

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 265/MP/2018**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member**

**Date of Order: 19<sup>th</sup> May 2024**

**In the matter of**

Petition under Section 79 (1)(f) read with Section 142 of the Electricity Act, 2003 for issuance of direction for quashing of the letter dated 2.8.2018 issued by Power Grid Corporation of India Limited whereby, PGCIL has wrongful and arbitrarily proceeded to impose transmission charges to the tune of Rs. 6.41 Crore upon the Petitioner towards Long Term Access capacity 8.4 MW and also, through a subsequent letter dated 14.8.2018 threatened curtailment of Short-Term Open Access with effect from 23.8.2018, which is in direct contravention of the final Order dated 31.5.2018 passed by the Commission in Petition No. 190/MP/2016.

**And**

**In the matter of**

**Greenko Budhil Hydro Power Private Limited,  
Plot No. 1367, Road No. 45,  
Jubilee Hills,  
Hyderabad- 500033**

**.....Petitioner**

**Vs.**

- 1. Central Transmission Utility of India Limited,  
Plot No. 2, Sector 29 Gurugram,  
Haryana- 122001.**
- 2. Himachal Pradesh State Electricity Board,  
Through its Chief Engineer (Comm.)  
Vidyut Bhawan, Shimla,  
Himachal Pradesh – 171004.**
- 3. Power Grid Corporation of India Limited,  
B-9, Qutab Institutional Area,**



Katwaria Sarai,  
New Delhi-110016.

**4. Energy Department, Government of Himachal Pradesh,**  
Through its Principal Secretary Civil Secretariat,  
Shimla – 171002.

.....Respondents

**Following was present:**

Shri Sanjay Sen, Sr. Advocate, GBHPPL  
Shri Hemant Singh, Advocate, GBHPPL  
Shri Lakshyajit Singh Bagdwal, Advocate, GBHPPL  
Ms. Alchi Thapliyal, Advocate, GBHPPL  
Ms. Roberta Ruth Elwin, Advocate, GBHPPL  
Ms. Suparna Srivastava, Advocate, CTUIL  
Shri Tushar Mathur, Advocate, CTUIL  
Shri Chitikena Abhijit, CTUIL  
Shri Amal Nair, Advocate, HPSEB  
Ms. Shivani Verma, Advocate, HPSEB

**ORDER**

**Background**

The Petitioner, Greenko Budhil Hydro Power Private Limited (hereinafter referred to as “GBHPPL”) has developed Budhil Hydro Power Project (2X35 MW) in the State of Himachal Pradesh on Develop, Build, Own, Operate, and Maintain (hereinafter referred to as “DBOOM”) basis. The Petitioner entered into a long-term Power Purchase Agreement with PTC India Limited (hereinafter referred to as the “PTC PPA”) for a period of 35 years on 30.3.2005 from the date of commercial operation of the generating station for supply of entire saleable power and energy. PTC entered into a Power Sale Agreement (hereinafter referred to as “PSA”) dated 21.9.2006 with Haryana Power Generation Corporation Limited (hereinafter referred to as “HPGCL”) for transfer of power from the Petitioner’s project to Haryana State. PTC obtained Long Term Open Access (hereinafter referred to as “LTOA” or “LTA”) from the CTU in the year 2005. The Petitioner and PTC signed a Bulk Power



Transmission Agreement dated 18.10.2007(hereinafter referred to as “BPTA”) with CTU. As per the BPTA, PTC was the Injection Utility with the injection point as the Chamera Pooling station, and the Haryana Power Generation Corporation Limited was the Drawee Utility with drawal at all points where inter-connection between HPGCL and Power Grid Corporation of India Limited (hereinafter referred to as “PGCIL”) systems exist. Later, on 18.12.2009, the Petitioner terminated the PTC PPA dated 30.3.2005, citing certain force majeure events.

2. The Petitioner approached the Commission vide Petition No. 190/MP/2016 seeking adjudication qua the issue, “as to which entity has to bear the transmission charges under BPTA dated 18.10.2007”, as some dispute arose between the parties on account of the payment of transmission charges to PGCIL. The Commission, after hearing the parties, vide its Order dated 31.05.2018, decided the Petition No. 190/MP/2016 as under:

*“...As regards the liability for payment of LTA charges, it primarily remains the responsibility of PTC till the time the LTA is relinquished in accordance with the provisions of the BPTA.”*

3. PGCIL, vide its letter dated 2.8.2018, asked the Petitioner for payment of transmission charges for 8.4 MW for evacuation of free power to the Government of Himachal Pradesh. PGCIL, vide its letter dated 14.8.2018, informed the Petitioner about the curtailment of short-term open access (hereinafter referred to as “STOA”) on account of non-payment of transmission charges for 8.4 MW. The Petitioner filed the instant Petition under sub-clause (f) of clause (1) of Section 79, read with Section 142 of the Act, seeking the quashing of letters dated 2.8.2018 and 14.8.2018 issued by PGCIL.

4. The Commission, after hearing the parties, vide its order dated 20.11.2019 in Petition No. 265/MP/2018, framed the following three issues:

(a) Issue No. 1: Whether the Petitioner is liable for the payment of transmission charges for the supply of free power to the State of Himachal Pradesh?

(b) Issue No.2: What relief should be granted to the Petitioner?

(c) Issue No. 3: Whether any direction is required to be issued against PGCIL under Sections 60, 142 and 146 of the Act?

5. As regards Issue No.1, the Commission, in its order dated 20.11.2019, held as under:

“42. The Government of Himachal Pradesh is entitled for royalty @12%/18% of the deliverable energy which is measured at the generator terminal. There is no provision in the MOU or IA which saddles the Petitioner with the liability to evacuate free power from the generation bus bar till the STU point. In fact, Government of Himachal Pradesh and HPSEB have neither applied for LTA nor have asked the Petitioner to apply for LTA for free power on their behalf to PGCIL. On the other hand, HPSEB is evacuating its share of free power by availing short term open access.

43. The Petitioner has signed the BPTA and accepted the liability for paying the transmission charges for free power in case transmission arrangement is not made by the Petitioner/HPSEB. Accordingly, HPSEB is already paying the Short Term Open Access charges for evacuating free power from the bus bar of the generating station. The Petitioner, therefore, cannot be held liable for transmission charges for the capacity corresponding to free power as Long Term Customer as the Petitioner had neither applied on its own nor on behalf of Government of Himachal Pradesh/ HPSEB for LTA for this capacity and accordingly, it has not been treated as Long Term Customer in the BPTA, as PTC has been treated.

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46. In light of the above, we are of the view that even though the Petitioner has signed the BPTA, it has neither applied for nor was granted LTA for free power. Since free power is evacuated by HPSEB by availing short-term open

access, the Petitioner cannot be saddled with the transmission charges for the same power subject to our decision on Issue No.2.”

6. As regards the second issue, the Commission held as under:

*“47. Since the Petitioner has signed BPTA and has voluntarily accepted the liability for payment of Northern regional transmission charges for free power till the adequate arrangement is made by Petitioner/HPSEB, and nothing has been produced on record to prove that it has ever disputed such liability till filing of the present petition, the Petitioner cannot escape the liability for transmission charges till the date of filing of instant petition when the Petitioner disputed its liability for transmission charges for free power. Accordingly, we hold that the Petitioner shall not be liable for payment of transmission charges for free power from the date of filing of this petition. Keeping in view the totality of the facts of the case and the provisions of the MOU and IA, we hold that since the Petitioner did not apply for LTA, the Petitioner shall not have liability to pay the transmission charges for free power from the date of filing of the petition. However, the bills already raised by CTU towards free power after the date of filing this petition shall be adjusted against STOA charges within a period of 3 months from date of issue of this Order.”*

7. As regards the third issue, the Commission held that no case is made out against PGCIL under Sections 60, 142 and 146 of the Act.

8. Aggrieved by the aforesaid Order dated 20.11.2019, the Petitioner preferred Appeal No. 6 of 2020 before the Appellate Tribunal for Electricity (hereinafter referred to as “APTEL”). The said appeal was decided by APTEL vide judgment dated 17.2.2022 as under:

*“6. Having heard the learned counsel for the parties at length, we are of the view that the above formulation of the final directions on the petition preferred by the appellant could not and should not have been reached without impleading HPSEB as a party to the proceedings. After all, it is the said entity which has been drawing the free power, as royalty claimed by the State, statedly under short-term open access arrangement.*

*7.... For complete closure to the expectation of PGCIL (now CTUIL) for transmission charges for the period in question to be paid to it, it is only appropriate that the CERC be called upon to rehear all concerned entities, including HPSEB and decide the matter as to the liability for paying*

*transmission charges for the period prior to the petition being filed, to be decided afresh. We order accordingly.*

...

*9. The short issue of the liability to pay the transmission charges for period anterior to the filing of the petition, and the identity of the party which must bear such charges for the said period, is remitted to CERC for further hearing and fresh adjudication. As observed above, before hearing the parties already on board, the CERC shall implead and issue notice to HPSEB as well.”*

### **Proceedings pursuant to the remand**

9. Pursuant to the remand, the Commission held the preliminary hearing and directed the Petitioner to file a revised memo of parties impleading Himachal Pradesh State Electricity Board (hereinafter referred to as “HPSEB”) and Central Transmission Utility of India Limited (hereinafter referred to as CTUIL) as parties to the Petition. The Commission further directed the Respondents, including HPSEBL, to file their respective replies on the short issue under the remit as per Para 9 of the judgment of APTEL dated 17.2.2022. The Petitioner filed the amended memo of parties on 11.11.2022 impleading CTUIL, HPSEB, and PGCIL as Respondent Nos.1,2 and 3, respectively. During the hearing of the petition on 14.3.2023, learned counsel for the Petitioner brought to the notice of the Commission that after HPSEB was impleaded as a respondent, the Petitioner was informed by HPSEB that after its restructuring, the issue of free power was being dealt with by the Energy Department, Government of Himachal Pradesh (GoHP) exclusively which was confirmed by the learned counsel for HPSEBL. Learned counsel for the Petitioner further submitted that APTEL, in para 7 of its judgement dated 17.2.2022 had directed the Commission to rehear all the concerned parties, including HPSEB, while deciding the matter and Energy Department, GoHP is also a concerned entity, which needs to be impleaded. Learned counsel for HPSEBL submitted that subsequent to

the restructuring of HPSEB in 2010, the issue of free power is being dealt with exclusively by the Energy Department, Government of Himachal Pradesh, and requested for impleadment of Energy Department, Government of Himachal Pradesh as a party to the present proceedings. The Commission directed the Petitioner to file a revised memo of parties by impleading the Energy Department, GoHP, as a party to the petition and directed the Energy Department, GoHP, to file its reply. The Petitioner filed a revised memo of parties impleading Energy Department, GoHP, and PTC India Limited (PTCIL) as Respondent Nos.4 and 5, respectively. During the hearing on 20.4.2023, the learned counsel for PTCIL submitted that PTCIL is not a necessary and affected/relevant party to the present proceedings and be discharged from the present proceedings, which was not opposed by the learned counsel for the Petitioner. The Commission discharged PTCIL from the present proceedings and directed not to include PTCIL as a party to the petition.

**Reply on behalf of Himachal Pradesh State Electricity Board Limited (HPSEBL)**

10. HPSEBL (Respondent No. 2) vide its reply affidavit dated 11.04.2023 has submitted as under:

- (a) The Petitioner owns and operates the 2x35 MW hydro-electric power plant (Project) in the State of Himachal Pradesh. For power sale arrangements, the Petitioner had proposed that power generated from the project would not be sold directly to its purchaser (then Haryana), but the sale and purchase would take place through an intermediary power trader. PTC was identified as the intermediary power trader.

(b) The Petitioner and the Government of Himachal Pradesh signed a Memorandum of Understanding (MoU) on 23.9.2004 for the implementation of the project. According to the terms of the MoU, the Petitioner is under obligation to supply free power of 12%/18% to the State of Himachal Pradesh. As per the MoU, the Petitioner was also required to tie up with HPSEB/PGCIL (now CTUIL) for the arrangement of a suitable integrated transmission system at mutually agreed wheeling charges for evacuation of power beyond the interconnection point. However, no such agreement has been entered into between the Petitioner and HPSEB/PGCIL.

(c) The Petitioner also entered into a MoU with PTC on 3.11.2004, which captured the arrangement that the delivery point of power generated from the Project was to be the nearest grid sub-station of PGCIL (now CTUIL) for onward transmission by PTC and/or its ultimate purchaser.

(d) The Petitioner entered into an Implementation Agreement dated 22.11.2005 with the Government of Himachal Pradesh, which contained the Petitioner's liability to supply free power to the Government of Himachal Pradesh and not to HPSEB. Therefore, the title over the electricity is that of the Government of Himachal Pradesh, which may thereafter dispose of the said power in the manner it deems fit.

(e) The Petitioner entered into a PPA dated 30.5.2005 with PTC, under which PTC agreed to buy the power generated by the Petitioner minus the free power. PTC entered into a PSA dated 21.9.2006 with Haryana Power Generation Corporation Limited (HPGCL) for the onward sale of power



purchased by PTC from the Petitioner. For transferring power from the project to Haryana, PTC applied to PGCIL for a grant of LTA. The application of PTC was discussed between the parties in a meeting held on 24.11.2006, wherein it was stipulated that if HPSEBL does not make any transmission arrangement, it is the Petitioner who will bear the transmission charges for the share of free power.

(f) The Petitioner and PTC entered into a BPTA on 18.10.2007 to decide the evacuation arrangements. Since HPSEB was not even a signatory to the BPTA, there can be no liability on HPSEB under the BPTA to bear any sort of transmission charges. The BPTA captures an eventuality where the transmission arrangement for evacuation of free power is not made by the Petitioner/HPSEB; the transmission charges towards evacuation of free power have to be borne by the Petitioner.

(g) The project was commissioned on 30.5.2012, and the LTA was accordingly operationalised. The Petitioner was duly paying the transmission charges, including for the free power supplied to the Government of Himachal Pradesh. The entire controversy that gave rise to the present dispute arose when the Petitioner stopped paying the transmission charges, including for the free power, from March 2016 onwards on the grounds that it was not using the LTA to the transmission system connected for transmission of power to HPGCL on account of the termination of the PPA by the Petitioner with PTC.

(h) The Petitioner subsequently entered into a PPA with Uttarkhand for a long term supply of power. The Petitioner approached PGCIL (now CTUIL)

for a change of drawee utility to Uttarkhand discom. PGCIL refused to grant LTA since another LTA with PTC for the same capacity was already in existence. The Petitioner approached the Commission by way of Petition No.190/MP/2016, and the Commission vide order dated 31.5.2018 held PTC liable for payment of transmission charges for the subject LTA as PTC was the LTA customer. Even going by the rationale in the order dated 31.5.2018, HPSEBL cannot be held liable to pay the transmission charges towards the share of free power to the Government of Himachal Pradesh. HPSEBL has neither applied for the LTA nor is an LTTC for the free power, nor has it signed the BPTA.

(i) HPSEBL was not even a party to the Petition No.265/MP/2018. However, the Commission, in the order dated 20.11.2019 in the said petition, has observed that HPSEBL was availing short term open access (STOA) and was paying the STOA charges for the free power. The above observation of the Commission was perhaps on account of the understanding given to the Commission that HPSEBL was entitled to a supply of free power, which is factually incorrect. The said order was challenged before APTEL without making HPSEBL a party to the appeal. APTEL, in its judgement dated 17.2.2022, has remanded the petition back to the Commission for fresh adjudication on the sole issue of the liability of the party who has to pay the transmission charges for the period anterior to the filing of Petition No.265/MP/2018 by impleading HPSEBL and hearing all concerned parties including HPSEBL.

(j) The Commission, vide its order dated 20.11.2019 in Petition No. 265/MP/2018, has recorded that HPSEB is evacuating its share of free power by availing of STOA on payment of STOA charges. However, HPSEBL has neither availed of STOA nor has, at any point in time, paid for the STOA charges. It is the Government of Himachal Pradesh through the Department of Energy which has been paying the STOA charges. The Himachal Pradesh State Electricity Board has been reorganized as HPSEBL with effect from 14.06.2010, and as such, HPSEBL is a separate legal entity from the Government of Himachal Pradesh.

(k) The Petitioner and the Government of Himachal Pradesh have entered into the Memorandum of Understanding dated 23.9.2004 and the Implementation Agreement dated 22.11.2005. Thus, the organization referred to as "HPSEB" in Article 8 of the Memorandum of Understanding is to be understood as the State of Himachal Pradesh's electrical board previous to the reorganization. Further, HPSEB is not a party to any agreements made between parties, ranging from the MoU to the BPTA. Moreover, HPSEBL has neither requested LTA nor has been granted LTA for free power evacuation. Admittedly, no LTA has been allotted in relation to free power and no agreement in the nature of BPTA/TSA was entered by PGCIL with HPSEBL.

(l) In an order dated 31.5.2018 in Petition No.190/MP/2016, the Commission had held PTC liable for transmission charges as PTC was the LTTC and had signed the BPTA. HPSEBL was neither an LTTC nor a party to the BPTA for

free power and, therefore, cannot be held liable to pay the transmission charges. Further, the Commission, in an order dated 22.11.2019 in Petition No.265/MP/2019, has held the Petitioner not liable to pay the transmission charges for the reason that even though the Petitioner has signed the BPTA, it had neither applied for nor was granted LTA for free power. HPSEBL is placed in a better position as it is neither a party to the BPTA nor to any agreement inter se parties. HPSEBL has neither applied for nor has been granted LTA for free power. In light of the orders dated 31.5.2018 in Petition No.190/MP/2016 and order dated 22.11.2019 in Petition No.265/MP/2019, HPSEBL cannot be held liable for the transmission charges towards evacuation of free power.

**Reply on behalf of Energy Department, Government of Himachal Pradesh (GoHP) (Respondent No. 4)**

11. Energy Department, GoHP vide its reply dated 8.5.2023 has submitted as under:

(a) GoHP has free power entitlement in Budhil Hydro Power Project (2x35 MW) of the Petitioner at the rate of 12% of deliverable energy for the first 12 years and at the rate of 18% of deliverable energy for the next 28 years from the SCOD of the project.

(b) The Petitioner and GoHP signed a Memorandum of Understanding (MOU), and as per Clause 8.0 of the MoU, "the company will be required to make arrangements for evacuation of power from the Project to the Board/PGCIL's Sub Station (designated or Interconnection Point) as per the provisions in the DPR. For evacuation

of power beyond the Interconnection point, the Company shall tie up with HPSEB/PGCIL for the arrangement of a suitable integrated transmission system at mutually agreed Wheeling Charges".

(c) The generator, i.e., Budhil Hydro Power Project as per the Implementation Agreement (IA), is supplying GoHP free power at the Chamera pooling Station of PGCIL. This Interconnection Point is the interconnection of the Project Transmission Line with the PGCIL transmission system. Therefore, all the transmission charges as per the IA up to this Interconnection Point have to be borne by Budhil Hydro Power Project.

(d) GoHP is selling its power, including free power from Budhil Hydro Power Project, in the short-term market and, accordingly, is paying the short term open access charges as per the applicable regulations. The GoHP has never asked Budhil Hydro Power Project to acquire BPTA/LTA for GoHP free power. Accordingly, there is no question of paying Long Term Open Access Transmission Charges as power is being sold through short term mode, which is available at the interconnection point of PGCIL.

(e) The Petitioner was supposed to supply GoHP free power at the Interconnection Point without any cost or charges to the Government. Further, PGCIL cannot force the Petitioner to execute the BPTA for GoHP-free power.

### **Rejoinder by the Petitioner**

12. The Petitioner, in its rejoinder dated 9.8.2023, has mainly submitted as under:



(a) The question in this petition is limited to whether the Petitioner is availing of the Long-Term Access (LTA) services of PGCIL's transmission system for the purpose of supplying free power to Respondent No. 4 (GoHP).

(b) The Petitioner's project line, or dedicated line, is connected to the PGCIL's transmission system at the interconnection point, as Respondent No. 4 has itself "admitted." Thus, it is evident that there is no question about the Petitioner using the transmission system up to that point or about the imposition of any transmission charges on a dedicated line when the Petitioner is supplying power from its dedicated transmission line up to the PGCIL pooling station. The power that Respondent No. 4 draws from the PGCIL's Chamera pooling station is subject to transmission costs.

(c) The Petitioner has been using concurrence/NOC, in accordance with Regulation 8 of the CERC (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter "OA Regulations") on behalf of DoE, GoHP, in order to provide free power to Respondent No. 4. The DoE receives the tariff for selling through Tata Power Trading Company Limited (trader designated by DoE, GoHP for trading 12% free power from Hydro Projects in Himachal Pradesh) after the charges towards the aforementioned NOC or any use of the transmission system are settled at the exchange platform. Accordingly, the most recent NoC/Standing clearance from NRLDC, dated June 28, 2023, has been placed on record wherein the "Regional Transmission Charges" are referenced expressly.

(d) As per Regulations 6 and 18 of the OA Regulations, all transactions that are done through the power exchange it is the power exchange that avails open access, and all commercial settlements take place at the exchange platform itself. It is quite evident that the Petitioner is not obligated to pay any further transmission fees in exchange for the free power. Further, Respondent No. 4 has entered into an arrangement with Tata Power Trading Co. Ltd. (TPTCL) for the purpose of supplying free power, and the revenues earned by TPTCL qua the said quantum are directly transferred to Respondent No. 4, being net of the expenses including open access charges, and the Petitioner does not have to arrange or make payment of any transmission charges to CTUIL. For this, the Petitioner has placed on record the recent obligation report dated 30.6.2023 issued by the Indian Energy Exchange, which clearly provides for the levy of all the charges, including 'Injection CTU Transmission Charges' and 'Drawal CTU Transmission Charges'.

(e) The Petitioner is not availing any LTA or any other open access qua the free power which is supplied to the Respondent No. 4, and as a consequence, no transmission charges for the said power can be levied upon the Petitioner. The Commission ought to set aside the impugned demand letters dated 2.8.2018 and 14.8.2018 issued by PGCIL and hold that the transmission charges liability of Rs. 6.41 crores is not payable by the Petitioner.

### **Analysis and Decision**

13. We have heard all concerned parties and perused the documents on record. To recapitulate the background of the case, the Petitioner filed Petition No.265/MP/2018



seeking a direction to quash the CTUIL's letters dated 2.8.2018, 14.8.2018, and 21.8.2018 issued to the Petitioner. In the letter dated 2.8.2018, CTUIL informed the Petitioner that though the Petitioner was paying the LTA charges for the entire quantum of 70 MW (61.6 MW with PTC and 8.4 MW free power) from May 2012 till February 2016, it had stopped paying the LTA charges since March 2016 citing the issue concerning its application for transfer of LTA from PTC to the Petitioner. CTUIL further stated in the said letter that even after the issue of the Commission's order dated 31.5.2018 in Petition No.190/MP/2018 holding PTC liable to pay the transmission charges for the LTA of 61.6 MW till the LTA was relinquished, the Petitioner was liable to pay the transmission charges for LTA of 8.4 MW on account of free power and raised the claim for payment of Rs.6.25 crore towards transmission charges since March 2016. CTUIL, through the letter dated 14.8.2018, while reiterating the contents of the letter dated 2.8.2018, gave a notice to the Petitioner for curtailment of the short-term open access in the event of non-payment of outstanding dues towards transmission charges for free power. The letter dated 21.8.2018 was a request by CTUIL to POSOCO (now Grid India) to curtail the short-term open access of the Petitioner.

14. The Commission, in its order dated 20.11.2019 in Petition No.265/MP/2028, framed three issues, namely (a) whether the Petitioner was liable for payment of the transmission charges towards supply of free power to the GoHP; (b) What relief should be granted to the Petitioner; and (c) Whether any direction is required to be issued to PGCIL(CTUIL) under Sections 60, 142 and 146 of the Act. The first issue was dealt with in paras 41 to 46 of the order dated 20.11.2019. The Commission,



after examining the relevant provisions of Open Access Regulations, 2004 and 2008, Connectivity Regulations, Implementation Agreement dated 22.11.2005 between the Petitioner and GoHP, MoU dated 23.9.2004 between the Petitioner and GoHP, and BPTA dated 18.10.2007 between the Petitioner, PTC and CTU, came to the conclusion that even though the Petitioner had signed the BPTA, it had neither applied for nor was granted LTA for free power and since the free power was evacuated by HPSEB by availing of short term access, the Petitioner could not be saddled with transmission charges for the said power. Accordingly, the Petitioner was held not liable to pay the transmission charges for free power, subject to decision on Issue No.2. The Second issue was dealt with in para 47 and 48 of the order dated 20.11.2019 in which it was held that since the Petitioner had signed the BPTA and voluntarily accepted the liability to pay the transmission charges for free power and never disputed such liability till the filing of the petition, the Petitioner could not be discharged from the liability to pay the transmission charges till the filing of the petition. The Petitioner's IA No.80/2018 to exempt it from paying the transmission charges from the date of commercial operation of its generating station (30.5.2012) till March 2016 was rejected. The third issue was decided against the Petitioner since no case was found to be made out against PGCIL (CTUIL) under Sections 60, 142, and 146 of the Act.

15. The Commission's order dated 20.11.2019 was challenged in Appeal No.6 of 2020 by the Petitioner, particularly the decision on Issue No.2 and the demand for transmission charges for free power made by PGCIL in its letters dated 2.8.2018 and 14.8.2018. APTEL, in its judgement dated 17.2.2022, has not disturbed the findings

of the Commission on the first issue as recorded in paras 41 to 46 of the order dated 20.11.2019 in Petition No. 265/MP/2018. In this connection, para 8 of the judgement dated 17.2.2002 in Appeal No.6 of 2020 is extracted as under:

“8. For clarity, we must add that we are not disturbing the conclusions and findings reached by the Commission through Paras 41 to 43 and 46 as have been extracted above vis-à-vis the impugned demands through letters dated 02.08.2018 and 14.08.2018. We may note that the rejection of the said demands as bad in law, and under the contractual arrangement, has not been questioned or challenged by PGCIL (now CTUIL) by any independent appeal and, therefore, has attained finality.”

The APTEL in the above-quoted para has held that rejection of the demands made by CTUIL in letters dated 2.8.2018 and 14.8.2018 by the Commission in para 46 of the order as bad in law and under the contractual arrangement has not been questioned or challenged by CTUIL by any independent appeal and therefore, has attained finality. In other words, the decision to exempt the Petitioner from paying the transmission charges for free power from the date of filing of the petition has attained finality.

16. On the second issue of liability of the Petitioner to bear the transmission charges for free power prior to the date of filing of the Petition, APTEL, in its order dated 17.2.2022 in Appeal No. 6 of 2020, observed that the decision on the liability to pay the transmission charges in an order dated 20.11.2019 suffered from a procedural infirmity on account of HPSEB not being impleaded as a party. Para 6 of the order dated 17.2.2022 is extracted as under:

*“6. Having heard the learned counsel for the parties at length, we are of the view that the above formulation of the final directions on the petition preferred by the appellant could not and should not have been reached without impleading HPSEB as a party to the proceedings. After all, it is the said entity*

*which has been drawing the free power, as royalty claimed by the State, stately under short-term open access arrangement.”*

17. Accordingly, APTEL directed the Commission to implead HPSEB and hear all concerned entities, including HPSEB, and decide afresh the issue of liability to pay the transmission charges anterior to the filing of the petition and the identity of the party who shall bear the charges during the said period. As directed by APTEL, HPSEBL was impleaded as a party, and its reply is on record. HBSEBL has categorically denied its involvement in the evacuation of free power on behalf of GoHP in terms of either the Implementation Agreement or the BPTA and has submitted that the Energy Department, GoHP is directly handling and dealing with its share of free power from the project. Accordingly, the Energy Department, GoHP was impleaded as a Respondent. Energy department, GoHP, has filed its reply in which it has denied its liability to bear the transmission charges for transmission of free power.

18. HPSEBL has referred to the following documents in support of its contention that HPSEBL is not associated with the evacuation of free power from the generating station of the Petitioner to GoHP:

- (a) MoU dated 29.3.2004 between the Petitioner and GoHP;
- (b) MoU dated 3.11.2004 between the Petitioner and PTC;
- (c) Implementation Agreement dated 22.11.2005 between the Petitioner and GoHP;
- (d) PPA dated 30.5.2005 between the Petitioner and PTC; and
- (e) BPTA dated 18.10.2007 among the Petitioner, PTC and CTU.

HPSEBL has submitted that HPSEB was not a party to any of the agreements as mentioned above. HPSEBL has further submitted that though the BPTA provided that where the transmission arrangement for evacuation of free power is not made by the Petitioner/HPSEB, the transmission charges towards evacuation of free power would be borne by the Petitioner, HPSEBL had neither requested for nor was granted LTA for evacuation of free power nor was a party to the BPTA and therefore, HPSEBL cannot be held liable for the transmission charges for the evacuation of free power.

19. GoHP, Respondent No.4 has submitted that in accordance with the Implementation Agreement, the Petitioner has been supplying free power at the interconnection point, i.e., the Chamera sub-station of PGCIL and the transmission charges up to the interconnection point are being borne by the Petitioner. GoHP has further submitted that it has never asked the Petitioner to apply for and acquire LTA/BPTA on its behalf for free power. Since GoHP is selling its power, including free power from the project of the Petitioner in the short-term market and is paying short term open access charges as per applicable regulations, there is no question of GoHP paying the LTA charges.

20. The Petitioner, in its rejoinder, has concurred with the submissions of GoHP that it is supplying power on its dedicated transmission line up to the interconnection point, which is the PGCIL's Chamera pooling station. The Petitioner has submitted that GoHP has entered into an arrangement with Tata Power Trading Company Limited (TPTCL) for the purpose of sale of free power from the project of the Petitioner, and the revenues earned by TPTCL qua the supply of free power are

directly transferred to GoHP being net of expenses including open access charges. The Petitioner has submitted that since it is not availing any LTA or any other open access qua the free power to GoHP, no transmission charges for the said free power can be levied on the Petitioner.

21. From the submissions of the parties, it emerges that though there is a reference to HPSEB in the MoU dated 23.9.2004 and the BPTA dated 18.10.2007 for making arrangements for evacuation of free power beyond the interconnection point, HPSEB was neither authorized by GoHP to make the necessary arrangement nor to apply for LTA to CTU for the evacuation of said power. In fact, HPSEB is not a signatory to any of the MoUs, IA, or the BPTA. GoHP has admitted on affidavit that it has entered into an arrangement with TPTCL for the sale of free power by availing of short-term open access whereunder the revenues earned from the sale of free power net of expenses, including open access charges are directly transferred to GoHP. Since HPSEBL is not involved in the chain of supply of free power and GoHP is selling its share of free power through TPTCL by availing of short-term open access on payment of short-term open access charges, no liability for the transmission charges can be fastened on HPSEBL. In paragraph 46 of our order dated 20.11.2019, the Commission observed that “free power is evacuated by HPSEB by availing short term open access.” HPSEBL has requested that the said observation be modified in light of the fact that HPSEBL is not involved in the evacuation of free power. We find merit in the submission of HPSEBL. Accordingly, “HPSEB” appearing in the second sentence of para 46 of the order dated 20.11.2019 shall be read as “GoHP.”

22. We further observe that GoHP has neither applied for nor authorized any entity to apply for LTA on its behalf nor is it a signatory to the BPTA. From the beginning, GoHP had been selling its share of free power through TPTCL by availing short term open access on payment of short term transmission charges. Since GoHP has not entered into any sort of contractual arrangement for LTA for free power, GoHP cannot be held responsible for the payment of transmission charges for LTA of 8.44 MW for free power.

23. The only entity that has signed the BPTA for free power and accepted the liability for the transmission charges for the LTA quantum of 8.4 MW is the Petitioner. In fact, the Petitioner has paid the LTA charges from 30.5.2012 (the date of its commercial operation) till March 2016. In the present petition, the Petitioner had challenged the claim of PGCIL/CTUIL for transmission charges from March 2016 onwards. The Petitioner had also filed I.A. No. 80/2018 in which the Petitioner claimed that it was not liable to make any payment of transmission charges towards free power from March 2016 onwards and reserved its right to file a separate petition for the period from 30.5.2012 till March 2016. In its written submission dated 28.3.2024, the Petitioner has submitted that the Petitioner is delivering the free power at the Chamera pooling station of PGCIL through its dedicated transmission line and there is no question of levy of transmission charges on such dedicated transmission line. The transmission charges are payable for the power which is drawn by GoHP from the Chamera pooling station. The Petitioner has further submitted that for the purpose of supplying free power, it has been availing concurrence/NOC in terms of Regulation 8 of Central Electricity Regulatory

Commission (Open Access to inter-State Transmission) Regulations, 2008. Further, GoHP is selling its power through TPTCL by availing short term open access and the revenue earned by TPTCL qua the sale of free power is directly transferred to GoHP by TPTCL, being net of the expenses, including the open access charges. The Petitioner has submitted that the obligation to pay transmission charges qua 8.4 MW free power is clearly met through the arrangement entered into between GoHP and TPTCL. Since CTUIL is recovering transmission charges towards the quantum of free power, no transmission charges for the said power can be levied upon the Petitioner. The Petitioner has further submitted that any sort of recovery from the Petitioner qua the free power would amount to 'double charging', thereby unjustly enriching PGCIL/CTUIL. The Petitioner has requested to quash the PGCIL/CTUIL's letters dated 2.8.2018 and 14.8.2018 with directions to return/release the bank guarantee as furnished by the Petitioner in favour of PGCIL/CTUIL. In short, the Petitioner is seeking adjustment/refund of transmission charges towards free power from March 2016 till 19.8.2018 (the day prior to the filing of the petition on 20.8.2018) and has reserved the right to seek remedy for the period from 30.5.2012 to March 2016 subsequently.

24. The Commission, in para 46 of the order dated 20.11.2019, held that even though the Petitioner had signed the BPTA, it had neither applied for nor was granted LTA for free power, and the said power is evacuated by HPSEB (substituted as "GoHP") by availing short open access charges, the Petitioner cannot be saddled with transmission charges for the said power. In para 47 of the order dated 20.11.2019, the Commission made this decision applicable from the date of filing of

the petition, i.e. 20.8.2018. It is pertinent to mention that the decision of the Commission in para 46 has been affirmed by the APTEL, and the decision in para 47 has been set aside and remanded the matter to the Commission for reconsideration after hearing all concerned parties.

25. The Commission has reached a conclusion in this order that neither GoHP nor HPSEBL is liable for payment of transmission charges for the quantum of LTA for free power. The primary reason being that there was no contractual arrangement between the Petitioner and GoHP/HSEBL for the evacuation of free power of 8.4 MW through LTA since neither of them had applied for LTA nor had they entered into BPTA nor scheduled the free power by availing LTA. However, the Petitioner, despite not being authorized by GoHP, became a party to the BPTA between PTC and PGCIL/CTUIL, accepted the liability for payment of charges towards LTA, and continued to pay the LTA charges till March 2016. The Petitioner stopped paying the transmission charges for free power with effect from March 2016 after it sought a transfer of LTA from PTC to itself. The Petitioner approached the Commission on 20.8.2018 after PGCIL/CTUIL raised the demand for outstanding transmission charges for LTA for free power with effect from March 2016. Therefore, the question arises as to “whether an entity which has voluntarily accepted a liability which does not concern it and approaches for a remedy belatedly is entitled to the relief from the date the liability has been incurred”.

26. The APTEL has examined a similarly situated question in its judgement dated 2.2.2024 in Appeal No. 383 of 2022 (Uttar Haryana Bijli Vitran Nigam Limited &



Others Vs Central Electricity Regulatory Commission & Others). In that case, the Point of Connection charges (PoC Charges) were levied on the Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (Haryana Utilities) for the period starting 1.7.2011 with respect to the power flow from IGSPTS on the 400 kV Jhajjar-Daulatabad Line owned, operated and maintained by Haryana Vidyut Prasaran Nigam Limited. Haryana Utilities approached the Commission in Petition No.126/MP/2017 for a refund of the amount of transmission charges. The Commission, in its order dated 4.5.2018, held that the 400 kV Jhajjar-Daulatabad Line is not an inter-State transmission system, and therefore, Haryana Utilities are not liable to pay the PoC charges for evacuation of their share of power from IGSPTS by using the said transmission line. The Commission, however, held that the relief would be applicable from the date of issue of the order. Haryana Utilities preferred Appeal No.240/2018 before the APTEL, and by its judgement dated 4.2.2020, The APTEL remanded the matter on the issue of the order dated 4.5.2018 being applied prospectively. The Commission, vide its order dated 30.7.2022, held that the issue under consideration related to the interpretation and applicability of the Sharing Regulations and no retrospective operation can be granted on the reasoning that a statute that affects substantive rights is prospective in operation. Haryana Utilities filed Appeal No.383 of 2022, challenging the order dated 30.7.2022. APTEL, in its judgement dated 2.2.2024, held that the orders dated 4.5.2018 and 30.7.2022 were passed by the Commission in the exercise of its adjudicatory power and not in the exercise of its regulatory power. APTEL further held that in the light of the judgement of the Hon'ble Supreme Court in A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd. [(2016) 3 SCC 468], retrospective application of an



claim, for refund of the amounts illegally collected from them by Respondents 2 and 3, for the period from 03.06.2014 till 04.05.2018, when the earlier order was passed by the CERC.”

27. The APTEL, in the above-quoted judgement, has held that period of limitation would be applicable and, accordingly, allowed the claims of Haryana Utilities for the period of three years prior to the filing of the Petition No.126/MP/2017 and prior to that period, the claim was disallowed. In the light of the legal principle enunciated by the Hon'ble Supreme Court in A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd. and APTEL in Appeal No.383 of 2022, the Commission is of the view that since Petition No.265/MP/2018 was filed on 20.8.2018, the claim of the Petitioner for the period of three years anterior to that date i.e. 20.8.2015 to 19.8.2018 shall be covered within the period of limitation. Consequently, the Petitioner shall be liable to pay the transmission charges corresponding to LTA for the free power only for the period from the date of commercial operation (i.e.30.5.2012) till 19.8.2015. The Petitioner shall not be liable to pay any transmission charges for the free power from 20.08.2015. CTUIL is directed to revisit its claims raised vide its letters 2.8.2018 and 14.8.2018 in terms of the above decision. CTUIL is further directed to work out the amount of transmission charges paid by the Petitioner towards free power from 20.08.2015 and refund the said amount by making adjustment against the TGNA in terms of Regulation 11(3) and in case of shortfall, against Regional Transmission Deviation Account in terms of Regulation 12(3) of the Sharing Regulations, 2020 within a period of three months from the date of issue of this order. The bank guarantee kept alive by the Petitioner in terms of the directions of the APTEL shall be returned to the Petitioner.

28. Petition No.265/MP/2018 on remand is disposed of in terms of the above.

**(P.K. Singh)**  
Member

**(Arun Goyal)**  
Member

**(Jishnu Barua)**  
Chairman

