

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

IA NO. 19 OF 2017 IN APPEAL NO. 81 OF 2017

Dated: 19th September, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:

NHPC LIMITED)
NHPC Office Complex,)
Sector 33, Faridabad, (Haryana) – 121003).... **Appellant(s)**

AND

1. POWER GRID CORPORATION OF INDIA LTD.)
"Saudamani", Plot No.2,)
Sector-29, Gurgaon – 122001)
)
2. NTPC LIMITED)
NTPC Bhawan,)
Core 7, Scope Complex, Institutional Area,)
Lodhi Road, New Delhi – 110003)
)
3. PARBATI KOLDAM TRANSMISSION COMPANY)
LIMITED)
Building No. 10 B, 12th Floor,)
DLF Cibre City, Shankar Chauk,)
Haryana – 122001)
)
4. CENTRAL ELECTRICITY REGULATORY)
COMMISSION)
(a statutory body incorporated under the)
Electricity Act, 2003),)
3rd & 4th Floors, Chanderlok Building,)
36, Janpath, New Delhi - 110001).... **Respondent(s)**

Counsel for the Appellant(s) : Mr. Sachin Datta, Sr. Adv.
Mr. Rajiv Shankar Dvivedi
Mr. Utkarsh Singh
Mr. A.K. Pandey
Mr. J.K. Jha

Counsel for the Respondent(s) : Mr. M. G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan
Mr. Shubham Arya for R-1

Ms. Suparna Srivastava
Ms. Sanjana Dua for R-2

Mr. Vishal Anand
Ms. Aparajita Upadhyay for R-3

Mr. Sethu Ramalingam for R-4

ORDER

1. The Appellant is a Generating Company as defined under Section 2(28) of the Electricity Act, 2003 (“**the said Act**”). The Appellant’s Parbati Hydro Electric Project, Stage-III (“**Parbati-III**”) is located in the State of Himachal Pradesh. Respondent No.1 is Power Grid Corporation of India which is responsible for development of transmission lines. Respondent No.4 is the Central

Electricity Regulatory Commission (“**CERC**”) whose order dated 21/07/2016 is challenged in this appeal.

2. Admittedly, the Appellant and Respondent No.1 had signed Indemnification Agreement on 22/07/2005 to protect mutual interest. Pursuant to the same the development of Associated Transmission System (“**ATS**”) of Parbati-III was under the scope of Respondent No.1.

3. Respondent No.1 filed a petition for determination of transmission tariff for combined assets of transmission system associated with Parbati-III in the CERC. The CERC vide its order dated 26/05/2015 considered only Asset-I and Asset-III for tariff with effect from 01/08/2012. Tariff of Asset-II was denied by the CERC. Paragraph 23 of the said order read as under:

“23. The Commission vide RoP dated 9.10.2014 directed the petitioner to submit on affidavit the status of actual usage of the asset. The petitioner vide affidavit dated 3.12.2014 has submitted that in view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the

petitioner has commissioned the asset with effect from 1.8.2013. It is observed that unit # 1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC. Our decision is in conformity with Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010 as amended from time to time which provides as under:-

“(6) For Long Term Customers availing supplies from inter-state generating stations, the charges payable by such generators for such Long Term supply shall be billed directly to the respective Long Term customers based on their share of capacity in such generating stations. Such mechanism shall be effective only after “commercial operation” of the generator. Till then, it shall be the responsibility of generator to pay these charges.”

Respondent No.1 raised bill amounting to Rs. 74.78 crores to the Appellant based on the said order.

4. On 28/07/2015 Respondent No.1 filed a review petition being Review Petition No.19/RP/2015 in the CERC for reconsideration of Asset-II for tariff.

5. The Appellant filed review petition being Review Petition No.25/RP/2015 for review of the above quoted paragraph 23. The CERC by its order dated 29/12/2015 recalled paragraph 23 quoted above and heard the matter on the limited aspect of sharing of transmission charges. The matter was heard on 21/07/2016 and by the impugned order dated 21/07/2016 the above quoted paragraph 23 was substituted by following paragraph:

“23. In view of the requirement of NHPC as conveyed by its letter dated 12.6.2013, the petitioner has commissioned the asset with effect from 1.8.2013. Unit#1 and 2 of Parbati HEP-III of NHPC were commissioned on 24.3.2014. Since the transmission assets were commissioned with effect from 1.8.2013 at the request and behest of NHPC, we are of the view that the transmission charges from 1.8.2013 to 23.3.2014 shall be borne by NHPC in terms of Regulation 8(6) of Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time. The CTU is directed to examine whether these transmission assets were used by other generators during the period in question, and if so, the transmission charges paid by them shall be utilised to reduce the liability of NHPC.”

The Appellant being aggrieved by the above paragraph has preferred Appeal No.281 of 2016 which is admitted. In the said appeal the Appellant has filed IA No.577 of 2016 for stay of order

impugned in the said appeal, which has been dismissed by us by a reasoned order dated 19/09/2017.

6. On 07/09/2016 the CERC disposed of Review Petition No.19/RP/2015 filed by Respondent No.1. The CERC by this order allowed tariff for Asset-II which was denied in the earlier order. The CERC has directed that the Appellant should pay the transmission charges from 01/09/2013 till 23/04/2014. The Appellant has challenged the said order dated 07/09/2016 in this appeal.

7. In the instant application, the Appellant has prayed that the impugned order dated 07/09/2016 be stayed during the pendency of this appeal.

8. The impugned order is challenged on several counts. In the appeal memo it is stated that the CERC committed an error in allowing the tariff for Asset-II from 01/09/2013 which was denied in earlier order. It is also urged that the CERC has erred in taking two distinct approaches for allowing CoD of the same Transmission

Assets. In this application the basic grievance appears to be that the CERC has directed that the Appellant to pay transmission charges from 01/09/2013 to 23/04/2014. According to the Appellant the CERC wrongly placed the entire burden of paying transmission charges on the Appellant.

9. Pertinently, the Appellant itself had vide letter dated 12/06/2013 called upon Respondent No.1 to commission the Assets at an early date. The said Assets are intended for evacuation of power generated from Parbati-III Hydro Power Station of the Appellant and not for any other generating station. Respondent No.1 has constructed and commissioned the transmission system associated with Parbati-III consisting of Assets-I,II and III. It is the case of Respondent No.1 that at the instance of the Appellant the Assets were completed in all respects in July,2013 and were declared under commercial operation effective from 01/08/2013. In the impugned order the CERC has accepted the CoD of Asset-II as 01/09/2013. However, the Appellant commissioned the Plant only on 24/03/2014. Therefore, the CERC directed the Appellant to pay transmission charges from 01/09/2013 till 23/04/2014.

10. We have referred to companion Appeal No.281 of 2016 and IA No.577 of 2016 filed in that appeal. We have noted that the said application has been dismissed by us by a reasoned order. Though there is slight difference in the dates the basic issue involved in the said application and the present application and the basic contentions of the counsel are same. Hence, for the reasons stated in order dated 19/09/2017 in IA No.577 of 2016 in Appeal No.281 of 2016 we dismiss this application.

11. List the appeal for hearing on **27th November, 2017.**

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson