

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 374/MP/2022**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Ramesh Babu V., Member  
Shri Harish Dudani, Member**

**Date of Order: 16<sup>th</sup> October, 2024**

**In the matter of:**

Petition under Section 79 of the Electricity Act, 2003 read with Regulation 111, 112, and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for enforcement/ execution of the tariff order dated 21.11.2019 passed by the Commission in Petition No. 158/TT/2018 directing bilateral billing and payment of transmission charges by the Respondent No.1 to the Petitioner on account of delay in commissioning of its downstream transmission network.

**And**

**In the matter of:**

**Power Grid Corporation of India Limited,  
SAUDAMINI', Plot No-2, Sector-29,  
Gurgaon-122001 (Haryana).**

**.....Petitioner**

**Versus**

**Himachal Pradesh Power Transmission Corporation Limited,  
Near, Shimla Bypass (below Old MLA Quarters),  
Tutikandi, Panjari-171005,  
Himachal Pradesh.**

**Central Transmission Utility India Limited,  
Plot No. 2, 1<sup>st</sup> Floor, Saudamini, Sector-29,  
Gurgaon-122001, Haryana.**

**.....Respondent(s)**

**Parties Present:**

Shri Shubham Arya, Advocate, PGCIL  
Ms. Reeha Singh, Advocate, PGCIL  
Shri Samir Malik, Advocate, HPPTCL  
Ms. Nikita Choukse, Advocate, HPPTCL  
Shri Tushar Mathur, Advocate, HPPTCL



Ms. Himani Yadav, Advocate, HPPTCL

## ORDER

The present Petition has been filed by Power Grid Corporation of India Limited (hereinafter referred to as the “**Petitioner/PGCIL**”) under Section 79 of the Electricity Act, 2003 read with Regulations 111, 112 and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (in short “**the Conduct of Business Regulations, 1999**”) seeking enforcement/execution of the tariff order dated 21.11.2019 passed by the Commission in Petition No. 158/TT/2018 (hereinafter referred to as “**Tariff Order**”) directing bilateral billing and payment of the transmission charges by Himachal Pradesh Power Transmission Corporation Limited (“**Respondent No. 1/ HPPTCL**”) to the Petitioner on account of delay in commissioning of its downstream transmission network under the scope of HPPTCL.

The Petitioner has made the following prayers in the instant Petition:

*“(a) Direct the Respondent No. 1-Himachal Pradesh Power Transmission Corporation Limited (HPPTCL) to pay/clear all outstanding dues along with the applicable Late Payment Surcharge with immediate effect;*

*(b) Award the cost of litigation to the Petitioner;*

*(c) Pass such other order(s) and/or direction(s) as this Commission may deem just and proper in the facts and circumstances of the case.”*

### Factual Matrix

2. The background of the present Petition emanates from the following series of events:

(a) The Petitioner filed Petition No. 158/TT/2018 for the determination of the transmission tariff for the 2014-19 tariff period from anticipated/ actual COD to 31.3.2019 for Asset-1: 400/220 kV, 3 x 105 MVA ICT along with associated bays at Hamirpur Sub-station; Asset-2: 220 kV, 2 numbers line bays at Hamirpur Sub-station; Asset-3: 220 kV, 2 numbers line bays at Jalandhar Sub-



station; and Asset-4: 1 x 500 MVA, 400/220 kV ICT-IV at GIS Gurgaon Sub-station, under "Augmentation of Transformers in Northern Region-Part B" in Northern Region.

(b) The Petitioner successfully completed its scope of work related to Asset-2: 220 kV, 2 numbers line bays at Hamirpur Sub-station. However, HPPTCL delayed the construction and commissioning of the interconnecting downstream transmission assets within its scope of work.

(c) The Commission vide order dated 21.11.2019 approved the COD of Asset-2 as 31.3.2019 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and held that the transmission charges for Asset-2 from 31.3.2019 till the COD of the associated 220 kV transmission system under the scope of HPPTCL shall be borne by HPPTCL. Further, the COD of Asset-3 was approved as 25.3.2019 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and held that the transmission charges for Asset-3 from 25.3.2019 till the COD of the associated transmission system under the scope of PSPTCL shall be borne by PSPTCL. The relevant portions of the order dated 31.3.2019 are as under:

*"25. .... Based on the above, we approve COD of Asset-2 and Asset-3 as 31.3.2019 and 25.3.2019 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, 2014.*

*26. In view of the above, the transmission charges for Asset-2 from 31.3.2019 till commissioning of the associated 220 kV transmission system under the scope of HPPTCL shall be borne by HPPTCL and thereafter, shall be recovered under provisions of Sharing Regulations...."*

*"30. In case of Asset-3 (i.e. 220kV, 2 Nos. line Bays at Jalandhar Substation), the Petitioner has requested to approve the COD as 25.3.2019 under proviso (ii) of 4(3) of 2014 Tariff Regulations. It is seen from 30th SCM held on 19.12.2011 that requirement of 2 nos. of 220kV line bays for Jalandhar was agreed. Further, in the 22nd meeting of TCC and 25th meeting of NRPC held on 23rd and 24th Feb., 2012 wherein the representative from PSTCL were present, the minutes of meeting indicate that after deliberations the transmission proposals were concurred by NRPC and it was agreed that 2 nos. of 220 kV line bays would be constructed at Jalandhar substations. Therefore, the contention of PSTCL is not justified that at no point of time it has agreed for additional bays at Jalandhar. Based on above, we are of the view that, the COD for Asset-3 i.e. 25.3.2019 as requested by the Petitioner qualifies under Proviso (ii) of Regulation 4 (3) in line with the 2014 Tariff Regulations. Accordingly, the transmission charges from 25.3.2019 till commissioning of*



*associated 220kV downstream network of PSTCL shall be borne by PSTCL and thereafter, shall be recovered under PoC mechanism”*

(d) Accordingly, Respondent No. 2/ Central Transmission Utility India Limited (CTUIL) raised bilateral invoices for payment of the amount of ₹6,76,30,075/- along with the late payment surcharge for the overdue period for delay in the payment of such transmission charges on HPPTCL. However, HPPTCL failed to pay the said amount despite the invoices raised and repeated requests and reminders from CTUIL. As the downstream system by HPPTCL is yet not ready, the bilateral billing is being raised on them as per the directions of the Commission.

(e) In the meantime, HPPTCL filed Appeal No. 300 of 2022 before the Appellate Tribunal for Electricity (“**APTEL**”), challenging the Commission’s order dated 21.11.2019 in Petition No. 158/TT/2018. The appeal is pending adjudication before the APTEL.

(f) HPPTCL also filed an IA No. 270 of 2020 in Appeal No. 300 of 2022 for the stay of the Commission’s direction. However, HPPTCL has not pressed the same during the hearing of the appeal.

(g) HPPTCL filed another IA No. 1430 of 2023 in Appeal No. 300 of 2022 after filing the present Petition for urgent listing of the Appeal. However, the APTEL vide order dated 17.07.2023 disposed of the IA by stating as under:

*“The submission of Ms. Nikita Choukse, learned Counsel for the Appellant, is that this Appeal should be taken up for hearing immediately, since the Execution Petition is being taken up by the CERC. We must express our inability to agree.”*

(h) Against the finding of the Commission in an order dated 21.11.2019 in Petition No.158/TT/2019 imposing bilateral charges on PSTCL, PSTCL filed Appeal No. 109 of 2021, and APTEL vide judgment dated 15.9.2022 has set aside the Commission’s order dated 21.11.2019.



(i) The Petitioner/PGCIL has filed Civil Appeal No.1377 of 2023 before the Hon'ble Supreme Court against the APTEL's judgment dated 15.9.2022 in Appeal No. 109 of 2021, and it is pending adjudication.

### **Proceedings before the Commission**

3. The Commission, on 15.5.2023, admitted the Petition, and notices were issued to the Respondents. HPPTCL has filed its reply vide affidavit dated 21.6.2023, and the Petitioner has filed its rejoinder to HPPTCL's reply vide affidavit dated 28.7.2023.

4. In the hearing dated 10.10.2023, the Commission heard the parties at length and reserved the matter for order. However, the order could not be issued prior to the Members of the Commission demitting the offices. Accordingly, the Petition was re-listed for the hearing on 17.9.2024, and the order was reserved in the matter.

5. This order is being issued considering the submissions made by the Petitioner in the Petition, the reply filed by HPPTCL, the Petitioner's rejoinder thereto, and the Record of Proceedings (RoP) reply and written submissions of HPPTCL dated 14.9.2023 and 26.10.2023, respectively.

### **Submission of the Petitioner/ PGCIL**

6. The learned counsel for the Petitioner, during the course of the hearing, made the following submissions:

(a) HPPTCL is a State Transmission Licensee and also a State Transmission Utility (STU), which is not a designated ISTS Customer (DISCOM). Therefore, the power supply of HPPTCL is not regulated by the CTUIL under the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply), Regulations, 2010 (now repealed) and also as per Late Payment Surcharge Rules 2021/ 2022 notified by the Ministry of Power (MoP). The Petitioner has no contractual mechanism to enforce recoveries



against HPPTCL as there is no Bank Guarantee (BG) or Letter of Credit (LC) available with the CTUIL or the Petitioner for encashment to recover the outstanding dues.

(b) HPPTCL has willfully and continuously defaulted in complying with the order dated 21.11.2019 in Petition No. 158/TT/2018. The Commission has the power to exercise its regulatory powers in terms of Section 79, read with the applicable provisions of the Electricity Act, 2003 (the Act) within its scope, and also has the powers of the Civil Courts and can execute and enforce its own orders under Regulation 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and undertake all such steps as may be considered appropriate to ensure implementation of the tariff order. Reliance is placed on the various judgments of the Hon'ble Supreme Court and APTEL's judgment.

(c) HPPTCL has filed Appeal No. 300 of 2022 before the APTEL on the ground that no liability can be fastened upon them for paying the transmission charges for the mismatch period. However, it has not obtained any interim directions in its favour for staying the decree of the Commission. HPPTCL has adopted dilatory tactics to delay the Petitioner's legitimate dues. The mere filing of an appeal does not give the right to non-payment. The Commission can enforce its orders even when an appeal is pending and no stay has been granted in the appeal. Reliance has been placed on the APTEL's judgment in Appeal Nos.112, 113 and 114 of 2013 in the matter of "*Western Electricity Supply Company of Orrisa Limited Vs. Orrisa Electricity Regulatory Commission & Ors*".

(d) Non-payment of the outstanding dues by HPPTCL has rendered the Petitioner to seek enforcement of the directions of the Commission in an order dated 21.11.2019 in Petition No. 158/TT/2018.

#### **Reply of Respondent No. 1/ HPPTCL**

7. Respondent No. 1/ HPPTCL, in its reply, vide affidavit dated 21.6.2023, has



denied all the contentions of the PGCIL. Further, HPPTCL has mainly submitted as under:

(a) In the 30<sup>th</sup> Standing Committee Meeting (SCM) held on 19.12.2011, in the presence of HPPTCL and the Petitioner, HPPTCL made a request for four numbers 220 kV line bays at ISTS Sub-station of the Petitioner at Hamirpur (HP) out of which two numbers bays were demanded for connecting Kangoo Sub-station of Himachal Pradesh State Electricity Board (HPSEB) (Respondent No. 5 in Petition No.158/TT/2018), and the other two number bays were demanded for their proposed Sub-station at Palampur (Dehan) for injection of power from their proposed 132/220 kV Dehan Sub-station. During deliberations, the Petitioner informed that they had already planned for six number bays, out of which four numbers would be utilized by the Petitioner for Loop-in-Loop-out (LILLO) arrangement of their 220 kV lines, and the other two number bays would be made available for connecting Kangoo Sub-station of HPSEB. The Petitioner further told in the meeting that the two numbers 220 kV bays as demanded by HPPTCL for their proposed Sub-station at Palampur (Dehan), could be considered in the future whenever required.

(b) However, HPPTCL never requested the two additional bays for the connection of HPPTCL's Dehan Sub-station from the Petitioner, and the same was affirmed in the 40<sup>th</sup> SCM meeting held on 22.6.2018, whereas nothing was on record to show that the two additional bays for which the instant Petition has been filed was done at the instance and request of HPPTCL and that the two 220 kV D/C line bays were to be utilized by HPSEB. Thus, it is evident that the construction/ erection of the additional two bays by the Petitioner, was not in any manner dependent on the downstream system of HPPTCL. The Petitioner is misleading the Commission by stating that its assets could not achieve the COD due to HPPTCL. The two bays were allocated to HPSEB for connecting their Kangoo sub-station, and HPSEB has already been paying charges to the Petitioner since 2014-15 in terms of the Commission's order dated 29.4.2016 in Petition No. 99/TT/2014. Therefore, the creation of the associated line/system is the sole responsibility of HPSEB and not of HPPTCL.



(c) The 22<sup>nd</sup> meeting of TCC and the 25<sup>th</sup> meeting of NRPC held on 23.2.2012 and 24.2.2012, respectively, provided that additional systems beyond Hamirpur would be planned based on the requirement/ commissioning of the new projects.

(d) The Petitioner, in the 33<sup>rd</sup> SCM held on 23.12.2013, admitted that Hamirpur is an ISTS Sub-station planned for drawl of power by Himachal Pradesh and for the purposes of injecting power into this Sub-station. HPPTCL would need to apply for Long Term Access (LTA) declaring the quantum of power and the time frame of injection along with the certification that the generation is already connected with the State grid. HPPTCL neither signed the LTA agreement nor was there any Transmission Service Agreement (TSA) existing between HPPTCL and the Petitioner.

(e) Apart from the several meetings of the SCM, TCC, and NRPC held from time to time, it was never mentioned that either the Petitioner was agreeing to the request of HPPTCL for the construction of two numbers bays for Dehan Sub-station or HPPTCL committing to the match the schedule of the Petitioner with respect to 2 number bays at Hamirpur for Dehan Sub-station. No correspondence exchanged between the Petitioner and HPPTC from 19.11.2011 to 18.10.2017 (almost 6 years) has been placed on record. The Petitioner never even informed HPPTCL all these years, either about their original schedules or revised schedules of construction or the delays thereof or the reasons thereof or any communication asking HPPTCL to match their latest schedules of construction.

(f) Till date, the Petitioner and HPPTCL have neither entered into any Implementation Agreement (IA) on the matter nor any other agreements for Asset-2. However, in the 35<sup>th</sup> meeting of TCC and the 39<sup>th</sup> meeting of NRPC held on 1.5.2017 and 2.5.2017, respectively, wherein the Committee recommended that the number of bays to be commissioned for each Sub-station may be decided in consultation with the concerned State, keeping in view the specific requirement of the State and the utilization of the STU network instead of





following the norms of the standard number of bays as per the existing guidelines. The Committee members suggested that all the bays provided at the ISTS Substation can only be built and utilized in a phased manner.

(g) HPPTCL has been penalized for no fault which has been endorsed in the 39<sup>th</sup> meeting of NRPC and the 35<sup>th</sup> meeting of TCC held on 2.5.2017 and 1.5.2017, respectively. The relevant extract of the meetings has been reproduced as follows:

<i>Sr. No.</i>	<i>Name of Substation</i>	<i>MVA Capacity</i>	<i>Expected Schedule</i>	<i>Remarks</i>
2	<i>Hamirpur 400/220 Substation Readiness by Aug-17</i>	<i>2x315 MVA</i>	<i>04 nos. 220 kV downstream lines commissioned</i>	<i>Status of downstream system for balance 2 Nos. 220kV bays Line (70 Kms.) yet to be awarded by HP.</i>

(h) HPPTCL vide letter dated 14.11.2017 responded to the Petitioner's letter dated 18.10.2017 and informed about its tentative planned/ under construction assets, which was scheduled in December 2019. The MoM, in the 41<sup>st</sup> NRPC and 38<sup>th</sup> TCC meeting, held on 27.2.2018 and 28.2.2018, respectively, also asserted the fact that the matter of construction of two number bays for the Dehan Sub-station of HPPTCL was never in question.

(i) The Petitioner filed Petition No. 158/TT/2018 wherein the Commission erroneously approved the COD of Asset-2 as 31.3.2019 under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and held HPPTCL liable for the transmission charges for Asset-2 from 31.3.2019 till the COD of the associated 220 kV transmission system under the scope of HPPTCL and thereafter, shall be recovered under the PoC mechanism.

(j) Aggrieved by the said order, HPPTCL filed Appeal No. 300 of 2022 before the APTEL along with I.A. No. 270 of 2020 for an interim direction for stay, and the same is pending adjudication. However, HPPTCL did not press for any further directions in the stay application as no coercive actions were being taken by the Petitioners at the relevant time. However, in the meantime, HPPTCL has

filed another application for urgent listing of the matter so that the appeal can be adjudicated by the APTEL in the light of the judgment dated 15.9.2022 in Appeal No. 109 of 2021 filed by Punjab State Transmission Corporation Limited (PSTCL) (Respondent No. 19 in Petition No. 158/TT/2018), wherein the APTEL has upheld the principle that the transmission charge cannot be imposed on the STU without any contractual arrangement between the STU and the Petitioner. In Appeal No. 109 of 2021, the Petitioner had contended that the resolution adopted in the 25<sup>th</sup> meeting of NRPC dated 23.2.2012 and 24.2.2012 constitutes an agreement between the parties. The APTEL while rejecting the argument of the Petitioner in the judgment dated 15.9.2022, has held that such alleged resolution is only to record concurrence of the transmission proposal subject to the 'requirement of STU being communicated to the Petitioner'. Like PSTCL, no such requirement was ever communicated by HPPTCL to the Petitioner. The APTEL, in its findings, has relied upon the judgment dated 14.9.2020 and 9.5.2022 in the matters of NRSS XXXI (B) Transmission Ltd. vs. CERC & Ors. (Appeal No. 17 of 2019) and Himachal Pradesh State Electricity Board vs. the Central Electricity Regulatory Commission (Appeal No. 343 of 2018) which suggests that the infrastructure projects involving huge investments must not be part of the regulatory uncertainties that too, without remedy. More importantly, the APTEL has categorically noted in these judgments that the levy of the transmission charges in the absence of a contract is more in the nature of 'damages' for the delay in commissioning of assets and cannot be qualified as sharing of the transmission charges. Therefore, such damages cannot be claimed without a valid contract that has been breached by parties in terms of Sections 73 and 74 of the Indian Contract Act, 1872. The APTEL also acknowledged that the Appellant therein being the STU of Punjab is not the beneficiary for use of the transmission system erected by the Petitioner, and only the beneficiaries of such transmission system with whom the Petitioner has entered into a transmission services agreement are liable to pay the transmission charges. HPPTCL is in the same situation in the present case as a STU and not a beneficiary of the subject transmission system erected by the Petitioner.

(k) Reliance has been placed upon the APTEL's judgment dated 27.3.2018



in Appeal No. 390 of 2017, titled “*Punjab State Power Corporation Limited vs. Patran Transmission Company Limited & Ors.*”, wherein it was held that there was no contractual arrangement between the parties commissioning its transmission element on time, i.e. Patran Transmission Company Limited (PTCL), and the defaulting party, i.e. Punjab State Transmission Company Limited (PSTCL). The APTEL held that contractual arrangements only existed between PTCL and its LTTCs, including Punjab State Power Corporation Limited (hereinafter, "PSPCL"). PSPCL, as an LTTC, had undertaken the obligation under the TSA to arrange the interconnection facilities for the project. Accordingly, the APTEL held PSPCL liable to pay the transmission charges, instead of PSTCL. The same is the situation with HPPTCL, as there is no contractual arrangement or any other agreement between HPPTCL and the Petitioner or HPSEB.

(l) The impugned order is in contravention with the APTEL’s judgment dated 15.9.2022 in Appeal No. 109 of 2021, which was decided on a similar issue and against the same impugned order in the case of PSTCL. Further, the Commission has failed to appreciate the full and complete facts as well as settled principles of law in consonance with the relevant laws and regulations, and therefore, the instant case is liable to be set aside, and the impugned order cannot be enforced as HPPTCL has filed Appeal No. 300 of 2022 challenging the said order.

(m) The Petitioner has preferred a review against the APTEL’s judgment dated 15.9.2022 in Appeal No. 109 of 2021 being IA No. 1776 of 2022 in DFR No. 459 of 2022 which has been dismissed by the APTEL vide order dated 28.11.2022.

### **Rejoinder of the Petitioner/ PGCIL**

8. In response to the submissions of HPPTCL, the Petitioner in its rejoinder has mainly submitted as under:

(a) The contentions raised by HPPTCL are similar in nature to the



contentions raised by HPPTCL in its reply in Petition No. 158/TT/2018 and in Appeal No. 300 of 2022 before the APTEL, amounting to challenge the impugned order on merits, which is impermissible in law. The liability has already been decided in the final order dated 21.11.2019 in Petition No. 158/TT/2018, and HPPTCL, by way of its pleadings in an Execution Petition, cannot seek to re-agitate the issues which have already been settled by the Commission (*ref. Para 9, Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises, [(1999)1 SCC 558]*).

(b) It is a settled principle of law that the court must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on the facts until it is set aside by an appropriate proceeding in appeal or revision, even if it is erroneous, it is still binding between the parties. HTTPCL has not challenged the impugned order; however, HPPTCL has filed an Appeal No. 300 of 2022 before the APTEL challenging the said order on similar grounds as are being urged in the present reply which has already been dealt with by the Commission in the impugned order. The Commission has rightly approved the COD of Asset-2 as 31.3.2019 and held HPPTCL liable to pay the transmission charges for the mismatch period.

(c) HPPTCL itself, in the 30<sup>th</sup> SCM held on 19.12.2011, has proposed 4 numbers 220 kV line bays at Hamirpur Sub-station, including included 2 number line bays for its proposed Palampur Sub-station. The said matter has also been discussed and deliberated upon in the 22<sup>nd</sup> TCC meeting, and the 25<sup>th</sup> NRPC meeting held on 23.2.2012 and 24.2.2012, respectively. The Commission has also considered the same in the impugned order.

(d) The requirement of 2 numbers 220 kV line bays at Hamirpur was duly discussed and concurred upon in the various meetings of the SCM, TCC, and NRPC. Further, the representatives of HPPTCL, present in the said meetings, agreed to the requirement of the said 2 numbers 220 kV line bays at the Hamirpur Sub-station. The Asset-2 was undertaken solely at the request of HPPTCL, and HPPTCL was also aware of the same. HPPTCL by not paying the bills raised, is denying the Petitioner of its legitimate transmission charges.



(e) HPPTCL was duly informed by the Petitioner that the construction work of Asset-2, line bays is at the advanced stage of completion and also requested HPPTCL to make corresponding downstream of the 220 kV transmission lines for evacuation of power from 400/220 kV GIS Sub-station to match the commissioning. However, HPPTCL at no stage has written to the Petitioner that it does not require or has never asked for the said line bay.

(f) HPPTCL, vide its letter dated 14.11.2017, informed the Petitioner that the tenders for the construction of the Hamirpur-Dehan line of Asset-2 were invited and price evaluation was carried out, the work was expected to be awarded by December 2017, and considering minimum construction period of 24 months, the Hamirpur-Dehan line was scheduled to be completed in December 2019. The said observation has also been recorded by the Commission in the impugned order.

(g) In the 40<sup>th</sup> SCM held on 22.6.2018, HPPTCL has itself accepted that the Hamirpur-Dehan line is yet to be commissioned by April 2020. The relevant extract of the MoM dated 22.6.2018 is as follows:

11	<i>Hamirpur 400/220 kV 2x315 MVA Sub-station (Augmentation by 3x105 MVA ICT) To be completed by Sep'18</i>	<i>04 nos. 220 kV downstream lines commissioned Dehan – Hamirpur ISTS. Balance two 220kV d/c line bays to be utilised by HPSEBL</i>	<i>HPPTCL informed that earlier 2 nos. of bays were planned to be utilised for connecting 220/132kV Kangoo substation by HPSEBL. Presently, HPTCL is implementing Dehan – Hamirpur 220 kV D/c line with commissioning schedule as April 2020</i>
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(h) The scheme of implementing the transmission system was decided at the SCMs with the involvement of all the stakeholders. The communications were exchanged between the parties, and the documents were presented during the meetings. The MoMs recorded the decisions taken at the meeting after consultation with the participating members of the committee. If the stakeholders do not protest or take appropriate proceedings to question the decision before the Commission at the relevant time, it has to be taken to have agreed to the decision. The participating entities cannot be allowed to question

the implementation of the decision on any ground at a later stage including that there was no specific agreement entered into between the two utilities specifying their respective rights and obligations separately. HPPTCL has not challenged any of the said meetings to be incorrect or raised any plea that the decision taken at the meetings shall not bind HPPTCL. Therefore, there is no merit in any of the allegations made by HPPTCL to deny its obligation to pay the transmission charges related to Asset-2 to the Petitioner as decided by the Commission in an order dated 21.11.2019 in Petition No. 158/TT/2018. In the instant case, all the decisions were taken after due deliberation and agreement between the participants, including HPPTCL. There is nothing on record to demonstrate that the decision was taken without the consent or concurrence of HPPTCL. Accordingly, the contention of HPPTCL that at no point in time, they have agreed or sought additional bays at Hamirpur Sub-station is liable to be rejected.

(i) HPPTCL has not pressed for the interim order for stay in the IA No. 270 of 2020 in Appeal No. 300 of 2022, and, in the absence of any stay, the claim of the Petitioner cannot be ignored.

(j) Reliance placed on the APTEL's judgment dated 15.9.2022 in Appeal No. 109 of 2021 in the matter of "*Punjab State Power Corporation Limited vs. Central Electricity Regulatory Commission & Ors.*", is erroneous and Civil Appeal No. 1377 of 2023 has been preferred by the Petitioner against the said judgment.

(k) The SCOD of Asset-2 was 16.5.2016 and the Petitioner attempted to match the COD of Asset-2 with the COD of the Hamirpur-Dehan Line, which was within the scope of work of HPPTCL. However, admittedly, there was a delay in completion of the Hamirpur-Dehan Line. Due to contractual implications, it was not possible for the Petitioner to delay the COD of Asset-2 further. Therefore, the Petitioner claimed the COD of Asset-2 as 31.3.2019 as per the proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations and the Commission has correctly approved the COD of Asset-2 as 31.3.2019.



(l) HPPTCL is following the dilatory tactics during the pendency of the appeal without obtaining any interim stay and inordinately and unreasonably delaying the payment legitimately due to the Petitioner. Reliance has been placed on the Hon'ble Supreme Court's judgment in the matter of "*Satyawati vs. Rajinder Singh, [(2013) 9 SCC 491]*".

9. The gist of the submissions made by HPPTCL on 13.8.2023 are as under:

(a) The Petitioner itself has admitted in the present Petition that it cannot enforce recoveries against HPPTCL as there is no contract between HPPTCL and PGCIL.

(b) The 220/132 kV Dehan Sub-station along with the 220 kV Dehan-Hamirpur transmission line, have been charged by HPPTCL on 4.8.2022 and, therefore, HPPTCL is not liable to pay any transmission charges to the Petitioner after 3.8.2022 as the transmission system under scope of HPPTCL has achieved completion. Therefore, the 220 kV line bays at the Hamirpur Sub-station of the Petitioner should be included under the Point of Connection (PoC) mechanism for recovery of the transmission charges.

(c) HPPTCL is an STU operating within the State of Himachal Pradesh. Currently, HPPTCL has approved a tariff of ₹163.23 crores for 2023-24, but only the amount of ₹84.38 crore is being billed by HPPTCL on account of the following matters:

(i) The Petition before the Commission for inclusion of 66/220/400 kV Wangtoo Sub-station under PoC mechanism.

(ii) The Petition before the Commission for inclusion of 33/220 kV Karian Sub-station along with 220 kV Karian-Rajera transmission line under PoC mechanism.

(d) The payment of liability amounting to the Petitioner will impact the cash flows of HPPTCL as HPPTCL is not fully realizing the billed amount and is also discharging various costs and liabilities as an STU and transmission licensee.

(e) HPPTCL has not cleared the bills raised by CTUIL as the same is in



contravention to the principle of law settled by the APTEL in its judgment dated 15.9.2022 in Appeal No. 109 of 2021.

(f) Request to defer the instant Petition till Appeal No. 300 of 2022 is adjudicated by the APTEL.

### **Written Submissions of the Respondent No. 1/ HPPTCL**

10. HPPTCL, vide its written submission dated 26.10.2023, has reiterated its submission and, in addition, has made the following submissions:

(a) Effective hearing of Appeal No. 300 of 2022 filed by HPPTCL before the APTEL, along with an application seeking a stay, could not be held for a long time on account of the outbreak of the COVID-19 pandemic and other reasons. The matter was part heard and has been referred to a larger bench. Similar findings of the Commission in the case of PSTCL have been set aside by the APTEL.

(b) HPPTCL has been keeping the liability of the said amount into HPPTCL's Annual Accounts. The amounts raised through invoices will be suitably adjusted upon the decision in Appeal No. 300 of 2022.

### **Analysis and decision**

11. We have heard the learned counsels for the Petitioner and the Respondent. We have also examined the submissions filed by the parties in the present matter. The following issues arise for consideration in the present matter:

**Issue No. 1:** Whether the instant Petition is maintainable under the provisions of Section 79 read with Regulations 111,112 and 119 of Conduct of Business Regulations, 1999? Whether the Commission has the power to execute /enforce its own orders, while an appeal is pending?

**Issue No. 2:** In this case, if the answer to Issue No. (1) is in affirmative, what relief is to be given, if any?

The above issues have been dealt with in the succeeding paragraphs.





**Issue No. 1: Whether the instant Petition is maintainable under the provisions of Section 79 read with Regulations 111,112 and 119 of Conduct of Business Regulations, 1999? Whether the Commission has the power to execute / enforce its own orders?**

12. Before delving into the merits of the present matter, it is apposite to first note that the Petitioner has filed the present Petition under Section 79 of the Act read with Regulation(s) 111, 112, and 119 of the Conduct of Business Regulations, 1999 seeking execution/enforcement of the Tariff Order passed by the Commission.

13. The Commission, in an order dated 21.11.2019 in Petition No. 158/TT/2018, held that HPPTCL is liable to pay the transmission charges of Asset-2, i.e., the two bays at Hamirpur Sub-station from the date of COD of the bays on 31.3.2019 till the COD of the associated 220 kV transmission system under the scope of HPPTCL .The Commission also held that PSTCL should bear the transmission charges of Asset-3 from its COD to COD to the downstream assets of PSTCL. Accordingly, the CTUIL raised bills on HPPTCL. However, they were not paid by HPPTCL. Therefore, the Petitioner has filed the instant Petition for execution of the order dated 21.11.2019 in Petition No. 158/TT/2018. In the meanwhile, HPPTCL filed Appeal No. 300 of 2022 and IA No.270 of 2020 before the APTEL against the order dated 21.11.2019 in Petition No. 158/TT/2018. The IA No.270 of 2020 filed for an interim stay of the order dated 21.11.2019 was disposed of by the APTEL as HPPTCL did not press for the interim relief and the Appeal No.300 of 2022 is pending adjudication before the APTEL.

14. HPPTCL has mainly contended that the two bays in the Hamirpur Substation were not requisitioned by it and that there is no valid agreement between HPPTCL and the Petitioner or HPSEB. Further, since HPPTCL is an STU of Himachal Pradesh



and is not the beneficiary of the bays, no liability can be fastened on it.

15. *Per contra*, the PGCIL has submitted that the contention of HPPTCL that there is no agreement between HPPTCL and the PGCIL is liable to be rejected on the ground that the requirement of 2 numbers 220 kV line bays at Hamirpur Sub-station was discussed and agreed upon by HPPTCL in the various meetings of the SCM, TCC and NRPC, wherein the representatives of HPPTCL was present and agreed to the requirement of the two 220 kV line bays at the Hamirpur Sub-station.

16. Further, the PGCIL has submitted that the issues raised by HPPTCL in the instant Petition have already been dealt with by the Commission in its order dated 21.11.2019 in Petition No. 158/TT/2018, and it is impermissible in law for HPPTCL to re-agitate the matter on merits and seek re-adjudication in the present Execution Petition. PGCIL has also contended that until set aside by an appropriate proceeding in appeal or revision, the decree, even if erroneous, remains binding between the parties, and the executing court cannot entertain objections to its correctness. Furthermore, the filing of an appeal by HPPTCL does not hinder the execution of the order or the determination of rights, and since no interim stay has been obtained, there is no legal interim stay, no legal obstacle to the PGCIL's legitimate claim. In this regard, PGCIL has placed reliance on the various rulings of the Hon'ble Supreme Court in *S.P. Misra v. Mohd. Laiquddin Khan* [(2019) 10 SCC 329], *S. Bhaskaran v. Sebastian* [(2019) 9 SCC 161], *State of Bihar (now Jharkhand) v. Mijaj International* [AIR 2004 Jhar 29], *Vedic Girls Senior Secondary School, Arya Samaj Mandir v. Rajwanti* [(2007) 5 SCC 97], *Maharaj Kumar Mahmud Hasan Khan v. Moti Lal Banker* [AIR 1961 All 1], and *Ganapathi And Another vs. Balasubramania Gounder* [AIR 1987 Madras 124].



17. Having considered the submissions of the parties, we note the provisions of Section 79 of the Act as under:

**“Section 79. (Functions of Central Commission)**

- (1) *The Central Commission shall discharge the following functions, namely: -*
- a) *to regulate the tariff of generating companies owned or controlled by the Central Government;*
  - b) *to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;*
  - c) *to regulate the inter-State transmission of electricity;*
  - d) *to determine tariff for inter-State transmission of electricity;*
  - e) *to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;*
  - f) *to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*
  - g) *to levy fees for the purposes of this Act;*
  - h) *to specify Grid Code having regard to Grid Standards;*
  - i) *to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;*
  - j) *to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
  - k) *to discharge such other functions as may be assigned under this Act...”*

18. Further, Regulation(s) 111, 112, and 119 of the Conduct of Business Regulations, 1999 provides as under:

**“Saving of inherent power of the Commission**

111. *Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.*

112. *Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.*

**Enforcement of orders passed by the Commission**

119. *The Secretary shall ensure enforcement and compliance of the orders passed by the Commission, by the persons concerned in accordance with the provisions of the Act and Regulations and if necessary, may seek the orders of the Commission for directions”.*

19. Albeit the present proceedings were initiated under the Conduct of Business



Regulations, 1999, on 23.1.2024, the Commission notified the Conduct of Business Regulations, 2023, in supersession of the Conduct of Business Regulations, 1999.

The relevant provisions of the Conduct of Business Regulations, 2023 are as under:

**“PREAMBLE**

*...Now, therefore in exercise of the powers conferred under Section 178(2)(zb) read with Section 92(1) of the Act and all other powers enabling it in this behalf, and after previous publication, and in supersession of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, except in respect of acts or things done or omitted to be done before such supersession, the Central Electricity Regulatory Commission hereby makes the following Regulations with respect to the practice and procedure for discharge of its functions under the Act”.*

**Regulation 2. Application.-**

*All proceedings, whether pending before or instituted after the date of commencement of these regulations, shall be governed by these regulations.*

**Regulation 70. Effect of non-compliance**

*(1) Failure to comply with any requirement of these regulations shall not invalidate any proceeding merely by reason of such failure, unless the Commission is of the view that such failure has resulted in miscarriage of justice.*

*(2) Failure to comply with the provisions of the Act, the Rules, the Regulations issued under the Act or any directions or orders of the Commission shall invite appropriate action against the concerned party or person under Section 142 of the Act”.*

20. Apart from the above, we also note that Section 142 of the Act enables the Commission to impose a penalty on any person who does not comply with any provisions of the Act, the Rules or Regulations, or any direction given by the Commission. Section 142 of the Act reads as follows:

**“Section 142. Punishment for non-compliance of directions by Appropriate Commission**

*In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees*



*for every day during which the failure continues after contravention of the first such direction”.*

21. After perusing the aforesaid provisions of the Act as well as the Conduct of Business Regulations, 1999 and 2023, we observe the following:

(a) Although Section 79(1) of the Act does not specifically embark upon the execution of orders passed by the Commission, it enables the Commission, amongst others, to regulate the inter-State transmission of electricity, to determine the tariff for the inter-State transmission of electricity and also to adjudicate upon the disputes in connection thereof.

(b) Regulation 119 of the Conduct of Business Regulations, 1999 empowers the Secretary of the Commission to oversee the enforcement and compliance of orders passed by the Commission in accordance with the provisions of the Act.

(c) Regulation 70 of the Conduct of Business Regulations, 2023 provides for appropriate action against the concerned party for non-compliance with Section 142 of the Act.

(d) Under Section 142 of the Act, this Commission is specifically empowered to impose the penalty on the basis of complaint by any person or even suo-moto if the Commission is satisfied that any person has contravened its orders, and regulations, etc.

22. Now, coming to the preliminary issue as to whether the Commission can execute/enforce its own orders, we find that the said issue is no longer res-integra. As rightly pointed out by the Petitioner, in various judicial pronouncements, it has already been held that the power to regulate also includes with it the power to enforce [Central Power Distribution Co. & Ors. v. Central Electricity Regulatory Commission and Anr.

(2007) 8 SCC 197] and that the Courts/Tribunals must be held to possess the power to execute their own orders [State of Karnataka v. Vishwabharti House Building Coop. Society (2003) 2 SCC 412]. In this regard, we may also refer to the observations of the APTEL in the judgment dated 4.2.2022 in Appeal No. 184 of 2019 in the matter of *CLP Wind Farms (India) Pvt. Ltd. v. MP Power Management Co. Ltd. and Anr.*, which read as under:

*“11. In our view, the approach of the regulator has been hesitant. A State Commission is empowered under the Electricity Act not only to adjudicate upon such disputes but also to enforce its decision to maintain judicial discipline amongst entities within its State. It has, however, been noticed by this tribunal, almost as a pattern, that in most of such claims arising out of default in payments, effective adjudication of dispute is missing. There is a perceptible reluctance on the part of Commissions to prescribe a definite timeline for payment or to take recourse to jurisdiction under Section 142 read with Section 146 of Electricity Act. This invariably has the fall out of compelling the parties seeking enforcement to approach this tribunal by appeals or applications for execution unnecessarily adding to the work at this level. It is not that this tribunal is loath to exercise its powers under the law to execute and enforce binding orders. We would not have, and have never shown, any hesitation in intervening by deploying all possible measures in law to enforce discipline wherever we come across disobedience. But such involvement of this tribunal would not be required if the Commissions were to start showing better control....”*

23. Moreover, the Hon’ble Supreme Court in the case of *Maharashtra State Electricity Distribution Company Ltd. Vs. Maharashtra State Electricity Regulatory Commission & Ors.* [(2022) 4 SCC 657] has observed that the Electricity Regulatory Commissions constituted under the Act are to be seen as substitutes for Civil Courts in relation to the disputes between the licensees and the generating companies and that the Courts have the power to execute its own orders. The Hon’ble Court further observed that the Electricity Regulatory Commission is well within its scope of power of its regulatory supervision to give directions for the payment which is due from the defaulting entity. Relevant para of the judgement is encapsulated as hereunder:

*“205. It is now well settled by various decisions of this Court that an Electricity Regulatory Commission such as MERC constituted under the Electricity Act, 2003 has all the trappings of a Court. The MERC is a substitute for a Civil Court in respect of all*



*disputes between licensees and Power Generating Companies. This proposition finds support from the judgments of this Court in Tamil Nadu Generation & Distribution Corporation Ltd. v. PPN Power Generating Co. Pvt. Ltd., Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Others. and Gujarat Urja Vikas Nigam Limited v. Amit Kumar & Others cited by Mr. Vishrov Mukerjee”.*

*206. As held by this Court in State of Karnataka v. Vishwabharathi House Building Cooperative Society and Others, cited by Mr. Mukerjee, Courts have the power to execute their own order. The impugned judgment and order cannot, therefore be faulted for giving directions for payment of the outstanding dues of the Appellant. Moreover, State Regulatory Commissions exercise continuous regulatory supervision as affirmed by this Court in All 45 (2014) 11 SCC 53 46 (2016) 3 SCC 468 (2021) SCC OnLine 194 (2003) 2 SCC 412 (Paras 59-62) India Power Engineering Federation & Ors. v. Sasan Power Limited & Others 49, cited by Mr. Mukerjee.*

*207. MERC acted within the scope of its power of regulatory supervision in directing the Appellant to make payment of LPS within the time stipulated in the order of MERC. The APTEL rightly upheld the direction. In any case, such a direction cannot be interfered with in exercise of powers under Section 125 of the Electricity Act which corresponds to the power of Second Appeal under Section 100 of the CPC, since the sine qua non for entertaining an appeal is the existence of a substantial question of law.”*

24. In view of the above, we hold that the Commission has requisite powers to enforce/execute its own order(s). However, keeping in view the course of action adopted by us in the subsequent paragraphs for securing the enforcement of the order dated 21.11.2019, we do not find any need to deal with aspects of manner and modes available with the Commission for securing the enforcement/execution of its orders at this stage.

25. The issue is answered accordingly.

**Issue No. 2: In this case, if the answer to Issue No. (1) is in affirmative, what relief is to be given, if any?**

26. HPPTCL, from its set of rival submissions, has also submitted that the grounds raised in its Appeal No. 300 of 2022 before APTEL are similar to the issues dealt by APTEL in its judgement dated 15.9.2022 in Appeal No.109 of 2021, filed by Punjab State Transmission Corporation Limited (PSTCL), while setting aside the Commission’s order dated 21.11.2019. Therefore, the instant matter may be deferred



till the final outcome of Appeal No. 300 of 2022.

27. It is pertinent to mention here that the Commission vide order dated 21.11.2019 in Petition No. 158/TT/2018, approved the COD of Asset-2 as 31.3.2019 and held that HPPTCL would bear the transmission charges until the COD of the associated 220 kV transmission system under its scope. In addition, the COD of Asset-3 was approved as 25.3.2019, and PSTCL's liability was fastened to bear the transmission charges in respect of Asset-3 for the period of mismatch in the COD of the associated transmission assets of the Petitioner and PSTCL. Against these findings of the Commission in an order dated 21.11.2019, PSTCL filed Appeal No. 109 of 2021, and APTEL vide judgment dated 15.9.2022 has set aside the Commission's order dated 21.11.2019. Being aggrieved by the said judgment of the APTEL, PGCIL has submitted that it has filed Civil Appeal No. 1377 of 2023 before the Hon'ble Supreme Court, challenging the APTEL's judgment dated 15.9.2022 in Appeal No. 109 of 2021, which is currently pending adjudication.

28. Further, our findings in the case of HPPTCL in an order dated 21.11.2019 are already being considered by the APTEL. Upon review of the material on record, it is evident that APTEL's findings in Appeal No. 109 of 2021 are confined solely to PSTCL's liability for the transmission charges in relation to Asset-3. Conversely, HPPTCL's challenge in the pending Appeal No. 300 of 2022 pertains to Asset-2, and the liability imposed upon HPPTCL with respect to Asset-2 does not constitute any impediment at present. The case of HPPTCL is similar to the case of PSPCL. It is observed that the issues raised by HPPTCL in the instant Petition are similar to the issues raised by PSPCL before the APTEL in its Appeal No. 109 of 2021. The APTEL, taking into consideration the submissions made by PSPCL and the Petitioner, vide





judgment dated 15.9.2022 in Appeal No. 109 of 2021, had set aside the Commission's finding with respect to PSPCL in an order dated 21.11.2019 in Petition No.158/TT/2018. Further, our findings in the case of HPPTCL in an order dated 21.11.2019 are under consideration by the APTEL. Since there is no stay of the Commission's order dated 21.11.2019 in Petition No. 158/TT/2018 in so far as HPPTCL is concerned, it is liable to pay the transmission charges as per the decision of the Commission in an order dated 21.11.2019 in Petition No. 158/TT/2018.

29. Since the Commission has already adjudicated on the issues as raised by HPPTCL in the present petition and in view of the well-settled legal proposition that an executing court cannot travel beyond the order or decree under execution, we find no force in the contentions of HPPTCL that they are not liable to pay the amount claimed by the present petition.

30. Although HPPTCL has challenged the order dated 21.11.2019 in Petition No. 158/TT/2018 in Appeal No. 300 of 2022 before the APTEL, there is no stay of proceedings, and it is well-settled legal proposition that mere filing of an appeal would not affect the enforceability of an order. Therefore, in light of the Tariff Order dated 21.11.2019, the Commission, in order to secure the execution/enforcement of its orders, hereby directs HPPTCL to clear the entire outstanding dues along with applicable late payment surcharge in terms of the bilateral invoices raised by the Petitioner in respect of Asset-2, within a period of thirty days in two equal installments. The Respondent, HPPTCL, is additionally also cautioned to comply with the stipulated directions given in the Tariff Order dated 21.11.2019, failing which appropriate proceedings, including but not limited to the proceedings under Section 142 of the Act, will be initiated against the Respondent, HPPTCL. The Respondent, HPPTCL, shall



also file an affidavit submitting the compliance with the aforesaid direction within a week thereafter. Needless to say, the above direction shall be subject to the outcome of the order/direction issued by the APTEL in Appeal No. 300 of 2022 as preferred by the HPPTCL. HPPTCL, in its submission, has requested to defer the instant Petition till the Appeal No. 300 of 2022 is adjudicated by the APTEL. In our view, no purpose would be served to keep the petition pending since we have held that our decision shall be subject to the outcome of the decision of the APTEL.

31. The Issue No. 2 is decided accordingly.

32. In light of the above discussion, Petition No. 374/MP/2022 is disposed of.

Sd/-  
**(Harish Dudani)**  
**Member**

sd/-  
**(Ramesh Babu V.)**  
**Member**

sd/-  
**(Jishnu Barua)**  
**Chairperson**

