

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 69 of 2020
APPEAL No. 70 of 2020
APPEAL No. 72 of 2020
APPEAL No. 73 of 2020

Dated : 5th May, 2025

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

In the matter of:

APPEAL No. 69 OF 2020

Greenko Budhil Hydro Power Pvt. Ltd.

P.No. 1367, Road No. 45, Jubilee Hills,
Hyderabad – 500033

Through its Manager

Email: manojkumar.t@greenkogroup.com

... Appellant

Versus

1. Central Electricity Regulatory Commission

Through its Secretary,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001
Email: secy@cercind.gov.in

2. Central Transmission Utility of India Limited

Through its Chief General Manager,
“Saudamini”, Plot No. 2,
Sector – 29, Gurgaon – 122001
Email: powergrid.pr@powergrid.in,
swapnilverma@powergridindia.com

3. **Rajasthan Rajya Vidyut Prasaran Nigam Limited**
Through its Nodal Officer,

Vidyut Bhawan, Janpath, Jaipur - 302 005 Rajasthan,
India
Email: ce.nppr@rvpn.co.in
4. **Ajmer Vidyut Vitran Nigam Limited,**
Through its Managing Director,
Vidyut Bhawan, Panchsheel Nagar,
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5. **Jaipur Vidyut Vitran Nigam Limited,**
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Email: companysecy@jvvn.org,
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6. **Jodhpur Vidyut Vitran Nigam Limited,**
Through its Managing Director,
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Email: md.jdvvn@rajasthan.gov.in
ce.nppr@rvpn.co.in
7. **Himachal Pradesh State Electricity Board,**
Through Chairman,
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Email: cecomm@hpseb.in
8. **Punjab State Electricity Board,**
Through its Managing Director,
1st Floor, Opposite Kali Mata Mandir
Shakti Sadan, Patiala - 147001,

Email: cmd-ppcl@ppcl.in

9. **Haryana Power Purchase Centre,**
Through its Chairman,
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Email: cehppc@uhbvn.org.in
10. **Power Development Department,**
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11. **Uttar Pradesh Power Corporation Ltd.,**
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- 20. PTC India Limited**
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APPEAL No. 70 OF 2020

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Through its Manager

Email: manojkumar.t@greenkogroup.com

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APPEAL No. 72 OF 2020

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APPEAL No. 73 OF 2020

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J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The Greenko Budhil Hydro Power Private Limited, (formerly known as Lanco Budhil Hydro Power Private Limited) has, in this batch of four appeals, assailed the common order dated 10th May, 2019 passed by 1st Respondent – Central Electricity Regulation Commission (hereinafter referred to as “Commission or CERC”) passed in four Review Petitions bearing Nos. 65/RP/2016, 66/RP/2016, 18/RP/2017 & 19/RP/2017.

2. The factual matrix in brief, relevant for disposal of the present appeals is given below :-

3. The Appellant owns and operates a 70 MW Hydro Power Plant located at Budhil Village, Chamba District, Himachal Pradesh (hereinafter referred to as the “Budhil HEP”).

4. PTC India Limited (Respondent No. 20 in Appeal Nos. 69/2020 & 70/2020) had applied to Power Grid Corporation of India Limited (now Central Transmission Utility of India Limited i.e. CTUIL, Respondent No. 2) for grant of long-term open access (LTOA) for evacuation and sale of power from the said Budhil Hydro Electric Project. LTOA was granted to the PTC and accordingly a tripartite Bulk Power Transmission Agreement (BPTA) was executed between the Appellant, PTC and PGCIL on 18th October, 2007. As per the terms and conditions of the BPTA, Appellant was required to construct a dedicated transmission line from Budhil HEP to the nearest pooling station of PGCIL. On the other hand, PGCIL was required to construct the 400/220 KV pooling station near Chamera-II HEP of NHPC.

5. It appears that the Appellant had made a request to PGCIL for pre-ponement of the date of commercial operation of the 440/220 KV pooling station as the Budhil HEP was anticipated to commence generation and supply of power during the period 2008-09. PGCIL agreed to pre-ponement of Chamera-II pooling station to match with the

commissioning of Budhil HEP. However, neither Budhil HEP nor Chamera-II HEP of NHPC nor the transmission system of PGCIL could achieve commercial operation as scheduled.

6. PGCIL filed Petition No.92/TT/2011 for approval of transmission charges for (a) 400 kV D/C transmission line from GIS Pooling Station Chamba-Jalandhar, (b) 220 kV D/C transmission line from GIS Pooling Station Chamba-Chamera HEP and (c) Jalandhar Sub-station Extension under Transmission System associated with Chamera-III HEP for 2009-14 period under the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the “2009 Tariff Regulations”). The Commission approved tariff for these assets vide order dated 16th November, 2012 and it was held that the transmission charges for the assets would be shared by PTC/LANCO till they become part of the regional system. The relevant part of the said order is quoted herein below:-

“59. The transmission charges for the transmission assets covered under this petition shall be shared by the PTC/LANCO in line with the

BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets become part of the regional system, i.e. till the commissioning of Chamera-III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with the Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010.”

7. Another petition bearing No. 94/TT/2011 was filed by PGCIL seeking transmission charges for (a) 400 kV S/C Chamera-II Pooling Station transmission line, (b) 400/220 kV 315 MVA ICT-I & ICT-II and (c) 80 MVAR Bus Reactor at pooling point under establishment of 400/220 kV GIS Pooling Station near Chamera-II HEP (referred to as “transmission assets”) for the 2009-14 period under the provisions of the 2009 Tariff Regulations. The transmission charges for the said transmission system were allowed vide order dated 2nd January, 2013. It is pertinent to note here that as in the case of Petition No.92/TT/2011, the Commission held in this case also that the transmission charges would be shared by PTC/LANCO in accordance with the BPTA dated 18th October, 2007 signed between the Appellant, PTC and the PGCIL, till

they become part of the regional system. The relevant portion of the order dated 2nd January, 2013 is extracted hereunder:-

“50. In the light of the submissions of the petitioner, we direct that the transmission charges for the transmission assets covered under Part-I shall be shared by the PTC/ LANCO in line with the BPTA dated 18.10.2007 signed between PTC/LANCO and the petitioner, till these assets becomes part of the regional system i.e. till the commissioning of Chamera–III HEP. After the asset becomes part of regional system, all the constituents of the Northern Region shall share the tariff in accordance with Central Electricity Regulatory Commission (sharing of inter-state transmission charges and losses) Regulations, 2010.”

8. In pursuance to the order dated 16th November, 2012 passed in Petition No.92/TT/2011 and order dated 2nd January, 2013 in Petition No. 94/TT/2011, PGCIL raised invoice dated 2nd July, 2014 for an amount of Rs.404.01 lakhs and Rs.2511.59 lakhs in terms of the BPTA dated 18th October, 2007 upon the Appellant alone towards the transmission charges for the period between November 2011 and June 2012.

9. Meanwhile, PGCIL also filed Petition No.528/TT/2014 and Petition No. 18/TT/2015 for truing up the tariff allowed in Petition No. 94/TT/2011 and Petition No. 92/TT/2011 respectively for 2009-14 tariff

period under the provisions of the 2009 Tariff Regulations and for grant of tariff for the 2014-19 tariff period under the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”). The tariff was trued up vide orders dated 17th February, 2016 and 23rd February, 2016 in these two Petition Nos. 528/TT/2014 and 18/TT/2015 respectively.

10. Feeling aggrieved by these four orders dated 16th November, 2012, 2nd January, 2013, 17th February, 2016 and 23rd February, 2016 in Petition Nos. 92/TT/2011, 94/TT/2011, 528/TT/2014 and 18/TT/2015 respectively, the Appellant (which had taken over Lanco Green Power Pvt. Ltd.) filed Interlocutory Applications separately in all the four petitions seeking recall of these orders and for quashing of the invoices issued by PGCIL pursuant to the these orders. These applications were converted into Review Petitions bearing Nos. 65/RP/2016, 66/RP/2016, 18/RP/2017, 19/RP/2017 as per the directions of the Commission and were disposed of by the Commission vide common order dated 10th May, 2019 which has been assailed in these four appeals. The reasoning of the Commission and the operative part of the impugned order is extracted herein below :-

“21. The instant transmission system was to be built by PGCIL for evacuation of power from GBHPPL’s Budhil HEP and Chamera-II HEP of NHPC. As per the BPTA dated 18.10.2007, the 220 kV D/C Budhil-Chamera Pooling Station and associated bays at Chamera Pooling Station were required to be built by LGPPL. For evacuation of power from Chamera-III HEP, PGCIL was required to LILO the said line as a regional scheme alongwith the commissioning of Chamera-III HEP, which was anticipated to be commissioned in August 2010. The establishment of Chamera- II Pooling Station and the inter-connection upto Chamera-II was to be pre-poned by PGCIL for evacuation of power from Budhil HEP. The transmission charges for the Chamera-II Pooling Station and the transmission line connecting it to Chamera-III was to be borne by LGPPL till it became the part of the regional system. After the commissioning of the Chamera-III HEP the transmission charges were to be shared in the manner decided by the Commission.

22. The evacuation system for Budhil HEP and Chamera-III HEP was under discussion during the period 2005 to 2009 and the final arrangement was arrived at in the 23rd Meeting of the Standing Committee as follows:

- a. Establishment of GIS Pooling Station near Chamera-II by PGCIL
- b. Chamera-II to Chamera-II Pooling Station 400 kV S/C line by PGCIL
- c. Chamera-III to Chamera-II Pooling Station 220 kV line by PGCIL
- d. 220 kV S/C line from Budhil HEP to Chamera-III HEP by LGPPL

23. *It is observed that LGPPL had agreed to bear the transmission charges for the above said transmission system from commissioning of Budhil HEP to the anticipated date of commissioning of Chamera-III HEP, which was August 2010 on the condition that transmission system of PGCIL would be ready on the date of commissioning of Budhil HEP which was anticipated to be in December 2009. However, it is observed that none of the projects i.e. Budhil HEP, Chamera-III HEP and the transmission system were ready on the anticipated dates.*

24. *The instant transmission assets under the scope of PGCIL were constructed for evacuating power from Budhil HEP of LGPPL and Chamera-III HEP of NHPC and they were scheduled to be put into commercial operation on 1.4.2010. On the request of LGPPL, PGCIL agreed to pre-pone the COD of these assets to December 2009 in terms of the BPTA signed with PTC and LGPPL on the agreement that PTC/LGPPL would bear the transmission till they become regional system. Had PGCIL been ready with the transmission assets under its scope in December 2009 (as agreed in the BPTA amongst PTC, LGPPL and PGCIL), LGPPL would have been liable to pay the transmission charges from December 2009. However, the instant assets were put into commercial operation on 1.11.2011. Accordingly, the Commission in the impugned orders had held that LGPPL is liable to bear the*

transmission charges from 1.11.2011 to 24.5.2012 taking into consideration the BPTA between LGPPL and PGCIL.

25. However, it is observed that the instant transmission system was constructed for evacuating power from Budhil HEP of LGPPL and Chamara-III HEP of NHPC. It is further observed that there is an Indemnification Agreement between PGCIL and NHPC dated 22.7.2005 and as per the said Agreement, in case of delay in commissioning of generating station or COD of the transmission system, the defaulting party shall compensate the other party. The relevant portion of the Agreement is as under:-

“2. INDEMNIFICATION”

a) In the event of delay in commissioning of generating units vis a vis ATS the defaulting party shall pay the Interest During Construction (IDC) including Foreign Exchange Rate Variation (FERV) and Govt. Guarantee fee, if any, for generating units and ATS calculated as lower of the two, up to a period of six months from the zero date. However, the defaulting party shall pay the indemnification claim only in case of revenue loss or part thereof suffered by the other party due to delay in commissioning by the defaulting party.”

26. The fact that the instant transmission system was to be shared by LGPPL and NHPC and that there is an Implementation Agreement was not considered by the Commission at the time of issue of the impugned orders. Thus, there is sufficient cause for reconsideration of the impugned

orders in the light of the said facts regarding the sharing of the transmission charges of the subject transmission assets from 1.11.2011 till 24.5.2012, the day they are treated as part of regional transmission system.

27. However, it is noticed that NHPC was not a party in the Petition Nos.92/TT/2011, 94/TT/2011, 19/TT/2015 and 528/TT/2014. Accordingly, PGCIL is directed to file a fresh petition for determining the issue of sharing of transmission charges from 1.11.2011 to 24.5.2012, impleading GBHPPL and NHPC, besides the other beneficiaries of the instant transmission assets within 30 days from date of issue of this order. Further, GBHPPL shall keep the BG valid as per the Commission's order dated 29.5.2017 in I.A No.29/IA/2017, till further directions of the Commission.

28. Review Petition Nos. 18/RP/2017, 19/RP/2017, 65/RP/2016 and 66/RP/2016 are disposed of in terms of above."

11. In the orders passed by the Commission in the original petitions, it was held that the transmission charges for the transmission assets in question are payable by PTC/LANCO in line with the BPTA dated 18th October, 2007. However, in the impugned order passed on the Review Petitions, the Commission appears to have taken a contrary view by holding that the transmission charges for the transmission system in question have to be shared by the Appellant and

NHPC in view of the provisions of the BPTA dated 18th October, 2007 and indemnification agreement dated 22nd July, 2005 entered into between PGCIL and NHPC in terms of which PGCIL was entitled to recover the transmission charges from NHPC in case of any delay in commissioning of Chamera-III HEP beyond August, 2010. The Commission has observed that the fact that the transmission system in question was to be shared by the Appellant and NHPC and the fact that there was an indemnification agreement executed between PGCIL and NHPC, was not considered by the Commission as a time of passing of the orders of the original petitions. Thus, the Commission found sufficient cause for re-consideration of the orders dated 16th November, 2012, 2nd January, 2013, 17th February, 2016 and 23rd February, 2016 passed in the Original Petition Nos. 92/TT/2011, 94/TT/2011, 528/TT/2014 and 18/TT/2015 respectively.

12. However, at the same time, the Commission noticed that NHPC was not a party to these four petitions, and therefore, stopped short of passing final orders holding NHPC liable to share the transmission charges for the transmission system in question along with the Appellant. Accordingly, the Commission disposed off the Review Petitions with a direction to PGCIL to file a fresh petition for adjudication of the issue of

sharing of transmission charges from 1st February, 2011 to 24th May, 2012 impleading the Appellant and NHPC as Respondents therein besides the other beneficiaries of the transmission assets in questions. The relevant paragraph of the impugned order i.e. paragraph No. 27 has already been reproduced hereinabove.

13. Challenging the said common order dated 10th May, 2019 of the Commission in the four Review Petitions, the Appellant has filed this batch of four appeals.

14. In Appeal No. 69 of 2020, tariff order dated 16th November, 2012 passed by the Commission in Petition No. 92/TT/2011 as well as the common Review Order dated 10th May, 2019 has been assailed.

15. In Appeal No. 70 of 2020, tariff order dated 2nd January, 2013 passed in Petition No. 94/TT/2011 as well as the common Review Order dated 10th May, 2019 has been assailed.

16. In Appeal No. 72 of 2020, true-up order dated 23rd February, 2016 passed in Petition No. 18/TT/2015 as well as the common Review Order dated 10th May, 2019 has been assailed.

17. In Appeal No. 73 of 2020, true-up order dated 17th February, 2016 passed in Petition No. 528/TT/2015 as well as the common Review Order dated 10th May, 2019 has been assailed.

18. In essence, the dispute involved in batch of appeals pertains to the levy of transmission charges for the period commencing from 1st November, 2011 to 24th May, 2012 i.e. from the date of commissioning of Chamera Pooling Station of 2nd Respondent – CTUIL till the commissioning of Appellant's 70 MW Hydro power plant.

19. We have heard Learned Senior Counsel appearing on behalf of the Appellant, Learned Counsel for Respondent No. 2 and Learned Counsel for Respondent No. 20. No other Respondent has contested the appeal. We have also gone through Written Submissions filed on behalf of the Appellant, the 2nd Respondent and Respondent No. 20.

Submission on behalf of the Parties

20. The Appellant is aggrieved by the findings of the Commission in paragraph Nos. 24 & 26 of the impugned review order dated 10th May, 2019 wherein, the Commission has reiterated that the Appellant is liable to pay transmission charges for the transmission system in question even though the Commission directed the PGCIL (now CTUIL) to file a fresh petition considering that there exists an indemnification agreement between CTUIL and NHPC which imposes liability of transmission charges upon NHPC as well. The contention of the Appellant is that the Commission has neither considered nor analyzed the terms and

conditions of the BPTA dated 18th October, 2007 in terms of which liability to make payment of transmission charges lies with PTC only.

21. On behalf of the 2nd Respondent, PGCIL, it is contended that a number of hydro electric projects had been envisaged for development in the northern region including the Appellant's Budhil HEP and Chamera-II HEP of NHPC. The transmission system for evacuating power from these projects was discussed in various Standing Committee Meeting as was finalized after discussion and correspondence with the system beneficiaries. It is stated that when the evacuation system from Budhil HEP and Chamera-III HEP was discussed in 18th Meeting of the Standing Committee on transmission system planning in Northern Region held on 6th June, 2025, it emerged that the Appellant had presented that its project is likely to be commissioned earlier than Chamera-III HEP and for which the establishment of 400/220 KV Chamba pooling station along with its connectively to Chamera-III HEP was required to be advanced.

22. It is further stated that in the meeting held on 22nd September, 2006 with Central Electricity Authority (CEA), the construction of sub-station near Chamera-II was agreed by Northern Region constituents as a regional scheme under Chamera-III transmission system and it was decided that PTC was to pay transmission charges for the works till they

became part of regional transmission system. It is further stated that in the subsequent meeting dated 24th November, 2006, the Appellant informed that it was ready to bear full transmission charges for the agreed transmission system and accordingly, the following was recorded in the minutes :-

"1. For transfer of power from Budhil generation project to Haryana, a pooling station near Chamera-II alongwith its connectivity with Chamera-II, which is a part of Chamera-III transmission system, may be preponed. The transmission charge for this part, till this become part of regional system shall be borne by M/s PTC and/or M/s Lanco."

... ..

4. For the above arrangement M/s. PTC will sign BPTA with POWERGRID for bearing transmission charges for Chamera Pooling station and regional transmission charges of NR till the pooling station becomes part of regional transmission system corresponding to 88% of the generation capacity of Budhil generation project."

23. It is argued that the Appellant, on its own violation and based on its commercial considerations, agreed to bear transmission charges for not only the 220 kV D/c Budhil HEP-Chamera pooling station line, but also for the associated transmission system till it became part of the regional transmission system.

24. It is pointed out that vide letter dated 29th August, 2007 also, the Appellant confirmed to PGCIL that it would pay the transmission charges of the transmission line from Chamera-III to Chamba Pooling Station till the time such system becomes part of regional grid. The relevant portion of the letter is extracted hereinbelow :-

“(a) Budhil HEP shall construct the 220 kV double circuit transmission line from Budhil power house to Chamera-III HEP. It shall have initially single circuit single moose conductor, and shall be upgraded to twin moose double circuit conductor once the projects near Budhil HEP take shape.

(b) Power Grid shall advance the construction of the Chamera-III transmission system to match the commissioning schedule of Budhil HEP by LILO. Whereas it is expected that transmission charge from Chamera-III to pooling station is to be paid by the beneficiary of power, Lanco agrees to pay the transmission charges of the line from Chamera-III to Chamba pooling station till such time the system becomes part of the regional grid. Lanco is agreeing to this only to facilitate the process of Power Grid starting work on the line. However, it is expected that the beneficiary of the power will pay this transmission charge.”

25. According to the 2nd Respondent – CTUIL, the transmission system planning was finalized on the premise that the Appellant would be

commissioning its project early, would construct the Budhil HEP-Chamera Pooling sub-station 200 kV D/c line at its own cost and would also bear transmission charges for the Chamera-III transmission system till the same becomes part of regional grid. It is submitted that in the BPTA dated 18th October, 2007 also it was clearly agreed that entire transmission charges for 400-200 KV Pooling Station and its 400 KV connectivity to Chamera-II HEP of NHPC would be borne by PTC/the Appellant till the said assets became part of regional transmission system.

26. It is further submitted that in pursuance to the directions given by the Commission in the impugned Review Order dated 10th May, 2019, PGCIL had filed Petition No. 45/MP/2019 impleading NHPC Limited also as a Respondent and seeking relief against the Appellant in view of the Appellant's unequivocal undertaking to pay transmission charges for the system till it is put to sharing under the regional transmission system. It is stated that the Commission examined the indemnification agreement dated 22nd July, 2005 signed between NHPC Ltd. and PGCIL as well as the minutes of various meetings in the order dated 20th January, 2024 passed in the said petition and has observed in paragraph No. 33 & 34 of the order as under :-

“33.

We observe that the indemnification Agreement provides for payment of Interest During Construction in case commissioning of a transmission system is required to be delayed. We observe that once COD of the transmission system is declared, payment of IDC does not carry any relevance which is applicable prior to COD of the transmission system. We also observe that the zero date agreed in the Indemnification Agreement is "1.9.2010" with the commissioning schedule of generation project Chamera-III and the commissioning schedule of the Associated Transmission System as August 2010."

“34 We have noted the BPTA dated 18.10.2007 which also notes the scheduled commissioning date for Chamera-III as August 2010. However there is no denial to the fact that neither the Budhil HEP of Greenko Budhil, nor the Chamera-III HEP of NHPC Limited nor the transmission system of Petitioner could achieve COD as scheduled. The Budhil HEP was commissioned in two phases on 25.05.2012, the Chamera-III HEP of was commissioned in June 2012 whereas the transmission system of the Petitioner was put to commercial operation on 01.11.2011. There is also no denial of the fact that the instant transmission system was planned for Chamera-III generation project and Budhil as observed from various Standing Committee Meetings. Since both Budhil project and Chamera-III were delayed beyond their

scheduled commissioning dates, however transmission was commissioned, we find that both Chamera-III and Budhil generation project are defaulters due to whom the transmission system could not be put to use. Hence we exercise our regulatory powers and direct that transmission charges shall be shared by both the defaulters i.e. Chamera-III and Budhil generation project (GBHPPL) in the ratio of their Installed capacity, till the transmission system became part of the regional system i.e. from 1.11.2011 till 24.05.2012.”

27. It is submitted that the Commission has proceeded on the premise that subject transmission system had been planned for Chamera-III HEP and Budhil HEP and since both the projects have been delayed beyond the scheduled commissioning dates but the transmission system has been commissioned, both the Appellant and NHPC were defaulters due to whom the transmission system has not been put to use and accordingly, in exercise of its regulatory powers, the Commission directed the transmission charged to be shared by both the Appellant and NHPC in the ratio of their installed capacities till the transmission system has become part of regional system.

28. It is also pointed out that the said order dated 20th January, 2024 passed by the Commission in Petition No.451/MP/2019 has been

challenged by the Appellant as well as NHPC by way of Appeal Nos. 248 of 2024 and 124 of 2024 respectively which are still pending adjudication in this Tribunal.

29. On behalf of Respondent No. 20 - PTC also, reference has been made to the letters dated 29th August, 2007 and 24th September, 2007 addressed by the Appellant to PGCIL to point out that the Appellant itself had specifically agreed to bear the transmission charges for the transmission system in question till the time it becomes part of regional grid. Relying upon some previous orders of the Commission, it is argued that in the event of mis-match in execution of the linked transmission/generation elements the party whose assets are not yet ready and because of whom the already executed assets of the other transmission licensees have not been put to regular service i.e. the defaulting party is liable to pay the transmission charges till the elements become part of regional system irrespective of any relation between the parties executing the linked elements. It is argued that since the Appellant is a defaulting party as it did not commission its hydro power project on the scheduled commissioning date, it is liable to pay transmission charges of the transmission system in question of PGCIL

and, therefore, the impugned order of the Commission does not suffer from any equity.

Our Analysis

30. It is not in dispute that Budhil HEP of the Appellant was not commissioned on the scheduled commissioning date and in fact was commissioned in two phases on 25th May, 2012. Similarly, the Chamera-II HEP of NHPC also was commissioned in June, 2012 i.e. much beyond its scheduled commissioning date. However, the transmission system of PGCIL had been put to commercial operation on 1st November, 2011. Accordingly, the dispute between the parties involves the levy of transmission charges for the transmission assets of PGCIL (now CTUIL) from the date of its commissioning i.e. 1st November, 2011 to the date when Appellant's Budhil HEP was commissioned i.e. 24th May, 2012.

31. We find that the Commission totally mis-read the contents of BPTA dated 18th October, 2007 which is a tripartite agreement between PGCIL, PTC and the Appellant. The Commission appears to have gone beyond the scope of the said BPTA in holding the Appellant liable for payment of the transmission charges for the transmission system in question of PGCIL along with NHPC for the reason that the name of NHPC no where

figures in the BPTA at all. With regards to the payment and sharing of transmission charges, it has been agreed in the said BPTA as under :-

“Transmission charges:

For transfer of power from Budhil generation project, a pooling station near Chamers-II alongwith its connectivity with Chamera-II, (which is a part of Chamers-II transmission system) is required to be preponed. The system would be built by POWER GRID and the transmission charges for this part, till it becomes part of regional system shall be borne/shared by PTC/ Lanco. In regard to the payment of transmission charges corresponding to the amount of power as given in the Long Term application and for transfer of 12% free power for the first 12 years and 18% free power thereafter from Budhil generation project to Himachal Pradesh (HP), following is agreed:

Case i: Evacuation arrangements made for transfer of free power to HP

M/s HPSEB/Lanco shall make adequate transmission arrangement at their own cost and draw 12% / 18% free power from Budhil generating station. PTC will bear the complete transmission charges of above Chamera pooling station for the period it is preponed till it becomes part of the regional system and the regional transmission charges of NR corresponding to 88% of the generation capacity of Budhil generation

project for the first 12 years and 82% of the generation capacity of Budhil generation project thereafter.

Case ii: *Evacuation arrangements not made for transfer of free power to HP*

In the event, HPSEB/Lanco either does not make adequate transmission arrangement or draws 12% / 18% free power from the Budhil generation switchyard, full power from Budhil generation project would be injected at Chamera Pooling station. For this, Lanco shall bear the transmission charges for Chamera Pooling station from its (Date Of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of Northern region corresponding to 12% of the generation capacity of Budhil generation project for the first 12 years and 18% of the generation capacity of Budhil generation project thereafter.

And PTC shall bear transmission charges for Chamera Pooling station from its (Date Of Commercial Operation) DOCO till the pooling station becomes part of regional transmission system and regional transmission charges of NR corresponding to 88% of the generation capacity of Budhil generation project for the first 12 years and 82% of the generation capacity of Budhil generation project thereafter.”

(Emphasis supplied)

32. The dispute at hand appears to be covered by **case – II** as none of the parties has brought to our notice that transmission arrangement had been made for transfer of 12%/18% free power from Budhil HEP to HPSEB. Therefore, it is clear from the plain reading of BPTA that the Appellant is liable to bear the transmission charges for Chamera Pooling station from its Commercial Operation Date till it becomes part of regional transmission system as well as regional transmission charges of northern region corresponding to only 12% of the generation capacity of its Budhil HEP for 12 years and corresponding to 18% of the generating capacity of the power project thereafter, whereas its PTC which has to bear the transmission charges of the said pooling station from its COD till it becomes part of regional transmission grid as well as regional transmission charges of northern region corresponding to 88% of the generation capacity of Budhil HEP for the first 12 years and corresponding to 82% of the generation capacity of the power project thereafter. Thus, both the Appellant and PTC were to share the transmission charges for the asset in question from its Commercial Operation Date till it became part of regional transmission system.

33. Further, clause 1.0(a) of the BPTA specifically provides that the long-term transmission customer shall share and pay the transmission charges including FPRV, incentive, taxes etc. of Power Grid transmission system of northern region including charges for inter-regional links and system strengthening scheme. In the preamble of the BPTA, PTC has been specifically mentioned as “Long-term Transmission Customer”.

34. Hence, the liability to pay transmission charges as well as other charges of PGCIL was not entirely upon the Appellant but were to be shared by Appellant and PTC as agreed in the BPTA.

35. No doubt, the Appellant had in the meeting dated 24th November, 2006 as well as in the letter dated 29th August, 2007 addressed to PGCIL expressed willingness to pay the transmission charges of the transmission line from Chamera-III to Chamba pooling station. However, it is to be noted that all this has happened much prior to the execution of BPTA dated 18th October, 2007 between PGCIL, PTC and the Appellant. Upon execution of the BPTA, all previous representations held out by the Appellant with regard to payment of transmission charges for the transmission line in question, lost their significance and the rights and obligations of the parties vis-à-vis the payment of transmission charges

got crystalized and came to be governed by the provisions of the BPTA which have been noted already here in above. The BPTA is a tripartite agreement to which the PTC and PGCIL are signatories apart from the Appellant. Therefore, all the three are bound by the terms and conditions therein regarding payment of transmission charges.

36. The indemnification agreement dated 22nd July, 2025 stated to have been executed between PGCIL and NHPC, which has been noted and relied upon by the Commission in the impugned order, does not in any way alter or substitute the provisions of the BPTA. It is a separate agreement between PGCIL and NHPC and cannot be relied upon to hold Appellant liable to share transmission charges for the transmission line in question along with NHPC.

37. Therefore, there was no material before the Commission on the basis of which it could hold the Appellant liable to pay transmission charges alongwith NHPC for the transmission asset in question. Evidently, the Commission has erred in holding so.

38. We are consciously refraining from expressing any opinion upon the subsequent order dated 20th January, 2024 passed by the Commission in petition No. 45/MP/2019 of PGCIL as its

correctness/legality would be examined by this Tribunal in Appeal Nos. 248 of 2024 and 124 of 2024 filed by the Appellant and NHPC respectively.

39. Hence, the impugned order of the Commission dated 10th May, 2019 as well as the orders dated 16th November, 2012 & 2nd January, 2013 passed in Petition Nos. 92/TT/2011 & 94/TT/2011 respectively cannot be sustained. The same is hereby set aside. All the four Appeals stand allowed. Resultantly the Review Petitions filed by the Appellant before the Commission also stand allowed. Accordingly, we hereby quash the invoices dated 2nd July, 2014 issued by PGCIL in the name of the Appellant and direct the PGCIL(now CTUIL i.e. Respondent No. 2) to issue fresh invoices in terms of the provisions of BPTA which have been noted and explained herein above.

Pronounced in the open court on this 5th day of May, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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REPORTABLE / NON-REPORTABLE
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