

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

**APPEAL No. 106 of 2020**

**Dated: 01.07.2025**

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

**IN THE MATTER OF:**

- (1) Mahan Energen Limited  
(Formerly known as Essar Power MP Ltd.)  
Through its Associate General Manager,  
Near Vaishno Devi Circle, S.G. Highway,  
Khodiyar, Ahmedabad - 382421.
- (2) Essar Power Transmission Company Limited,  
Through its Director,  
Lower Ground Floor,  
Hotel Conclave Boutique,  
A-20, Kailash Colony, New Delhi – 110048.

**...Appellant(s)**

**Vs.**

- (1) Central Electricity Regulatory Commission  
(Through Secretary)  
3<sup>rd</sup> and 4<sup>th</sup> Chanderlok Building,  
36, Janpath Road,  
New Delhi, Delhi – 110001.
- (2) Western Regional Power Committee,  
(Through Member Secretary)  
F-3, MIDC Area, Marol,  
Opp. SEEPZ, Central Road,  
Andheri (East), Mumbai – 400093.
- (3) Central Electricity Authority,

(Through the Chairperson)  
Sewa Bhawan, R. K. Puram,  
New Delhi – 110066.

- (4) Western Regional Load Despatch Centre  
(Through the Secretary)  
F-3, MIDC Area, Marol,  
Andheri (East), Mumbai – 400093.
- (5) Power Grid Corporation of India Limited  
B-9, Qutab Industrial Area,  
Katwaria Sarai,  
New Delhi – 110016.
- (6) M.P. Power Management Company Ltd.  
(Through the CMD)  
Shakti Bhawan, Rampur, Jabalpur,  
Madhya Pradesh – 482008.
- (7) National Load Despatch Centre,  
(Through the Director (MO),  
Power System Operation Corporation Limited,  
B-9 (1<sup>st</sup> Floor), Qutab Institutional Area,  
Katwaria Sarai, New Delhi – 110016.

**...Respondent(s)**

Counsel for the Appellant(s)	:	Mr. Sanjay Sen, Sr. Adv. Mr. Hemant Singh Mr. Mridul Chakravarty Mr. Biju Mattam Mr. Lakshyajit Singh Bagdwal Mr. Supriya Rastogi Agarwal Mr. Chetan Kumar Garg Mr. Ankita Bafna Mr. Harshit Singh Mr. Robin Kumar Ms. Alchi Thapliyal Ms. Lavanya Panwar for A-1
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Mr. Buddy A. Ranganadhan, Sr. Adv.  
Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Mr. Amal Nair  
Mr. Kritika Khanna  
Ms. Shivani Verma for A-2

Counsel for the Respondent(s) : Mrs. Suparna Srivastava  
Ms. Neha Sharma for R-5

Mr. Aditya Singh for R-6

### **JUDGEMENT**

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

1. M/s. Mahan Energen Limited and M/s. Essar Power Transmission Company Ltd. (in short "Appellants") filed the captioned appeal under Section 111 of the Electricity Act, 2003, against the Order dated 21.01.2020 (in short "Impugned Order") passed by the Central Electricity Regulatory Commission (in short "CERC" or "Respondent Commission") in Petition no. 132/MP/2018.

#### **Description of the Parties**

2. Appellant No. 1, Mahan Energen Ltd. (in short "MEL"), is a generating company formerly known as M/s Essar Power M.P. Ltd. (in short "EPMPL").

3. Appellant No. 2, Essar Power Transmission Company Ltd. (in short "EPTCL"), previously a group company of Appellant No. 1, was granted a

transmission licence by the Commission on 29.04.2008, effective from 08.04.2008, to develop specific transmission lines and substations.

4. Respondent No. 1 is the Central Electricity Regulatory Commission, which is a statutory body functioning vested with the functions and powers by the Electricity Act 2003 (in short “Act”).

5. Respondents No. 2, 3, and 4 are the Statutory authorities constituted under the Act.

6. Respondent No. 5, Power Grid Corporation of India Limited (in short “PGCIL”), is a deemed Inter-State Transmission Licensee and was mandated to undertake functions of Central Transmission Utility (in short “CTU”) under Section 38 (1) of the Electricity Act, 2003 for transmission of power, before bifurcating into two entities, namely PGCIL and CTUIL.

7. Respondent No. 6, M.P. Power Management Company Ltd., is a holding company of the State of Madhya Pradesh entrusted with the purchase of power for the Discoms of M.P., inter alia, is a beneficiary of Appellant No. 2.

8. Respondent No. 7, National Load Despatch Centre (in short “NLDC”), is a Statutory authority constituted under the Act.

### **Factual Matrix**

9. Appellant No. 2 commissioned the following transmission system under the grant of transmission licence:

**1. Transmission Lines:**

400 kV D/C (triple conductor) transmission line from Mahan to Sipat Pooling sub-station.

LILO of the existing 400 kV S/C Vindyanchal-Korba transmission line at Mahan.

400 kV D/C (twin conductor) transmission line from Gandhar NTPC switch yard to Hazira.

**2. Substations:**

3x500 MVA, 400/220 kV sub-station at Hazira.

2x50 MVAR line reactors at Sipat pooling sub-station.

2x50 MVAR line reactors at Mahan.

1x80 MVAR, 420 kV switchable bus reactor at Mahan TPS with its associated 400 kV bay.

2 nos. 400 kV line bays at Sipat pooling sub-station.

2 nos. 400 kV line bays at Gandhar NTPC switchyard.

4 nos. 400 kV line bays at Mahan TPS.

10. On 10.06.2014, the National Load Despatch Centre (NLDC) filed Petition No. 30/MP/2014 seeking issuance of directions to the Central Transmission Utility (CTU) to:

- i. Review all granted connectivity to ensure compliance with CEA Standards.
- ii. Stop granting connectivity through interim LILO arrangements and shift existing interim LILO connectivity to permanent arrangements.

11. Essar Power Limited, being the holding company of EPMPL and EPTCL, was named as a Respondent since EPMPL was granted connectivity through an LILO on the Vindyanchal-Korba transmission line developed by EPTCL.

12. EPMPL and EPTCL represented Essar Power Limited before the Commission. The Commission, in its order dated 28.09.2016, observed that LILO arrangements could be permanent or temporary:

- i. Permanent LILO is part of planning if established for technical reasons, including optimal asset utilization.
- ii. Temporary LILO may be allowed where generation is commissioned ahead of a dedicated transmission line due to issues like ROW or forest clearance, subject to a defined timeline for completion of the dedicated transmission line and removal of the LILO.

13. The Commission directed the Regional Power Committee (RPC) to review the interim LILO connectivity within one month of the order, and the interim LILO should be disconnected within three months unless an extension is granted by the RPC.

14. On 31.01.2017, in compliance with the order in Petition No. 30/MP/2014, WRPC reviewed the progress of work by EPTCL and permitted evacuation from the LILO at Mahan until 30.06.2017. WRPC directed that if the Mahan-Sipat line was not completed by 30.06.2017, the LILO at Mahan should be disconnected, assuming it was a temporary arrangement.

15. On 14.06.2017, EPMPL filed Petition No. 127/MP/2017 before CERC seeking:

- i. A direction to CTU to refrain from disconnecting the LILO until WRPC's decision in its next meeting, or without CERC's express permission.
- ii. An order directing WRPC to consider EPMPL's request for continued use of the interim LILO or, alternatively, to permit EPMPL to use the interim connectivity until January 2018.
- iii. Permission to use the interim LILO pending WRPC's decision.

16. On 28.06.2017, a meeting was held under the chairmanship of Member (Power System), CEA (Respondent No. 3) to discuss the extension of the LILO arrangement for power evacuation from Appellant No. 1's project.

17. Then on 30.06.2017, CERC directed WRPC to expeditiously consider EPMPL's request and instructed CTU to maintain the status quo until WRPC's decision, not later than 05.07.2017.

18. On 07.07.2017, PGCIL informed WRLDC, EPMPL, and others, based on the CERC order dated 30.06.2017 and WRPC's letter dated 04.07.2017, that WRPC

would decide the matter regarding the extension of the LILO arrangement in the 34th TCC/WRPC meeting scheduled for 27.07.2017 and 28.07.2017. It was communicated that the LILO arrangement would continue until then.

19. On 11.09.2017, WRPC issued the minutes of the 34th TCC/WRPC meeting, deciding to continue the interim LILO arrangement until 30.09.2017, with a review to be conducted thereafter. On 17.11.2017, the 42nd meeting of the Standing Committee on Power System Planning of the Western Region was held to discuss the continuity of the LILO arrangement for EPMPL.

20. On 20.12.2017, WRPC held its 35th meeting, where detailed deliberations on the LILO arrangement of Appellant No. 1 took place. WRPC granted one month's time until 20.01.2018 and directed EPMPL to seek directions from CERC on the continuation of the LILO of the 400 kV D/C Vindhyachal-Korba Transmission Line at Mahan.

21. EPMPL filed Petition No. 10/MP/2018 before CERC on 25.12.2017, seeking:

- i. A declaration that the LILO of the Vindhyachal-Korba D/C line at Mahan (an ISTS element) be treated as a permanent element due to technical requirements.
- ii. A direction to CTU to refrain from taking any coercive steps to disconnect the LILO pending WRPC's decision.

22. On 19.01.2018, the Commission directed the completion of the Mahan-Sipat Line by 31.03.2018, failing which the LILO at Mahan was to be disconnected.



Regarding the request to declare the LILO as a permanent element, the CERC directed the CTU to approach the Commission for the continuation of the LILO after 31.03.2018 with proper justification.

23. On 20.03.2018, EPMPL filed an appeal before this Tribunal against the CERC order in Petition No. 10/MP/2018, seeking:

- i. Setting aside the order dated 19.01.2018, to the extent it directed the opening of the LILO at Mahan on the Vindhyachal-Korba D/C Line.
- ii. A declaration that the LILO at Mahan on the Vindhyachal-Korba D/C Line is a permanent element and cannot be removed.

24. On 27.03.2018, this Tribunal disposed of the Appeal, directing the completion of the Mahan-Sipat Line by 30.06.2018. On the prayer for declaring the LILO at Mahan as a permanent element, the Tribunal granted liberty to the Appellant to raise the issue before the appropriate legal forum.

25. In June 2018, CTU filed Petition No. 132/MP/2018 before CERC, as directed in Petition No. 10/MP/2018. The petition was admitted by the Commission on 20.12.2018.

26. On 20.12.2018, CERC directed CTU to submit additional information on affidavit, and 11.01.2019, PGCIL (Respondent No. 5) submitted point-wise information.

27. On 05.03.2019, MPPMCL (Respondent No. 6) filed its reply, and on 26.03.2019, CTU filed a rejoinder to the reply.

28. On 21.01.2020, CERC disposed of Petition No. 132/MP/2018, directing that:

- i. LILO at Mahan shall continue for six months.
- ii. CTU shall conduct system studies within two months.
- iii. LILO line is a dedicated line of EPMPL, and EPMPL shall bear the transmission charges.

29. Thus, being aggrieved by the Impugned Order dated 21.01.2020 passed by the CERC in the Petition No. 132/MP/2018, the Appellants have preferred the present Appeal.

**Written Submissions of the Appellant No.1, Mahan Energen Limited**

30. The Appellant No. 1 submitted that the present Appeal challenges the order dated 21.01.2020 passed by the Central Electricity Regulatory Commission (CERC) in Petition No. 132/MP/2018, wherein Mahan Energen Limited (MEL) was held solely liable for transmission charges concerning the LILO of the 400 kV single-circuit Vindhychal-Korba transmission line.

31. The core issue pertains to the classification of this LILO asset and whether MEL can be exclusively burdened with its transmission costs. At the time of the Impugned Order, Essar Power MP Limited and Essar Power Transmission Company Limited belonged to the same corporate group.

32. However, following the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016, Adani Power Limited took over EPMPL under the NCLT, Delhi order dated 01.11.2021 in Petition No. 863 (PB)/2020, after which EPMPL was renamed Mahan Energen Limited.

33. The Impugned Order is contrary to the Electricity Act, 2003, as it erroneously categorizes the subject LILO asset as a dedicated transmission line of MEL. In reality, the asset forms part of the Inter-State Transmission System and falls within the transmission licence granted to Essar Power Transmission Company Limited by the same regulatory authority.

34. The transmission licence was granted to Essar Power Transmission Company Limited on 10.04.2008, as per the Commission's own findings. The Commission had explicitly held that the transmission system, including the subject LILO, was never considered a dedicated transmission system since its inception.

35. Accordingly, the subject LILO asset has always been classified as part of the Inter-State Transmission System (ISTS) and not as a dedicated transmission line (in short "DTL") of Mahan Energen Limited. This position has been reaffirmed in multiple orders issued by the Respondent Commission, including the order dated 12.09.2013 in Petition No. 173/TT/2013, the order dated 30.01.2018 in Review Petition No. 27/IA/2017, and the Minutes of Meeting dated 28.06.2017 of the Central Electricity Authority, which categorically recognized the subject LILO as an ISTS asset being implemented by EPTCL and not a dedicated transmission system of the generation developer.

36. Given that the classification of the subject LILO as part of ISTS has been consistently upheld, the Respondent Commission had no justification to unilaterally alter its nature to a '**Dedicated Transmission Line**' in contradiction to its prior decisions. Such reclassification is contrary to settled legal principles, which establish that once an asset is integrated into ISTS, it cannot be retrospectively treated as a dedicated transmission asset.

37. This principle has been reinforced by judicial precedents, including the judgment dated 21.10.2020 in Appeal No. 16 of 2020 (**Odisha Power Generation Corporation Limited v. CERC & Ors.**) and the judgment dated 31.10.2022 in Appeal No. 450 of 2019 (**Kanchanjunga Power Company Private Limited v. CERC & Ors.**), both of which affirm that an ISTS asset cannot later be designated as a dedicated transmission system. In light of these legal and regulatory findings, the Impugned Order treating the subject LILO as a dedicated line of MEL is unsustainable.

38. In furtherance of the above, reference is made to Sections 2(16), 2(72), 2(73), 9, 10, and 40 of the Electricity Act 2003. The said provisions are as follows:

***“Section 2. (Definitions): --- In this Act, unless the context otherwise requires,-***

*... ..*

*(16) “dedicated transmission lines” means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in*

*section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;*

*(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.*

*(73) "transmission licensee" means a licensee authorised to establish or operate transmission lines*

**Section 9. (Captive generation):**

*(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:.....*

**Section 10. (Duties of generating companies): ---**

*(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating*

*stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

**Section 40. (Duties of transmission licensees):**

*It shall be the duty of a transmission licensee -*

*(a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;”*

*... ..*

*(c) to provide non-discriminatory open access to its transmission system for use by-*

*(i) any licensee or generating company on payment of the transmission charges; or.....”*

39. Further, submitted that the statutory framework under the Act distinguishes between transmission lines and dedicated transmission lines. Sections 2(16), 9, and 10 establish that dedicated transmission lines can only be constructed by captive generating plants or generating companies, whereas transmission lines, as defined under Section 2(72), can only be constructed by licenced transmission entities under Sections 2(73) and 40(a).

40. The Central Government's "Removal of Difficulty (5th Order)" further reinforces that dedicated transmission lines do not fall within the scope of transmission lines under Section 2(72) or distribution systems under Section 2(19).

41. Consequently, a transmission licensee, in its capacity as such, is responsible for constructing and operating an Inter-State Transmission System (ISTS) and is entitled to receive transmission charges for its usage under Section 40(c)(i).

42. Given this legal position, the question of whether the subject LILO asset was intended as a temporary or permanent arrangement is irrelevant. Once it was granted a transmission licence, it became an integral part of ISTS and could not be reclassified as a dedicated transmission line.

43. Further, by categorizing the LILO as dedicated, the Respondent Commission has effectively amended the ISTS licence of EPTCL without adhering to the statutory process under Section 18 of the Act, which mandates a structured procedure for such modifications.

44. In light of the above, the Appeal ought to be allowed, with a declaration that the LILO of the 400 kV Vindhyachal-Korba transmission line is part of the ISTS, and Mahan Energen Limited cannot be made solely liable for its transmission charges.

**Written Submissions of the Appellant No. 2, EPTCL**

45. The present Appeal challenges the order dated 21.01.2020 passed by the Central Electricity Regulatory Commission in Petition No. 132/MP/2018, wherein the Commission directed Appellant No. 1 to bear the transmission charges for the LILO of the 400 kV D/C Vindhyachal-Korba Transmission Line at Mahan Thermal Power Station until an alternative system is identified through system studies to mitigate high short circuit levels.

46. The Impugned Order primarily held that:

(a) The LILO was permitted only as an interim connectivity measure due to delays in the commissioning of the Sipat Pooling Station and was not part of the original transmission planning.

(b) Continued operation of the LILO may contribute to a short circuit at Vindhyachal.

(c) The LILO was classified as a dedicated transmission line of EPMPL, making the company solely liable for its transmission charges, and

(d) EPMPL (now MEL) must continue paying the charges until the Commission takes a final view based on system studies.

47. After this, the Commission directed the opening of the LILO (order dated 01.06.2022) and issued a final decision on 04.05.2023. This Appeal specifically contests the Commission's findings in paragraphs 28 and 29 of the Impugned Order, which impose liability for transmission charges on Appellant No. 1.

48. Also submitted that the Commission had earlier granted an ISTS licence to EPTCL on 10.04.2008 for various transmission lines and sub-stations, which



explicitly included the subject LILO as part of the licenced ISTS network. Given this, the classification of LILO as a dedicated transmission asset and the imposition of transmission charges on EPMPL are erroneous. The Appeal seeks to set aside this erroneous classification and confirm that the LILO forms part of the ISTS, thereby exempting EPMPL from exclusive liability for transmission charges.

49. This Tribunal, in its judgment dated 11.12.2024 in Appeal No. 397 of 2018 (***Essar Power Transmission Company Limited v. CERC & Ors.***), acknowledged that the Central Commission had granted an ISTS licence to EPTCL for its transmission lines and substations, including the LILO, vide order dated 10.04.2008 in Petition No. 157 of 2007.

50. While granting the licence, the Central Commission held that the entire transmission system, including the LILO, was not a dedicated transmission system, as a dedicated line does not require a licence. It further observed that the system could be utilized in the future for purposes beyond its initial construction intent. This order was never challenged and has attained finality.

51. Therefore, the Impugned Order contradicting the 2008 licence order is legally unsustainable and ought to be set aside. Once an asset is part of the ISTS, the transmission charges for its usage must be recovered under the ISTS Sharing Regulations, 2010.

52. As per Regulation 3 read with Regulations 2(l) and 2(y), the charges must be shared by all Designated Interstate Customers (DICs) and not imposed solely on Appellant No. 1.

53. Furthermore, EPTCL had filed tariff petitions (Petition Nos. 173/TT/2013 and 111/TT/2015) seeking tariff determination for Stage-I transmission assets, including the LILO, from COD to 31.03.2014 and for truing-up of the 2009-14 period. The Central Commission, in its order dated 15.06.2016, held that the billing, collection, and disbursement of transmission charges would be governed by the ISTS Sharing Regulations, 2010. This includes other assets under the 2008 transmission licence, such as the 400 kV Bays at NTPC Gandhar Switchyard.

54. Accordingly, the Impugned Order's classification of the LILO as a dedicated transmission line and the imposition of exclusive transmission charges on Appellant No. 1 are erroneous and contrary to settled regulatory and legal principles.

55. The Central Commission had earlier directed EPTCL and NTPC to jointly approach it for tariff determination of two bays, with recovery through the POC Pool. NTPC's review petition (RP No. 55/RP/2016) against this direction was dismissed on 30.01.2018.

56. Subsequently, MPPMCL, Respondent No. 6, filed Appeal No. 371 of 2018 against the orders dated 15.06.2016 and 30.01.2018, which remains pending before this Tribunal. From the outset, it was established that the tariff for the transmission assets, including the LILO, must be determined under the ISTS Sharing Regulations, 2010, making any bifurcation for tariff determination unjustified.

57. The Review Order dated 30.01.2018 reaffirmed that the transmission licence order was unchallenged and final, rendering any objections regarding the nature of the transmission lines baseless. Despite this, the Impugned Order disregards previous rulings affirming that the LILO is part of ISTS and not a dedicated transmission line.

58. Furthermore, EPTCL filed Petition No. 92/MP/2021 before the Central Commission for the determination of the AFC of the LILO and the separation of its tariff from other EPTCL assets.

59. However, the Central Commission, in its order dated 04.05.2023, upheld its decision that transmission charges for the LILO post 21.01.2020 must be recovered exclusively from Appellant No. 1, relying on the Impugned Order in Petition No. 132/MP/2018. This approach contradicts settled regulatory principles and previous orders that recognized the LILO as part of ISTS, warranting the setting aside of the Impugned Order.

60. EPMPPL has filed Appeal No. 162 of 2024 challenging the Central Commission's order dated 04.05.2023 in Petition No. 92/MP/2021, currently pending before Court-1 of this Tribunal. The key issues in the present appeal are

- (i) the validity of Para 30 of the Impugned Order concerning the period when the LILO remained a licenced asset and
- (ii) whether a transmission asset forming part of ISTS can simultaneously be treated as a dedicated transmission line.

61. This legal question has already been settled by this Tribunal in its Judgment dated 31.10.2022 in Appeal No. 450 of 2019 (***Kanchanjunga Power Company Pvt. Ltd. v. CERC & Ors.***). The argument of MPPMCL that tariff recovery from the PoC Pool is unjustified because the LILO was not a permanent element is misconceived.

62. MPPMCL's reliance on this Tribunal's order dated 27.03.2018 in DFR No. 1052 of 2018 (***Essar Power M.P. Limited v. CERC & Ors.***) is misplaced, as that order granted Appellant No. 1 the liberty to raise its grievance before the appropriate legal forum. Neither the Electricity Act, 2003, nor the applicable regulations distinguish between temporary and permanent transmission assets. Every licenced asset is inherently temporary since licences are issued for a defined period of 25 years under Section 15(8).

63. Thus, the only relevant issue is whether the LILO is a licenced asset. The classification as temporary or permanent has no impact on its licensing status or the recovery of its tariff. Accordingly, the impugned order is flawed and warrants reversal.

**Reply of the Respondent No. 5, PGCIL (Dated 06.10.2020)**

64. We considered the reply of CTU, erstwhile PGCIL, as they prefer not to file any written submissions.

65. Respondent No. 5 submitted that the Appellants' grievances pertain to:

- (i) the rejection by CERC of their request to make the LILO of the Vindhyachal-Korba STPP 400kV D/C line at Mahan TPS permanent, and
- (ii) the imposition of transmission charges on Appellant No.1 for the LILO, which has been deemed dedicated to Mahan TPS.

66. Regarding the first issue, CERC had granted the Appellants a six-month period to continue using the LILO while Respondent No.5 conducted system studies to assess its impact, particularly on short circuit levels at the Vindhyachal complex. The studies were completed, and the findings were discussed in the 1st Meeting of the Western Region Power Committee (Transmission Planning), with the outcome communicated to CERC via a letter dated 10.07.2020.

**67. On the second issue, the LILO was part of a transmission system implemented by Appellant No.2 under a transmission licence from CERC. Since its commissioning, its transmission charges have been recovered through the Point of Connection (PoC) mechanism under the 2010 Sharing Regulations.**

68. Respondent No.5, responsible for collecting and disbursing yearly transmission charges (YTC) for ISTS licensees, issues bills based on Monthly/Regional Transmission Accounts (RTAs) prepared by Respondent No.2.

69. These RTAs rely on injection/withdrawal data from Respondent No.7 (NLDC), which also determines the inclusion or exclusion of assets in the PoC pool.

70. There is a distinction between Respondent No.5's role as a system planner and as the nodal agency for billing and disbursement. The transmission charges for the LILO continued under the PoC mechanism until the Validation Committee's decision to exclude its tariff, along with GIS at Hazira and the 400kV Hazira-Gandhar line, from PoC computations.

71. Consequently, Respondent No.5 must issue transmission charge bills as per the revised RTAs, subject to modifications by CERC or this Tribunal.

**Written Submissions of the Respondent No. 6, MPPMCL**

72. Respondent No. 6 submitted that the connectivity of Mahan TPS to the WR Grid was facilitated through a temporary LILO of one circuit of the 400 kV Vindhyachal-Korba STPS line at Mahan TPS, executed by EPMPPL.

73. Power transfer from Mahan TPS was conducted on a short-term basis. As per the LTA intimation dated 01.08.2012, EPMPPL was required to remove the LILO and restore the line to its original configuration at its own cost as a prerequisite for LTA commencement, confirming the temporary nature of the LILO.

74. In its order dated 28.09.2016 in Petition No. 30/MP/2014, CERC recognized that a LILO arrangement may be either permanent or temporary. A LILO planned for technical reasons, including optimal asset utilization, is considered permanent, whereas a LILO introduced as a temporary measure, such as to facilitate early

commissioning of generation in the absence of a dedicated transmission line due to right-of-way or forest clearance delays, must have a clear removal timeline.

75. CERC had reiterated in its order dated 16.02.2015 in Petition No. 92/MP/2014 that LTA on LILO is permissible only if the LILO was considered at the planning stage or granted as a temporary measure until the originally planned system becomes operational, subject to system security assessments.

76. Since the present LILO was not planned as a permanent element but was necessitated due to delays by the Appellants, it does not qualify as a permanent feature.

77. Further, CTU's petition contradicts this Tribunal's order dated 27.03.2018 in DFR No. 1052 of 2018, which had denied treating the LILO as a permanent element. Therefore, the reopening of this issue by CTU/Respondent No. 5 is in direct contravention of the Tribunal's earlier ruling.

78. CERC, in its order dated 21.01.2020 in Petition No. 132/MP/2018, directed CTU to conduct system studies within two months, deliberate the findings in WRPC, consult with CEA, and take necessary actions to address fault levels. CTU's report dated 19.01.2022 confirmed that the interim LILO was increasing the fault level at Vindhyanchal, causing higher voltages and downstream issues in Chhattisgarh.

79. Consequently, CERC ordered the opening of the LILO within 15 days of its order dated 01.06.2022 in IA No. 4/IA/2022 in Petition No. 92/MP/2021. The

Appellants have relinquished their LTA for ISTS usage, and power is now being evacuated through the LILO system rather than the ISTS. As a result, the LILO effectively becomes a dedicated line of the first Appellant.

80. Since the first Appellant no longer utilises the ISTS developed by the second Appellant under a transmission licence, the LILO cannot be considered part of ISTS, and MPPMCL cannot be burdened with additional PoC charges for the LILO. CERC has correctly directed the first Appellant to bear the transmission charges for the LILO of the 400 kV Vindhyanchal-Korba line at Essar Mahan.

81. Consequently, these charges must be excluded from the PoC sharing mechanism. Including the LILO in ISTS would be arbitrary and impose unjustified financial obligations on Respondent No. 6 under the 2010 Regulations. PGCIL had permitted the LILO only as an interim connectivity measure. STOA was granted for power evacuation through the LILO at Mahan due to delays by the second Appellant in commissioning the 400 kV D/c Mahan-Sipat transmission line. In the absence of the main evacuation infrastructure, the LILO served as a temporary solution for transmitting power from the generating station.

82. Connectivity of Mahan TPS with the WR Grid was established through the LILO of one circuit of the 400 kV Vindhyachal-Korba STPS line at Mahan TPS, implemented by Essar Power M.P. Ltd. for short-term power transfer. As per the LTA intimation dated 01.08.2012, this LILO was a temporary arrangement and was to be removed and restored to its original configuration at the cost of EPMPL before the commencement of LTA.



83. With the commissioning of the 400 kV D/C Mahan-Sipat transmission line (315 km), the LILO has become redundant and is no longer required for transmitting power to beneficiaries.

84. Instead, it is being maintained to manage voltage fluctuations, power swings, and angular instability at Mahan TPS. The section between Mahan TPS and Vindhyachal STPS is now kept open, with the breaker at Vindhyachal end available for contingency use.

85. Consequently, CERC has correctly considered the LILO as a dedicated line for Essar Mahan. Since the LILO serves only Mahan TPS, its transmission charges should be borne by the Appellants, and not by LT beneficiaries under the PoC mechanism. In light of these facts, this Tribunal is requested to allow the Appeal and grant appropriate relief.

### **Analysis and Conclusion**

86. The only issue which emerges out after hearing the learned counsels on behalf of the Appellants and the Respondents and also examining the various documents placed before us including the past judgments/ orders, is ***Whether an asset developed by a transmission licensee under an ISTS licence can be treated as a dedicated transmission line built by a generating station, inter alia, whether the liability to pay transmission charges can continued to be in accordance with the provisions of the Sharing Regulations.***

87. The Appellant herein has prayed for the following:

- a. Admit the present Petition;*
- b. Set aside the impugned Order dated 21.01.2020 passed by the Ld. Central Electricity Regulatory Commission in Petition no. 132/MP/2018;*
- c. Pass any other appropriate Order/ Directions.*

88. The present Appeal arises out of the order dated 21.01.2020, Impugned Order, passed by the CERC in Petition No. 132/MP/2018. By the Impugned Order, the Central Commission held that the Loop-In-Loop-Out (“LILO”) of the 400 kV Vindhyachal–Korba transmission line is a “dedicated transmission line” of Appellant No. 1 Mahan Energen Limited, formerly Essar Power MP Limited, and consequently, directed MEL to bear its transmission charges exclusively until further studies on fault levels and grid stability could be completed, the relevant extract of the Impugned Order is quoted as under:

*“30. MPPMCL has submitted that continuation of LILO as a permanent element would burden the beneficiaries with the additional PoC charge of LILO of Vindhyachal – Korba 400kV S/c line at Mahan TPS. We observe that Essar Mahan has already relinquished its full LTA as on 30.4.2018 as noted in Order dated 7.10.2019 in Petition No. 187/MP/2017. **We also observe that the instant LILO line is the dedicated line of Essar Mahan.** Accordingly, the generating station is liable to pay transmission charges for same. -----*

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*Accordingly, till the Commission takes a final view as per para 29 above, the Respondent No.1 will be liable to pay the transmission charges for the instant LILO line.”*

89. The Appellants contend that the subject LILO forms part of the ISTS, pursuant to a valid ISTS transmission licence granted on 10.04.2008 to Appellant No. 2. They assert that any transmission asset falling under an ISTS licence must be governed by the applicable regulatory framework, i.e., the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 (“Sharing Regulations, 2010”), and cannot be reclassified as a dedicated transmission line of a generating station.

90. The Respondent, MPPMCL, has countered such arguments. MPPMCL supports the Impugned Order that the LILO was only a temporary measure and should remain dedicated to MEL alone, thereby imposing the transmission charges on MEL.

91. Therefore, we ought to examine whether the LILO asset, developed under a valid ISTS licence, can be categorised as a dedicated transmission line, and whether any liability to pay transmission charges can be imposed other than under the Sharing Regulations.

92. The Central Commission, vide order dated 10.04.2008 in Petition No. 157/2007, granted EPTCL an ISTS licence covering several transmission elements, including the asset under dispute, i.e., **LILO of one circuit of the 400 kV Vindhyachal–Korba line at Mahan TPS (approx. 20 km).**

93. In the same order, the Commission clarified that no licence is required to build a dedicated transmission line, and that the very act of granting an ISTS licence implies that the asset in question is part of the ISTS and not a dedicated transmission line, the para 13 of the order reads as under:

***“It is further made clear that the Commission does not propose to treat the transmission system as a “dedicated” transmission system, for construction, maintenance and operation of which licence is not needed by the generating company, since the system may be utilized in future for carrying power other than that for which it is being proposed to be constructed presently.”***

94. The above order of the Commission has not been challenged and has attained finality.

95. The LILO was initially introduced as an interim connectivity measure to facilitate power evacuation from MEL’s 1200 MW (2×600 MW) thermal power plant at Mahan in Madhya Pradesh, especially because the primary 400 kV D/C Mahan–Sipat transmission line (also under EPTCL’s licence) faced delays.

96. From the inception, various CEA/WRPC meetings (including those dated 28.06.2017 and 17.11.2017) recognised that the LILO would support grid stability and mitigate rotor angle or voltage instability at Mahan TPS in certain outage conditions.

97. As the LILO remained in service, concerns arose regarding increased fault levels at Vindhyachal. PGCIL, acting as CTU, filed Petition No. 132/MP/2018 before CERC, seeking approval to continue the LILO arrangement until system studies could be completed.

98. In the Impugned Order dated 21.01.2020, the Commission allowed the LILO to remain for six months pending further studies, but simultaneously held that the LILO was effectively a dedicated transmission line of MEL and that MEL must pay its charges exclusively, as noted above.

99. Further, by order dated 01.06.2022 in IA No. 4/IA/2022 in Petition No. 92/MP/2021, the Central Commission directed the opening (disconnection) of the LILO within 15 days, based on the final system studies submitted by PGCIL.

100. The Commission, thereafter, reiterated, in its order dated 04.05.2023 in Petition No. 92/MP/2021, that MEL was to bear the LILO charges post 21.01.2020, relying on the very Impugned Order under challenge.

101. Appellant No. 1 (MEL) and Appellant No. 2 (EPTCL) challenge the classification of the LILO as a dedicated transmission line and the exclusive liability for transmission charges. They rely on the 2008 licence order and subsequent tariff orders to contend that the LILO is an ISTS element whose costs must be shared under the Sharing Regulations.

102. MEL emphasises that the LILO was always part of the licenced ISTS network. The 10.04.2008 licence order explicitly included LILO within EPTCL's transmission licence.

103. In fact, PGCIL also confirmed the above, submitting that - *On the second issue, the LILO was part of a transmission system implemented by Appellant No.2 under a transmission licence from CERC. Since its commissioning, its transmission charges have been recovered through the Point of Connection (PoC) mechanism under the 2010 Sharing Regulations.*

104. Relying on various orders (e.g., Petition No. 173/TT/2013, Review Petition No. 27/IA/2017, and the minutes of the meeting dated 28.06.2017), MEL submits that the CERC itself repeatedly recognised the LILO as part of ISTS.

105. Undisputedly, Sections 9, 10, and 2(16) of the Electricity Act, 2003, as noted in the foregoing paragraphs, mandates that a dedicated transmission line, inter alia, it is one that a generating station (or captive generating plant) builds without a licence, however, once a licence has been granted for an asset, it necessarily falls under the ISTS.

106. Citing the judgments of this Tribunal in **Odisha Power Generation Corporation Limited v. CERC** (Appeal No. 16 of 2020, order dated 21.10.2020) and **Kanchanjunga Power Company Pvt. Ltd. v. CERC** (Appeal No. 450 of 2019, order dated 31.10.2022), MEL argues that once an asset forms part of the ISTS, it cannot later be reclassified as a dedicated transmission line.

107. EPTCL argued that the Commission's Impugned Order contradicts its own earlier determinations and the unchallenged 2008 licence order, which has attained finality.

108. PGCIL, in its role as CTU, initiated Petition No. 132/MP/2018 to seek a temporary extension of the LILO arrangement until suitable system studies could address the short-circuit level at Vindhyachal.

109. PGCIL clarifies that its concern was primarily grid security and reliability, not the classification of the LILO. It does note, however, that in the original planning stage, the LILO was conceptualised as an interim arrangement.

110. Once system studies indicated that fault levels at Vindhyachal were rising, PGCIL recommended the disconnection of the LILO. The Commission, in the Impugned Order, however, deemed it a "dedicated line," a finding that PGCIL did not specifically seek.

111. MPPMCL argued that the LILO was never meant to be a permanent ISTS element. It points out that the LILO was originally described as a temporary measure pending completion of the 400 kV Mahan–Sipat line.

112. MPPMCL failed to reply when asked how the ISTS transmission asset built by a transmission licensee can now be considered as a dedicated transmission line.

113. However, MPPMCL argues that if the LILO were included in the ISTS, the cost burden would unfairly shift to distribution companies through the PoC mechanism. Since MEL alone benefits from this LILO, MPPMCL believes MEL should bear all related costs.

114. However, the issue before us is whether the disputed line is an ISTS line or a dedicated line.

115. MPPMCL also cites the Commission's earlier orders and this Tribunal's order in DFR No. 1052/2018 (dated 27.03.2018) to show that the LILO was treated as an interim connectivity measure that should be disconnected once the dedicated line (Mahan–Sipat) was ready.

116. It is important to take a note of the provisions of the Act as noted in the foregoing paragraphs, specifically, Section 2(16), which defines “dedicated transmission lines” as lines as built by a generating station or a captive generating plant (under Sections 9 and 10), specifically for evacuation of power from the generating stations. Sections 9 and 10 provide that dedicated lines are owned by the generating stations, and no licence is required for such lines, and not by transmission licensees.

117. By contrast, Section 2(72) defines “transmission lines,” and Sections 2(73) and 40(a) lay down that only a licenced transmission entity may construct the transmission lines.



118. The Commission's order dated 10.04.2008 in Petition No. 157/2007 granted EPTCL a transmission licence covering multiple lines and sub-stations, including the LILO of the 400 kV Vindhyachal–Korba line at Mahan TPS. That order explicitly noted that the assets in question were not dedicated lines but part of the ISTS.

119. This licence order has never been challenged and has attained finality. Once the LILO was included in the licenced scope, it is logically and legally inconsistent to treat the same line as if it were constructed without a licence by a generating station.

120. Further, MPPMCL and PGCIL underscore that the LILO was conceptualised as a temporary or interim measure, pending the commissioning of the 400 kV Mahan–Sipat line. While this may be relevant to operational decisions (i.e., whether to keep the LILO open to avoid fault-level issues at Vindhyachal), it does not override the fact that the LILO is part of a licenced ISTS network.

121. Several orders and minutes of meetings (28.06.2017 at CEA, 17.11.2017 at WRPC, etc.) show that the LILO was indeed helpful for grid security under certain contingencies, though it also contributed to higher fault levels. These operational realities do not alter the legal classification of the asset under the licence, the only issue before us.

122. The Sharing Regulations, 2010 mandate that ISTS assets' costs be pooled and recovered from all Designated ISTS Customers (DICs) through the Point of Connection (PoC) mechanism, unless specifically excluded by the Commission under extraordinary circumstances.

123. The Impugned Order dated 21.01.2020, by categorising the LILO as a dedicated line, effectively excludes it from the PoC mechanism and imposes exclusive liability on MEL. However, this approach contradicts:

- (a) The unchallenged 2008 licence order, which includes the LILO as an ISTS element;
- (b) prior tariff determinations (e.g., Petitions No. 173/TT/2013, 111/TT/2015) where the Commission approved the cost recovery for EPTCL's licenced assets through PoC; and
- (c) settled legal principles enunciated by this Tribunal in ***Odisha Power Generation Corporation Limited v. CERC*** (Appeal No. 16 of 2020) and ***Kanchanjunga Power Company Pvt. Ltd. v. CERC*** (Appeal No. 450 of 2019) that an ISTS asset cannot be subsequently declared "dedicated transmission line."

124. It is important to note that the Central Government's "Removal of Difficulty (5th Order)" clarifies that a "dedicated transmission line" is neither a "transmission line" (Section 2(72)) nor a "distribution system" (Section 2(19)). Hence, once a line is granted a transmission licence, it cannot be considered a "dedicated transmission line" within the meaning of Section 2(16). The said provision of the Removal of Difficulty (5th Order) was considered by this Tribunal in ***Odisha Power Generation Corporation Limited v. CERC & Ors***, which has been relied upon by the Appellants.

125. In **Odisha Power Generation Corporation Limited v. CERC & Ors.**, this Tribunal has held as under:

*“8.6 Further, it is noted that an Inter-state transmission system is planned by the CTU/ PGCIL, as provided in Section 38 of the Act. The said provision does not mandate that an ISTS line can be constructed as a dedicated transmission line. **Once a transmission line is held to be part of inter-state transmission system (ISTS), then it cannot be dedicated. In the present case, the subject line has been constructed by the Respondent No. 3, who is an inter-state transmission licensee, meaning thereby that the said asset is part of ISTS, and therefore, the same cannot be termed as dedicated.**”*

*8.8 It is the case of Respondent No. 3 that the 7th Amendment of the Connectivity Regulations aligns with the provisions of the Electricity Act, 2003 that a dedicated transmission line shall only be constructed by a generating company or by its contractor. It is opined that the said submission is in line with the interpretation of the Electricity Act, 2003 i.e. dedicated transmission lines cannot be built for an ISTS network built under the supervision and coordinated planning of the CTU/ PGCIL. The role of CTU/ PGCIL/ Respondent No. 2 is to only provide specifications for construction of the dedicated line, but not to construct them. **In other words, once an asset becomes part of ISTS, then the same cannot be treated as dedicated.**”*

8.9 It was also brought to our knowledge that the Central Government issued the Removal of Difficulty (5th Order) under the Act, which provides that a dedicated transmission line is neither a transmission line in terms of Section 2 (72) of the Act nor it is a distribution system. **The Appellant also referred to a judgment passed by the Tribunal in Appeal No. 145 of 2011 in the case of The Chairman TSEB &Ors. v. M/s. Ind Bharath Thermal Power Ltd. &Anr., wherein it was held that the dedicated transmission lines cannot be classified as transmission lines. In the light of the said judgment, the argument of PGCIL that the transmission line in question is a dedicated line merits no consideration, as the same is part of ISTS.**

8.10 We have noted that after the promulgation of the 7<sup>th</sup> Amendment of the CERC Connectivity Regulations on 09.01.2019, Regulation 8(8) does not contain any provision towards payment of transmission charges for the transmission line constructed as dedicated. Hence, we note that especially after the 7<sup>th</sup> Amendment, the only regulation which is applicable for the purpose of payment of transmission charges of a transmission line, which is part of ISTS, is the CERC Sharing Regulations, 2010, and consequentially the PoC/ sharing mechanism. It is necessary to refer to the various provisions of the Sharing Regulations (stated Supra). From the sharing regulations, it is evident that the transmission charges/ yearly transmission charges of ISTS lines, are recovered through the sharing mechanism (also called as PoC) whereby the said

*charges are shared by all the interstate transmission system users nationally.*

*-----"*

126. In ***Kanchanjunga Power Company Pvt. Ltd. v. CERC***, this Tribunal has held as under:

***"104. Therefore, once a Transmission Line asset becomes a part of ISTS, then the same cannot be treated as dedicated, as in the present case, the subject Line has been declared to be a part of ISTS in terms of Section 2 (36)(ii) of the Electricity Act, 2003 by this Tribunal which is also upheld by Hon'ble Supreme Court, it shall hold the status of that of an ISTS and cannot be termed as dedicated anymore.***

***105. In view of the conclusions made above, it is directed the subject Line is a part of ISTS, which cannot be simultaneously termed as dedicated transmission line."***

127. The Commission's direction to open the LILO (order dated 01.06.2022 in IA No. 4/IA/2022 and order dated 04.05.2023 in Petition No. 92/MP/2021) was primarily on account of fault-level concerns at Vindhyachal. Such disconnection or partial utilisation does not, in itself, convert the LILO into a "dedicated transmission line. Rather, it indicates that the system no longer requires LILO for routine ISTS power flows.

128. Even if the LILO's usage is intermittent or is eventually dismantled, the question of classification pertains to the period during which it was included under a valid ISTS licence. Liability for transmission charges during that period must flow from the Sharing Regulations.

129. We, therefore, conclude that an asset developed by a transmission licensee under a valid ISTS licence cannot be classified as a dedicated transmission line. The LILO was explicitly included within the scope of EPTCL's 2008 licence, which remains unchallenged. The Impugned Order's reclassification of the LILO as "dedicated transmission line" is unsustainable in law.

130. Accordingly, the liability to pay transmission charges for any ISTS asset must be determined under the Sharing Regulations, reliance is also placed on this Tribunal judgment in ***Odisha Power Generation Corporation Limited v. CERC & Ors.*** The Commission erred in imposing exclusive liability on MEL for the LILO charges without duly applying the cost-sharing framework. The reliance on the "temporary" nature of the LILO or MEL's relinquishment of LTA does not negate the fact that the line was, at all material times, part of a licenced ISTS.

### **ORDER**

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 106 of 2020 has merit and is allowed.

The Impugned Order dated 21.01.2020, to the extent it treats the LILO of the 400 kV Vindhyachal–Korba line at Mahan TPS as a dedicated transmission line of MEL

and imposes exclusive liability on MEL for transmission charges, is hereby set aside.

The LILO, having been included in the ISTS licence granted to EPTCL on 10.04.2008, shall be treated as an ISTS asset.

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

**PRONOUNCED IN THE OPEN COURT ON THIS 1<sup>st</sup> DAY OF JULY, 2025.**

**(Virender Bhat)**  
**Judicial Member**

**(Sandesh Kumar Sharma)**  
**Technical Member**

**REPORTABLE / ~~NON-REPORTABLE~~**

pr/mkj/kks