

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

APPEAL NO. 356 OF 2018

Dated: 25.03.2025

**Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member**

IN THE MATTER OF:

M/s Teestavalley Power Transmission Ltd.
Through its authorised signatory
Having its Registered Office at:
2nd Floor, Vijaya Building,
17, Barakhamba Road, Connaught Place,
New Delhi- 110001.

...Appellant

Versus

1. Central Electricity Regulatory Commission
3rd Floor, Chandralok Building,
36 Janpath, New Delhi- 110001.
(Represented by its Chairperson)
2. PTC India Ltd.
2nd Floor, NBCC Tower, 15,
Bhikaji Cama Place, New Delhi-110066.
(Represented by its CMD).
3. Energy and Power Department,
Government of Sikkim,
Kazi Road, Gangtok-737101
(Represented by its PCE-cum-Secretary)
4. Teesta Urja Ltd.
2nd Floor, Vijaya Building, 17,
Barakhamba Road, New Delhi-110001
(Represented by its Managing Director)
5. M/s Sneha Kinetic Power Projects Pvt. Ltd.

- Sonam Complex, Jeevan Theng Marg Development Area,
Near Little Pixel International School,
Gangtok - 737101, Sikkim,
(Represented by its Managing Director).
6. M/s Powergrid Corporation of India Ltd,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk, Gurgaon - 122001, Haryana,
(Represented by its CMD).
7. Punjab State Power Corporation Ltd.
The Mall, Patiala -- 147001, Punjab,
(Represented by its CMD).
8. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C16, Sector-6,
Panchkula - 134109, Haryana,
(Represented by its MD).
9. Dakshin Haryana Bijli Vitran Nigam Limited
Vidyut Sadan, Vidyut Nagar,
Hisar - 125005, Haryana,
(Represented by its MD).
10. Haryana Power Purchase Centre,
Shakti Bhawan, Sector 6,
Panchkula - 134109, Haryana,
(Represented by its MD).
11. Ajmer Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road,
Ajmer- 305004, Rajasthan,
(Represented by its CMD).
12. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur - 302005, Rajasthan,
(Represented by its CMD).
13. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House, Industrial Area,

Jodhpur - 342003, Rajasthan,
(Represented by its CMD).

14. Rajasthan Urja Vikas Nigam Ltd.
Vidyut Bhawan, Janpath,
Jyoti Nagar, Jaipur - 302005, Rajasthan,
(Represented by its CMD).

15. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 226001, Uttar Pradesh,
(Represented by its MD).

...Respondent(s)

Counsel for the Appellant(s) : Mr. Vidhan Vyas
Mr. Syed Haider Shah
Mr. Mayur Punjabi
Mr. Anand K. Ganesan

Counsel for the Respondent(s) : Mr. Amit Kapur for R-5

Mr. Pallav Mongia
Ms. Mridul Chakravarty for R-6

JUDGEMENT

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

1. M/s. Teestavalley Power Transmission Limited filed the present Appeal challenging the Order dated 15.05.2018 ("Impugned Order") passed by the Central Electricity Regulatory Commission (in short "CERC" or "Commission") in Petition No. 108/TT/2016, for Approval of Transmission Tariff of 400 kV D/C Teesta-III to Rangpo Section up to LILO point at Rangpo for the period of FY 2014-19 under Sections 62 and 79(1)(d) of the Electricity Act, 2003 read with Regulation 86 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Central Electricity Regulatory Commission

(Terms & Conditions of Tariff) Regulations, 2014 in respect of 215 Km 400 kV Double Circuit Transmission Line from Teesta-III to Rangpo of the Appellant.

Factual Matrix of the Case

2. The Appellant, M/s Teestavalley Power Transmission Ltd. (in short "TPTL") is an Inter State Transmission Licensee (in short "ISTS Licensee"). The Company is registered under the Companies Act and is a Joint Venture (JV) of Powergrid Corporation of India Ltd ("Powergrid") and Teesta Urja Ltd ("TUL") a Government of Sikkim Enterprise. The Appellant is presently implementing the 215 KM 400 kV D/C Transmission Line from Teesta-III HEP, Sikkim to District Kishanganj, Bihar as a part of the master plan for evacuation of power of the hydro-electric projects in the State of Sikkim.

3. The 400 kV D/C Teesta III - Rangpo - Kishanganj Transmission Line is being developed by TPTL in the manner as mentioned below:

Transmission Line and Substation Equipment

S. No.	Particulars	Details
1.	Teesta III - Rangpo Section i.e. Circuit #2 (36 Ckt Km)	Commissioned on 17 th Jan 2017. Transmission Tariff allowed vide the Impugned Order
2.	Teesta III - Dikchu Section i.e. Circuit #1(a) (14 Ckt Km)	Commissioned on 14 th April 2017. Transmission Tariff allowed vide the Impugned

		Order
3.	Dikchu - Rangpo Section i.e. Circuit #1(b) (22 Ckt Km)	Commissioned on 2 nd July 2018. Tariff Petition is being filed separately before CERC.
4.	Rangpo to Kishanganj D/C transmission line (179 Km) and 2 Nos. line bays along with 2 Nos. 63 MVAR reactors at Kishanganj Substation of POWERGRID substation bays	Tariff Petition is being filed before CERC

4. Respondent No.1, Central Electricity Regulatory Commission ("CERC") is the Appropriate Commission under the Electricity Act 2003 inter-alia vested with the powers of approving the transmission tariff of the Appellant.

5. Respondents No. 2 to 15 are the licensees under the provisions of the Electricity Act, 2003.

6. In May 2006, the Central Electricity Authority (CEA) approved the (6x200) MW Teesta III Hydro Electric Project by TUL, with the first unit scheduled for commissioning in May 2011 and the remaining units to follow within five months.

7. On 14.05.2009, the Central Electricity Regulatory Commission (CERC), exercising its authority under Section 14 of the Electricity Act, 2003, granted the Appellant an ISTS Licence. This authorization permitted the construction, maintenance, and operation of a transmission system under the

supervision of the Central Transmission Utility (CTU), comprising a 400 kV double-circuit transmission line with quad Moose conductor from Teesta III to Mangan (2 km) and from Mangan to a new pooling station at Kishanganj (204 km), including two-line bays and two 63 MVAR reactors at Kishanganj switchyard.

8. On 14.09.2009, the Standing Committee on Power System Planning (Eastern Region) decided that the 400 kV double-circuit Teesta III-Kishanganj transmission line would be looped in and out (LILO) at Mangan Pooling Station for future power evacuation from Northern Sikkim.

9. However, the Mangan Pooling Station by POWERGRID has not materialized. Subsequently, on 20.09.2010, the Committee resolved to LILO the same transmission line at the Rangpo substation, with the LILO portion falling under POWERGRID's scope.

10. On 03.12.2014, the CERC, in Petition No. 157/MP/2014 filed by M/s Sneha Kinetic Power Projects Private Ltd ("SKPPPL"), ruled that the 400 kV double-circuit (D/C) transmission line from Teesta III to Kishanganj constitutes an inter-state transmission system. Under Section 40(c) of the Electricity Act, 2003, transmission licensees must provide non-discriminatory open access to their networks upon payment of transmission charges. Accordingly, SKPPPL was allowed to utilize the transmission system developed by the petitioner on this basis. CERC also permitted the loop-in-loop-out (LILO) of one circuit of the 400 kV D/C Teesta III-Kishanganj transmission line at the Dikchu Hydro-electric Power Project as an interim measure. The Central Electricity Authority and POWERGRID confirmed no technical constraints in this arrangement. SKPPPL was authorized to

implement the LILO work as a dedicated system, with the cost borne by SKPPPL, and the arrangement was to be dismantled once the originally planned scheme became operational.

11. As a result, while the overall scope of work under the CERC-issued transmission license remained unchanged, modifications occurred in the configuration of the 400 kV D/C Teesta III-Kishanganj transmission line. The length increased from the originally approved 206 km to 215 km due to a change in the Kishanganj POWERGRID substation location and right-of-way (ROW) issues requiring realignment during construction. The transmission line was subsequently divided into four sections:

- (a) Teesta III-Rangpo Circuit #2 (36 km),
- (b) Teesta III-Dikchu Circuit #1(a) (14 km),
- (c) Dikchu-Rangpo Circuit #1(b) (22 km), and
- (d) Rangpo-Kishanganj D/C Circuit (179 km).

12. The Appellant filed Petition No. 108/TT/2016 before the Central Electricity Regulatory Commission (CERC) on 21.06.2016, seeking tariff determination for the 400 kV double-circuit (D/C) Teesta III–Kishanganj transmission line. Circuit 2 was commissioned on 17.01.2017, and Circuit 1(a) on 14.04.2017.

13. On 15.05.2018, CERC issued the Impugned Order, determining the tariff for Circuit 2 and Circuit 1(a) while directing the Appellant to file separate petitions for Circuit 1(b) and the remaining section up to Kishanganj. The order also disallowed certain cost components related to Circuit 2 and Circuit 1(a).

14. Subsequently, on 29.06.2018, the Appellant filed a review petition before CERC, seeking reconsideration of specific findings on the grounds of an apparent error on the face of the record.

15. Being aggrieved by the Impugned Order dated 15.05.2018 passed by CERC in Petition No. 108/TT/2016, the Appellant has preferred the present Appeal.

16. The present appeal challenges the CERC order determining the tariff for Circuit #2 and Circuit #1(a) of the 400 kV Teesta III-Rangpo section of the inter-state transmission line. The Appellant contests the following findings:

- (i) disallowance of Rs. 184.69 lakh towards design and engineering costs for Circuit #1(a) and Circuit #2,
- (ii) disallowance of Rs. 562.88 lakhs towards increased costs for erection, stringing, and civil works, and
- (iii) arbitrary treatment of Incidental Expenditure During Construction (IEDC) for Circuit #1(a) and Circuit #2.

Written Submission of the Appellant

17. The Appellant submitted that this Appeal challenges paragraph 41 of the Impugned Order dated 15.05.2018 passed in Petition No. 108/TT/2016 whereby CERC approved the transmission tariff for Circuit #2 being 400 kV D/C Line from Teesta-III to Rangpo Section and Circuit #1(a) being 400 kV D/C Line from Teesta-III to Dikchu Section for the period of FY 2014-19 in

respect of the project of 215 km 400 kV Double Circuit Transmission Line from Teesta-III to Rangpo of the Appellant The same is reproduced below:

“41. We have considered the submissions of the Petitioner regarding cost over-run. The cost of Design and Engineering & Audit and Accounts and the variation in cost of erection, stringing & civil works including foundation is disallowed. Accordingly, the cost of Rs. 1336.80 lakh and 268.78 lakh in case of Ckt-2 and Ckt-1 (a) respectively are not capitalised. The details of the cost disallowed are given in the table below: -

(Rs. In lakh)

<i>Srl. No.</i>	<i>Particular</i>	<i>Circuit-1(a)</i>	<i>Circuit-2</i>	<i>Remarks</i>
<i>1.1</i>	<i>Design and Engineering</i>	<i>51.71</i>	<i>132.98</i>	The justification given by the Petitioner for increase is not satisfactory.
<i>2.8</i>	<i>Erection, Stringing and Civil Works including foundation</i>	<i>217.07</i>	<i>345.81</i>	NER region is earthquake prone. The reasons given are not satisfactory.

11.2	<i>Audit and Accounts</i>	0	858.01	<i>The increase is very high and it is not justified. Contingency may cover the Audit and account expenditure.</i>
Total		268.78	1336.8	

”

18. The disallowed cost of Rs. 858.01 lakhs under "Audit and Accounts" was subsequently approved by CERC through its order dated 30.12.2019, in Review Petition No. 25/RP/2018 and further affirmed in the True-Up Order dated 22.03.2022, in Petition No. 35/TT/2021.

19. Consequently, this aspect is no longer being contested in the present appeal. Beyond stating that the reasons provided were unsatisfactory, the Central Commission's Impugned Order lacks any substantive findings or reasoning for disallowing the Appellant's claims. The Impugned Order is being challenged on multiple grounds, which are mentioned below.

A. With respect to the disallowance of the cost of Design and Engineering of Rs. 184.69 Lacs

20. The Appellant submitted that Design and engineering are fundamental to the project, forming an essential prerequisite for its planning, procurement, and execution before construction begins. The 2014-19 Tariff Regulations recognize design and engineering costs as a capital cost component for transmission projects, explicitly listed under Serial No. 1.1 in Form-V of the regulations.

21. The Appellant, in Tariff Petition No. 108/TT/2016 before CERC, specifically sought recognition of these costs and provided a detailed justification in paragraph 5.8.1 of the petition. Despite this, CERC did not seek clarifications or raise queries while the petition was pending.

22. The Appellant's board had duly approved the initial cost estimate, as documented in the appeal. CERC did not request the Appellant to submit specific documents regarding consultancy payments during the proceedings or technical validation sessions. Furthermore, the Impugned Order does not cite any failure by the Appellant to provide necessary documentation related to consultancy costs.

23. CERC simply notes the component of Design and Engineering in paragraph 40 of the Impugned Order which is as follows:

“(i) Preliminary works

The head ‘Design & Engineering’ under the DPR has not considered any estimates towards consultancy charges. The DPR provides that such consultancy charges shall be considered separately. The actual expenditure incurred upto COD towards consultancy charges for Teesta-111-Rangpo section amounts to Rs. 296 lakh....”

24. And thereafter disallowed the cost in paragraph 41 of the Impugned Order.

25. Thus, CERC has failed to conduct a prudence check in accordance with section 64 of the Electricity Act 2003 and erroneously disallowed the cost of Design and Engineering by sole reasoning of “*The justification given by the Petitioner for increase is not satisfactory*”.

26. The Appellant awarded the engineering consultancy contract to POWERGRID on 21.04.2009, for a lump-sum fee of Rs. 16 crores plus applicable service tax. This contract covered the entire design, drawing, engineering, consultancy, technical specifications, and bidding documents for the transmission line.

27. The final payment installment of Rs. 1.6 crore plus service tax was to be made on the commercial operation date of the Teesta-Kishanganj 400 kV D/C transmission line. The Appellant’s Board of Directors approved pre-investment in consultancy work at its 19th Board Meeting on 09.11.2009. The annexure to the award letter explicitly included the development of designs and engineering for towers and foundations.

28. The Detailed Project Report (DPR) stated in its disclaimer that consultancy fees were not included in the cost estimate and were to be separately accounted for by the Board of Directors when forwarding cost estimates to the client.

29. Under Regulation 3(36) of the CERC Tariff Regulations (2014), the Appellant's Board of Directors was the competent authority to approve cost estimates. Accordingly, in meetings held on 26.08.2013, and 05.01.2016, the board approved the Revised Cost Estimates (RCE), including the design and engineering costs. By 31.03.2016, the Appellant had incurred Rs. 14.40 crore (excluding service tax) for consultancy services provided by POWERGRID, with an additional Rs. 1.48 crore paid as service tax at 10.30%. The pro-rata cost allocation for Circuit #2 and Circuit #1(a), including taxes, amounted to Rs. 1.84 crore.

30. The Appellant sought approval for projected costs up to the commercial operation date (COD) of the Teesta III–Rangpo section. For the entire transmission line, the outstanding balance payable to POWERGRID upon test charging was Rs. 1.60 crore, plus applicable service tax. Assuming a 15% service tax rate as of 01.06.2016, the total amount for the entire line was Rs. 1.84 crore. The pro-rata cost allocation for the Teesta III–Rangpo section, including taxes, was calculated at Rs. 0.21 crore based on the transmission line's length and applicable cost distribution formula.

31. The Impugned Order is devoid of any reasoning concerning such disallowance and is liable to be set aside. In ***GVK Industries Ltd. (Phase-I) v. Eastern Power Distribution Company of Andhra Pradesh Limited 2015 SCC OnLine APTEL 171***, this Tribunal observed as under:

“30. We agree that a judicial authority must record reasons in support of its conclusions. Recording of reasons is meant to serve the wider principles of justice that justice must not only be done it must also appear to be done as well. Reasons reassure that

discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous conditions. Reasons also facilitate the process of judicial review by superior courts.”

32. Further, this Tribunal in ***Bharat Jhunjunwala v. Uttar Pradesh Electricity Regulatory Commission, 2014 SCC OnLine APTEL 31*** refrained on adjudicating the issue where it found that the Regulatory Commission had not performed the requisite prudence check and directed the State Commission to perform the requisite function before rejecting a claim.

B. Disallowance of cost of “Erection, Stringing and Civil Works including Foundation of Rs. 562.88 Lacs in the capital cost in respect of Circuit #1(a) and Circuit #2.

33. The Appellant submitted that CERC, in paragraph 41 of the Impugned Order, disallowed the cost increase for Erection, Stringing & Civil Works, including Foundation, amounting to Rs. 217.07 lakh for Circuit #1(a) and Rs. 345.81 lakh for Circuit #2. The Commission cited the project's location in an earthquake-prone region and found the Appellant's justification unsatisfactory.

34. However, CERC did not provide any reasoning for the disallowance in relation to the earthquake-prone nature of the area. On the contrary, the project's seismic vulnerability supports the Appellant's justification for cost overruns in civil works. The DPR, under Section 9.2 (Salient Features of Transmission Lines), states that the design and cost estimation of

transmission lines were based on a walkover survey conducted using India's topographical and forest maps.

35. Further, DPR also notes the difficult terrain in point 9.2.1.4, and the same is reproduced below:

“9.2.1.4. Revetment and benching

As the major portion of the lines is traversing in tough hilly terrain/undulated stretch revetment & benching shall be provided as per site conditions.”

36. Thus, against the quantity envisaged under the DPR, the actual quantity executed was substantially higher due to the Benching, Revetment, Chimney extension, Excavation, Concreting, etc, which are described below:

S. No.	Function	Quantity envisaged in DPR	Actual quantity
1.	Benching	1890 cum	59496 cum
2.	Revetment	3100 cum	3850 cum
3.	Chimney Extension		In some locations, the chimney extensions as high as 12m are being constructed after providing leg extensions up to 9m also. Construction of frequent chimney extensions in all locations in hilly

			areas required considerable extra concreting at height upto 12m was not envisaged in the DPR.
4.	Excavation		
	Normal Soil	5352 cum	24604 cum
	Hard rock	562 cum	31506 cum
5.	Concreting		
	Actual Concreting 1:1:5:3(M20)	10709 cum	14838 cum
	Actual Concreting 1:3:6	1109 cum	1229 cum
	Actual Reinforcement	1239	1565

37. The transmission line passes through challenging hilly terrain in Sikkim, as evidenced by project site photographs. A major earthquake of magnitude 6.8 struck Sikkim in September 2011, causing significant damage to cut slopes and roads.

38. Following an assessment of the damage, additional slope stabilization measures and protection walls for tower foundations were deemed necessary and subsequently constructed, which had not been accounted for in the DPR. The remote and inaccessible locations further complicated material transport, often requiring manual labor, leading to increased costs under Erection, Stringing & Civil Works, including Foundation.

39. CERC disallowed these costs without providing specific reasoning, aside from citing the region's seismic vulnerability. The Appellant argued that such disallowance is unjustified and should be set aside. Reliance is placed on judicial precedents, including ***Bharat Jhunjunwala v. Uttar Pradesh Electricity Regulatory Commission (2014 SCC OnLine APTEL 31)*** and ***GVK Industries Ltd. (Phase-I) v. Eastern Power Distribution Company of Andhra Pradesh Limited (2015 SCC OnLine APTEL 171)***.

40. The Project has various sections for which the Appellant had filed separate Petition No. 35/TT/2021 for True up for the period 2014-19 and Tariff for the period 2019-24. In all such tariff petitions, the entire cost overrun pertaining to Hard Cost has been allowed. The details of which are as follows:

S. No.	Section	Tariff Petition	Tariff Order of CERC and relevant Para.
1.	Ckt #1(b)	368/TT/2018	All Hard Costs consisting of Design and Engineering and Erection, Stringing & Civil works including foundation Para. 32 and 33 of Order dt. 22.01.2020. "33. We have examined the submissions made by the Petitioner regarding the cost over-run. It is observed that the cost over-run is due to the compensation paid by the Petitioner, increase in forest area, increase in cost of transmission line material and increase in IEDC due to

			<i>time over-run. We are of the view that the cost over-run is not attributable to the Petitioner. Therefore, the cost over-run is allowed.”</i>
2.	Ckt # 2(a) and Ckt # 1(c)	96/TT/2019	All Hard Cost consisting of Design and Engineering and Erection, Stringing & Civil works including foundation are allowed in Para. 52 of Order dt. 09.08.2020.
3.	Ckt #1(a), Ckt # 2, Ckt #1(b), Ckt # 2(a) and Ckt # 1(c)	True-up Petition No. 35/TT/2021	All cost including the cost of Design and Engineering and Erection, Stringing & Civil works including foundation are allowed in Para. 41 of Order dt. 22.03.2022 with respect to Ckt #1(b), Ckt # 2(a) and Ckt # 1(c).

C. With respect to Arbitrary treatment of Incidental Expenditure during construction (IEDC)

41. The Appellant had also sought for IEDC in the instant appeal without applying any arbitrary capping for Circuit #2 and Circuit #1 (a).

42. CERC disallowed the IEDC of Circuit #2 and Circuit #1 (a) by restricting it to 5.00% of the hard cost based on the Abstract Cost Estimate and thereby allowed Rs.401.70 Lacs for Circuit #2 and Rs.173.43 Lacs for Circuit #1 (a) in para. 53 of the Impugned Order. The same is reproduced below:

“Treatment of Incidental Expenditure During Construction (IEDC)”

53. Like the other transmission tariff petitions, the “IEDC limit” indicated in the ‘Abstract Cost Estimate’, which is 5.00% of the hard cost is considered in the instant case. As the IEDC claimed for both the assets as on COO is higher than 5.00% of the hard cost, the claimed IEDC has been reduced to 5.00% of the hard cost. Further, IEDC had been worked out up to 25.11.2016 and 23.11.2016 for Ckt-2 and Ckt-1(a) respectively and the IEDC for period 1.7.2016 to 13.11.2016. for both the assets have been reduced on pro rata basis, from the allowed IEDC. The IEDC claimed by the petitioner and allowed are given below: -

(Rs. In lakh)

Asset	IEDC				
	Claimed as on COD (Accrual Basis)	Claimed as on COD (Cash Basis)	Claimed to be discharged in 2017-18	Allowed as on COD (Cash Basis)*	Allowed to be capitalised in 2017-18
Ckt-2	871.74	858.01	13.73	401.70	0.00
Ckt-1(a)	356.98	346.96	10.03	173.43	0.00

Reduced as per IEDC limit of 5.00%

43. The Appellant further submitted that the Appellant filed Review Petition No. 25/RP/2018 seeking a review of the Impugned Order concerning the non-condonation of time overrun from 01.07.2016, to the COD for Circuit 2 and Circuit 1(a), as well as the double deduction of Incidental Expenditure During Construction (IEDC) amounting to Rs. 858.01 lakh for Circuit 2.

44. In its order dated 30.12.2019, CERC rejected the Appellant's contention regarding the non-condonation of time overrun but accepted the claim related to the double deduction of IEDC, stating that the tariff would be revised during the truing-up process for the 2014–19 period.

45. Subsequently, in the order dated 22.03.2022, in Truing-Up Petition No. 33/TT/2021, CERC adjusted and allowed the previously disallowed IEDC for the period of time overrun not condoned for Circuit 1(a) and Circuit 2. As a result, the Appellant no longer seeks to pursue *prayer d* of this Appeal.

MEMO on behalf of Respondent No. 6, Power Grid Corporation of India Ltd (PGCIL)

46. Respondent No. 6 submitted that the Appellant is an inter-state transmission licensee and a joint venture between PGCIL and Teesta Urja Ltd. (TUL). Although PGCIL is a JV partner in TPTL, they function independently with separate offices and employees. PGCIL was awarded a consultancy contract for design and engineering, for which TPTL is required to make payments.

47. Also submitted that it is not required to file a written reply as no allegations or reliefs have been sought against it in the appeal. However, it states that it will provide necessary information if directed by this Tribunal. The memo is filed to place this position on record and allow the matter to proceed.

Analysis and Conclusion

48. After hearing the Appellant at length and carefully considering their respective submissions, we have also examined the Impugned Order, written pleadings, and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

Whether the increase in capital cost of Rs. 184.69 lakhs for Design & Engineering and Rs. 562.88 lakhs for Erection, Stringing & Civil Works including Foundation be allowed in the tariff determination?

49. The Appellant herein has prayed for the following:

“a. Allow the present Appeal filed by the Appellant and thereby, set aside the Impugned Order dated 15.05.2018 passed by the Respondent No. 1 in Petition No. 108/TT/2016 to the extent as mentioned in Para No. 55 to 56 of the Grounds of Appeal as mentioned above.

b. Allow the increase in the Capital Cost on account of Design & Engineering by Rs. 184.69 lakhs, i.e. Rs.51.71 lakhs for Circuit #1(a) and Rs.132.98 lakhs for Circuit #2 and,

c. Allow the increase in capital cost on account of Erection, Stringing including civil works by Rs. 562.88 lakhs, i.e. Rs.217.07 lakhs for Circuit #1(a) and Rs.345.81 lakhs for Circuit #2 and;

d. Allow the Incidental Expenditure during Construction without applying any arbitrary capping for Circuit #1(a) and Circuit #2 and;

e. Pass such other order as this Hon'ble Tribunal may deem fit and proper in the facts and the circumstances of the case.”

50. The present appeal has been filed by M/s Teestavalley Power Transmission Ltd. (TPTL) against the Impugned Order dated 15.05.2018 passed by the CERC in Petition No. 108/TT/2016, whereby CERC determined the transmission tariff for Circuit #2 (Teesta III–Rangpo Section) and Circuit #1(a) (Teesta III–Dikchu Section) but disallowed certain capital costs.

51. The Appellant has limited the challenge to the following disallowances:

- Design & Engineering Costs: Rs. 184.69 lakhs (Rs. 51.71 lakhs for Circuit #1(a) and Rs. 132.98 lakhs for Circuit #2).

- Erection, Stringing & Civil Works, including Foundation Costs: Rs. 562.88 lakhs (Rs. 217.07 lakhs for Circuit #1(a) and Rs. 345.81 lakhs for Circuit #2).

52. Before we proceed further, it is important to note some of the daily orders passed by this Tribunal, as under:

i. Dated: 3rd October, 2024

“ORDER

When the matter was called, there is representation on behalf of Respondent No. 6, which is the proforma party only. The contesting Respondents have not made any representation today. Heard Learned Counsel for the Appellant for sometime.

We give one more opportunity to the Respondents to appear before this Court on the next date of hearing. We also record the submission made by the Appellant that this matter is an identical matter to Appeal No. 55 of 2022 in which the judgement has already been passed by this Tribunal on 18.08.2022.

*Post this matter for further hearing on **07.11.2024.**”*

ii. Dated: 16th December, 2024

“ORDER

IA No. 2009 of 2024

(For urgent Listing)

Mr. Anand K. Ganesan, learned Counsel for the Appellant, expresses urgency. The application filed by the applicant/appellant, having served its purpose, stands disposed of.

Appeal No. 356 of 2018

Heard Mr. Anand K. Ganesan, learned counsel for the Appellant. There is no presence on behalf of the respondents except 6th Respondent who is proforma party in this case. There is no presence on behalf of the Commission during the hearing nor any vakalatnama has been filed by the Commission so far.

Arguments concluded.

Judgment is reserved.

Revised written submissions, if any, shall be filed on or before 31.12.2024.”

53. From the above, it is seen that the Respondents including the Central Commission, except Respondent No. 6, preferred not to appear in the court, as noted in the daily orders, in fact, the Central Commission has not filed the vakalatnama.

54. Accordingly, the issues herein are decided on the basis of the Impugned Order and the submissions of the Appellant in addition to all other documents placed before us.

55. Let us consider the two issues as pressed by the Appellant:

a) Design & Engineering Costs

56. Design & Engineering is an essential and integral part of any transmission project. Without it, the transmission system cannot be designed, planned, and executed. It is a well-accepted component of the capital cost in

transmission projects, explicitly recognized under Regulation 9 of the CERC Tariff Regulations, 2014–19, and listed in Form-V of the Tariff Regulations.

57. The Appellant had awarded the engineering consultancy services contract to POWERGRID Corporation of India Ltd. (POWERGRID) vide an award letter dated 21.04.2009, for Rs. 16 crores plus applicable service tax, covering all aspects of design, drawings, engineering consultancy, technical specifications, and bidding documents for the entire transmission line. The last installment of Rs. 1.6 crore plus service tax was payable upon the commercial operation of the transmission line.

58. The Board of Directors (BoD) of the Appellant approved this expenditure in its 19th Board Meeting held on 09.11.2009. Furthermore, the Detailed Project Report (DPR) explicitly stated that consultancy charges for design and engineering were not included in the original cost estimate and needed to be accounted for separately.

59. The Board of Directors of the Appellant, in its meetings dated 26.08.2013 and 05.01.2016, approved the Revised Cost Estimates (RCE), including the costs for Design & Engineering. The actual expenditure incurred up to 31.03.2016 for these services amounted to Rs. 14.40 crore (excluding service tax of Rs. 1.48 crore).

60. CERC disallowed this cost on the sole ground that the justification provided by the Appellant was “not satisfactory,” without citing any specific defect or deficiency in the claim. Further, CERC neither sought clarification nor raised any queries during the proceedings, the relevant extract of the Impugned Order is reproduced as follows:

“41. We have considered the submissions of the Petitioner regarding cost over-run. The cost of Design and Engineering & Audit and Accounts and the variation in cost of erection, stringing & civil works including foundation is disallowed. Accordingly, the cost of Rs. 1336.80 lakh and 268.78 lakh in case of Ckt-2 and Ckt-1 (a) respectively are not capitalised. The details of the cost disallowed are given in the table below: -

(Rs. In lakh)

Srl. No.	Particular	Circuit-1(a)	Circuit-2	Remarks
1.1	Design and Engineering	51.71	132.98	The justification given by the Petitioner for increase is not satisfactory.
2.8	Erection, Stringing and Civil Works including foundation	217.07	345.81	NER region is earthquake prone. The reasons given are not satisfactory.
11.2	Audit and Accounts	0	858.01	The increase is very

				<i>high and it is not justified. Contingency may cover the Audit and account expenditure.</i>
Total		268.78	1336.8	

”

61. The disallowance of Design & Engineering costs by CERC is arbitrary and unjustified. The Appellant has demonstrated that:

- The expenditure is genuine, necessary, and contractually agreed upon with POWERGRID.
- The CERC Tariff Regulations recognize Design & Engineering as a legitimate capital cost component.
- The Board of Directors duly approved the expenditure, and it was a part of the Revised Cost Estimates.
- Similar costs have been allowed in other petitions for the same transmission project (Petitions No. 368/TT/2018, 96/TT/2019, and 35/TT/2021).

62. Undisputedly, Design & Engineering are an essential part of any power system commissioning process, and the costs incurred by the developer ought to be allowed after prudent check.

63. **Accordingly, the Tribunal finds that the disallowances of Rs. 184.69 lakhs towards Design & Engineering are without basis and are liable to be set aside.**

64. The Appeal on this count is allowed in favor of the Appellant.

b)Erection, Stringing & Civil Works, including Foundation Costs

65. It cannot be disputed that the 400 kV Teesta III–Rangpo Transmission Line passes through the difficult hilly terrain in Sikkim, requiring extensive civil work and specialized construction measures. The Appellant has substantiated that the geographical challenges and natural calamities led to increased costs:

- A 6.8 magnitude earthquake struck Sikkim in September 2011, causing landslides and structural instability in several locations.
- Post-earthquake, additional slope stabilization measures and protective walls were required at multiple tower locations to ensure the structural integrity of the foundations. These measures were not originally envisaged in the DPR.
- The remote locations and lack of road accessibility further escalated transportation and labor costs, requiring manual material handling.

66. CERC disallowed these costs on the reasoning that the project is located in an earthquake-prone region, and the justification provided was “not satisfactory.” However, CERC failed to provide:

- Any specific reasoning or prudence check regarding why the costs should not be allowed.
- Any assessment of whether the additional civil works were necessary given the changed site conditions.

67. It is a settled principle of law that the “*Regulatory Prudence*” requires consideration of actual site conditions. In fact, the Central Commission after recording that the project passes through a high earthquake-prone area has disallowed the additional costs required to mitigate such risks. The fact that the region is earthquake-prone strengthens, rather than weakens, the justification for the additional civil works.

68. The DPR itself, in Clause 9.2.1.4, recognized the need for revetment and benching measures due to difficult terrain. The actual quantity executed for excavation, concreting, and reinforcement significantly exceeded the DPR estimates due to site conditions.

69. Similar cost overruns have been approved by CERC in other tariff petitions related to the same transmission project, including:

- Order dated 22.01.2020 (368/TT/2018)
- Order dated 09.08.2020 (96/TT/2019)
- Order dated 22.03.2022 (35/TT/2021)

70. Further, the Appellant has placed on record the audited costs incurred for mitigating the risks, which should have been considered by the Commission before ruling that “***NER region is earthquake prone. The reasons given are not satisfactory.***”

71. In view of the above, the Tribunal finds that the disallowance of Rs. 562.88 lakhs towards Erection, Stringing & Civil Works, including Foundation, is arbitrary and not supported by proper reasoning. The cost increase is justified and should be allowed.

72. The Tribunal finds that the Impugned Order dated 15.05.2018 passed by CERC suffers from a lack of reasoned justification and failure to conduct a prudence check as required under Section 64 of the Electricity Act, 2003.

73. On the contrary, we found that such costs incurred by the Appellant are prudent and required for the commissioning of the project, accordingly, just, and reasonable to be allowed.

74. Therefore, the disallowance of the claimed costs for Design & Engineering and Erection, Stringing & Civil Works, including Foundation, is unjustified and liable to be set aside.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 356 of 2018 has merit and is allowed.

Accordingly, we allow the following costs along with carrying cost:

- (i) Rs. 184.69 lakhs towards Design & Engineering (Rs. 51.71 lakhs for Circuit #1(a) and Rs. 132.98 lakhs for Circuit #2).

- (ii) Rs. 562.88 lakhs towards Erection, Stringing & Civil Works, including Foundation (Rs. 217.07 lakhs for Circuit #1(a) and Rs. 345.81 lakhs for Circuit #2).

The CERC is directed to pass the consequential order within 3 months from the date of this judgment.

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

PRONOUNCED IN THE OPEN COURT ON THIS 25th DAY OF MARCH, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kk