IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL No. 109 OF 2017 & IA No. 845 of 2024

Dated: 20.03.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

Hon'ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:

M/s. Harison Hydel Construction Co. (P) Ltd.
Regd. Office at Akhara Bazar,
Kullu, (H.P.) – 175101.

Appellant

Vs.

1. The HP State Electricity Board Ltd.
   Vidhyut Bhawan,
   Shimla, Himachal Pradesh -171004.

2. Himachal Pradesh Electricity Regulatory Commission,
   Keonthal Commercial Complex, Khalini,
   Shimla, Himachal Pradesh – 171002.

Respondent(s)

Counsel for the Appellant(s) : Mr. Arijit Maitra
Ms. Pallavi Bagchi Maitra

Mr. Ajay Marwah
Mr. Swaroop Anand Mishra
Ms. Narvada Kashyap
Mr. Ajay Vaidya
Mr. R. L. Verma
Ms. Pratiksha Vij
Mr. Elangbam Premjit
Mr. Abhishek Upadhyay

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Ashwin Ramanathan
Mr. Utkarsh Singh
Ms. Parichita Chaudhury
Ms. Neha Garg for R-1
Mr. Pradeep Misra
Mr. Manoj Kumar Sharma
Mr. Suraj Singh for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. M/s. Harison Hydel Construction Co. (P) Ltd. has filed the present appeal challenging the Order dated 15.03.2016 passed by the Himachal Pradesh Electricity Regulatory Commission (in short "HPERC" or "Commission") in Petition No. 96 of 2015.

Factual Matrix of the Case

2. The Appellant, M/s. Harison Hydel Construction Co. (P) Ltd is a limited company incorporated under the Indian Companies Act, 1956, having its office at Akhara Bazar, Kullu, Himachal Pradesh.

3. Respondent No. 1 is the HP State Electricity Board Ltd. (in short "HPSEBL") and is responsible for the supply of Uninterrupted & Quality power to all consumers in Himachal Pradesh. Power is being supplied through a network of Transmission; Sub-Transmission & Distribution lines laid in the state.

4. Respondent No. 2, Himachal Pradesh Electricity Regulatory Commission is the Regulatory Commission for the state of Himachal Pradesh.

5. Respondent No. 1 imposed penalties for tentative/actual Operation and Maintenance (O&M) charges for the period 2008-2009 to 2014-2015, allegedly contrary to the provisions of the O&M Agreement dated 19.09.2009. By letter dated 23.07.2013, Respondent No. 1 demanded O&M charges amounting to ₹25,85,763 for the years 2008-2009 to 2013-2014. The Appellant, dissatisfied with the demand, submitted a representation on 21.10.2013, requesting a recalculation of the O&M charges. It was contended that the charges should be based on 8 bays/feeders instead of 6 (as calculated by the board), considering two Vacuum Circuit Breakers (VCBs) equivalent to normal 33KV feeders. These VCBs, one installed for coupling arrangement and another for operating a 33/0.4 KV transformer at Jari Substation, were maintained and operated by the substation staff, incurring maintenance costs equivalent to other 33KV breakers.

6. The Appellant requested that the O&M charges for the interconnection bay at Jari be recalculated after deducting the 50% share of M/s Kapil Mohan Associates Hydro Power Pvt. Ltd. and M/s Sandhya Hydro Power Projects

Balarga Pvt. Ltd., as per the tripartite agreements dated 23.11.2011 and 05.01.2013. These agreements stipulated cost-sharing for power evacuation from the Jirah, Toss, and Balarga projects.

7. Respondent No. 1, HPSEBL, in its response dated 22.10.2013, revised the O&M charges for the years 2011-2012 and 2012-2013. It clarified that O&M costs for the interconnection bay at Jari for Brahmganga HEPwill be shared as under:

- for 26.12.2011 to 28.02.2012 (2011-2012), would be shared 50% with M/s Kapil Mohan Associates.
- for 05.01.2013 to 15.03.2013 (2012-2013), would be shared 50% with M/s Sandhya Hydro Power Projects.

8. Based on HPSEBL instructions dated 02.11.2013, the Appellant deposited O&M charges amounting to ₹16,83,063 for the period 2008-2009 to 2012-2013. However, the Appellant could not deposit the claimed O&M charges of ₹6,91,430 for 2013-2014 due to a lack of detailed calculations provided by HPSEBL.

9. On 01.12.2014, HPSEBL revised the O&M charges for 2013-2014 to ₹4,70,084, down from the earlier claim of ₹6,91,430. However, HPSEBL imposed a cumulative penalty of ₹15,97,927 on O&M charges from 2008-2009 to 2013-2014 for delayed payments, directing the Appellant to pay within 30 days, failing which a further penalty of 1.5% per month would be levied.

10. The Appellant contested this as a violation of guidelines and the O&M Interconnection Facilities Agreement dated 19.09.2009. On 19.01.2015, the Appellant deposited ₹4,70,084 for the 2013-2014 O&M charges and argued

that, per Clause 6.3 of the 19.09.2009 agreement, O&M charges must be calculated on a pro-rata basis. This requires apportioning costs based on the ratio of the number of bays in the interconnection facility to the total bays at the substation.

11. The Appellant claimed the charges were inflated as HPSEBL's calculations did not reflect the actual number of bays at the Dhunkhara substation. The Appellant repeatedly sent communications and held meetings with HPSEBL officials seeking clarification and rationalization of the charges. Despite these efforts and the issuance of Astha Guidelines, HPSEBL neither adhered to the agreement nor recalculated the O&M charges as per its provisions.

12. On 06.07.2015, Respondent No. 1 directed the Appellant to deposit actual O&M charges of ₹5,96,530 for the year 2014-2015 and also instructed the payment of penalties for the late payment of tentative amounts from 2008-2009 to 2013-2014, and actual O&M charges for the same period.

13. These payments were to be made within 30 days of the demand notice, failing which an interest penalty of 1.5% per month would apply as per Clause 8. The Appellant challenged this directive by filing Petition No. 96 of 2015 before Respondent No. 2, HPERC which was dismissed on 15.03.2016.

14. Aggrieved by the said order as mentioned above, the Appellant herein has preferred the present Appeal.

Submissions of the Appellant

15. The Appellant filed the petition before HPERC (Petition No. 96 of 2015) and sought a directive for HPSEBL, Respondent No. 1 herein, to calculate O&M charges for the interconnection facility based on the number of bays/feeders/VCBs at the station or sub-station, adhering to the relevant regulations issued by HPERC.

16. HPERC, Respondent No. 2 has held for Interpretation of O&M Charge Apportionment referring to its prior order in Petition No. 81/2010 (Astha Project vs. HPSEBL), which established guidelines for O&M cost apportionment and O&M costs should be shared among beneficiaries based on the ratio of the number of incoming/outgoing feeders at the substation. O&M costs include expenses for infrastructure maintenance (e.g., roads, staff quarters, sanitation, building repairs) as per agreements.

17. HPERC ruled that bus couplers and station transformers do not qualify as feeders. Therefore, the Appellant's contention that the total number of feeders should be eight (instead of six, as determined by HPSEBL) was rejected. HPERC upheld HPSEBL's methodology for calculating the Appellant's share of O&M costs.

18. The Appellant argued that HPERC failed to address its specific prayer to calculate O&M charges based on the interconnection facility's total number of bays/feeders/VCBs. The decision ignored their plea for adherence to the detailed calculation method outlined in the petition. The core contention revolves around whether bus couplers and station transformers qualify as feeders for apportioning O&M costs, and whether HPERC adequately addressed the Appellant's arguments and regulatory provisions.

19. Further, the Counsel submitted that HPERC focused solely on the issue of "VCBs" and failed to address the actual number of "feeders" in the **33/11 kV Dunkhra (Jari) Sub-station**, operated by Respondent No. 1, HPSEB. In IA No. 845 of 2024, the Appellant submitted a Single Line Diagram (SLD), authenticated by HPSEB, showing a total of nine feeders i.e. five 33 kV feeders and four 11 kV feeders.

20. HPERC had earlier ruled that "the total number of incoming and outgoing feeders irrespective of voltage level" should be considered for O&M cost calculations. However, the Respondent Board, HPSEBL objected, claiming that three of these feeders should not be counted. They argued that the feeders associated with the Brahmganga (5 MW) project interfaced at 33 kV level in the sub-station should be excluded from O&M cost calculations. The Appellant countered by highlighting the existing configuration of 33 kV and 11 kV feeders and the equipment installed in the substation.

21. The Appellant highlighted that the 33 kV Barshani feeders (incoming and outgoing) have independent operational systems, including isolators, G.O. switches, CTs, and panels. These feeders are configured in a "Loop In" and "Loop Out" system with a shared operating VCB, which is standard for such setups. Further contended that, despite these being two distinct feeders, only one feeder was accounted for in the calculation of O&M charges, therefore, requested that both feeders be properly recognized as separate entities in the apportionment of O&M costs.

22. The Appellant submitted that the 33/0.4 kV, 100 KVA sub-station transformer is connected via a 33 kV tapping from the common 33 kV bus bar at the Dunkhra Substation. The connection includes drop-out fuses, an isolator, and other protection equipment, making it a distinct feeding line to the

substation transformer. This transformer supplies power for essential facilities such as switchyard lighting, the control room, the Assistant Engineer's office, the workshop, and staff residences. While annual O&M estimates are prepared and expenses apportioned, this 33 kV feeder is excluded from the calculation of feeders for cost-sharing purposes. As HPSEBL is a direct beneficiary of this substation transformer, it must be accounted for in the feeder calculations. Therefore, instead of three 33 kV feeders, five feeders should be recognized for O&M cost apportionment.

23. For 11 KV Feeders, the Appellant submitted that the following feeders exist at 33/11 KV Sub-station:

a) 11 KV Manikaran Outgoing
b) 11 KV Jari Outgoing
c) 11 KV Malana Power Company Ltd. Outgoing
d) 11 KV Spare Feeder

24. Current O&M Apportionment: Only the first three 11 KV feeders (Manikaran, Jari, Malana Power Company Ltd.) are currently considered for O&M cost sharing. The spare 11 kV feeder, equipped with full protection equipment, panels, and isolators, is maintained in operational condition to handle any contingencies or failures of the other feeders. Consequently, it incurs annual O&M expenses, which the Appellant argues should be borne by HPSEBL as a beneficiary.

25. The Appellant further contended that the spare 11 KV feeder should also be included in the O&M cost apportionment. Therefore, instead of accounting for three (3) 33 kV feeders, five (5) 33 kV feeders should be recognized.

Similarly, instead of three (3) 11 kV feeders, four (4) 11 kV feeders should be included, therefore requested that:

Total Feeders:

33 KV: From 6 to 9 feeders

11 KV: From 3 to 4 feeders

26. The Appellant requested that a total of nine (9) feeders (comprising both 33 kV and 11 kV) be considered for O&M charge apportionment. This adjustment should be applied retrospectively from 02.04.2008, the date when the Brahmganga project began interfacing power at the 33/11 kV Dunkhra (Jari) sub-station.

27. In IA No. 845 of 2024, the appellant produced color photographs of the Dunkhra sub-station to depict and substantiate the total number of feeders, as contested in the O&M apportionment dispute. The appellant referenced the Hon'ble Supreme Court's decision in Sanjay Kumar Singh vs. State of Jharkhand (Civil Appeal No. 1760/2022, decided on 10.03.2022). The judgment emphasized that Appellate Courts should permit additional evidence when:

- Such evidence clarifies or resolves doubts about the case.
- The evidence has direct relevance and a significant impact on the core issue of the matter.
- Allowing the evidence serves the interest of justice.

28. The Appellant asserted that the photographs are crucial additional evidence that directly impacts the dispute regarding the total number of feeders. The evidence removes ambiguity and substantiates the Appellant's claims about the correct calculation of feeders for O&M charge apportionment. They seek the court’s consideration of this evidence in alignment with the Supreme Court’s guidance to ensure justice.

29. The Hon'ble Supreme Court has held as follows:

> *"It is further observed that the true test, therefore, is whether the Appellate Court is able to pronounce judgment on the material before it without taking into consideration the additional evidence sought to be adduced*."

30. Conclusively, the Appellant requested this Tribunal to render a judgment in the present appeal based on the evidence submitted. Alternatively, the Appellant seeks the remand of the matter for fresh consideration in light of the materials provided.

Submissions of the Respondent No. 1

31. Respondent No. 1 submitted that the Appeal contests the Himachal Pradesh Electricity Regulatory Commission's (HPERC) order dated 15.03.2016, passed in Petition No. 96 of 2015. The HPERC rejected the Appellant's petition seeking:

i. Quashing of the first and second demand notices for O&M charges for 2008-09 to 2014-15.
ii. Restraint on HPSEB from imposing penalties for late payment.
iii. Directions to HPSEB to calculate O&M charges based on the number of bays, feeders, and Vacuum Circuit Breakers (VCBs) at the sub-station.

32. The rejection was based on the Appellant's admitted default in the timely payment of O&M charges to HPSEB. O&M charges were computed as per the

formula outlined in the HPERC's order dated 23.11.2010 in Petition No. 81 of 2010 – Astha Projects India Ltd. vs. HPSEBL & Anr.

33. The Astha Guidelines, which govern the calculation of O&M charges, are final and have been consistently applied by the HPERC in similar cases. The Appellant argued that additional assets, such as certain VCBs and ancillary equipment, should be classified as feeders under the Astha Guidelines for computing O&M charges. This forms the crux of their grievance against the demand notices and penalties imposed.

34. The Appellant originally contended before the State Commission that the substation had eight feeders, not six, to calculate O&M charges. However, in 2024, nine years after filing the petition before the State Commission and seven years after filing the present appeal, the Appellant submitted additional documents through IA No. 845 of 2024, including a Single Line Diagram (SLD), to claim the existence of nine feeders.

35. Respondent No. 1 argued that the SLD does not satisfy the conditions of Order XLI Rule 27 of the CPC, 1908, as no valid explanation has been provided for why it was not submitted earlier during Petition No. 96 of 2015. Furthermore, the Respondent asserted that even if the SLD is considered, it does not alter the case. The Appellant is equating VCBs (11 in total) with feeders, which could increase the count, but such an argument had already been presented before the State Commission. The mere absence of the SLD during earlier proceedings does not justify revisiting or altering the prior assessment of the number of feeders.

36. The Appellant's reliance on the single-line diagram at this stage is inconsequential. Submissions based on the diagram were already presented to

and addressed by the HPERC in its order (referenced in Para 15 of the impugned order and Para 2 II of the Appellant's petition).

37. HPSEBL further argued that the Appellant cannot introduce the single-line diagram at this appellate stage. Regardless, the issues raised using the diagram have been addressed, and the Appellant's claims lack merit even if the diagram is considered. The Appellant's assertion that HPSEBL should have accounted for 8 or 9 feeders instead of 6 in calculating O&M charges is denied as incorrect. Per the Astha Guidelines, only outgoing and incoming feeders that connect to lines or substations for electricity transmission are considered in O&M charge calculations. A Bus Coupler does not qualify as a feeder, as its purpose is to connect or disconnect incoming lines, not to transmit electricity. The presence of Vacuum Circuit Breakers (VCBs) in the Bus Coupler does not change its role. Also, the Station Transformer is not a feeder, as it serves auxiliary supply to the low-tension (LT) distribution system of the sub-station, supporting only internal substation operations.

38. The State Commission rightly concluded that bus couplers used for coupling arrangements and the station transformer do not qualify as feeders and cannot be included in the calculation of O&M costs. The Single Line Diagram (SLD), submitted by the Appellant, supports the HPSEB's position that the actual number of bays/feeders is 6, not 8, the breakdown is as follows:

6 bays total: 3 for 33 kV feeders and
3 for 11 kV feeders.

39. The VCB bus coupler, used for load sharing and internal arrangements, is integral to the bus-bar system and not a feeder. The 33/0.4 kV station

transformer, used for auxiliary supplies (e.g., battery banks), lacks a VCB and is not a feeder.

40. As per Astha guidelines, only 11 KV outgoing feeders and 33 KV incoming feeders are included in O&M cost calculations, while the transformer and other bays are excluded. The Jari Sub-station has 3 outgoing 11 kV feeders and 3 incoming 33 kV feeders, calculated for O&M costs on a pro-rata basis. A single VCB connects two 33 KV feeders (incoming and outgoing) to the bus, so these utilize one bay and cannot be counted as separate feeders. A spare bay, depicted in the SLD, is excluded unless it serves as an active feeder for transmission. Thus, the evidence confirms that the substation has 6 feeders, supporting HPSEB's calculations.

41. The Appellant's calculation of O&M charges for 2008-2009 to 2023-2024, based on the inclusion of 8/9 feeders instead of 6, is therefore incorrect. The State Commission applied the Astha Guidelines, affirming that the prescribed formula considers only incoming and outgoing feeders connected for electricity transmission. Even if additional VCBs that are neither incoming nor outgoing were included, their costs should be apportioned only to the actual incoming and outgoing feeders. The State Commission upheld that the computation of O&M charges must strictly adhere to the Astha Guidelines. Any additional equipment, like VCBs not functioning as feeders, cannot independently alter the formula but should instead have their costs allocated to the relevant feeders. The Appellant's method of calculation was therefore invalidated. Para 17 of the Impugned Order is as follows:

> *"17. The Commission fully agrees with the views of the Respondent Board and endorses the view that the bus couplers installed for the coupling arrangement and Station Transformer do not qualify to be*

feeders, as claimed by the petitioner, and these cannot be considered for computing the petitioner's share in O&M cost. However in order to dispel the doubt of the petitioner, the Commission would like to point out that the person(s) owning incoming feeders and outgoing feeders are the real beneficiaries of the activities carried out in the Sub-station. The incoming feeders ie, the feeders directly connected to the Sub-station which, under normal operation, inject power into the sub-station, for being taken away by one or more feeders connected to the Sub-station at the same voltages or different voltage, help in evacuation of power from the upstream system. Similarly the outgoing feeders ie. the feeders which may, under normal operation, carry away the power from the Sub-station after its injection into the Sub-station by one or more incoming feeders, help in delivery of power to the downstream systems. The O&M costs of any devices, other than those directly connected to the incoming or outgoing feeders, installed at the Sub-station for conveyance or for facilitating conveyance of electricity from incoming feeders to outgoing feeders, cannot be allocated to any particular feeder and the O&M costs of such devices have essentially to be shared by the incoming and outgoing feeders. Accordingly, even if, purely for argument sake, the bus coupler and the station transformer were to be considered as two additional feeders for the purpose of working out the petitioners share in O&M cost, the O&M costs related to these two additional feeders would again have to be loaded on the 6 Nos incoming and outgoing feeders only. For example, if the total O&M cost is Rs. 1200/- and 8 number feeders are to be considered, as claimed by the petitioner, the share of each feeder shall workout to Rs. 150/- (i.e. 1200/8), then in that

case, the recoverable amount for each incoming and outgoing feeder shall have to be increased in the ratio of 8:6 in order, to load the O&M costs of so called 2 number additional feeders which cannot be allocated to any particular incoming or outgoing feeder. The end result will, therefore, remain the same as in both the cases, the share of each incoming feeder shall be 150x 8/6 -200 or 1200/6-200. This will equally hold good even if the O&M costs were to be worked out on the basis of incoming/outgoing bays and in that case also the bays, other than those directly connected to the incoming and outgoing feeders, shall not qualify to be treated as incoming/outgoing bays.

In view of above, petitioner's contention that number of feeders/bays should be considered as eight instead of six for working out the petitioners share in O&M cost is not accepted."

42. The Appellant raised no arguments regarding the penalty for late payment during the 11.07.2024 hearing. The Appellant's claim that penalties were levied unreasonably on tentative/actual O&M charges (2008-2009 to 2014-2015) is denied. Under Clause 3.3 of the PPA (08.06.2004) and the inter-connection facility agreement (19.09.2009), HPSEB executed the interconnection works for power evacuation at the Appellant's cost. The Appellant was obligated to pay O&M charges as per the agreement's provisions (Clauses 6.2, 6.4, 7.1(d), and 7.1(e)).

43. Under Clause 8 of the inter-connection facility agreement, a penalty of 1.5% per month is applicable for delays in payment of O&M expenses to HPSEB. The Appellant belatedly paid only the principal amount of O&M charges for 2008-2009 to 2014-2015, without including the penalty for late payment as

mandated by Clause 8.1. Additionally, the Appellant failed to adhere to the payment timelines outlined in Clauses 6 and 7.1(c), (d), and (e) of the agreement.

44. The State Commission correctly rejected the Appellant's argument that delays caused by the issuance or implementation of guidelines, or the pendency of proceedings/representations, absolved them from paying penalties. The Commission held that the appellant remained obligated to make timely payments under the terms of the agreement (pgs. 83-85). Thus, the penalty liability for delayed payments remains enforceable as per the agreement.

45. Respondent No. 1 further submitted that the Appellant had argued that the delay in paying O&M charges arose due to an alleged discrepancy in their quantification. However, the State Commission noted that any perceived discrepancy could not justify non-payment. The Appellant was obligated to pay the charges as understood by it in a timely manner, which it failed to do. The Astha Guidelines (order dated 23.11.2010, Petition No. 81 of 2010) remain binding and conclusive. These guidelines do not exempt penalties for delayed payment but allow for adjustments if excess amounts are found to have been charged.

Submissions of the Respondent No. 2

46. Respondent No. 2, HPERC submitted that the Appellant’s claim that clarification was sought from HPSEBL regarding whether the VCBs at the sub-station (used for coupling arrangements and the station transformer) qualify as feeders for O&M apportionment is denied. The Appellant did not invoke the dispute resolution mechanism under Clause 11 of the Agreement, which requires a written notice to address disputes and refer unresolved issues to

arbitration. A tripartite agreement was executed between HPSEBL (Respondent No. 1), HHPCCPL, and M/s Kapil Mohan & Associates Hydro Power Pvt. Ltd. for interim power evacuation from Jirah and Toss projects. Respondent No. 1 revised and reduced the O&M charges for certain periods in 2011-2012 and 2012-2013.

47. Specifically, charges for 26.12.2011 to 28.02.2012 and 05.01.2013 to 15.03.2013 were reduced to 50% in compliance with the tripartite agreement.

48. Further stated that the imposition of a penalty for delayed payments is a stipulated consequence under the agreement. If the Appellant had objections regarding the penalty, it should have at least paid the undisputed amount deemed justified by it. The balance disputed amount could then have been resolved, with penalties applied only if the disputed amount was eventually found payable. Furthermore, the Astha guidelines do not waive penalties for delayed payments but allow adjustments if an excess amount is determined to have been charged.

49. Para 18(iii) of the Order dated 23.11.2010 passed in Astha Case clearly states that:

> *"the other provisions including those relating to detailed mechanism for payment of the charges in this regard as contained in the agreement executed by the petitioner with the respondent Board shall remain unchanged. However the amount billed/recovered by the Board on account of normal O&M charges in excess of that determined as per the above formulation should be withdrawn/refunded alongwith the penalty, if any charged on such excess amounts"*

50. HPERC continued to argue that according to Astha guidelines only incoming and outgoing feeders are considered for levying O&M charges. The Bus Coupler, despite having a VCB (Vacuum Circuit Breaker), is not classified as a feeder as it merely connects/disconnects incomers. Similarly, the station transformer, which supplies auxiliary power to the LT distribution system, is not regarded as a feeder.

51. The levy of penalties for non-payment of O&M charges follows a well-established procedure, and no separate show-cause notice is required for imposing such penalties. The Respondent is charging O&M costs in compliance with the Astha guidelines. Penalty for delayed payments is a natural consequence under the agreement. The Appellant's failure to pay the full amount demanded for an extended period renders it liable for penalties. The Appellant's contention that it is not liable for penalties during the period of guideline issuance or implementation is baseless and inconsistent with the terms of the agreement. The Appellant failed to adhere to the payment schedule specified in the agreement and is legally bound to pay the penalty as per the agreed terms and conditions.

Analysis and Conclusion

52. Having heard all parties in detail, the core question for determination in this appeal is as follows:

> *Whether the Respondent Commission has rightly calculated the Operation and Maintenance (O&M) charges based on the number of bays, feeders, and VCBs at the relevant station or substation as per Astha Guidelines?*

53. The Appellant filed Petition No. 96 of 2015 before the HPERC, seeking a directive for the apportionment of Operation & Maintenance (O&M) charges based on the number of bays, feeders, and VCBs at the interconnection facility, referencing the precedent set in Astha Projects (India) Ltd. vs. HPSEBL on 23.11.2010. The Astha judgment had established guidelines for allocating O&M costs proportionally among beneficiaries based on all incoming and outgoing feeders, irrespective of voltage levels, including infrastructure maintenance.

54. The HPERC acknowledged the earlier guideline in Astha, affirming that O&M costs should be allocated proportionally to the total number of feeders in a substation, as outlined in Paragraph 18 of the Astha decision.

55. The Appellant has asserted that the Commission's exclusion of bus couplers and station transformers contradicts the Astha guidelines, resulting in an incorrect apportionment of O&M costs and unfairly reducing their share from 8 feeders to 6. This raises the legal question of whether the Commission deviated from established precedent without sufficient justification, the relevant extract is quoted as under:

> *"18. The Commission, therefore, lays down the guidelines to work out the cost of O&M for interconnection facilities for the SHPs (upto 25 MW) as under :-*
>
> *(i) the total amount of normal O&M costs of the interconnecting manned substation shall be apportioned in the ratio of <u>number of feeders for which interconnection facilities are provided to SHPs to the total number of incoming and outgoing feeders irrespective of the voltage level of such feeders.</u> The normal O&M cost of substation shall also*

include the maintenance costs of the infrastructure works, such as approach roads, staff quarters, sanitation, repair of buildings etc., as per provisions of the agreement;

(ii) the prorata amount worked out on the above lines in respect of the interconnection facilities shall be suitably increased to account for the applicable departmental charges as stipulated in the agreement;

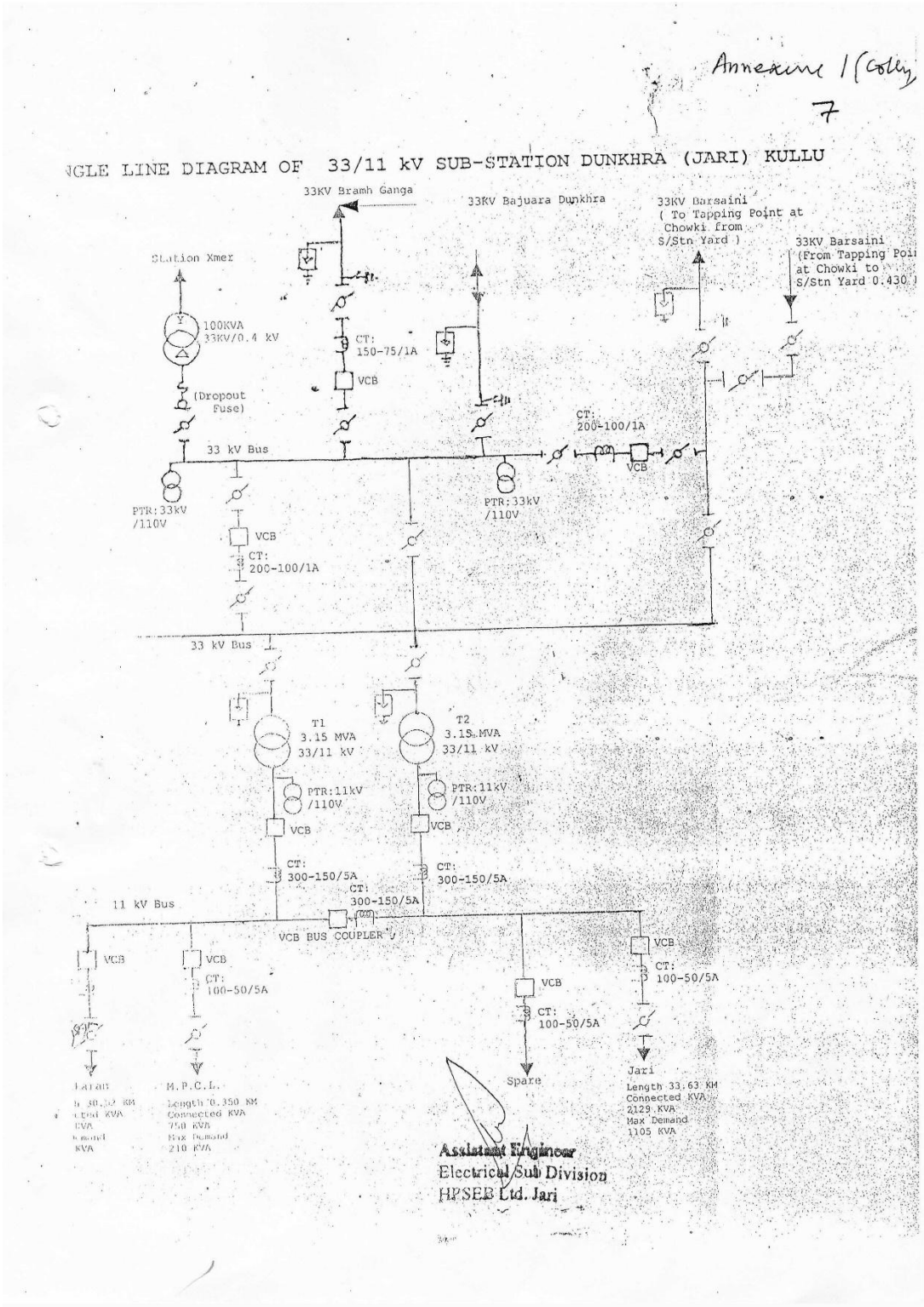
(iii) the other provisions including those relating to detailed mechanism for payment of the charges in this regard as contained in the agreement executed by the petitioner with the respondent Board shall remain unchanged.

However, the amount billed/recovered by the Board on account of normal O&M charges in excess of that determined as per the above formulation shall be withdrawn/ refunded alongwith the penalty, if any charged on such excess amount."

56. From the above, it is clear that only *the total number of incoming and outgoing feeders irrespective of the voltage level of such feeders* shall be considered for the O&M prorata charges.

57. In the Impugned Order, the HPERC has correctly excluded bus couplers and station transformers from the feeder count, thus, observing the total feeders as 6 and not 8 as alleged by the Appellant. The Commission reasoned that these components do not qualify as feeders under the definition provided by the Respondent Board, thereby rejecting the Appellant's contention that they should be included.

58. We agree with the Respondents' arguments, however, we consider it appropriate to deal with the issue on merit. It is, therefore, important to note and examine the single-line diagram submitted by the Appellant, which the Respondents objected to under the prevailing provisions in the CPC, the single line diagram is reproduced as under:



59. From the single-line diagram, undisputedly there are only 6 incoming/ outgoing feeders i.e. 3 at 33kV and 3 at 11kV, the interconnection with the station transformer within the substation and the feeder kept for emergency/spare cannot be treated as incoming/ outgoing feeders.

60. The contention of the Respondents that the Appellant through IA No. 845 of 2024 has filed the above-referred single-line diagram after nine years of filing Petition No. 96 of 2015, and seven years after filing the present appeal, claiming that there are now 9 feeders, cannot be ignored as the single line diagram fails to meet the criteria under Order XLI Rule 27 of the Code of Civil Procedure, 1908 and should have been presented earlier which the Appellant failed to do.

61. As already mentioned, we decided to adjudicate the issue on merit, the Appellant counts Vacuum Circuit Breakers (VCBs) and ancillary equipment (e.g., bus couplers, station transformers) as feeders. However, Bus Couplers merely connect/disconnect incomers and do not transmit electricity and Station Transformers provide auxiliary power to the substation’s Low Tension (LT) system, not functioning as feeders, and are part of the sub-station, therefore cannot be considered as incoming and outgoing feeders.

62. We also decline to accept the claim of the Appellant that the Barshani feeder has been treated as one feeder by HPSEB, both feeders have separate isolators, CTs, and panels, despite sharing a common VCB in a "Loop In" and "Loop Out" configuration. The Appellant argued that both feeders are functionally independent and should be counted as two feeders, as the two 33 kV feeders (one outgoing to Barsaini and one incoming from Barsaini) connect to the bus through a single VCB, utilizing one bay collectively. Thus, they cannot be counted as separate feeders/bays.

63. In our view, the contention raised by the Appellant regarding the number of feeders/bays at the 33/11 kV Jari Substation of HPSEB is unfounded. The examination of the single-line diagram unequivocally supports HPSEB's position, confirming that the actual number of feeders is 6, not 8 or 9 as claimed by the Appellant.

64. The substation comprises 3 incoming 33 kV feeders and 3 outgoing 11 kV feeders, calculated as per Astha guidelines. The VCB Bus Coupler is integral to the internal bus-bar arrangement and is not classified as a feeder/bay. The 33/0.4 kV station transformer, supplies auxiliary power and is used exclusively for auxiliary systems, excluding it from the feeder/bay count, as per Astha Guidelines, only incoming/outgoing feeders are considered for O&M cost apportionment. Other bays, such as transformer bays and spare bays, are excluded unless actively transmitting power.

65. Therefore, the computation of O&M charges by the Appellant for the period 2008-09 to 2023-24, based on 8/9 feeders, is erroneous. The correct count of 6 feeders has been duly accounted for in the pro-rata apportionment of O&M costs by the HPSEB.

66. The O&M cost calculation as per the State Commission's methodology is upheld, we find no infirmity in the Impugned Order as passed by the HPERC.

67. The State Commission applied the Astha guidelines to confirm that the number of qualifying feeders at the Jari Sub-station is 6, not 8, as claimed by the Appellant. Non-feeder elements, such as the Bus Coupler and the Station Transformer, are used for internal operations and cannot be classified as feeders for O&M cost purposes. Even if these elements were hypothetically

included as feeders, their O&M costs would still be proportionally allocated to the incoming and outgoing feeders, resulting in no change to the ultimate liability.

68. The Commission has also upheld that only incoming and outgoing feeders contribute to power conveyance and qualify under the guidelines. The Appellant's contention for recalculating O&M costs based on 8 feeders is therefore dismissed.

69. Regarding the imposition of penalty for delayed payment of O&M Charges, it is seen that the Power Purchase Agreement (PPA) dated 08.06.2004 and the subsequent Inter-Connection Facility Agreement dated 19.09.2009, the Appellant was obligated to pay O&M charges to HPSEB for inter-connection facilities. Clause 8.1 of the Inter-Connection Facility Agreement imposed a penalty of 1.5% per month for delayed payments. The Appellant was also required to adhere to the payment schedule under Clauses 6 and 7.1(c)-(e).

70. The Appellant has failed to pay O&M charges for the period 2008-2009 to 2014-2015 in a timely manner and subsequently deposited only the principal amount without penalty. The State Commission rightly concluded that discrepancies in the quantification of charges do not exempt the Appellant from making payments. The Appellant ought to have paid at least the amount it deemed correct within the stipulated time.

ORDER

For the foregoing reasons, we are of the considered view that Appeal No. 109 of 2017 does not have any merit and is therefore dismissed for the

reasons stated above.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 20th DAY OF MARCH, 2025.

(Virender Bhat)	**(Sandesh Kumar Sharma)**
Judicial Member	**Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kk