

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 124/MP/2017

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Shri Ravinder Singh Dhillon, Member

Date of Order: 29th May, 2025

In the matter of

Petition under Section 79(1)(f) read with Sections 79(1)(c) & (d), 38, 39, 40, and 60 of the Electricity Act, 2003 concerning the unjust, arbitrary and illegal terms imposed by Himachal Pradesh Power Transmission Corporation Limited and Allain Duhangan Hydro Power Limited for transmission of power by the Petitioner on inter-state transmission lines operated by them.

And

In the matter of

Kanchanjunga Power Company Private Limited,

B-37, 3rd Floor, Gautam Budh Nagar,

Sector 1, Noida-201301.

...Petitioner

Versus

1. Himachal Pradesh Power Transmission Corporation Limited,

Himfed Bhawan, Panjari (Below Old MLA Quarters)

Shimla-171005.

2. Allain Duhangan Hydro Power Limited,

Bhilwara Towers, A-12,

Sector-1, Noida-201301.

3. Power Grid Corporation of India Limited,

Central Transmission Utility,

B-9, Qutab Institutional Area,

Katwaria Sarai, New Delhi-110016.

4. Directorate of Energy,

Shanti Bhawan, Phase-3,

Sector-6, New Shimla-171009,

Himachal Pradesh.

5. Government of Himachal Pradesh,

Armsdale Building, H.P. Secretariat,

ORDER

The Petitioner, Kanchanjunga Power Company Private Limited ("hereinafter referred to as "KPCPL"), has filed the present Petition with the following prayers:

"a. Declare that the terms of the Interim Power Transmission Agreements dated 28.04.2016 between the Petitioner and the Respondents No.1 and 2 as well as the invoices issued thereunder are void and non-est insofar as they are inconsistent with the applicable inter-state transmission regulations including the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014;

b. Declare that the 220 kV Fozal pooling station and the 220 kV D/C line from Fozal to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission line operated by Respondent No.1 (i.e., the HPPTCL Assets) and the 220 kV Pirni-Nallagarh D/C transmission line operated by Respondent No.2 (i.e., the AD Line) form part of the inter-state transmission system managed by the Central Transmission Utility (i.e., Respondent No.3) and are governed by all of this Hon'ble Commission's regulations pertaining to inter-state transmission including the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014;

c. Declare that the Petitioner is entitled to use the 220 kV Fozal pooling station, the 220 kV D/C line from the Fozal pooling station to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission line and the 220 kV Pirni-Nallagarh D/C transmission line on the payment of transmission charges as determined by this Hon'ble Commission in accordance with this Hon'ble Commission's regulations pertaining to inter-state transmission including the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014;

d. Determine one single transmission charge payable to the Central Transmission Utility (the CTU, i.e. Respondent No.3) for the Petitioner's use of the HPPTCL Assets (i.e., the 220 kV Fozal pooling station, the 220 kV D/C line from the Fozal pooling station to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission line), the AD Line (i.e., the 220 kV Pirni-Nallagarh D/C transmission line), and the transmission assets directly managed by the CTU (i.e., from the Nallagarh pooling station onward) as per the Point of Charge (POC)

method as part of the inter-state transmission system operated and managed by the CTU in accordance with this Hon'ble Commission's regulations pertaining to inter-state transmission including the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 and Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014;

e. Direct the Respondents to refund to the Petitioner all amounts collected for the use of the 220 kV Fozal pooling station, the 220 kV D/C line from the Fozal pooling station to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission line and the 220 kV Pirni-Nallagarh D/C transmission line in excess of the transmission tariff determined by this Hon'ble Commission;

f. Pending the instant Petition, restrain the Respondents from taking any coercive steps, or from interfering with the Petitioner's use of the 220 kV Fozal pooling station, the 220 kV D/C line from the Fozal pooling station to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission line and the 220 kV Pirni-Nallagarh D/C transmission line;

g. Grant ad interim ex-parte reliefs in terms of prayer clause (f) above; and

h. Pass such other orders that this Commission deems fit in the interest of justice."

Hearing Dated: 20.6.2017

2. The instant Petition was first listed for the hearing on 20.6.2017. During the course of the hearing, the Commission observed that the present Petition pertains to the use of the 220 kV Fozal pooling station and the 220 kV D/C line from the Fozal pooling station to the Loop-in-Loop-out (LILO) point on the 220 kV Pirni-Nallagarh D/C transmission line operated by Allain Duhangan Hydro Power Limited, and the charges being levied thereunder by HPPTCL and ADHPL. Accordingly, vide Record of Proceedings dated 20.6.2017, the Petitioner was directed to pay 80% of the outstanding invoices raised by ADHPL/HPPTCL and continue paying monthly charges, subject to adjustment upon final determination of the tariff. Further, the parties were directed to file their replies and rejoinders.

Hearing Dated: 12.2.2020

3. The matter was argued at length by the learned senior counsels for the Petitioner and the Respondents. During the course of the hearing, the learned senior counsel for the Petitioner referred to the findings of the Commission in its order dated 17.10.2019 in Petition No. 209/MP/2017 filed by AD Hydro, wherein the Commission, *inter alia*, had held that the AD line is incidental to the inter-State Transmission System and accordingly, determined the transmission charges for the said line. The matter was thereafter reserved for orders on the same day.

4. Subsequently, the Petitioner filed an Interlocutory Application (hereinafter referred to as “the IA”) i.e., No. 14/2020 in Petition No. 124/MP/2017 seeking a stay on and quashing of the NRPC Minutes of Meetings dated 29.10.2018 and 30.10.2018, and for a declaration that the Commission has the jurisdiction to determine the tariff. However, vide order dated 24.6.2020, the said IA No.14/2020 was rejected.

5. Aggrieved by the order dated 17.10.2019 passed by the Commission in Petition No. 209/MP/2017, the Petitioner approached the Appellate Tribunal for Electricity (hereinafter referred to as “the APTEL”) on the ground that transmission tariff determined by the Commission for the 220 kV Transmission Line built by M/s AD Hydro Power Limited was in violation of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010, the Act, and the observations of both the APTEL and the Hon'ble Supreme Court. The Petitioner specifically argued that, despite the transmission line being part of the Inter-State Transmission System (ISTS), the recovery of transmission charges should be conducted in accordance with the Point of Connection (hereinafter referred to as “PoC”) mechanism.

6. The APTEL, vide Judgment dated 31.10.2022 in Appeal No. 450 of 2019, held that the 220 kV Pirni–Nalagarh double circuit transmission line (hereinafter referred to as “the AD Line”) owned by Respondent No. 2 (i.e., A. D. Hydro Power Limited) forms part of the Inter-State Transmission System (hereinafter referred to as “ISTS”), and the recovery of transmission charges for the said line must be undertaken in accordance with the PoC mechanism under the Sharing Regulations framed by this Commission. The relevant extract of the Judgment is as under:

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

...

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

7. Subsequently, the Commission, vide order dated 19.1.2024 in Petition No. 209/MP/2017, directed inclusion of the AD Line under the Sharing mechanism in accordance with the Sharing Regulations. The relevant extract of the order dated 19.1.2024 is as under:

“Directions: -

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

(a) The Petitioner shall furnish the transmission charges and losses received by it from AD Hydro, EPPL and KPPTCL (on behalf of KPCPL,

HPSEBL and other small Hydro) with effect from 1.8.2011 onwards. NRLDC shall cross-check those figures with AD Hydro, EPPL, and KPPTCL in order to avoid any disputes in the future.

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

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

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

(e) The arrears of the transmission charges of 220 kV ADHPL-Nalagarh transmission line for the period from 1.11.2020 to 23.8.2021 and 24.8.2021 onwards (after relinquishment of LTA by the Petitioner) till the issue of the tariff order in respect of the subject transmission line pursuant to the order of the APTEL dated 31.8.2023 in Appeal No.410 of 2019 shall be computed and recovered by CTU under Bill-2 as per provisions of Regulation 15(2)(b) of the Sharing Regulations, 2020 in proportion to the first bill in the month in which the arrears shall be calculated and recovered in accordance with this order.

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

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

8. In addition, the Petitioner, being aggrieved by the order dated 26.6.2020 passed in I.A. No. 14/2020 in Petition No. 124/MP/2017, preferred an Appeal before the APTEL. Vide Judgment dated 29.1.2024 in Appeal No. 111 of 2020, the APTEL upheld the non-certification by NRPC of HPPTCL's assets, namely, the 220 kV Fozal pooling station

and the 220 kV D/C transmission line from the Fozal pooling station to the LILO point on the 220 kV Pirni-Nallagarh D/C transmission line, as part of the Inter-State Transmission System (ISTS). The relevant portion of the aforesaid Judgment dated 29.1.2024 is extracted as under:

“20. Thus, in line with sharing regulations amendment 3, NRPC made detailed procedure and criteria to certify non ISTS line as ISTS and was applied uniformly to all such intra state lines seeking certification. On the basis of such criteria, the subject assets were not certified as ISTS lines as decided in the Minutes of meeting held on 29.10.2018 and 30.10.2018. Thus, non certification of subject lines as ISTS is in line with regulations and there could not be automatic declaration of non ISTS line as ISTS line as per section 2(36) (ii) of Electricity Act 2003.

....
22. Thus the Commission has rightly relied upon the certification of NRPC for certifying non ISTS lines as ISTS, and for the subject assets, NRPC did not certify them as ISTS..... ..”

9. Aggrieved by the said decision of the APTEL, the Petitioner filed Civil Appeal No. 5146 of 2024 in the Hon`ble Supreme Court. Vide order dated 3.5.2024, the Hon`ble Supreme Court dismissed the said Civil Appeal. The relevant extract of the said Judgment is as under:

“22. Thus the Commission has rightly relied upon the certification of NRPC for certifying non ISTS lines as ISTS, and for the subject assets, NRPC did not certify them as ISTS.

23. Further, it is noteworthy that the Commission sought certification of NRPC from the Appellant only in terms of 3rd amendment of Sharing Regulations. These Regulations are statutory in character, constitute law, and are binding on all the regulated entities including the Appellant herein (as well as the CERC and even this Tribunal). Thus, the Appellant has in effect sought indulgence of this Tribunal to declare the sub-ordinate legislation, i.e. Sharing Regulations, ultra vires. The Electricity Act, 2003 does not confer the power of judicial review of the validity of the Regulations made by the CERC under Section 178 of the Act on the Appellate Tribunal for Electricity. Such Regulations are made under the authority of delegated legislation, they are in the nature of subordinate legislation, and have general application. Consequently, its validity can be tested only in judicial review proceedings before Courts, and not by way of an appeal before the Appellate Tribunal for Electricity under Section 111 of the Act.”

10. The Petitioner, vide affidavit dated 30.4.2025, has submitted that in view of the above developments, the issues arising in the present Petition stand resolved and the Petition has been rendered infructuous. The Petitioner has prayed to dispose of the instant Petition accordingly.

11. We have considered the submissions of the Petitioner. According to the Petitioner, pursuant to the judgments of the APTEL and the Hon`ble Supreme Court, the issues arising in the instant Petition stand resolved. Accordingly, the instant Petition is disposed of as infructuous.

12. Petition No. 124/MP/2017 is disposed of as infructuous.

Sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson