,903	-	-	28,465,928	-	181,939	29,738,538
9	2019-20	-	-	21,952,667	-	-	22,222,881	-	-	16,161,813
10	2020-21	-	-	-	-	-	33,562,000	-	-	15,202,619
11	2021-22	-	-	-	-	-	38,101,880	-	467,470	41,159,317
12	2022-23	-	-	-	-	-	20,580,810	-	815,158	49,250,411
13	2023-24	-	-	-	-	-	5,051,095	-	-	-
	Total	8,356,291	1,783,706	1,633,338,554	-	-	212,382,554	-	1,464,567	181,737,707

26. In response to NRLDC's submission regarding the computation of transmission losses, the Petitioner has submitted that since there is a direction from the Commission for the calculation of data, NLDC can calculate the same.

27. KPCPL, vide its affidavit dated 30.5.2023, in response to the NRLDC affidavit dated 2.5.2023, has submitted as under:

(a) APTEL's interim order dated 17.1.2020 in Appeal No.410 of 2019 merely prevents the raising of adjustment bills upon the Petitioner in terms of the tariff determined in an order dated 17.10.2019 in the present petition. APTEL's order does not prevent a refund of excess of transmission charges paid by KPCPL from the PoC pool as directed in the judgement dated 31.10.2022 in Appeal No.450 of 2019.

(b) NLDC being the nodal agency, is bound to carry out the directions of APTEL and the Commission and revise the DSM accounts based on average weekly losses for the period prior to the date of the order dated 17.10.2019 in Petition No. 209/MP/2017 so that any excess payment of transmission losses by KPCPL and other entities can be refunded.



(c) The averment of NRLDC that the judgement dated 31.10.2022 in Appeal No.450/2019 nowhere mentions the revision of transmission losses retrospectively is misleading. As per the APTEL's judgement, the PoC mechanism has to be made applicable from the date when EPPL was connected to the 220 KV D/C ADHPL-Nalagarh transmission line in August 2011. The said PoC mechanism is a "sharing" mechanism which not only includes transmission charges for ISTS but also includes transmission losses. As regards the intra-State nature of KPCPL as contended by NLDC, KPCPL has submitted that it is entitled to line losses to the extent of the usage of the ISTS through the 220 KV D/C ADHPL-Nalagarh transmission line.

(d) As regards the reliance laced by NRLDC on the applicability of Regulation 6(3) of the Sharing Regulations, 2010, KPCPL has submitted that the Commission, in its order dated 17.10.2019, has categorically directed that the line losses have to be factored qua the 220 KV D/C ADHPL-Nalagarh transmission line. Further, APTEL's judgement dated 31.10.2022 set aside the Commission's order dated 17.10.2019 only to the extent that recovery of transmission charges would take place through the PoC mechanism and, therefore, Sharing Regulations would be applicable for computation transmission charges and losses.

(e) As regards the apprehension of NRLDC that retrospective revision of line losses would result in a change of energy accounts for all grid-connected utilities of the Northern Region and All India, KPCPL has submitted that NRLDC cannot wriggle out of its statutory duties and functions. Further, the impact of retrospective revision of line losses on the

PoC could be given effect in the forthcoming determinations. If the revision of line losses is not carried out, it would result in illegal penalisation of KPCPL.

(f) As regards the contention of NRLDC that software needs to be changed for computation of line losses, KPCPL has submitted that if the software is required to be changed in order to implement the judgement of APTEL, then it has to be changed. As regards the suggestion of NRLDC for consultation with NRPC, KPCPL has submitted that NRPC is not a statutory body which would entail the Commission to hear its views as well. KPCPL has further submitted that NRLDC ought to simply take the details of DSM accounts and accordingly compute the transmission losses and refund the excess line losses paid by the users of 220 KV D/C ADHPL-Nalagarh transmission line, including KPCPL.

28. The Petitioner, vide its letter dated 20.9.2023, has placed on record the order dated 31.8.2023 passed by APTEL in Appeal No.410/2020 and IA No.360/2020 disposing of the said appeal and remanding the matter to the Commission to examine afresh the claims of the Petitioner for capital cost and initial spares in terms of Regulations 7, 8 and 9 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

Analysis and Decision

29. The Petitioner established a generating station of 192 MW in the Kulu District of Himachal Pradesh and also constructed a dedicated transmission line, namely, 220 KV D/C ADHPL-Nalagarh transmission line from its generating station to the sub-station of PGCIL at Nalagarh. As per the Master Plan



envisaged by the Central Electricity Authority, the balance spare capacity on 220 KV D/C ADHPL-Nalagarh transmission line would be made available by the Petitioner for evacuation of power from other projects in the Parbati/Beas Valley viz. Malana II of EPPL and Sainj. Ministry of Power, Government of India, in its sanction letter under Section 68 of the Act, permitted EPPL to wheel its power from Malana II by LILO of one circuit of 220 KV D/C ADHPL-Nalagarh transmission line till the Nalagarh sub-station of PGCIL. On a petition filed by EPPL, the Commission, in its order dated 1.6.2011 in Petition No.259 of 2009, held that the portion of the 220 KV D/C ADHPL-Nalagarh transmission line to be used by EPPL for evacuation of power becomes part of inter-State transmission system under section 2(36) of the Act since it is incidental to inter-State transmission of electricity. The Commission further held that the Commission is empowered to issue directions under section 79(1)(c) of the Act to regulate inter-State transmission of electricity on the 220 KV D/C ADHPL-Nalagarh transmission line. The Commission directed the Petitioner to grant connectivity to EPPL and also issued a slew of directions on the technical and commercial aspects for smooth operation and sharing of the charges of the 220 KV D/C ADHPL-Nalagarh transmission line. On appeal, APTEL, vide its judgement dated 2.1.2013 in Appeal No.81 of 2011, upheld the decision of the Commission with regard to the nature of the 220 KV D/C ADHPL-Nalagarh transmission line and the jurisdiction of the Commission to regulate the transmission of power and adjudicate the dispute between the Petitioner and EPPL regarding sharing of transmission charges and losses etc. APTEL also recorded its findings on various issues raised with regard to the determination and sharing of transmission charges and losses and other related issues. On further appeal by



the Petitioner, the Hon'ble Supreme Court, in its judgement dated 26.4.2017 in Civil Appeal No.1795 of 2013, upheld the order of the APTEL and directed the Commission to decide the matter on merit. Hon'ble Supreme Court, in its judgement dated 26.4.2017 in Review Petition (c) No.1365 of 2017 in Civil Appeal No.1795 of 2013, further directed the Commission to decide the matter on merit without regard to the observations of APTEL in its judgement dated 2.1.2013. Consequent to the directions of the Hon'ble Supreme Court, the Petitioner filed Petition No.209/MP/2017 for the determination of the tariff of the 220 KV D/C ADHPL-Nalagarh transmission line. The Commission, in its order dated 17.10.2019 in Petition No.209/MP/2017, determined the tariff of the 220 KV D/C ADHPL-Nalagarh transmission line. However, the Commission held that the transmission charges and losses of the said line would be shared by the Petitioner and other generators in proportion to their installed capacity and would not be serviced through the PoC mechanism under Sharing Regulations, 2010.

30. Two nos. of appeals were filed against the order dated 17.10.2019 in Petition No.209/MP/2017- Appeal No. Appeal No.410/2020 by the Petitioner challenging the determination of capital cost of 220 KV D/C ADHPL-Nalagarh transmission line and Appeal No.450 of 2019 by KPCPL for inclusion of the transmission charges in the PoC pool under the Sharing Regulations. APTEL, vide its order dated 31.8.2023, disposed of Appeal No.410/2020 by remanding the matter to the Commission to examine afresh the claims of the Petitioner for capital cost and initial spares in terms of Regulations 7, 8 and 9 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009. APTEL, vide its judgement dated 31.10.2022, has disposed of the Appeal No.450 of 2019 filed by KPCPL, holding that the transmission charges for usage



of the 220 KV D/C ADHPL-Nalagarh transmission line would be determined and levied in accordance with the PoC mechanism under Regulation 3(b) of the Sharing Regulations, 2010. The exercise for re-determination of tariff in the light of the directions of APTEL in its order dated 31.8.2023 in Appeal No.410/2020 is being undertaken separately. However, necessary consequential directions in the light of the observations and conclusions recorded by APTEL in its judgement dated 31.10.2022 in Appeal No.450 of 2019 are being issued through this order. It is, however, clarified that wherever the implementation of the directions issued through this order is contingent upon the re-determination of tariff in the light of the directions of APTEL in its order dated 31.8.2023 in Appeal No.410/2020, the said directions shall be implemented by CTUIL or NLDC, as the case may be, after re-determination of tariff.

31. The observations and conclusions recorded by APTEL in its judgement dated 31.10.2022 in Appeal No.450 of 2019 are briefly summarised as under:

(a) APTEL has declared that 220 KV D/C ADHPL-Nalagarh transmission line is part of ISTS as recorded in the findings of APTEL dated 2.1.2013 and upheld by Hon'ble Supreme Court (Para 97 of the judgement).

(b) The jurisdiction of the Commission is attracted under Section 79(1)(c) and (d) of the Act only because the Hon'ble Supreme Court has held that the 220 KV D/C ADHPL-Nalagarh transmission line is part of ISTS in terms of Section 2(36)(ii) of the Act. (Para 99 of the judgement).

(c) 220 KV D/C ADHPL-Nalagarh transmission line has been declared as part of ISTS in terms of Section 2(36)(ii) of the Act by APTEL, which has been upheld by the Hon'ble Supreme Court. The said transmission line



shall hold the status of ISTS and cannot be termed as dedicated anymore.
(Para 104 of the judgement).

(d) The subject line fulfils the criteria to be included in the basic network of an ISTS for the purpose of including the same under the PoC mechanism. As per Regulation 3(b) of Sharing Regulations, 2010, Yearly Transmission Charges are applicable to the DICs such as State Electricity Boards/State Transmission Utilities connected with ISTS or designated agencies in the State (on behalf of distribution companies, generators and bulk consumers connected to the transmission system owned by the SEB/STU/intra-State transmission licensee). KPCPL, being connected with the ISTS line (220 KV D/C ADHPL-Nalagarh transmission line) through HPPTCL, is a DIC.
(Para 111 of the judgment).

(e) As per Regulation 2(k) of the Sharing Regulations, 2010, Deemed ISTS means such transmission system which has regulatory approval of the Commission as being used for inter-State transmission of power and qualified as ISTS. In the regulatory order of the Commission dated 1.6.2011 in Petition No.259/2010, it was held that 220 KV D/C ADHPL-Nalagarh transmission line is being used as part of ISTS and the Petitioner (ADHPL) being the owner of Deemed ISTS becomes a Deemed ISTS licensee. Accordingly, the APTEL, in its judgment dated 2.1.2013, held that the Petitioner was not required to take a licence (Para 113 of the judgement).

(f) APTEL held that the transmission tariff for usage of 220 KV D/C ADHPL-Nalagarh transmission line has to be determined and levied in



accordance with Point of Connection (PoC) mechanism provided under Regulation 3(b) of Sharing Regulations, 2010 which shall be applicable for recovery of transmission charges from the date from which EPPL or any other generator or STU (or State Electricity Board) on behalf of generators got connected to the subject transmission line (Para 114 of the judgement).

32. The Petitioner has submitted the usage of the 220 KV D/C ADHPL-Nalagarh transmission line as follows:

S.No.	User of Line	Capacity in MW	Start of use	Status as on Date
1	ADHPL	192	16.9.2010	In use
2	EPPL	100	3.8.2011	Disconnected on 3.12.2019
3	KPCPL (through HPPTCL)	24	05.06.2016	In use
4	HPSEBL (through HPPTCL) for injection and drawal	11.4	30.12.2016	Upto 11.4.2019
5	HPSEBL (through HPPTCL) (initial contracted capacity of 11.40 MW raised to 27 MW wef 12.4.2019 against various SHEPs connected to the 33kV HPSEBL system) for injection and drawal.	27	12.4.2019	In use

33. NLDC, after consultation with all concerned parties, has submitted the following details with regard to the status of connectivity and usage of the 220 KV D/C ADHPL-Nalagarh transmission line:

S.No.	Name of entity	Installed Capacity	LTA(MW)	Date of Connectivity	Status of LTA/Connectivity
1	ADHPL	192	168.96	Upto 24.08.2021	LTA relinquished w.e.f. 24.08.2021
2	EPPL	100	86	03.08.2011 to 03.12.2019	Connectivity shifted from the interim 220 kV ADH-Nalagarh line to HP-STU system w.e.f. Dec'2019
3	HPPTCL	24	0	05.06.2016	No LTA/Connectivity obtained by HPPTCL/KPCPL (generator). MW capacity intimated by HPPTCL.
4	HPPTCL	35.4	0	31.12.2016	
5	HPPTCL	51	0	12.04.2019	



34. It is apparent from the data provided by the Petitioner and NLDC that the 220 KV D/C ADHPL-Nalagarh transmission line of the Petitioner was put into use on 16.9.2010. The Commission, in its order dated 17.10.2019 in Petition No.209/MP/2017, has decided the date of commercial operation of 220 KV D/C ADHPL-Nalagarh transmission line as 16.9.2010 when the transmission line was put into use. Relevant para of the said order is extracted as under:

“Date of Commercial Operation (COD)

60. The Petitioner has claimed the COD of the instant transmission line as 16.9.2010. In support of COD of the asset, the Petitioner has filed RLDC and CEA certificates of trial operation. Taking into consideration the CEA energisation certificate, RLDC charging certificate and CMD certificate, the COD of the instant transmission line is being considered as 16.9.2010. As the nature of the instant transmission line is a dedicated one from 16.9.2010 till the date of start of usage of the line by EPPL, we are of the view that there is no need to determine the transmission tariff for this period. Accordingly, in the instant case, the transmission tariff has been worked out from the month of start of usage of the line by EPPL. HPPTCL/ KPCPL/ HPSEB started injection of 24 MW of power into the instant transmission line during August, 2011. However, the exact date of start of use by EPPL/HPPTCL/ KPCPL/ HPSEB has not been furnished.”

35. The above finding has not been set aside by APTEL. Thus, this part of the order has attained finality. Therefore, the date of commercial operation of 220 KV D/C ADHPL-Nalagarh transmission line shall continue to be reckoned as 16.9.2010 in terms of the order dated 17.10.2019. Further, the Commission decided in the said order that the tariff of the subject transmission line would be determined with effect from the month of its usage by EPPL. APTEL, in its judgement dated 31.10.2022 in Appeal No. 450 of 2019, has recorded its findings and came to a conclusion that the tariff of the subject transmission line would be determined and levied in accordance with the Point of Connection (PoC) mechanism provided under Sharing Regulations, 2010 from the date from which EPPL got connected to the subject transmission line. Since EPPL got



connected to the 220 KV D/C ADHPL-Nalagarh transmission line from 3.8.2011, the tariff of the subject transmission line would be determined and included in the PoC pool for recovery in accordance with the Sharing Regulations, 2010, with effect from 3.8.2011.

36. It is noticed that the generating station of the Petitioner, which has an installed capacity of 192 MW and LTA capacity of 168.96 MW, continues to inject power through the subject transmission line, though the Petitioner relinquished its entire LTA with effect from 24.8.2021. Further, Malana II of EPPL, which had an installed capacity of 100 MW and LTA of 86 MW, stayed connected with the subject transmission line from 3.8.2011 till 3.12.2021. KPCPL, with an installed capacity of 24 MW and with 0 LTA, has been utilising the subject transmission line on being connected through the transmission system of HPPTCL at Phozal. HBSEBL was connected to the subject transmission line through the HPPTCL network and was injecting 11.4 MW from 13.12.2016 to 11.4.2019 and 27 MW from 12.4.2019.

37. As per the judgement of APTEL, 220 KV D/C ADHPL-Nalagarh transmission line of the Petitioner is a deemed ISTS system in terms of Regulation 2(k) of the Sharing Regulations, 2010. Regulation 2(1)(k) of the Sharing Regulations, 2010 provides as under:

“(k) ‘Deemed Inter State Transmission System (Deemed ISTS)’ means such transmission system which has regulatory approval of the Commission as being used for inter-State transmission of power and qualified as ISTS for the purpose of these regulations unless otherwise specified;”

APTEL has held that since the Commission, in its order dated 1.6.2011 in Petition No. 259/2009, has held that the subject transmission line is being used



as part of ISTS, the said line will be considered as deemed ISTS and the Petitioner ADHPL being the owner of the deemed ISTS becomes a Deemed ISTS licensee. The Commission is of the view that the 220 KV D/C ADHPL-Nalagarh transmission line was conceived and executed as a dedicated transmission line, but due to its use by more than one generator and considering the peculiar facts of the case, the Commission decided the subject transmission line as incidental to ISTS in terms of Section 2(36)(ii) of the Act which was upheld by both APTEL and the Supreme Court. However, the Commission had never accorded the status of deemed ISTS to the subject transmission line in terms of Sharing Regulations, 2010. In compliance with the directions of APTEL in its judgement dated 31.10.2022 in Appeal No.450/2019, the Commission is presuming the subject transmission line as deemed ISTS. Since this presumption is being accorded in the peculiar facts and circumstances of the APTEL's findings, it shall not be treated as a precedent case to confer deemed ISTS status on the dedicated transmission lines which are used by more than one generating station. Such cases shall be considered and decided on their own merit in accordance with law..

38. APTEL has held that the annual transmission charges of 220 KV D/C ADHPL-Nalagarh transmission line being a deemed ISTS shall be included in the Yearly Transmission Charges as defined in Regulation 2(1)(y) of the Sharing Regulations, 2010. The said clause is extracted as under:

“(y) ‘Yearly Transmission Charge(YTC)’ means the Annual Transmission Charges for the existing and new transmission assets of the inter-State transmission licensees, deemed ISTS licensees, owners of inter-State transmission lines connecting two States and owners of non-ISTS lines certified by Regional Power Committees for inter-State transmission of power, determined by the Appropriate Commission under Section 62 of the



Act or adopted by the Appropriate Commission under Section 63 of the Act or as otherwise provided in these regulations.”

Therefore, the Annual Transmission Charges of 220 KV D/C ADHPL-Nalagarh transmission line determined with effect from 3.8.2011 (the date on which EPPL got connected) would be included in the Yearly Transmission Charges.

39. Designated ISTS Customer has been defined in Regulation 2(1)(l) of Sharing Regulations, 2010 as under:

“(l) ‘Designated ISTS Customer or DIC’ means the user of any segment(s) or element(s) of the ISTS and shall include generator, State Transmission Utility, State Electricity Board or load serving entity including Bulk Consumer and any other entity or person directly connected to the ISTS and shall further include any intra-State entity who has obtained Medium Term Open Access or Long Term Access to ISTS:

Provided that where the ISTS charges were being billed to the distribution companies or any designated agency in the State for purchasing power before implementation of these regulations, the distribution companies or the designated ISTS Customer in that State for the purpose of preparation of Regional Transmission Account (RTA) by Regional Power Committees and for the purpose of billing and collection by CTU:

Provided further that after implementation of these regulations, the States may designate any agency as Designated ISTS Customer for the above purpose.”

As per the above definition, the Petitioner, EPPL, HPPTCL, HPSEBL, etc., are the DICs of ISTS being the users of the 220 KV D/C ADHPL-Nalagarh transmission line. However, KPCPL and other intra-State generators using 220 KV D/C ADHPL-Nalagarh transmission line through the systems of HPPTCL/HPSEBL, which have neither LTA nor MTOA to ISTS, cannot be called Designated ISTS Customers or DICs. However, relying on the provisions of Regulation 3(b) of Sharing Regulations, 2010, APTEL has held that KPCPL,



being connected with ISTS line i.e. 220 KV D/C ADHPL-Nalagarh transmission line, through HPPTCL, which is an STU, is a DIC. Accordingly, all intra-State entities who are users of the 220 KV D/C ADHPL-Nalagarh transmission line through the system of HPPTCL/HPSEBL shall be considered as DICs for the purpose of implementation of this judgement.

40. Regulation 7 of the Sharing Regulations, 2010 provides for the processes to be followed by the Nodal Agency for the determination and allocation of Point of Connection Charges and Losses. The Implementing Agency is required to collect the Basic Network data pertaining to the network elements and the generation and load at the various network nodes from all concerned entities, including DICs, transmission licensees, NLDC, RLDCs, SLDCs, RPCs and run AC load flows using the Basic Network, nodal generation and nodal demand. Consequent to the development of load flows on the Basic Network, the Hybrid Methodology is applied by the Implementing Agency on the Basic Network to determine the transmission charges and loss allocation factors attributable to each node on the power system. For the computation of transmission charges at each node as per Hybrid Methodology, the cost of ISTS transmission licensees whose lines feature on the Basic Network are considered. The total transmission charges to be recovered for all lines of a given voltage level and conductor configuration shall be divided by the total circuit kilometre for that voltage level and line configuration in order to arrive at the average transmission charge per circuit kilometre for that voltage level and conductor configuration. The total transmission charges for each line are recovered in proportion to the participation factors as detailed in Annexure to the Sharing Regulations, 2010.



41. There were three slab rates for PoC charges from 1.7.2011 to 30.4.2015. However, vide the Third Amendment to Sharing Regulations, 2010, which came into effect on 1.5.2015, there were nine slab rates for the PoC charges. Further, prior to the Third Amendment, the recovery of the YTC was based on the Hybrid Method and the Uniform Charge Sharing Mechanism at the rate of 50% each. With effect from 1.5.2015, Recovery of 90% of the Yearly Transmission Charges is based on Hybrid Methodology (PoC charges), and 10% of the Yearly Transmission Charges are based on Reliability Support Charges. The Reliability Support Charges are payable by the DICs in proportion to their approved withdrawal, and in the case of an Injection DIC, the same is payable in proportion to their approved injection.

42. The loss allocation factors are to be computed for each season using the Hybrid method and are to be applied to the total losses attributable to each DIC by suitably adjusting their scheduled MWs. Further, there would be nine slabs for the calculation of transmission losses to be expressed in terms of percentage. There would be 4 steps above the average loss and 4 steps below the average loss with a slab size of 0.25%, subject to a minimum loss of zero per cent.

43. CTU is responsible for raising the transmission bills on the concerned DICs, and collection and disbursement of transmission charges to ISTS transmission licensees in terms of Regulation 11 of the Sharing Regulations, 2010. Under Regulation 11(6) of the Sharing Regulations, 2010, the third part of the bill shall be used to adjust any variation in the transmission charges.



44. Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 (Sharing Regulations, 2020) came into force with effect from 1.11.2020 repealing the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010. Sharing Regulations, 2020 defines 'Yearly Transmission Charges' or 'YTC' as "the annual transmission charges as determined or adopted by the Commission for the transmission elements of ISTS which have achieved COD up to the last day of a billing period and for intra-State transmission lines used for inter-State transmission of electricity as approved by the Commission." As per Regulation 3(1) of Sharing Regulations, 2020, the transmission charges shall be shared amongst the DICs on a monthly basis based on the Yearly Transmission Charges such that (a) the Yearly Transmission Charges are fully recovered and (b) any adjustments on account of revision of the Yearly Transmission Charges are recovered. Regulation 3(2) of the Sharing Regulations, 2020 provides that Yearly Transmission Charges for transmission system shall be shared on a monthly basis by DICs in accordance with Regulations 5 to 8 of these regulations subject to exceptions provided in Clauses (3), (6), (9) and (12) of Regulation 13. Billing of the transmission charges shall be made as per Regulation 15(2) of the Sharing Regulations, 2020.

45. There is no dispute about the statutory provisions in the Sharing Regulations, 2010 and 2020, that the annual transmission charges determined by the Commission shall be included in the Yearly Transmission charges for recovery through the PoC mechanism. The Commission had determined the annual transmission charges of 220 KV ADHPL-Nalagarh line vide order dated 17.10.2019 in Petition NO.209/MP/2017 for the period from 2011-12 to 2018-19.



APTEL, vide its order dated 31.8.2023 in Appeal No.410 of 2019 & I.A. No. 360 of 2020, had set aside the tariff portion of the order on the ground of determination of capital cost by applying the ratio of indicating test and denial of additional capital cost and initial spares and remanded the matter to the Commission for a fresh examination of the claims of the Petitioner. The remand matter is under consideration by the Commission. Since the tariff of 220 KV ADHPL-Nalagarh line has been set aside and is yet to be determined, the annual transmission charges can be included in the YTC only after its fresh determination. Therefore, we are laying down the principle of sharing the transmission charges in compliance with the directions of APTEL in judgement dated 31.10.2022 in Appeal No. 450 of 2019. However, the exact sharing of transmission charges and offsetting of the charges already collected by the Petitioner shall be carried out by NRLDC after the redetermination of the tariff in compliance with the directions in an order dated 31.8.2023 in Appeal No.410 of 2019 & I.A. No. 360 of 2020.

46. NLDC has suggested the following mechanisms for sharing of the transmission charges;

(a) From 1.8.2011 to 3.12.2019 (Date of connectivity of EPPL with 220kV ADHPL-Nalagarh D/C transmission line till the date of shifting of connectivity of EPPL to Parbati Polling Point).

(b) From 4.12.2019 to 31.10.2020 (i.e. after the date of shifting of connectivity of EPPL to Parbati Polling Point till the implementation of Sharing Regulations, 2020).

(c) From 1.11.2020 to 23.8.2021 (from the effective date of Sharing Regulations, 2020 to the relinquishment of LTA by ADHPL).



(d) From 24.8.2021 onwards (i.e. after Relinquishment of LTA by ADHPL).

(A) For the period from 1.8.2011 to 31.10.2020

47. NLDC has proposed a similar methodology for the period from 1.8.2011 to 3.12.2019 when EPPL was connected to the 220 KV ADHPL-Nalagarh D/C Transmission Line and for the period from 4.12.2019 to 31.10.2020 when connectivity of EPPL was shifted to Parbati sub-station of PGCIL till the coming into force of Sharing Regulations, 2020. During the first period, HPPTCL got connected with 220 KV ADHPL-Nalagarh D/C Transmission Line for 24 MW on behalf of KPCPL with effect from 5.6.2016. Subsequently, HPPTCL got connected for 11.4 MW on behalf of HPSEBL for 22.4 MW with effect from 30.12.2016 up to 30.12.2016 which was modified to 27 MW with effect from 12.4.2019. NLDC has proposed that instead of revising the PoC rates of all DICs for the mentioned period, the liability of DICs for arrears of transmission charges of 220 KV ADHPL-Nalagarh D/C Transmission Line should be computed as per Clause 6 of Regulation 11 of Sharing Regulations, 2010 and all concerned DICs in the POC Pool shall share the transmission charges for the period from 1.8.2011 to 31.10.2020. The arrears from concerned DICs in the Pool towards the reimbursement of transmission charges of the 220 KV ADHPL-Nalagarh line as per POC mechanism shall be recovered by CTU under Bill-2 to be raised as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020. The Petitioner, as well as KPCPL, have submitted that NLDC's proposal not to undertake a revision of the PoC rates for the mentioned period is not in line with the findings of the APTEL and amounts to abdication of statutory functions by NLDC. The Petitioner has submitted that the period involved being prior to the



commencement of Sharing Regulations, 2020, the recovery of charges has to be in line with the provisions of Sharing Regulations, 2010. While the Petitioner has not suggested any mechanism, KPCPL has suggested that the transmission charges paid/borne qua 220 KV ADHPL-Nalagarh line should be first calculated under non-PoC mechanisms and next, NLDC should take into account the PoC rates prevailing at different point of time starting from the date when EPPL got connected to the 220 KV ADHPL-Nalagarh line. Thereafter, NLDC should make a comparison between the payments actually made with the PoC rates and excess payments made by the entities should be refunded with interest.

48. We have considered the submissions of NLDC, the Petitioner and KPCPL. NLDC has submitted that revision of PoC rates should not be undertaken for the period from 1.8.2011 to 31.10.2020 for two reasons, i.e. retrospective revision for a period of almost 10 years would be a time-consuming process, and the quantum of LTA of the Petitioner and EPPL being of 168.96 MW and 86 MW respectively is very marginal. On the other hand, the Petitioner has submitted that the PoC rates should be revised, and KPCPL has submitted that NLDC should take into account the PoC rates prevailing at different points in time and make a comparison with respect to the actual payments made by the entities. In our view, the annual transmission charges of 220 KV ADHPL-Nalagarh D/C Transmission Line, having been declared as a deemed ISTS by APTEL, shall form part of the YTC from the date EPPL got connected to the said line, i.e. 1.8.2011. The question is whether the YTC should be revised by including the annual transmission charges, and then PoC rates for the concerned DICs should be re-worked or the mechanism suggested by NLDC should be adopted in order to avoid large-scale revision of PoC rates for the past period. In so far as the



Petitioner being the owner of 220 KV ADHPL-Nalagarh line is concerned, the annual transmission charges as determined by the Commission for the said transmission line would be paid fully from the PoC pool irrespective of the manner of recovery from the DICs. However, there may be slight variation between the PoC charges based on the rates determined through revision on a month-to-month basis after including the annual transmission charges of 220 KV ADHPL-Nalagarh line and the PoC charges of DICs through the apportionment of the annual transmission charges of 220 KV ADHPL-Nalagarh line in proportion to their PoC charges already determined for the relevant period as suggested by NLDC. In our considered view, there is merit in the submission of NLDC that considering the very limited LTA capacity of 254.96 MW (Petitioner 168.96 MW+ EPPL 86 MW) and the miniscule amount of the annual transmission charges of 220 KV ADHPL-Nalagarh line, it would not be worth the effort and time to undertake a mammoth exercise covering a period of 8 years and 4 months to revise the PoC rates of all DICs in the country. NLDC has proposed that the liability of the concerned DICs for arrears of annual transmission charges of 220 KV ADHPL-Nalagarh D/C Transmission Line for the period 1.8.2011 to 30.10.2020 should be computed as per Clause 6 of Regulation 11 of Sharing Regulations, 2010 which pertains to arrears due to revision of transmission charges. Regulation 11(6) of Sharing Regulations, 2010 provides as under:

“(6) The third part of the bill shall be used to adjust any variation in interest rates, FERV, rescheduling of commissioning of transmission assets, etc., as allowed by the Commission for any ISTS transmission licensee. Total amount to be recovered/reimbursed because of such under-recovery/over-recovery shall be billed by CTU to each Designated ISTS Customer in proportion of its average Approved injection/Approved Withdrawal over previous six months on a biannual basis. This part of the bill shall be raised on first working day of September and first working day of March for the previous six months.”



Since the revision of PoC charges has taken place for the past period for complying with the directions of APTEL and recovery of PoC charges have already been made based on Approved injection/Approved Withdrawal at relevant points of time, it will serve the purpose of the transmission charges of 220 KV ADHPL-Nalagarh line are apportioned among the DICs in proportion to the monthly transmission charges already billed to them for the corresponding period.

49. It is pertinent to note that the Sharing Regulations 2010 have been repealed, and Sharing Regulations 2020 presently hold the field where the billing system is entirely different. The arrears of transmission charges are presently recovered under Bill 2 in accordance with Regulation 15(2)(b) of Sharing Regulations, 2020. Regulation 15(2)(b) of Sharing Regulations, 2020 provides as under:

“(b) The second bill shall be raised in the months of April, July, October and January every year for the quarter ending on 31st March, 30th June, 30th September and 31st December respectively to adjust variations on account of any revision in transmission charges allowed by the Commission, including incentives as applicable:

Provided that under-recovery or over-recovery of any amount on account of such revision in transmission charges in respect of a billing period shall be billed by the Central Transmission Utility to DICs in proportion to their first bill in the relevant billing month.”

Thus, the arrears from the concerned DICs towards the reimbursement of transmission charges of the 220 KV ADHPL-Nalagarh line as per POC mechanism for the period from 1.8.2011 to 31.10.2020 shall be computed as per Clause 6 of Regulation 11 of Sharing Regulations, 2010 and shall be recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing



Regulations, 2020 in proportion to the first bill in the month in which the arrears shall be calculated and recovered in accordance with this order.

(B) For the period from 1.11.2020 to 23.8.2021

50. Sharing Regulations, 2020 came into force with effect from 1.11.2020. The Petitioner relinquished its LTA with effect from 24.8.2021. As already stated, the connectivity of EPPL was transferred to Parbati Pooling station of PGCIL with effect from 3.12.2019. NLDC has suggested that during the period from 1.11.2020 to 23.8.2021, the liability of DICs for arrears of transmission charges of 220kV ADHPL-Nalagarh transmission line should be determined as per Regulation 15(2)(b) of Sharing Regulations, 2020. All DICs in the POC Pool, including the Petitioner (ADHPL), would share the transmission charges of the said transmission line and the arrears from the concerned DICs recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020. The Petitioner has submitted that the proposed mechanism of sharing charges from 1.11.2020 to 23.8.2021 is in line with the judgement of APTEL. KPCPL has submitted that it has no objection to the methodology proposed by NLDC for the period from 1.11.2020 to 23.8.2021 if they result in a retrospective revision of PoC charges and allow full recovery of excess transmission charges already paid along with carrying cost.

51. We have considered the submissions of the parties. The Commission is not inclined to direct for retrospective revision of the entire PoC charges for the past period in order to find out the revised PoC rates of all DICs on account of the inclusion of the annual transmission charges of 220 kV ADHPL-Nalagarh transmission line for the reasons recorded in para 48 of this order. As suggested



by NLDC, the transmission charges of 220 kV ADHPL-Nalagarh transmission line as determined by the Commission from 1.11.2020 to 23.8.2021 shall be recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020 in proportion to the first bill in the month in which the arrears shall be calculated and recovered in accordance with this order.

(C) For the period from 24.8.2021 onwards:

52. NLDC has submitted that as there is no LTA customer of the 220kV ADHPL-Nalagarh transmission line with effect from 24.8.2021 onwards and the nature of the said transmission line being “connectivity line” as per the provisions of the Sharing Regulations, 2020, the billing on the ADHPL would be done as per the provisions of Clause 13(9) of the Sharing Regulations, 2020 and the transmission charges of the said transmission line would not be part of Pool billing as per the Regulations, 2020. The Petitioner has submitted that the proposal of NLDC for a change of status of 220 KV D/C ADHPL-Nalagarh transmission line by applying Regulation 13(9) of the Sharing Regulations, 2020 is a clear departure from the directions and findings of APTEL in its judgement dated 31.12.2022 in Appeal No.450/2019. The Petitioner has further submitted that as per the judgement of APTEL, the transmission system of the Petitioner is to be treated as part of the ISTS network from the date of connectivity given to EPPL or any other generator or STU. KPCPL has submitted that NLDC cannot rely on Regulation 13(9) of Sharing Regulations, 2020, as the 220 KV D/C ADHPL-Nalagarh transmission line is part of ISTS in terms of Section 2(36) of the Act since EPPL started using the transmission line and not a dedicated transmission line as per the judgement of APTEL. KPCPL has further submitted that the absence of LTA customers 220 KV D/C ADHPL-Nalagarh transmission



line is of no relevance since APTEL, in its judgement dated 31.10.2022, has held the transmission line to be a deemed ISTS licensee.

53. We have considered the submission of the parties. Regulation 13(9) of the *Sharing Regulations, 2020* provides as under:

“(9) Where a dedicated transmission line has already been constructed or is under construction by an inter-State transmission licensee under coordinated transmission planning of the Central Transmission Utility, the Yearly Transmission Charges for such dedicated transmission line shall be payable by the concerned generating station to the inter-State transmission licensee (including deemed inter-State transmission licensee) from the COD of the dedicated transmission line till operationalization of Long Term Access of the generating station. After operationalization of Long Term Access, Yearly Transmission Charge for the dedicated transmission line proportionate to the quantum of Long Term Access operationalized qua the quantum of Connectivity for the dedicated transmission line shall be considered in accordance with Regulations 5 to 8 of these regulations and the balance transmission charges shall continue to be paid by the generating station.”

Regulation 13(9) of Sharing Regulations, 2020 was substituted through the Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) (First Amendment) Regulations, 2023, which came into force with effect from 1.10.2023:

“(9) Where a dedicated transmission line has already been constructed or is under construction by an inter-State transmission licensee under coordinated transmission planning of the Central Transmission Utility, and the Connectivity grantee has not achieved COD on or before COD of the dedicated transmission line, the Yearly Transmission Charges for such dedicated transmission line shall be payable by the concerned Connectivity grantee to the inter-State transmission licensee from the COD of the dedicated transmission line till COD of such Connectivity grantee and after which Yearly Transmission Charge for the dedicated transmission line shall be considered in accordance with Regulations 5 to 8 of these regulations.”

54. The above provisions provide the sharing of the tariff of a dedicated transmission line executed under coordinated transmission planning of CTU. Even though the transmission line is executed under the coordinated



transmission planning by a deemed transmission licensee or transmission licensee, the nature of such transmission line remains unchanged i.e. it is a transmission line having point to point connection between the generating station and ISTS sub-station, and there is no user other than the generating station for this line. The present case is distinguishable from the cases covered under Regulation 13(9) of the Sharing Regulations, 2020, since it is connected to the system of HPPTCL and the transmission line is being used by AD Hydro generating station, HPSEB, KPCPL and other generating stations linked to the systems of HPSEBL. Further, APTEL in para 104 of the judgement dated 31.10.2022 in Appeal No. 450 of 2019 has observed as under:

“104. Therefore, once a Transmission Line asset becomes a part of ISTS, then the same cannot be treated as dedicated, as in the present case, the subject line has been declared to be part of ISTS in terms of Section 2(36)(ii) of the Electricity Act, 2003 by this Tribunal which is also upheld by Hon’ble Supreme Court, it shall hold the status of that of an ISTS and cannot be termed as dedicated anymore.”

The APTEL, in its judgment dated 2.1.2013 in Appeal No.81 of 2011, has held that 220 KV D/C ADHPL-Nalagarh transmission line is an ISTS in terms of Section 2(36)(ii) of the Act in the following terms:

“35. The definition of the inter-state transmission system under Section 2(36)(ii) includes the conveyance of electricity across the territory of an intervening State as well as within the State which is incidental to such inter-State transmission of electricity. In the present case as discussed in the previous paragraphs, Allain Duhangan- Nalagarh line after loop-in-loop-out at Chhaur sub-station of the Respondent no.1 becomes the system incidental to inter-State transmission of electricity from Malana II station of the Respondent no.1. Therefore, the Central Commission shall have jurisdiction to regulate the transmission of electricity on Allain Duhangan – Nalagarh line after loop-in-loop-out of one of the circuits at Chhaur sub-station.”

The APTEL has held that 220 KV D/C ADHPL-Nalagarh transmission line after loop in and loop out at Chhaur sub-station of EPPL becomes the system



incidental to inter-State transmission of electricity and is accordingly incidental to the inter-State transmission of Electricity. EPPL has been disconnected subsequent to its shifting to the system of HPPTCL with effect from 3.12.2019. However, KPCPL is evacuating its power through the Phozal sub-station of HPPTCL, which is further connected to the 220 kV Allan Duhangan -Nalagarh D/c Transmission line by way of a Loop-In-Loop-Out (LILO) circuit w.e.f. 5.6.2016. HPSEBL and other Small HEPs connected with the 33 kV system of HPSEBL are also evacuating their power through the 220 kV Allan Duhangan - Nalagarh D/c Transmission line via Phozal sub-station of HPPTCL. Thus, even after disconnection of Malana II HEP of EPPL, 220 KV D/C ADHPL-Nalagarh transmission line continues to be used as an ISTS being incidental to inter-State transmission of electricity in terms of Section 2(36)(ii) of the Act. Therefore, Regulation 13(9) of the Sharing Regulations is not applicable in the present case since the status of 220 KV D/C ADHPL-Nalagarh transmission line is not a dedicated transmission line but an ISTS line at present. Accordingly, its transmission charges from 24.8.2021 onwards shall be recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020, in proportion to their first bill in the relevant billing month.

55. KPCPL, vide its affidavit dated 2.2.2023, has submitted that it would continue to utilize the 220 kV Allan Duhangan -Nalagarh D/c Transmission line till such time (i) the transmission system (Phozal sub-station and LILO) of HPPTCL is connected to the 220 kV Allan Duhangan -Nalagarh D/c Transmission line or (ii) till KPCPL's generation facility is connected to the transmission system of HPPTCL; or (iii) till the validity of the Implementation Agreement dated 12.1.2009 executed between KPCPL and Government of Himachal Pradesh, for a period of



40 years. In other words, if none of the eventualities mentioned by KPCPL remain in place in future, and no other entity utilises the 220 kV Allan Duhangan - Nalagarh D/c Transmission line, the question arises as to whether the 220 KV D/C ADHPL-Nalagarh transmission line will still be considered as deemed ISTS. In our view, since the deemed ISTS status of the 220 KV D/C ADHPL-Nalagarh transmission line is premised upon its being used by other users in terms of the judgement of the APTEL dated 2.1.2013 in Appeal No.81 of 2011 which has been relied upon by APTEL in its judgement dated 31.10.2022 in Appeal No. 450 of 2019 while declaring the said transmission line as deemed ISTS, the transmission line will revert back to the status of a dedicated transmission line if it is not used by any entity other than the Petitioner. In that case, the transmission charges of 220 kV Allan Duhangan -Nalagarh D/c Transmission line will cease to be serviced through the mechanism provided under the Sharing Regulations, 2020.

(D) Transmission Losses

56. NLDC has not proposed for retrospective calculation of losses on the 220 KV D/C ADHPL-Nalagarh transmission line for the following reasons:

- (a) The transmission losses of 220 KV D/C ADHPL-Nalagarh transmission line were being apportioned between ADHPL, EPPL and HPSEBL. Due to the declaration of the subject line as ISTS, the Point of Injection is to be shifted from Nallagarh Sub-station to Prini Sub-station, and additional meters have to be installed at Prini Sub-station. If the methodology of sharing of losses for the subject line is changed retrospectively, then losses have to be incorporated retrospectively in the Northern Regional ISTS Pool till Nov'2020 and National ISTS Loss Pool



after notification of Sharing Regulation 2020. This would result in the change of energy accounts of all the grid connected utilities of Northern Region and All India retrospectively.

(b) APTEL, in its judgement dated 31.10.2022 in Appeal No.450 of 2019, has nowhere mentioned about revision of transmission losses retrospectively.

(c) Since the generating station of KPCPL is not directly connected to the 220 KV D/C ADHPL-Nalagarh transmission line and is connected through the Phojal Substation of HPTCL, the accounts have to be revised by SLDC, Himachal Pradesh for any settlement of line losses pertaining to KPCPL.

(d) Regulation 6(3) of Sharing Regulations, 2010 provides that “the applicable transmission losses for the ISTS shall be declared in advance and shall not be revised retrospectively.”

(e) In order to avoid the reopening of all the settled scheduled transactions and accounts, inclusion of losses of the subject line in the ISTS Pool Losses should be made prospectively in terms of Sharing Regulation, 2020 from the accounting week 17.4.2023 to 23.04.2023 which NRLDC has already implemented in terms of the directions of the Commission vide RoP dated 20.4.2023.

57. KPCPL has submitted that NLDC being the nodal agency, is bound to carry out the directions of the APTEL and the Commission and revise the DSM accounts based on an average weekly losses for the period prior to the date of the order dated 17.10.2019 in Petition No. 209/MP/2017 so that any excess payment of transmission losses by KPCPL and other entities can be refunded.



Secondly, as per the APTEL's judgement, the PoC mechanism has to be made applicable from the date when EPPL was connected to the 220 KV D/C ADHPL-Nalagarh transmission line in August 2011. The PoC mechanism is a "sharing" mechanism which not only includes transmission charges for ISTS but also includes transmission losses. Thirdly, Regulation 6(3) of the Sharing Regulations, 2010, is not applicable, and the Commission, in its order dated 17.10.2019 in Petition No.209/MP/2017, has categorically directed that the line losses have to be factored qua the 220 KV D/C ADHPL-Nalagarh transmission line. The APTEL's judgement dated 31.10.2022 set aside the Commission's order dated 17.10.2019 only to the extent that recovery of transmission charges would take place through the PoC mechanism and therefore, Sharing Regulations would be applicable for computation transmission losses. Finally, KPCPL has submitted that NRLDC ought to simply take the details of DSM accounts and accordingly compute the transmission losses and refund the excess line losses paid by the users of 220 KV D/C ADHPL-Nalagarh transmission line, including that of KPCPL.

58. We have considered the submission of the parties. It is considered appropriate to recapitulate the directions issued by this Commission, the APTEL and the Hon'ble Supreme Court on the issue of transmission losses as under:

- (a) The Commission, in its order dated 1.6.2011 in Petition No.259/2009, prescribed a procedure to be adopted by the Coordinate Centre/Load Coordinator with regard to scheduling, metering and accounting, As regards the transmission loss, the Commission issued the following directions:

“20(j)

(vi): *Computation and apportionment of transmission losses in shared dedicated section: The estimated percentage average transmission losses shall be applied to the respective schedules. The estimation shall be based on the previous week’s actual percentage losses worked out through the actual meter readings.”*

(b) At the interim stage of the appeal, APTEL, vide its order dated 10.6.2011 in Appeal No.81 of 2011 & IA Nos. 141 & 142 of 2011, issued the following order:

“iii) The first Respondent shall share the transmission loss @ 4.75% of the energy injected by the Malana II Power Station at the tapping of 220 kV at Allain Duhangan – Nalagarh circuit at Chhuar Sub-station of Respondent No.1.”

(c) APTEL, in its judgement dated 2.1.2013 in Appeal No.81 of 2011, issued the following directions with regard to transmission losses:

“53.3 Sharing of transmission losses on Allain Duhangan – Nalagarh system:- The Appellant had sought 4% additional loss or loss based on incremental loss to be deducted from generation of Malana II HEP. The Central Commission has decided that the estimated percentage average transmission losses shall be applied to the respective schedules of the generating companies. The estimation shall be based on the previous week’s actual percentage average losses worked out through the actual meter readings. We are in agreement with the findings of the Central Commission that the transmission losses for Allain Duhangan – Nalagarh section to be borne by the Respondent no.1 should be on the basis of the average losses based on the actual meter readings on the sending and receiving ends of the lines. There is no basis for claim of 4% additional loss to be apportioned to Malana-II HEP. When the transmission charges are to be shared on a pro-rata basis on the respective installed capacity of the generating stations of the Appellant and the Respondent the same principle of sharing of losses on the basis of average losses in the line section has to be adopted. For the inter-State transmission of energy also the losses are apportioned on the average basis. The Appellant for inter-State transmission of its electricity has also to bear average losses on the inter-State transmission system.”

APTEL, in the said judgement, directed the Commission to issue a consequential order and further directed that till the consequential order is



issued, the interim arrangement for payment of transmission charges and transmission losses by EPPL to the Petitioner as per the interim order dated 10.6.2011 of APTEL would continue.

(d) The judgement of APTEL dated 2.1.2013 in Appeal No.81 of 2011 was carried on appeal before the Hon'ble Supreme Court in Civil Appeal No.1795/2013. Hon'ble Supreme Court, in its interim order dated 8.3.2013, issued the following directions:

“Till the next date of hearing, the interim arrangement directed by the Appellate Tribunal between the appellant and the Respondent No.1 shall continue.....”

“In the meantime, we direct the Central Electricity Regulatory Commission not to proceed on the basis of the order of remand.....”

(e) Hon'ble Supreme Court disposed of Appeal No.81 of 2011, vide its judgement dated 26.4.2017, upholding the judgement of the APTEL and vacated the interim order dated 8.3.2013. Further, the Hon'ble Supreme Court, vide its order dated 12.7.2017 in Review Petition (C) No.1365 of 2017 in Civil Appeal No.1795 of 2013, directed that the Commission would decide the matter on merit without regard to the observations of APTEL in its order dated 2.1.2013.

59. From the above, it emerges that the Commission's directions vide order dated 1.6.2011 for estimation of transmission losses based on the previous week's actual percentage losses worked out through the actual meter readings could not be given effect since APTEL vide its order dated 10.6.2011 directed for computation of the transmission loss @ 4.75% of the energy injected by the



Malana II Power Station. APTEL, in its final order dated 2.1.2013, vacated the interim order dated 10.6.2011 and upheld the order of the Commission but allowed the interim order to continue till the Commission issues the consequential order. Hon'ble Supreme Court, in its interim order dated 8.3.2013, while directing the Commission not to proceed with the order of remand, allowed the interim arrangement by APTEL to continue. Subsequently, the Hon'ble Supreme Court vide its judgement dated 26.4.2017, vacated the interim stay and remanded the matter to the Commission to decide on merit. The Commission, in its order dated 17.10.2019 in Petition No.209/MP/2017, determined the tariff of the 220 KV D/C ADHPL-Nalagarh transmission line and issued the following directions with regard to computation and sharing of transmission losses:

“59. As the transmission charges of the instant transmission line are to be shared on a pro-rata basis on the respective installed capacities of the connected generating stations, similar principle of sharing of losses on the basis of weekly average losses in the said line shared in proportion to the scheduled energy on weekly basis shall be adopted. We direct that line losses shall be monitored and coordinated by the concerned RLDC/NRLDC. For the accounts based on average loss for last week for periods prior to issue of this Order, NRLDC/NRPC shall revise the accounts only for entities connected to the transmission line in instant petition. Any shortfall or surplus shall be adjusted from UI /DSM pool for such period.”

As per the above directions, transmission losses in the 220 KV D/C ADHPL-Nalagarh transmission line were required to be computed on the basis of weekly average losses and shared in proportion to the scheduled energy on a weekly basis. NRLDC was directed to monitor and coordinate the line losses and revise the accounts only for the entities connected to the transmission line based on the average loss for the period prior to the date of issue of the order i.e. 17.10.2019. The Commission also directed that any shortfall or surplus would be adjusted from the UI/DSM pool for such period. NRLDC has submitted that while



it was in the process of understanding the work to be carried out and figuring out the modalities of implementation of the directions of the Commission, the order dated 17.10.2019 was stayed by APTEL, vide order dated 17.1.2020 in Appeal No.410 of 2019. It appears that the Petitioner has been charging transmission losses @4.75% as per the directions of the APTEL dated 10.6.2011 from the generating stations, which have been injecting electricity through 220 KV D/C ADHPL-Nalagarh transmission line. However, none of the parties have put on record the actual transmission losses charged by the Petitioner since EPPL got connected to the 220 KV D/C ADHPL-Nalagarh transmission line.

60. With regard to the submission of NRLDC that APTEL has not directed for computation of transmission losses, we are of the view that once 220 KV D/C ADHPL-Nalagarh transmission line is declared as a deemed ISTS, the provisions of Sharing Regulations with regard to transmission charges and losses will be applicable without any exception. Regulation 7 of Sharing Regulations, 2010 deals with the process of determination and sharing of transmission charges and losses. Therefore, the sharing of transmission losses is an integral part of the sharing mechanism and cannot be ignored even though APTEL has not specifically directed the determination and sharing of transmission losses. In fact, the Commission has already issued directions in para 59 of its order dated 17.10.2019 in Petition No.209/MP/2017, which has not been interfered with by APTEL.

61. NRLDC has also relied on the provisions of Regulation 6(3) of the Sharing Regulations, 2010, against the revision of transmission losses retrospectively. Regulation 6(3) of the Sharing Regulations, 2010 provides as under:



“(3) The applicable transmission losses for the ISTS shall be declared in advance and shall not be revised retrospectively.”

This provision has been made in order to avoid retrospective revision of transmission losses in normal circumstances, as it involves the collection of mammoth data for all the connected meters and revision of the UI/DSM accounts. However, in cases involving the implementation of the directions of the Courts, it would be unfair to the parties if the transmission losses are not revised for the past period, and the aggrieved party is left with no option but to pursue litigations for the desired reliefs. Therefore, provisions of Regulation 6(3) of Sharing Regulations, 2010 cannot be invoked in such cases to deny the legitimate claim of a party.

62. NRLDC has highlighted the magnitude of tasks involved in the revision of DSM accounts retrospectively. NRLDC has submitted that computation of transmission losses of 220 KV D/C ADHPL-Nalagarh transmission line requires compilation of the data for the period from the date of connectivity of EPPL (i.e. August-2011) for all the meters installed on the subject transmission line to revise the DSM Accounts of ADHPL, Malana-II (generating station of EPPL) and HPSEBL (as Phojal Substation of HPPTCL is considered as drawal point of Himachal Pradesh). It is a time-consuming and difficult process to compile, validate and process the massive meter data from the connectivity of EPPL (in Aug-2011) considering the facts such as changes/updation in data processing software, a huge volume of data, changes in DSM/UI regulations, meter replacement etc and the availability of resources both at NRLDC and NRPC. NRLDC has further submitted that due to the declaration of 220 KV D/C ADHPL-Nalagarh transmission line as ISTS, the Point of Injection is to be shifted from



Nalagarh Substation to Prini Substation, and if the methodology of sharing of losses for the subject line is changed retrospectively, then losses of the subject line would have to be incorporated retrospectively in Northern Regional ISTS Pool till 31.10.2020 and National ISTS Loss Pool after the Sharing Regulations, 2020 came into force. This will result in the change of energy accounts of all the grid-connected utilities of the Northern Region and All India retrospectively and would lead to the reopening of the settled cases/issues. NRLDC has also submitted that it has implemented the sharing of transmission losses of the 220 KV D/C ADHPL-Nalagarh transmission line in the ISTS pool losses in terms of the Sharing Regulations, 2020 from the accounting week 17.4.2023 to 23.4.2023.

63. The Commission appreciates the difficulties highlighted by NRLDC in computing and sharing the transmission losses of the 220 KV D/C ADHPL-Nalagarh transmission line for the period from 3.8.2011 (when EPPL got connected) to 16.4.2023 (already implemented with effect from 17.4.2023). The Commission is of the view that it will meet the ends of justice if the following methodologies are implemented for the computation and sharing of transmission losses of the 220 KV D/C ADHPL-Nalagarh transmission line:

- (a) For the period 3.8.2011 to 31.10.2020: During this period, Sharing Regulations 2010 was in operation, and the Commission used to notify the region-wise PoC slab rates applicable to the concerned DICs on a periodic basis. Since the 220 KV D/C ADHPL-Nalagarh transmission line has been declared as deemed ISTS with effect from 3.8.2011, NRLDC is directed to consider the transmission losses for Himachal Pradesh in respect of the



generating stations connected with the subject line for the period 3.8.2011 to 31.10.2020.

(b) For the period 1.11.2020 till 16.4.2023: Sharing Regulations, 2020 came into operation with effect from 1.11.2020. Further, NRLDC started computing the transmission loss as per the said Regulations with effect from 17.4.2023 by including the loss of the subject line in the All India pool. Therefore, during the period 1.11.2020 till 16.4.2023, NRLDC is directed to consider the transmission losses for Himachal Pradesh with respect to the generating stations connected to the subject transmission line.

(c) The Petitioner is directed to furnish to NRLDC within one month of the issue of this order the transmission losses charged by it to the concerned generating stations and its DSM accounts for the period from 3.8.2011 till the accounting week ending 16.4.2023. NRLDC shall settle the DSM accounts based on the PoC loss slab rates applicable for the period from 3.8.2011 till the accounting week ending 16.4.2023 and the transmission losses actually recovered by the Petitioner during the said period. Recovery from and payments to the concerned entities on account of transmission losses shall be made accordingly.

(d) NRLDC has implemented the sharing of transmission losses of the 220 kV D/c ADPHL-Nalagarh transmission line in the ISTS pool losses in terms of the Sharing Regulations, 2020 from the accounting week 17.4.2023 to 23.4.2023. NRLDC shall continue to determine the losses in accordance with the Sharing Regulations, 2020 for the subsequent accounting weeks.



Carrying Cost

64. KPCPL has extensively argued for payment of carrying cost on the amount due to be paid to it on account of the implementation of the judgement of APTEL. KPCPL has submitted that the interest or carrying cost is nothing but 'time value of money' which an entity is to be paid in order to provide complete justice. In this connection, KPCPL has relied upon the following judgements of Hon'ble Supreme Court and APTEL:

(a) Indian Council for Enviro-Legal Action V. Union of India [(2011) 8 SCC 161]

(b) T.N. Generation & Distribution Corporation Ltd. Vs PPN Power Generating Co. (P) Ltd. [(2014) 11 SCC 53]

(c)Uttar Haryana Bijli Vitran Nigan Limited V. Adani Power (Mundra) Limited [(2023) SCC 2 624]

(d) Noida Power Company Limited Vs. UPERC [(2016) SCC Online APTEL 61]

KPCPL has submitted that it paid a higher amount of transmission charges in the past and is, therefore, entitled to a refund of such a higher amount, but the same shall be refunded with applicable interest and shall be computed on a compounding basis only.

65. We have considered the submissions of KPCPL. The above judgements relate to the rationale for payment of compound interest. The question of compound interest arises only when a party is first held entitled to payment of interest. In this case, we have to first decide whether, in the facts of the present case, KPCPL and, for that matter, any other party to the dispute, is entitled to interest on the excess payment, if any, made by it on account of transmission



charges and losses prior to the issue of this order. It is well settled that the rationale for payment of interest is the restitution of a person to the time value of money to which he is entitled in law by the person who has enjoyed the benefits of such money which was not due to him. In the present case, the 220 KV D/C ADHPL-Nalagarh transmission line has all along been treated by the Commission, APTEL and Hon`ble Supreme Court as a dedicated transmission line, and accordingly, the transmission charges and losses were shared by the users of the subject line. In fact, APTEL, in its interim order dated 10.6.2011 in I.A. No.141 of 2011 in Appeal No.81 of 2011, directed for the determination and sharing of transmission charges and losses in a particular manner which continued till the determination of tariff of the 220 KV D/C ADHPL-Nalagarh transmission line, vide this Commission's order dated 17.10.2019 in Petition No. 209/MP/2017. Thereafter also, APTEL vide its order dated 17.1.2020 in Appeal No.410 of 2019, stayed the Commission's order dated 17.10.2019 in Petition No. 209/MP/2017 for raising of adjustment bills. APTEL, vide its order dated 31.8.2023 in Appeal No.410 of 2019, has remanded the matter to the Commission for fresh determination of tariff of 220 KV D/C ADHPL-Nalagarh transmission line in the light of its observations in the said order. Therefore, for all practical purposes, the transmission charges and losses of 220 KV D/C ADHPL-Nalagarh transmission line are being determined and shared in accordance with the interim order dated 10.6.2011 in I.A. No.141 of 2011 in Appeal No.81 of 2011. The nature of the 220 KV D/C ADHPL-Nalagarh transmission line changed only when APTEL, in its judgement dated 31.10.2020 in Appeal No.450 of 2019 filed by KPCPL, declared the 220 KV D/C ADHPL-Nalagarh transmission line as a deemed ISTS and directed that its transmission



charges shall be serviced through the sharing mechanism under the Sharing Regulations of the Commission. To put it differently, all along, the Petitioner has been claiming the transmission charges and losses as per the interim directions of the APTEL. KPCPL filed Appeal No.450 of 2019 with the following prayers:

“21. Relief sought

In view of the facts mentioned in para 7 above, questions of law and grounds set out in para 8(8) and 9, the Appellant most humbly prays for the following relief:

- (i) To set aside the impugned order dated 17.10.2019 passed by the Respondent Commission in Petition No.209/MP/2017, to the extent challenged in this petition;*
- (ii) direct that the transmission charges for the transmission line built by Respondent No.2 can only be levied and recovered as per the PoC mechanism provided under the CERC(Sharing of Transmission Charges and Losses) Regulations, 2010; and*
- (iii) Pass any order/orders or further order, as this Commission may deem fit and proper in the light of the facts and circumstances of the instant case.”*

Thus, KPCPL has not claimed any carrying cost or interest in the appeal filed by it in APTEL. Further, APTEL, in its judgement dated 31.10.2022 in Appeal No.450 of 2019, while declaring the 220 KV D/C ADHPL-Nalagarh transmission line as deemed ISTS, has directed the Commission to pass necessary consequential orders without any directions for payment of interest/carrying cost. Moreover, after the 220 KV D/C ADHPL-Nalagarh transmission line is declared deemed ISTS, its transmission charges and losses will be shared by all DICs in the country. The burden of carrying cost or interest cannot be passed on to all DICs which are not parties before the order of the Commission or APTEL. For the aforesaid reasons, the Commission is of the view that no carrying cost or interest shall be admissible on under-recovery or excess payment by any party prior to the issue of this order.



Directions

66. In light of the above discussion, it is ordered as under:

(a) The Petitioner shall furnish the transmission charges and losses received by it from AD Hydro, EPPL and KPPTCL (on behalf of KPCPL, HPSEBL and other small Hydro) with effect from 1.8.2011 onwards. NRLDC shall cross-check those figures with AD Hydro, EPPL, and KPPTCL in order to avoid any disputes in the future.

(b) After the determination of the tariff of the 220 KV ADHPL-Nalagarh line in terms of the judgement of APTEL in Appeal No.410 of 2019, the transmission charges shall be paid to the Petitioner from the PoC pool after adjustment of the recovery of transmission charges already made with effect from 1.8.2011.

(c) The transmission charges paid by EPPL and HPPTCL (for KPCPL and HPSEBCL and Small Hydro) shall be refunded by CTU from the pool after adjusting their liabilities as DICs for the period 1.8.2011 onwards or their respective dates of connectivity, as the case may be.

(d) The arrears of transmission charges of the 220 KV ADHPL-Nalagarh line for the period from 1.8.2011 to 31.10.2020 shall be computed as per Clause 6 of Regulation 11 of Sharing Regulations, 2010 and shall be recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020 in proportion to the first bill in the month in which the arrears shall be calculated and recovered in accordance with this order.

(e) The arrears of the transmission charges of 220 kV ADHPL-Nalagarh transmission line for the period from 1.11.2020 to 23.8.2021 and 24.8.2021 onwards (after relinquishment of LTA by the Petitioner) till the issue of the tariff order in respect of the subject transmission line pursuant to the order of the



APTEL dated 31.8.2023 in Appeal No.410 of 2019 shall be computed and recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020 in proportion to the first bill in the month in which the arrears shall be calculated and recovered in accordance with this order.

(f) After the issue of the tariff order in respect of the subject transmission line pursuant to the order of the APTEL dated 31.8.2023 in Appeal No.410 of 2019, the transmission charges of the subject transmission line shall be recovered in accordance with Regulation 15(2)(a) of Sharing Regulations, 2020.

(g) Transmission Losses shall be recovered/adjusted in accordance with para 63 of this order.

67. The above exercise shall be completed by CTU and NLDC/NRLDC/NRPC within a period of three months of this order.

Licence Fees and Filing Fees

68. In terms of Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008, as amended and Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, deemed transmission licensees are liable to pay the licence fees and petition filing fees. Since 220 kV ADHPL-Nalagarh transmission line has been declared as a deemed ISTS and AD Hydro is a deemed ISTS licensee, it shall be liable to pay the licence fees and petition filing fees as per the said regulations from 1.8.2011 onwards. Accordingly, the Petitioner shall calculate the licence fees and filing fees and deposit the same to the Commission within a period of three months from the date of issue of this order.



69. With this order, the directions of APTEL in Appeal No.450 of 2019 stand implemented and the Petition stands disposed of to the extent of the remand.

sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson

